New South Wales

Legislative Council

PARLIAMENTARY DEBATES
(HANSARD)

Fifty-Sixth Parliament
First Session

Wednesday, 19 September 2018

Authorised by the Parliament of New South Wales

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LEGISLATIVE COUNCIL

Wednesday, 19 September 2018

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

The PRESIDENT read the prayers.

Visitors

VISITORS

The PRESIDENT: On behalf of all members, I welcome into the public gallery students and teachers from the Campsie TAFE Australian Migrant English Program.

Bills

RSL NSW BILL 2018

EMERGENCY SERVICES LEGISLATION AMENDMENT BILL 2018

First Reading

Bills received from the Legislative Assembly.

Leave granted for procedural matters to be dealt with on one motion without formality.

The Hon. DON HARWIN: I move:

That the bills be read a first time and printed, standing orders be suspended according to sessional order for remaining stages and the second reading of the bills be set down as orders of the day for a later hour.

Motion agreed to.

Documents

INDEPENDENT COMMISSION AGAINST CORRUPTION

Reports

The PRESIDENT: According to the Independent Commission Against Corruption Act 1988, I table a report of the Independent Commission Against Corruption entitled "Investigation of the conduct of a principal officer of two non-government organisations and others", dated September 2018, received out of session and authorised to be made public this day.

The Hon. DON HARWIN: I move:

That the report be printed.

Motion agreed to.

Motions

TRIBUTE TO MARCIA DONOVAN

The Hon. ERNEST WONG (11:03): I move:

That this House:

(a) extends its heartfelt condolence to the family and friends of Marcia Donovan who was a long-time member of the Australian Labor Party [ALP] who sadly passed away recently;

(b) notes that Marcia was an activist on Indigenous issues, was particularly active on the local NAIDOC committee in Harris Park, and received an award for her service;

(c) recognises Marcia's love of sport, from her involvement with the Granville Soccer Club to her unwavering support of the South Sydney Rabbitohs;

(d) acknowledges the invaluable contribution that Marcia and her husband, Doug, made to the ALP over many years, particularly in their local branch of Harris Park where both were members for many years and were held in high esteem by fellow branch members; and

(e) notes that Marcia will be very sadly missed by all who loved and knew her.

Motion agreed to.

NATIONAL SERVICEMEN'S ASSOCIATION AND AFFILIATES MEMORIAL DAY AND ANNIVERSARY

The Hon. LOU AMATO (11:04): I move:

(1) That this House notes that:

(a) on 12 August 2018 at the Ingleburn Military Precinct, the NSW National Servicemen's Association and Affiliates celebrated the sixty-seventh anniversary of the first intakes of the 12th, 13th, and 19th Battalions into camps in 1951;

(b) the memorial day honoured those who served in the Korea, Monte Bello, Malaya, Vietnam, Borneo and Malaysia campaigns;

(c) the service commenced at 10.30 a.m. with the Welcome and Introduction by Lt. Col. Mr Michael Johnsen Moore, AM (Rtd);

(d) Chaplain, Lt. Col. Colin Aiken, OAM, RFD, recited the hymn *Abide with Me* and the Prayer of Remembrance;

(e) Fr Camello Sciberras, OAM, PP (Rtd) recited the Prayer for the Australian Defence Forces,

(f) John Redman recited the Prayer for Peace and the Nation;

(g) wreaths were laid at the National Servicemen's Memorial in the following order:

(i) Major General Paul Irving, AM, PSM, RFD, patron;

(ii) Ron Brown, OAM, JP, President NSW NSAA, with John Redman NS and CFAA;

(iii) Rhonda Vanzella and guest, War Widows Guild Sydney;

(iv) Alice Kang and John Haines, AM, Kokoda Track Walkway;

(v) Tom Dunne, 7th Division;

(vi) Craig Kelly, Federal member of Parliament;

(vii) the Hon. Lou Amato, MLC;

(viii) Caroline Mackaness, DVA;

(ix) Anoulack Chanthivong, MP, and Wally Scott Smith;

(x) Barbara Perry former member of Parliament and Auburn Disabled Veterans;

(xi) Alan Rawlinson Legacy;

(xii) Carolyn McMahon, WRAAC;

(xiii) George Sachse, on behalf of those killed in non-active service;

(xiv) Ray James, Ingleburn RSL; Geoff Grimes, Ingleburn NSAA; Terry Goldsworthy, Ingleburn RSL; and Peter Lander, Lakemba RSL S/B;

(xv) Kevin Watts, and Mick Hutton, Liverpool RSL, and Harry Allie, Indigenous Servicemen;

(xvi) Rey Manofo, Campbelltown Council and Peter Harie, Liverpool Council;

(xvii) Peter Drivas representing Landcom;

(xviii) John Zarb and Antonia Milanovic representing Bunnings;

(xix) Samantha Lind, Captains Jorja Smith and Miles Maestri Bardia, Public School Australian Army Cadet Band; and

(xx) many members of the public.

(h) the Remembrance Address was given by Major General Paul Irving, AM, PSM, RFD (Rtd);

(i) Ron Brown, OAM, JP, gave the Ode of Remembrance,

(j) the bugler sounded the *Last Post* followed by one minute's silence;

(k) George Sachse, JP, recited the National Servicemen's Ode;

(l) the bugler sounded Rouse;

(m) Fr Camello Sciberras, OAM, PP (Rtd) gave Benediction;

(n) the Australian National Anthem was recited, and

(o) the ceremony was concluded by State President Ron Brown, OAM, JP.

(2) That this House acknowledges:

(a) all national servicemen who were killed in action or died in service, through illness or accident and the memory of the many national servicemen who have passed away in the years since they served in the Defence Forces for their country, and

(b) the great efforts of the NSW National Servicemen's Association and Affiliates and all those who contributed to the National Servicemen's Memorial Day and the sixty-seventh anniversary of the first intakes of the 12th, 13th and 19th Battalions.

Motion agreed to.

TRIBUTE TO LAURIE CARMICHAEL

The Hon. DANIEL MOOKHEY (11:04): I move:

(1) That this House notes news of the sad passing of Australian trade unionist Mr Laurie Carmichael, who died on 18 August 2018.

(2) That this House notes that:

(a) after serving in the Royal Australian Air Force during World War II, Mr Carmichael joined the Amalgamated Engineering Union [AEU] in 1946 as a fitter at Williamstown Naval Dockyard in Victoria;

(b) in 1958 Mr Carmichael was elected State Secretary of the Victorian Branch of the AEU;

(c) in 1972 Mr Carmichael became Assistant National Secretary of the Amalgamated Metal Workers' Union, before his election in 1987 as Assistant Secretary of the Australian Council of Trade Unions [ACTU]; and

(d) his close partnership with ACTU Secretary Bill Kelty led to the establishment of the 38-hour week, Medicare, universal superannuation, tariff reduction, industry development plans and the national funding of skills training.

(3) That this House extends its sincere condolences to Mr Carmichael's family and thanks him for his contributions to Australian workers.

Motion agreed to.

Documents

UNPROCLAIMED LEGISLATION

The Hon. SCOTT FARLOW: According to standing order, I table a list detailing all legislation unproclaimed 90 calendar days after assent as at 18 September 2018.

TABLING OF PAPERS

The Hon. SCOTT FARLOW: I table the following paper:

Civil and Administrative Tribunal Act 2013—Erratum to the report of the NSW Civil and Administrative Tribunal for the year ending 30 June 2017.

I move:

That the report be printed.

Motion agreed to.

Irregular Petitions

KINGSCLIFF FLOOD MANAGEMENT

The Hon. WALT SECORD: I seek leave of the House for the suspension of standing orders to allow the presentation of a petition from 567 citizens of New South Wales concerning the flood impact study of future urban use land at Kingscliff, which is irregular, as it is addressed to the Speaker and members of the Legislative Assembly.

The Hon. Dr Peter Phelps: Get someone in the lower House to do it!

The PRESIDENT: Order! I control the Chamber, not an honourable member. The Hon. Walt Secord has the call.

Leave granted.

The Hon. WALT SECORD: I move:

That standing and sessional orders be suspended to allow the presentation of an irregular petition from 567 citizens of New South Wales requesting that the Government call on Tweed Shire Council to review and upgrade the current Kingscliff flood management study, halt filling for urban development on flood-prone and flood storage land between Kingscliff village and the Tweed River pending a new hydrological study, and investigate rezoning to prohibit the filling of current future urban use land that is designated as being flood prone.

Petition received.

Business of the House

POSTPONEMENT OF BUSINESS

Mr JUSTIN FIELD: I move:

That Business of the House Notice of Motion No. 1 be postponed until Tuesday 25 September 2018.

Motion agreed to.

The Hon. DON HARWIN: I move:

That Government Business Notices of Motions Nos 1 to 3 and Government Business Order of the Day No. 1 be postponed until a later hour.

Motion agreed to.

SUSPENSION OF STANDING AND SESSIONAL ORDERS: ORDER OF BUSINESS

The Hon. SHAYNE MALLARD: I move:

That standing and sessional orders be suspended to allow Private Member's Business item No. 2441 outside the Order of Precedence relating to a motion to make a reference to the Standing Committee on Social Issues be called on forthwith.

Motion agreed to.

Committees

STANDING COMMITTEE ON SOCIAL ISSUES

Reference

The Hon. SHAYNE MALLARD (11:17): I move:

That with reference to the May 2018 report of ACON "In Pursuit of Truth and Justice" and the progress made by the NSW Police Force through Strike Force Parrabell, the Standing Committee on Social Issues inquire into and report on the response to gay and transgender hate crimes between 1970 and 2010 and current developments in policy and practice in relation to such crimes, and in particular:

(a) the violent crimes committed in New South Wales between 1970 and 2010 where the victim of that crime was a member of the LGBTIQ community and where the relevant crime was the subject of a report to the NSW Police Force, including:

(i) whether there existed impediments within the criminal justice system that impacted the protection of LGBTIQ people in New South Wales and the delivery of justice to victims of LGBTIQ hate crimes and their families, with reference to case studies of particular matters including but not limited to Alan Rosendale, Scott Johnson, John Russell and Ross Warren,

(ii) to the extent that past impediments are identified, how effectively these have been addressed by current policy and practice,

(b) in relation to LGBTIQ hate crimes more generally:

(i) what role the so-called "gay panic" defence played in the culture of LGBTIQ hate crimes between 1970 and 2010,

(ii) how the so-called "gay panic" defence impacted the delivery of justice and the treatment of gay men during LGBTIQ hate crime investigations and court proceedings, and

(c) any other related matter.

I thank the House for allowing me to move this motion now. The reference to the Standing Committee on Social Issues relates to the spate of gay hate crimes, bashings and murders committed from the 1970s until 2010. Members are aware that at least 88 murders that occurred during that time have been identified as gay killings and that approximately 30 remain unsolved. The killings and bashings, which were brutal and organised, occurred at a dark time in our city's history. The reference follows strong and persistent community calls over many years in an effort to achieve some sense of justice for the victims and their families and friends, and for the community.

The AIDS Council of New South Wales [ACON], the peak community organisation representing the lesbian, gay, bisexual, transgender, intersex and queer [LGBTIQ] community, commissioned a landmark report, "In the Pursuit of Truth and Justice". The report, which was released earlier this year, detailed what happened during that dark time. The report examined in detail a number of cases and made a number of worthwhile recommendations which this committee will review. In addition to that, the NSW Police Force, to its credit, commissioned Strike Force Parrabell, which reviewed the 88 cases for evidence of bias or homophobia in the

period of investigation. It is a frank report. It is confronting reading and some people are not happy with it but I commend the police for doing it, and its recommendations will be reviewed by this committee.

It is appropriate that the Parliament responds to the recommendations about changes. The committee will consider and address the issues of culture changes in our society and culture changes within the agencies that are identified as having been involved in that time. The community often looks to the Parliament and its members to show leadership when there had been systemic hardship and suffering in our society. This is one glaring issue that needs to be resolved by the Parliament for the LGBTIQ communities. The community is looking forward to us dealing with this. We need to expunge this dark period of our history, city, State and nation and this is the best way to do it. I commend the inquiry. It is a multi-party inquiry and we are not playing politics here—we want to resolve this issue for the sake of the community. I commend the motion to the House.

Reverend the Hon. FRED NILE (11:21): As members are aware, I objected to the establishment of this important inquiry being rubberstamped through this House as a formal motion. It is not the correct procedure for such a major inquiry, and Mr Mallard has been forced by my objection to now explain the objectives and the purposes of inquiry. In view of that, we have had submissions from the Police Association asking for more time to consider the terms of reference for the inquiry. It is very unhappy about the process at the moment—it is like an ambush—and I do not believe it is the way we should conduct the business of this House. For the record, I moved in my Crimes Amendment (Provocation) Bill 2014 to remove the defence of gay panic attacks, which are at the heart of this inquiry.

The Hon. PENNY SHARPE (11:22): I support the motion of the Hon. Shayne Mallard. By way of background, I acknowledge the work Reverend the Hon. Fred Nile did in the removal of the gay panic defence, which was an important reform, and I know we would not have got there without his support. There is nothing to fear here: This is about learning from the dark days of the past. There was a time in this city from the 1970s through to the 2000s when groups of young men stalked gay men across this city. They attacked transgender women and lesbians, and there was organised violence across this city. It was a very dark period of our lives. It was also in the context of a time when the laws were very different. Thankfully for us, we have reformed legislation for lesbian, gay, bisexual, transgender and intersex [LGBTI] people. There has been a huge amount of law reform over that time—for example, in New South Wales gay men and lesbian couples are equal in all areas of the law. We still have some work to do regarding transgender and intersex, but that is for another day.

This inquiry is about understanding the level of violence targeted at one group in our community and the harm that was done—not only to those who were murdered but also to those who were bashed, those who were left behind and still have many unanswered questions and who have not, in many cases, had the opportunity to share publicly the stories of their loved ones and what happened to them during that time. Community organisations have done fantastic work in this area for decades—whether it was the anti-violence project that started in the early 1990s to document the violence or the work that was outlined in ACON's "In Pursuit of Truth and Justice" report of May 2018.

The report documented not just the murders but also the targeted violence that was happening every Friday and Saturday night just up the road. The community has done a significant amount of work for a long time. For many years I have worked closely with New South Wales police regarding violence. I commend Assistant Commissioner Tony Crandell for all the work he does in this area. For a long time he has kept many of us informed about Strike Force Parrabell. I also acknowledge the work of the NSW police for putting significant resources into reviewing those 88 deaths. There are still some questions there.

This inquiry will look at the two reports from ACON and the police and consider how it came to this, the reasons for it happening and the outstanding issues that people want to raise, particularly families, friends and victims. I cannot overemphasise how important this issue is to many people in our community. I pay particular tribute to Peter Rolfe, who has been in my ear—resulting in me being in the ear of the Leader of the Opposition since he became Leader of the Opposition—about finding justice for his partner. Earlier this year I was proud to stand with Luke Foley when Strike Force Parrabell commenced to say that we would pursue this.

I am pleased that, once again, members in this House have been working together to come up with the terms of reference on which that we all agree, that we think are reasonable and that will provide an important report for the Standing Committee on Social Issues. The social issues committee currently does not have any work in front of it. It has not done an inquiry for a long time. We have time, space and the willingness of many members to work through these issues, and I cannot think of a more important or reasonable inquiry for the social issues committee to undertake. The committee has a long and proud history of dealing with some difficult issues. There is much for us to learn, not just in looking back but also in looking forward, as to how we deal with violence in our community. I commend the motion to the House.

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

Motion agreed to.

Bills

CHILDREN (EDUCATION AND CARE SERVICES) SUPPLEMENTARY PROVISIONS AMENDMENT BILL 2018

Second Reading Debate

Debate resumed from 15 August 2018.

The Hon. WALT SECORD (11:27): As Deputy Leader of the Opposition in the New South Wales Legislative Council and shadow Minister for Health representing Labor's Early Childhood Education spokesperson in the Legislative Council, I lead for Labor in debate on the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018. It is a bill to amend the Children (Education and Care Services) Supplementary Provisions Act 2011 to further provide for the regulation of certain children's education and care services and to further align the regulation of those services with the Children (Education and Care Services) National Law (NSW) and other purposes. This will include the introduction of an assessment and rating system for State-regulated services and the transition of home-based care and care in what has become redundant shopping services, as distinct service types governed by the New South Wales legislation, to other service types regulated by the national system.

It is legislation that allows the State framework to mirror the Federal framework. Presently there are two regulatory regimes for early childhood education in care services for young children in New South Wales. More than 97 per cent of New South Wales services—about 5,500 services in New South Wales—are regulated under a nationally consistent legislation, the National Quality Framework [NQF]. This framework regulates long day care, family day care, out-of-school-hours care and preschool services.

A small number of services—about 120 services as at June 2018—are regulated under a separate New South Wales law. I note that the State Act has not been reviewed or amended since 2011, when the O'Farrell Government was first elected. Nothing occurred under the Baird regime and we now see the Berejiklian Government, after almost eight long years, recognising that there is a gap in the standards across the two regulatory systems, with requirements under New South Wales which are considered inferior to the requirements under the national law when compared to other State and Territory jurisdictions. The overview of this bill says that it is to amend the Children (Education and Care Services) Supplementary Provisions Act 2011 as follows:

a) To more closely align the regulation of mobile and occasional education and care services, which do not fall within the scope of the Children (Education and Care Services) National Law, with the regulation of other education and care services under that Act, including:

i. Applying the objectives and guiding principles of the National Law to the NSW Act, and

ii. Providing for NSW mobile and occasional education and care services to be assessed and rated in the same way as other education and care services are assessed and rated under the National Law;

iii. Applying the National Quality Standard and National Quality Framework to NSW mobile and occasional education and care services; and

iv. Making the administrative fees payable by providers of mobile and occasional education and care services the same as those payable by providers to other education and care services under the National Law;

v. To discontinue State regulated home-based child care so that all home based child care in NSW will be regulated as family day care service under the National Law;

vi. To provide that child minding services in retail shopping centres will no longer be regulated under the NSW Act;

I note, however, that there are no services in shopping centres—the Minister confirms my comments—so this legislation removes something that is redundant. The overview continues:

vii. To make it an offence to advertise an education and care service where an application for a provider approval or service approval is pending unless it is made clear that the service will only be provided once the relevant approvals have been granted.

The bill also makes other minor, consequential amendments to the Child Protection (Working with Children) Act 2012, the Child Protection (Working with Children) Regulation 2013 and various environmental planning instruments. I acknowledge and appreciate the briefing and materials on the legislation provided this week by the office of the Minister for Early Childhood Education. They were useful and guided the Opposition in its deliberations. They provided clarity and they were succinct. I accept assurances that the department has consulted with key stakeholder groups affected by the changes. I have been advised that they have included the Mobile Children's Services Association, the Occasional Child Care Association NSW and Community Connections Solutions Australia. On that basis, I have held discussions with Labor's shadow Minister for Early Childhood

Education, the member for Port Stephens Kate Washington, and she has advised that we will not be opposing this bill.

I also acknowledge the work of my colleague the Hon. Courtney Houssos in the area of early childhood education and her desire to improve quality in this important social policy area, as well as increasing access to availability for young families. My contribution will be brief but my Labor colleagues are likely to highlight some aspects of the bill that deserve scrutiny. Possibly the most significant reform to early childhood education in the past decade was the 2012 National Quality Framework for early childhood education and child care. This important national reform was delivered through the Council of Australian Governments by the then Federal Minister for Education Julia Gillard in 2010, who later saw it rolled out when she became Prime Minister.

It is unfortunate that successive governments have undervalued early childhood education. Sadly, the future viability of all preschools in Australia and particularly in New South Wales have been placed in doubt by the savage cuts by the Turnbull and Morrison governments. The most recent Federal budget papers described a so-called savings of more than $440 million over the forward estimates through the non-renewal of the national partnership agreement in early childhood education. That was a $440 million cut. On current trends, national partnership agreement funding represents about a third of the New South Wales preschool budget. That is a massive cut to these services.

However, unbelievably, at this month's budget estimates, the Minister for Early Childhood Education, Sarah Mitchell, said that she was confident she could cover the Federal funding cuts from within the department's existing budget. Even without this Commonwealth funding cut, the New South Wales Government was falling behind in its assessment and ranking of services. Almost 40 per cent of all early childcare services in New South Wales have not been assessed in more than three years. In fact, some centres have not been assessed in more than five years. That meant that a child could go into a service shortly after birth and emerge years later without that centre having been assessed at all. Again, this goes to priorities. The Berejiklian Government has the wrong priorities. This Government would rather spend $2 billion on stadiums and almost $2 billion on moving the Powerhouse Museum to Western Sydney against the wishes of the local community than support early childhood education.

The Hon. Dr Peter Phelps: Is that the best you can do—really?

The PRESIDENT: Order! I remind members that interjections are disorderly. I remind members who have the call that they should not acknowledge or respond to those interjections.

The Hon. WALT SECORD: I am mindful of your statements in the Chamber, but the former Government Whip, the Hon. Dr Peter Phelps, jogged my memory and prompted me to look at early childhood education in a part of the State that is under enormous stress. I refer to the growing problem of early childhood education on the State's South Coast, particularly in the electorate of Kiama and in the Illawarra. In March the Illawarra had one of the State's largest protests in support of early childhood education workers in the State. A record 7,000 parents, workers and children poured onto the streets of Kiama and the Illawarra on the South Coast. Unfortunately, the need for affordable and quality child care in the Illawarra and Kiama on the South Coast has been neglected by the Berejiklian Government and particularly by the member for Kiama. Protestor after protestor singled out the member for Kiama for his refusal to meet with or talk to parents and childcare workers. Clearly, he has the wrong priorities. This bloke—a member—would rather intimidate and drive women out of public office—

The PRESIDENT: Order! The member will resume his seat. The member is well aware that if he intends to make imputations against another member, particularly a member in the other House, he should do so by way of substantive motion. He will not do it during a second reading debate of a bill, particularly when it is clear that the comments he is making are offensive to another member. I will not give another warning.

The Hon. WALT SECORD: Mr President, I am not canvassing your ruling. To put it in context, the largest protests in New South Wales about the difficulties in securing affordable and quality early childcare education were in the Illawarra.

The PRESIDENT: My ruling was not based on protests being made. The member is well aware that my ruling was based on the imputations the member was making against the member for Kiama. The member has the call. He will continue with his second reading contribution.

The Hon. WALT SECORD: Mr President, this whole bill—the long title of the bill—is about quality and accessibility—

The Hon. Catherine Cusack: Point of order: Mr President, the member is challenging your ruling, and he is continuing to do that.

The PRESIDENT: The member is coming very close to challenging my ruling. I have given him the benefit of the doubt. The member will continue with his second reading contribution.

The Hon. WALT SECORD: Seven thousand parents, childcare workers and children poured onto the streets of the South Coast, the Illawarra and Kiama disappointed by the conservative members of this Government, who are refusing to stand up and represent them and put forward their needs to have affordable and quality child care. This is about the priorities of this Government, which prefers to stand by members like the former member for Wagga Wagga and members on the South Coast who have the wrong priorities. Members should be supporting women in the workforce and assisting them to get accessible and quality child care, rather than intimidating them and pushing them out of the workforce. This is about the priorities of the Government and the Premier. I expect the Premier to draw a line in the sand and say, "You must support women in the workforce." The best way to do that is through quality early childhood education rather than through intimidation.

I return to the bill. The Berejiklian Government asserts that the bill seeks to resolve a longstanding problem with inconsistent quality controls across different types of early childhood education and services. Currently a few types of early childhood education and services are regulated in New South Wales but are excluded from the application of the National Quality Framework. These services are known as "out-of-scope services" and include childcare services in shopping centres—which we have been advised are redundant—home-based care, occasional care and mobile preschools. The out-of-scope services have been regulated by the Children (Education and Care Services) Supplementary Provisions Act. This bill seeks to align the Act with the Gillard Government's 2012 National Quality Framework, which provides consistent regulation for early childhood education across the States and Territories.

In effect, this means that all services offering early childhood education and care in New South Wales, regardless of the setting or type of service, will be required to comply with the National Quality Framework. This is welcome. An intended consequence of the bill is to cease to recognise home-based care and shopping centre child care. Current home-based care providers will need to transition to family day care services in order to continue to operate. Currently no services in shopping centres are approved under the Act; therefore, there will be no impact from this change. With the removal of these services from the remit of the Act, the only services that will remain outside the National Quality Framework are mobile preschool services and occasional care and education services. The bill extends the National Quality Framework to these services, whereby they will undergo assessment and rating by the Department of Education.

The Minister for Early Education, the Hon. Sarah Mitchell, stated in her second reading speech, "Funding has been allocated for sector support to assist all services to transition to the new arrangements", without making any statement about how this will occur and the process that will be followed. The Labor Opposition would like clarification on this issue in the Minister's reply, including how much funding will be allocated and where it will come from. To only say that it will be reallocated is not enough. What programs will be affected and where will the funding be drawn from? The bill will also make it an offence to advertise an education and care service when an application for a provider approval or service approval is pending unless it is made clear that the service will be provided only when the relevant approvals have been granted. This issue was discussed in this morning's briefing, and the Opposition was satisfied.

I understand that the bill will commence upon assent by the Governor. Assessment and rating will commence after the proclamation of the regulations, which is expected to begin in April 2019, and will take full effect in October 2019, creating a period of transition and settling in. On that basis, I conclude my remarks and thank the House for its consideration. I reiterate that Labor will not be opposing the bill. However, with respect to matters that I raised earlier in my contribution, about which I was cautioned by the President, I will take the President's advice. A substantive motion on the antics and activities of the misogynous member for—

The PRESIDENT: Order! I call the Hon. Walt Secord to order for the first time. The Hon. Walt Secord will resume his seat. After making imputations earlier about and personal reflections on another member, the Hon. Walt Secord then said, "I will take the President's advice and will move a motion." The member is not moving a motion. All he is doing is attempting again to make personal reflections on another member. I remind the Hon. Walt Secord of Standing Order 91 (3), which states:

> A member may not use offensive words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

I consider the act of the member to be disorderly and that is why I called him to order for the first time.

Mr JUSTIN FIELD (11:44): The Greens will support the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018 . On behalf of The Greens, I make clear our support for a quality early learning system in New South Wales for all children. The bill goes some way towards improving or at least guaranteeing the quality of early learning services in this State. It targets a small number of services that are

operating in the State, the vast majority of which are already working under the National Quality Framework and under national laws. I qualify my support and the support of The Greens by saying that despite the high quality of the majority of services in this State within the long day care community preschool sector and the committed and professional educators working in those services every day to educate our young ones, some shortfalls in the New South Wales system should make us think critically about whether the mix of services and the allocation of public money to these services is pointed in the right direction to ensure the best outcomes for our young people and, ultimately, society as a whole.

In her second reading speech, the Minister for Early Education was correct when she addressed the significant social investment of quality early learning. There is a $14 return for every $1 spent on better social and health outcomes, not only for the individuals concerned but also for the community as a whole. The investment is very valuable. Despite increased investment in early learning by this Government, New South Wales still spends the lowest proportion of its budget on early learning compared to other States, at only 0.4 per cent. We spend the lowest amount per child and parents pay the highest amount to access services. We trail behind other States with regard to meeting the national target of children attending 600 hours of preschool in the year before full-time schooling. I would appreciate an update from the Minister on how we are currently placed in relation to those measures. Earlier this year we were tracking at approximately 81 per cent of children meeting that target compared to an 89 per cent outcome nationally.

It is fair to make the case that the mix of services is part of the story. In New South Wales, long day care centres make up a high proportion of the services provided and we have more for-profit operators in this sector. Our focus is on for-profit, long day care centres rather than community-based and public preschool services, community-based long day care centres and early learning centres within our public school system that are run by community operators, not-for-profit operators or the school community itself. That mix is part of the story of why our accessibility rates seem to be lower and why the cost of delivering services seems to be higher. Ultimately, that means there is a constraint on the ability of our early learning sector to deliver the best outcomes for New South Wales children and families.

I recognise that the bill before the House today will align the regulation with a small number of services, primarily mobile and occasional education and care services operating in New South Wales that do not currently fall under the national guidelines. This will affect a number of home-based care services, which will transition to the family day care model and come under the National Quality Framework that applies there. Other services—approximately 90 mobile and occasional services—will face some changes to standards as a result of this bill. Ultimately, they will be subject to the assessment and rating service of the Department of Education.

I also understand that approximately 90 mobile and occasional services will be the subject of changes to standards as a result of this bill and ultimately will be subject to the assessment and rating service of the Department of Education. I understand the goal is to complete the assessment and rating of those approximately 90 mobile and occasional services within the first year of commencement of the bill. I welcome that. I believe parents also will welcome that the services they choose to use will have additional assessment and rating, which will enable parents to have confidence in the quality of those services. Nevertheless, it is appropriate to ask questions about the capacity of the department to undertake that assessment and rating.

Some of the figures I will cite are contested. The Minister can address that in reply and point out where the Government thinks the figures are incorrect. As I understand it, approximately one-third of childcare centres in New South Wales have not been reassessed under the National Quality Framework. The assessment and rating service I have mentioned is operated by the Department of Education. Approximately one-third of those centres have not been reassessed for at least four years and many of them have the same rating that they were awarded in 2012 when the standard was first introduced. Unfortunately, there are some services that appear on the website that have never been rated.

This debate is an appropriate opportunity for the Minister to address how New South Wales fares in ratings. I recognise that the Government's response historically is that New South Wales is doing better than any other State. I would be prepared to accept that, except for the fact that we have many more services that are more weighted towards the for-profit sector—and potentially risks associated with quality—rather than towards the standards of early education. Ultimately, the delivery of services is tied to making a profit. Under those circumstances, it is appropriate to ensure that our assessment and rating program is up to date and that implementation is regularly assessed so that parents have the information they need when they make decisions about the services received by their children.

I reiterate that The Greens will support the bill. I recognise that it will go some way towards improving quality assurance of a small number of services in New South Wales that currently are not under the national law. However, it is critical for all members of this House to keep their minds on the facts and figures I outlined at the commencement of my speech concerning accessibility and cost. At the Federal level particularly, the subsidies

seem to drive the model. This highlights that there is an issue concerning our approach to early learning generally; the issue is that early learning is not as child-centred as it should be. Certainly the way the childcare subsidy is discussed at the Federal level—and ultimately many of the decisions are driven by subsidies—the focus has been around workforce participation and families having choice. I recognise that families should have a choice. I also recognise the need of families to ensure that they can engage in work. After all, a whole range of benefits can come from that. But early learning ultimately should be about the children.

The Hon. Walt Secord: It should be.

Mr JUSTIN FIELD: It should be about the children. The Government probably recognises that and agrees with it, but the way the service is discussed, more at the Federal level than at the State level, and the way in which funding decisions seem to be made suggest that the decisions are not based so much on the children. While The Greens support the bill, I offer the Government a solution to ensuring that we keep the child-centred focus, improve accessibility and reduce costs. The early learning sector in New South Wales and throughout Australia more broadly should move more towards a universal public education system. More of our early learning services should be delivered in our public schools.

As a starting point I propose that any new public or primary school built in New South Wales should include an early learning centre, a public centre that features public education teachers who are delivering high-quality early learning or preschool services that are free of cost for families and their children. We should transition early learning services into the public sector. It should be part of our free universal education system. That is how we will guarantee access, quality over time, affordability, fair pay for educators and early education being child-centred. In that way, we will guarantee achieving the outcomes that we all recognise result from investment in this important sector. The Greens will support this bill.

Reverend the Hon. FRED NILE (11:54): On behalf of the Christian Democratic Party, I express support for the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018. The main purpose of the bill is to ensure that standards for early childhood education services, which are regulated under New South Wales legislation, align with standards under the national system. This Government has adopted a policy of endeavouring to have this State's legislation incorporated into a national system so that legislation is consistent throughout Australia. This bill is part of the implementation of that policy, which is a positive move.

The importance of early childhood education was emphasised in the report by Dr Geoff Masters from the Australian Council for Educational Research who pointed out that a powerful predictor of how a child finishes high school is how he or she entered kindergarten. That is no surprise, given that 90 per cent of a child's brain development occurs before he or she reaches the age of five. The Effective Pre-School, Primary and Secondary Education project speaks to the importance of high-quality preschool education. Successive reports have found a strong correlation between two years of high-quality preschool education and strong educational and behavioural outcomes throughout a child's schooling. In other words, early childhood education lays the foundation for the child entering primary school, high school and higher education institutions and undertaking additional training such as apprenticeships.

The Nobel Prize winning economist James Heckman first demonstrated the powerful link between early learning and later life. He argued that the economic return on investment in the early years is higher than is the return on investment at any other time during childhood and could be as high as $17 for each dollar invested. There is ample academic support for this legislation and widespread recognition of the importance of early childhood education. Currently there are two regulatory regimes for early childhood education and care services for young children in New South Wales. More than 97 per cent of approximately 5,500 services in New South Wales are regulated under nationally consistent legislation, the National Quality Framework, which regulates long day care, family day care, out-of-school hours care and preschool services.

As at June 2018, 120 services, which is a relatively small number, were regulated under a separate New South Wales law. The services include occasional care services, home-based care services, mobile services and services deemed to be "other out of scope", such as multipurpose services. The Act also provides for the specific recognition of centre-based services in shopping centres, although none of those is approved under the State Act at present. Because of that wide variety of services, I urge the Government to ensure that the new legislation will not prohibit or ban the operation of more informal arrangements that may be needed to meet the needs of some children and families.

The existing registered home-based care services will be supported in transitioning to become family day care services under the national law. In developing these changes, the department consulted widely with the affected parties. As home-based care services do not have a peak advocacy group, the department contacted all individual providers and attempted to meet with as many of them as possible to discuss the changes. Consultation with each of these services indicates that approximately half are not currently operating and the remaining services

are prepared to transition to become registered as family day care services. This will then allow these services to apply to receive a child care subsidy for the children attending their services. That is a very important provision under this legislation, which we fully support. We congratulate the Minister on the work she has done on the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018 and we fully support it.

The Hon. Dr PETER PHELPS (12:00): I speak in debate on the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018. People cannot appreciate how concerned I was during the Hon. Walt Secord's speech when he mentioned that there was a protest of something like 7,000 people—

The Hon. Walt Secord: Almost.

The Hon. Dr PETER PHELPS: —almost 7,000 people complaining about childcare places in the Illawarra. That is outrageous, I thought. Surely our Government could not have let a wonderful electorate such as Kiama face that sort of situation. Surely it could not leave the people of Shellharbour, Wollongong and Keira in such a situation. But the Hon. Walt Secord said 7,000 people turned out—

The Hon. Walt Secord: Almost.

The Hon. Dr PETER PHELPS: Almost 7,000 people turned out. I was so shocked that I immediately contacted the voice of authority in the area, the *Illawarra Mercury*. I refer the member to an article headlined "Keiraville Community Preschool director really concerned about oversupply". It states:

> An increasing number of NSW childcare centres that have been around for decades are now going out of business due to too many vacancies.

The article is referring to the Illawarra. It further states:

> Keiraville Community Preschool, which has been operated since 1952, is safe for the moment but the oversupply issue is definitely on director Margaret Gleeson's radar. "We are concerned, especially given what has happened in other areas of the state where there has been an oversupply. We don't want it to happen in this area," Mrs Gleeson said.

The article further states:

> Mrs Gleeson shares this view and fears for at risk areas in the Illawarra where large child care centres are popping up despite no demonstrated need. "There are areas of demonstrated need but people are choosing to open new services in the areas where there has been an historic oversupply. The effect has been very detrimental to the existing services."

Despite what the Hon. Walt Secord says, we have a situation in the Illawarra of an oversupply of childcare places to the point where businesses are going out of business because there are too many places. If people are going around the Illawarra stirring up trouble amongst parents to try to fabricate a crisis of supply where there demonstrably is not one, one would have to seriously question their moral integrity. One would seriously have to question the moral integrity of people who would lie to parents and force them to go along to demonstrations where, by all accounts, there is an oversupply of places.

Perhaps the Hon. Walt Secord was not involved in this shameful use of the local community in the Illawarra for a fake demonstration about a fake crisis which does not exist, according to their own community—not commercial—preschool directors. One would have to say, who is responsible? One cannot help thinking that the South Coast Labour Council might have been involved in that in some way. I look forward to denials that might come forward from those opposite. Perhaps there is a problem. Maybe people who are concerned about child care could go to Western Sydney. Western Sydney is a very good example. For example, one could go to the office of Emma Husar, who has her own particular child care arrangements in place which involve using taxpayers' money to pay for staff members to look after her children.

The Hon. Shaoquett Moselmane: Point of order: The Hon. Dr Peter Phelps well knows that he should not reflect on other members. Emma Husar is a member of the Federal Parliament and should be respected.

The Hon. Scott Farlow: To the point of order: The standing orders apply to members of this place and members of the other place, not to members outside of this Parliament. The honourable member's comments were completely in order.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): Does the Hon. Dr Peter Phelps wish to respond?

The Hon. Dr PETER PHELPS: No, I am happy with what the Hon. Scott Farlow said. It adequately reflects my views.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): The Hon. Shaoquett Moselmane has taken a point of order. Usually the House respects members of the Federal Parliament as well, both in the Senate and the House of Representatives, to my knowledge and do not generally impute false motives to those members.

The Hon. Dr PETER PHELPS: I absolutely accept that situation.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): The House should not continue on that pathway.

The Hon. Dr PETER PHELPS: Thank you. I do not believe I have impugned any false motives. I simply said what we, including members of the Labor Party, know to be the truth in relation to the childcare arrangements made by the former—I think she is now former—member.

The Hon. Scott Farlow: She is still there.

The Hon. Dr PETER PHELPS: She is still there; she is still the member for Lindsay. And, of course, the whole attitude that Labor has towards child care and its own self-interest and self-aggrandisement can be seen in what the Hon. Dr Mike Kelly, the Federal member for Eden-Monaro, said about childcare arrangements, especially the childcare arrangements involving the use of taxpayers' money to look after Emma Husar's children. Mike Kelly said that he had no problem with using staff with taxpayer-funded salaries to help the single mother of three juggle life as a Federal politician.

The Hon. Walt Secord: Point of order: The President, when he was in the chair earlier, repeatedly drew the Chamber's attention to impugning other members and references to other members of Parliament and of other Chambers. I ask that the Hon. Dr Peter Phelps be called to order on the same basis.

The Hon. Dr PETER PHELPS: To the point of order—

The Hon. Walt Secord: Repeatedly. Double standards.

The Hon. Dr PETER PHELPS: I am not impugning anyone; I am simply pointing out Labor's standards in relation to the use of taxpayers' money for child care.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): Obviously, that is an imputation against that Labor Party member, who is still in the Parliament.

The Hon. Dr PETER PHELPS: To the point of order: Which Labor Party member?

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): I ask the Hon. Dr Peter Phelps to move on to other issues rather than make personal inferences.

The Hon. Dr PETER PHELPS: I was not speaking about Emma Husar. Which Labor Party member are you referring to in relation to the imputation?

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): I am referring to that Labor Party member that you have already named.

The Hon. Dr PETER PHELPS: I am now quoting from someone completely different.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): It seemed to imply you are still talking about the same events.

The Hon. Dr PETER PHELPS: Okay. The Hon. Dr Mike Kelly—who is not Emma Husar, I would like to point out—said:

> It's a small price to pay for having a truly representative democracy and facilitating the ability of women to participate in our parliament.

What we have here is a situation where the Labor Party creates false assertions about the supply of childcare places in the Illawarra and engages in its own little bit of taxpayer-funded entitlements to help out its mates in the Labor Right. And one would have to ask, how much did Labor know about this?

The Hon. Courtney Houssos: Point of order: The long title of the bill clearly deals with child care in New South Wales. I have listened intently to the contribution of the Hon. Dr Peter Phelps this morning. He is now going well outside the long title of the bill. I ask that he be drawn back to the matters that are contained in the bill before the House.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): I uphold the point of order. I remind the member of the long title of the bill and I ask him to confine his remarks to the bill.

The Hon. Dr PETER PHELPS: I certainly will. I return to childcare matters generally in the State of New South Wales. Should we work on the basis that childcare arrangements were discussed at the Labor Right Christmas party in 2017, where apparently various other childcare arrangements were raised at that time?

The Hon. Walt Secord: Point of order: Mr Assistant President, the member is flouting your earlier rulings and is not speaking to the long title of the bill before the House. He has flouted your rulings repeatedly. If I engaged in such activity, I believe that I would be placed on a call to order.

The Hon. Dr PETER PHELPS: To the point of order: Mr Assistant President, I am referring to the internal discussions that may have taken place within the Labor Party in relation to the childcare situation in Western Sydney.

The Hon. Walt Secord: To the point of order: Mr Assistant President, there is nothing within the long title of the bill that relates to any matter that the member has referred to and he is flouting your ruling. I believe I would have been removed from the Chamber by now if I had engaged in such activity.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): The Hon. Dr Peter Phelps would be very angry if the Labor Party were discussing the internal meetings of the Liberal Party. The House does not usually encourage such argument in the House. What happens in the internal discussions of the parties is the business of the parties, not the business of this House. I ask the member to return to the long title of the bill. I remind the Hon. Dr Peter Phelps that a member must not use offensive words against either House of the Legislature or any member of either House or make imputation of improper motives or personal reflections on either House, as members or officers doing so would be considered to be disorderly. I ask the member to adhere to my ruling.

The Hon. Dr PETER PHELPS: By way of clarification, Mr Assistant President, is that a revision of your earlier ruling about not making imputations against members of the Federal Government?

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): No, I included that. I have not cancelled that ruling.

The Hon. Dr PETER PHELPS: That is a new ruling, thank you. I congratulate the Government on bringing forward this bill as part of our visionary strategy for childhood education in this State. I warmly support this bill.

The Hon. WALT SECORD (12:11:0): Mr Assistant President, I seek leave to speak a second time under Standing Order 89.

Leave not granted.

The Hon. Walt Secord: Leave is not required.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): Which standing order are you referring to?

The Hon. Walt Secord: Standing Order 89.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): According to the standing order, are you claiming to be misquoted or misunderstood?

The Hon. Walt Secord: Yes, in reference to the Hon. Dr Peter Phelps' contribution to the second reading debate.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): The member can only speak about claims to have been misrepresented and cannot introduce any new matter.

The Hon. WALT SECORD: I seek to speak a second time as I was misrepresented by former Government Whip the Hon. Dr Peter Phelps in relation to the scale of protest in the Illawarra relating to childcare workers, family members and protesters earlier this year. The member selectively quoted and misrepresented my position. The article that I referred to was published on 5 September 2018 in the *Illawarra Mercury*, which carried the headline "Thousands of childcare workers on strike". It is astounding that the member would misrepresent that position, and it is even more astounding that the Premier would stand by the member for Kiama—

The Hon. Sarah Mitchell: Point of order: The member is clearly flouting the standing order as he has introduced a new matter. He should be called to order.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): I uphold the point of order. If the member continues to flout my rulings, he will not get the call.

The Hon. WALT SECORD: Thank you.

The Hon. COURTNEY HOUSSOS (12:13): I speak on the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018. From the outset, I indicated that the Labor Opposition will not

oppose this bill. This bill seeks to address inconsistent quality controls across a number of different types of early childhood education and care services in New South Wales. Services known as "out of scope services", which include care services in shopping centres—although none are currently registered in New South Wales—home-based care, occasional care and mobile preschools, are regulated by the State under the Children (Education and Care Services) Supplementary Provisions Act. Currently they are excluded from application of the 2012 National Quality Framework [NQF], and this bill is designed to bring them in line with the framework.

This will provide consistent regulation for early childhood education in New South Wales. It will cease to recognise home-based care and shopping centre childcare, and home-based care services will need to transition to be recognised as family day care under the Act. With the removal of these services, the only services that will remain outside the NQF are mobile preschools services and occasional care and educational services. The bill extends the National Quality Framework to these services, where they will undergo assessment and rating by the New South Wales directorate. I place on the record my admiration for the incredible work of the dedicated staff, particularly in mobile police—I am sorry, preschools.

The Hon. Sarah Mitchell: They are not that naughty!

The Hon. COURTNEY HOUSSOS: I acknowledge that interjection; they are not that naughty. I acknowledge the work of dedicated early childhood educators in mobile preschools around the State. Earlier this year I was fortunate to speak to workers from a mobile preschool that operates around the southern part of New South Wales out of Cooma. They explained to me that in addition to the high-quality care they provide to students, a lot of preparation is required at the beginning of each week. Often on a Sunday afternoon they have to pack up their van before they head off to the various small towns in that beautiful part of the world. Each day they have to unpack the van, set up the environment for children and then pack up before heading off to the next town. They do not have specialised premises and they are forced to work within whatever premises they can find. In doing so, they give young children who live in these remote parts of the State access to early childhood education.

I acknowledge the comments made by Reverend the Hon. Fred Nile in his contribution to debate on this bill. He talked about the value of early childhood education. We now know that 90 per cent of brain development happens before the age of five. We also know the vital importance of early childhood educators in brain development. Indeed, it was the Labor Government led by Julia Gillard that in 2012 implemented the National Quality Framework and cemented the recognition of early childhood workers as educators. It is important to note that that terminology plays a crucial role in recognising the work of early childhood workers in children's education. They are not just caring for children, although they do care for them; they are providing fundamental foundations for learning that will occur throughout those children's lives.

Many studies show that the better the quality of early childhood education children can access the better will be their results for the rest of their lives, throughout their high school years and even at university. We need to ensure that they are given the necessary building blocks. Some parents are fortunate to be in a position to provide that support but many are not in that position. That is why it is important that we as a State provide support to every child irrespective of their family circumstances. I place on the record that in consulting on this bill, the New South Wales Labor Opposition has received concerns from stakeholders around the transition provisions associated with the bill. We will be monitoring these provisions closely. We are huge supporters of the National Quality Framework but we acknowledge that there is a need to transition and that the appropriate support needs to be provided as this work is undertaken.

In pursuit of this goal, I will now talk about the current assessment of the National Quality Framework. Though it is a national framework that must be adhered to by all early childhood education and care providers across the country, the assessment is done by the States, including here in New South Wales. However, we are in a position where a number of our childcare centres in New South Wales have not been reassessed within what I would consider to be an appropriate time frame. Almost a third of childcare centres in New South Wales have not been assessed for almost four years, and many of those have the same rating they were awarded in 2012, when the standard was introduced. Indeed, earlier this year the *Sydney Morning Herald* reported that almost 4 per cent of approved services in New South Wales have never been rated.

As a parent and a parliamentarian I am deeply concerned by these figures. I believe that every parent, when their child enters an early childhood facility, should have the comfort of knowing that a centre has been assessed regularly. As a parent, I have relied on the accuracy of these ratings when deciding which childcare centre to send my children to. If the assessments are not up to date they do not work for good centres. For example, the centre may have been sold, may have new staff or may be operating in a different way to when it was last assessed. Out-of-date assessments do not work for centres that have received lower ratings either because they may have cleaned up their act and addressed the concerns that were raised with them; however, parents and the general public would not know. That is why it is crucially important that we undertake regular and rigorous assessments of all childcare centres in New South Wales.

In budget estimates Labor raised the cuts the Federal Government has recently made to the funding that is provided for these assessments to be undertaken. In total $20 million was cut, and $7 million of that will be felt in New South Wales. The Minister has assured us that this cut will be absorbed by the department. How will this be addressed when under the current arrangement a third of our centres are not being assessed? We need more resources for assessment, not less. In addition, the most recent Federal budget indicated that the Federal Government will not renew the $440 million in funding for national partnership agreements.

This Labor innovation was introduced to ensure that all children in New South Wales and across the country have access to high-quality early childhood education. I point out that $440 million is approximately a third of the funding that is provided to children in New South Wales. Again, the Federal Government has indicated that it will cut this funding. We need strong advocacy to the Federal Government to ensure that this funding is maintained. I suggest that if the Federal Government cannot maintain this funding, the people of Australia will have their say on that particular issue and on others at the upcoming Federal election.

I refer also to access to early childhood education. In its budget the New South Wales Government made a much-trumpeted announcement that we would be the first State in Australia to provide universal access to preschool for all three-year-olds. That is just not being offered to families in New South Wales. In 2014 this Government cut funding for three-year-olds attending preschools. According to the sector, funding for universal access to preschools will be available only for 17 per cent of three-year-olds who currently attend community preschools. I commend community preschools for the important work that they do. My daughter attends a community preschool. It is an incredibly fantastic organisation that is run by dedicated teachers.

The reality for working people in New South Wales is that the majority of three-year-olds attend long day care facilities. It is up to this Government to ensure that three-year-olds across New South Wales receive access to this funding regardless of where they attend their early childhood education. I call on the Government to address this. Indeed, community preschools have spent the past two years turning away three-year-olds and increasing four-year-old attendances to attract the funding they need to be sustainable under the Start Strong model. There are very few places left for three-year-olds in our community preschools as a result of the Government's funding. Only 17 per cent of New South Wales families with three-year-olds will be able to benefit from this funding. I am passionate about early childhood education. It is important not only for our children but also for the future economic growth and development of our State. I have reservations about this bill. However, I commend this bill to the House.

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (12:23): In reply: I thank members for their contributions to the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018 and for their broad support of it. This bill has been developed to minimise differences in regulatory requirements that currently exist between services regulated under the State law compared to services regulated under the Children (Education and Care Services) National Law and regulations. The National Quality Framework [NQF] has been progressively updated since 2012 and has established a strong track record in promoting quality. This bill will bring the New South Wales Children (Education and Care Services) Supplementary Provisions Act in line with the National Law. This will ensure that no matter what type of early childhood education and care service a child attends, their parents can be confident in the quality of the service and can be assured that there is an adequate system in place to ensure the safety of their child.

I will make some comments in relation to specific issues that were raised in the debate and to provide clarity. The Hon. Walt Secord asked for some clarification around sector support for services. I am happy to confirm for him that $200,000 has been allocated for sector support to assist all services in transitioning to the new arrangements under this bill, particularly with regard to assessment and rating. That includes mobile services, occasional care services and home-based services. On the broader issue of assessment and rating, which Mr Justin Field talked about, I have said publicly in the House and in budget estimates that we have a risk-based approach to assessment and rating. We have assessed and rated 96 per cent of services in New South Wales. It is important to reiterate that New South Wales has the highest percentage of completed assessment and ratings even though we have the largest number of services of any State.

Some remarks were made about how not all services have been rated. To reiterate what I have said previously, we will never get to 100 per cent and there is a good reason for that: we give new services about 12 months to embed their practice before we put them through the assessment and rating process. That is why we sit at 96 per cent: new services are being approved and we give them time to embed their practice before we go through that process. All services that were assessed and rated prior to 2015 will be scheduled for reassessment prior to the end of this year. I stand by comments I made in budget estimates, which the Hon. Courtney Houssos referred to in relation to continuing the funding that will ensure quality in assessments and rating. Yes, there was a cut in the Federal Government's budget this year for that part but the New South Wales Government has

committed to ensuring that the process will continue and that services will not be adversely affected in terms of assessment and rating. I stand by those comments.

I refer to the specifics of the Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018, which amends the Children (Education and Care Services) Supplementary Provisions Act 2011 to align with the Children (Education and Care Services) National Law. As members have indicated, the key provisions of the bill include the transitioning and phasing out of home-based care and care in shopping centres as distinct service types under the State law. The bill provides that, upon assent, a person may not apply for a provider approval or service approval for a home-based education and care service or approval to provide a centre-based education and care service that is a child-minding service at a retail shopping centre.

Shopping centre service approvals have not been widely requested by the sector in New South Wales. In fact, there has only ever been one service application and no services are currently approved under this category. The few remaining home-based care services in the State are being supported to transition to meet the new requirements to be approved as family day care services under the National Law, or to cease operations, to ensure that there is no discrepancy in regulatory standards between these two substantially similar service types and, most importantly, to ensure that services are of the highest quality for the health and safety of children who attend.

The second key provision of the bill is to extend the assessment and rating process which is currently used under the national law to become also applicable for service types regulated under our State law. The main impact on services resulting from alignment with national law standards will be the introduction of a system of quality audits and monitoring. The process, known as assessment and rating, involves each service documenting its plans for quality improvement, with implementation of the plan and outcomes tested and validated by the regulator. Service performance is assessed against the National Quality Standard, leading to an overall rating which is published and publicly available.

This amendment will allow for the recognition of high-quality mobile and occasional care services that currently sit outside the national law. This is a change that State-regulated services have been requesting since the introduction of the national law and it reflects the commitment by providers and stakeholders in New South Wales to ensuring a high-quality early childhood education sector regardless of the service type. These changes will provide both services and families with a more accurate understanding of the quality of the services their children attend. These benefits are acknowledged by the sector, and organisations that represent mobile and occasional care providers support the introduction of assessment and rating for these service types. I thank members for their contributions to this debate. I commend the bill to the House.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): The question is that this bill be now read a second time.

Motion agreed to.

Third Reading

The Hon. SARAH MITCHELL: I move:

That this bill be now read a third time.

Motion agreed to.

Documents

TABLING OF PAPERS

The Hon. SCOTT FARLOW: I table the following document:

Crown Land Management Act 2016—Notice of proposed addition to dedication of Crown Land at Hyde Park.

I move:

That the report be printed.

Motion agreed to.

Bills

ROAD TRANSPORT LEGISLATION AMENDMENT (PENALTIES AND OTHER SANCTIONS) BILL 2018

Second Reading Debate

Debate resumed from 18 September 2018.

Mr DAVID SHOEBRIDGE (12:31): I speak on behalf of The Greens on the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018. The Greens will not be supporting the bill in its current form. I heard the sotto voce sledge from the Parliamentary Secretary, which was probably unparliamentary. The bill seeks to achieve a number of things, including to allow for the issue of penalty notices in respect of certain low- and mid-range alcohol and other drug-related driving offences and automatic licence suspensions in those cases. It also provides for automatic, one-size-fits-all penalties for the great majority of drink- and drug-driving offences and the increase of maximum penalties for certain alcohol and other drug-related driving offences.

If the bill is passed, Roads and Maritime Services will be able to require persons convicted of certain alcohol- and other drug-related driving offences to undertake education programs and to cancel an offender's licence automatically until they have completed certain road safety programs. The bill also provides for the expansion of the definition of "drug" to include substances that can impair or deprive a person of normal mental or physical faculties and the creation of an offence for conduct that results in damage, disruption or obstruction and certain other conduct on the Sydney Harbour Bridge and other major bridges and in tunnels.

The Greens' primary concern, which I think is shared by a number of other parties in this Chamber and the great bulk of the legal profession, relates to the proposed change to the way in which penalty notices are to be applied automatically rather than having individuals go to court for low-range drink-driving and drug presence offences. I have on numerous occasions on behalf The Greens indicated our very real reservations—indeed, our opposition—to the way in which the current drug-driving regime operates. The mere presence, the slightest detectable presence of now only four illegal drugs can result in someone losing their licence regardless of whether there is any evidence of impairment. The Greens maintain our opposition to the way the regime works. It is unfair, it is unjust, and it does not improve road safety.

Rather than seeking to remedy the problem with the operation of the drug-driving offences regime in particular, the Government is aggravating the situation for the people of New South Wales. The Government proposes to introduce automatic penalty notices with a one-size-fits-all fine of $561 for lower-range drink-driving first offences involving a blood alcohol concentration [BAC] of between zero and 0.08, and drug-driving offences involving someone who has the slightest detectable presence of any of the four illegal drugs. Together with that will come an automatic three-months licence suspension as soon as someone has been found to have a prescribed BAC of greater than zero and less than 0.08. A BAC of between zero and 0.02 will apply to novice drivers, a BAC of between 0.02 and 0.05 will apply to those who have an intermediate licence, and a BAC of between 0.05 and 0.08 will apply to those who have an unrestricted licence.

Why do The Greens oppose this legislation? We oppose it because it is grossly unfair. We oppose it because courts look at an individual's circumstances and they hear why on this occasion they were driving with an unlawful blood alcohol concentration that would cause a danger to other road users or with the mere presence of one of the four illegal drugs. We know that the courts take into account people's personal circumstances. The evidence relied upon by the Government is that 56 per cent of low-range drink-driving first offences resulted in a non-conviction order—that is, a conviction is not recorded—and in most circumstances the defendant was not required to pay a fine because it was a first offence. They may have made a mistake or an error of judgement and they may have provided a compelling reason to the magistrate about what went wrong.

We live as flawed individuals in a very human justice system where courts take into account our individual circumstances. Having done so for those first low-range drink-driving offences, in 56 per cent of cases the court has determined not to record a conviction. I and The Greens have faith in our courts and in our magistrates. We have faith particularly in our hardworking magistrates, who see a great deal more of the panoply of life than do most members of Parliament. They see raw life, they get it, and they understand the complexity of human nature. I think they understand the human condition a lot better than do most members.

After having heard the evidence, in 56 per cent of cases magistrates have determined that a conviction should not be recorded. Because of compelling circumstances, they often allow people to retain their licence notwithstanding that they breached the law on one occasion. With that always comes an acceptance from the defendant that they have breached the law, that they did wrong and that they put other road users at risk. That is the way it works. Magistrates are also not recording convictions in 36 per cent of first offences of driving with the presence of an illicit drug. That is often because no evidence has been put by the prosecution as to the extent to which the defendant was impaired.

In case after case, particularly in the northern part of the State and in south-west Sydney, where individuals have been found with a trace element of cannabis in their system they have told the magistrate that they had a joint the week before or three days before and they were caught two days, three days or seven days later when they could not have been impaired and were not a risk to other road users. The magistrate says, "I am compelled to consider that a breach of the law but I accept that you were not a risk to other road users". The police

have no evidence to suggest otherwise because of how flawed the system is because there is no record of the concentration of the drugs in someone's system brought before the court. Hopeless, inadequate cases presented by the police are not their fault; it is just the dumb laws that are presented by this Government. In 36 per cent of occasions the magistrate has said, "I accept what you say, and I have determined not to issue a conviction and indeed you should keep your licence and not have a licence disqualification."

Magistrates are also able to hear what the effect of someone losing their licence will be. In rural and regional areas losing one's licence automatically may mean deep social isolation. Individuals who have lost their licence in regional parts of the State—and in parts of Sydney where there is poor public transport—can experience real social isolation. It may create difficulties in attending crucial medical appointments for a serious medical condition and it may also mean that family and loved ones cannot attend crucial medical appointments. Magistrates take these kinds of things into account when they make decisions because they hear about what the impact will be. But this Government proposes that none of that be heard by a court. The Government proposes that there will be an automatic fine of $561 and an automatic three months suspension with no questions asked. Undoubtedly that will produce untold levels of unfairness around the State. We know that because when magistrates have had a chance to look at the cases they produce quite distinct and different results.

The crossbench had the benefit of a briefing from the Centre for Road Safety, which has pushed these reforms, and I asked if it had done any qualitative assessment at all of these decisions by magistrates. Had it assessed the circumstances in which magistrates give section 10s? Had it assessed at all the circumstances in which people had been found to have breached the mere presence offence? Had it assessed any of them? The answer was just no. The centre had not done basic due diligence before bringing these cases. It wants to take the power off courts in most cases but it has not looked at the way the courts are exercising this power. The centre has just done a desktop study, worked out what the proportions are and said, "We don't like that", without looking at what courts do. That is not good advice to government; that is poor advice to government. It is very poor advice that the Centre for Road Safety have given the Government based upon a flimsy factual basis. It is not good enough and this Parliament should not support law reforms based upon it. Those are not just my concerns. The Law Society has made a number of submissions to a number of members of Parliament, which say, among other things:

> The Law Society does not support the bill. In particular, we have concerns that the effect of the "drink driving is a crime" campaign will be diluted if low-range PCA offences are dealt with by penalty notices rather than by the courts. We are of the view that the reforms will decrease deterrence, increase offence and recidivism rates, and have a significant impact on people's livelihood—particularly those living in regional and remote areas. We are also concerned that despite being designed to reduce the pressure on the Local Court, they may in fact have the opposite effect.

Why is the Law Society concerned about recidivism? It is concerned about recidivism because, unlike the Centre for Road Safety and this Government, the Law Society has looked at the way in which a similar arrangement operates in Victoria where penalty notice provisions have been in place for years. There is a slight difference in the way in which Victoria retains its data; it retains its data over a 10-year period rather than a five-year period when looking at recidivism. But when one looks at the data from Victoria, we see that the recidivism rate in Victoria is 29 per cent. However, the recidivism rate for similar offences in New South Wales is 8.1 per cent. More than three times as many drivers are coming back for a second offence in Victoria on these drug-driving and drink-driving offences than in New South Wales. Why is that the case?

The Law Society says that if an individual is brought before a magistrate in a court and read the riot act by the magistrate and is then the subject of a judgement in front of a court after a low-range prescribed concentration of alcohol [PCA] offence, that individual gets that they have committed a very serious offence. This is not like a parking offence when a notice is issued by mail; it is not like a jaywalking offence. If a person is dragged before a magistrate and the magistrate tells the person squarely that he or she has seen cases where drink drivers have killed people, killed families, and thinks it is a very serious offence, and then says, "If you ever come back before this court again you will find yourself in a whole world of pain", then it has an impact. But this Government wants to take that away. This Government wants to stop people going before the courts and having the magistrate tell them how serious the offence is. Instead, a penalty notice will simply be sent in the mail or will be handed to them by a police officer at the side of the road. In Victoria that has proven not to have a deterrent effect, as is illustrated by the far greater recidivism rates in Victoria than in New South Wales. The Law Society also notes:

> The imposition of a penalty notice and an immediate three months suspension has been justified by the Minister on the basis of reducing the pressure on the court system. However, the most recent statistics show that low range PCAs were only 1.9 per cent of all local court matters. Further, we are concerned that the reforms will actually increase the burden on the local court. It is likely there will be a significant increase in urgent applications for appeals against licence suspension resulting in two hearings rather than one.

The concern is that the way the Government wants the law to operate is that as soon as the penalty notice is issued there is an automatic driver licence suspension. If a person needs his or her licence to complete an apprenticeship

or to go to work—for example, as a tradesperson—or to attend urgent medical appointments and an immediate suspension of licence has been issued, the Government's answer is that people can file an urgent application in the Local Court, see how long it takes to get on, get a hearing before the Local Court and argue before the magistrate about why his or her licence should not be suspended until the matter comes on for hearing. That will take a significant amount of Local Court resources. The hearing itself will take a significant amount of Local Court resources and once a decision is made, one way or another, the matter will come back on for a final hearing at a later point.

That is not a rational use of court resources. It is also not a fair process because we know, particularly in rural and regional parts of the State as well as in busy local courts in Sydney that a hearing for a stay application could take days or weeks. Meanwhile the person is unable to do their job, unable to complete their education, unable to go to the doctor, unable to get groceries, and unable to do what might be essential if they had their driver licence. The Government says, "It's okay. Who cares?" The Government does not care. At the briefing with the Centre for Road Safety we asked what the court delays were and how long it would take to get matters on. We asked whether the Government had considered how long it would be in regional courts or other local courts. The answer was no. It had not even done basic due diligence and did not know how long it would take—maybe a couple of days, maybe a couple of weeks. It did not seem to care. The Law Society further noted:

> While drivers issued with a penalty notice will be able to elect to have their matter dealt with by a court or appeal against the immediate licence suspension, the suspension is only removed if the immediate suspension appeal is successful or if the court election is finalised without a suspension. An immediate suspension appeal often takes several weeks, and a court election even longer. There is already a significant period of the minimum three month suspension and is likely to lead to an increase in driving while suspending offences. The reforms will have an even more detrimental impact on people in rural and remote areas with part-time courts. The effect of court election should be to stay the process of the immediate suspension.

The Greens have put an amendment forward which would at least do that and we will discuss that in committee. Further, the Law Society states:

> The automatic licence suspension will impact on people's livelihoods, particularly in regional and rural areas that lack transport options. Driving while suspended offences will increase, snowballing into further periods of disqualification. The bill appears to be contrary to the Government's 2017 reforms which were aimed at reducing the length of disqualification periods. In support of the 2017 reforms, the Attorney General noted that the driver licence disqualification framework:
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> ... has a serious adverse social impact, particularly on vulnerable people and people in regional and rural areas, as long disqualifications affect the ability to travel for education and employment purposes. ... it contributes to the over-representation of Aboriginal people in the criminal justice system with more than 14 per cent of those sentenced and almost a third of those imprisoned for unauthorised driving identifying as Aboriginal Have we heard anything from this Minister about the likely significant impact this will have, particularly on First Nation peoples? No, nothing at all. There was not a word, despite the fact that the Attorney General has acknowledged—and we know—that a proportion of people who live in rural and regional areas who have their licence suspended will feel compelled to breach the law and drive illegally because there is no other way to get to the hospital or to work. A proportion of people will drive without a licence, they will be caught by the police and they will find themselves up on a very serious criminal charge. That will not only take a significant amount of time of the Local Court but see people fall into the cycle of further criminalisation that we know is already a problem in the way that unlicensed driving laws work in New South Wales. This Government took some steps, which I think were quite brave, to reverse that problem last year, but much of that work will be undone if this bill passes as it is.

It is almost as though one part of the Government has no idea what the other part of the Government is doing. It is almost as though the roads Minister does not get it and has not spoken with the Attorney General and does not realise how contrary this legislation is to the Government's own intended reforms on driver licence disqualification. This is a really bad law, poorly designed, poorly articulated by the Minister and poorly advised by the Centre for Road Safety. I hope that a majority of members in this House see sense and do not allow this bill to go through in its current form. I was glad to see that the collective will of the House was to have this matter referred for a brief inquiry on Monday. I look forward to hearing from the witnesses on Monday who can articulate these problems more clearly and the solutions. We never know, this might be the occasion when the Government listens to the evidence and to the concerns and decides to pull back from a really dumb law that will damage people.

The Hon. ERNEST WONG (12:51): I speak on the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018. As my colleagues have said before me, the Australian Labor Party supports the legislation overall, but I share with my colleagues concerns with some matters. The first reservation I have is in regard to the inclusion of testing for prescription drugs. The crash on the South Coast of New South Wales and the death of a family of four which apparently was caused by a driver who had just left a methadone clinic is a matter of the greatest regret. Few episodes could be more tragic. But to proceed from there to include prescription medications in the category of "drug" for roadside testing is a matter for some reflection. According to the National Transport Commission [NTC]—Australia's intergovernmental agency charged with improving the safety of Australia's road system—in the 2016 edition of its Assessing Fitness to Drive:

> While many drugs have effects on the central nervous system, most, with the exception of benzodiazepines, tend not to pose a significantly increased crash risk when the drugs are used as prescribed and once the patient is stabilised on the treatment.

In looking at three main classes of prescription drugs, the NTC makes the following observations about their properties:

> Antidepressants. Although antidepressants are one of the more commonly detected drug groups in fatally injured drivers, this tends to reflect their wide use in the community. The ability to impair is greater with sedating tricyclic antidepressants, such as amitriptyline and dothiepin, than with the less sedating serotonin and mixed reuptake inhibitors such as fluoxetine and sertraline. However, antidepressants can reduce the psychomotor and cognitive impairment caused by depression and return mood towards normal. This can improve driving performance.
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> Antipsychotics. This diverse class of drugs can improve performance if substantial psychotic-related cognitive deficits are present. However, most antipsychotics are sedating and have the potential to adversely affect driving skills through blocking central dopaminergic and other receptors. Older drugs such as chlorpromazine are very sedating due to their additional actions on the cholinergic and histamine receptors. Some newer drugs are also sedating, such as clozapine, olanzapine and quetiapine, while others such as aripiprazole, risperidone and ziprasidone are less sedating. Sedation may be a particular problem early in treatment and at higher doses.
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> Benzodiazepines. Benzodiazepines are well known to increase the risk of a crash and are found in about 4 per cent of fatalities and 16 per cent of injured drivers taken to hospital. In many of these cases benzodiazepines were either abused or used in combination with other impairing substances. If a hypnotic is needed, a shorter acting drug is preferred. Tolerance to the sedative effects of the longer acting benzodiazepines used to treat anxiety gradually reduces their adverse impact on driving skills.
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> Opioids. There is little direct evidence that opioid analgesics (e.g. hydromorphone, morphine or oxycodone) have direct adverse effects on driving behaviour. Cognitive performance is reduced early in treatment, largely due to their sedative effects, but neuroadaptation is rapidly established. This means that patients on a stable dose of an opioid may not have a higher risk of a crash. This includes patients on buprenorphine and methadone for their opioid dependency, providing the dose has been stabilised over some weeks and they are not abusing other impairing drugs. Driving at night may be a problem due to the persistent miotic effects of these drugs reducing peripheral vision.

The clear variation of impacts that prescription drugs may have would seem to suggest a careful approach in categorising such medications across the board. Not all prescription drugs impair driving capacity. A few may actually improve a driver's ability. As Dr Douglas Beirness of the Canadian Centre on Substance Use and Addiction wrote only last year:

> Establishing the connection between [prescription] drugs and road crashes, however, has proven to be considerably more complex than for alcohol.

It is arguable whether a sufficient level of sophistication exists in roadside tests for the presence of prescription drugs in a person. Can such tests be definitive, where there are so many variations in the effects of such medications? I now turn to the issue of the introduction of on-the-spot penalties for first-time, low-range drink-driving offences. The current system of courts handling drink-driving and drug-driving matters allows magistrates to consider the personal circumstances of an individual offender. A magistrate can consider the gravity of the offence and issue a sentence accordingly. It is possible that on consideration of the underlying circumstances a magistrate might decide that the offence does not merit the recording of a conviction—an outcome provided for in section 10 of the Crimes (Sentencing Procedure) Act 1999.

Under the proposed new law, the court will only be involved if police officers use their discretion to issue a court attendance notice or an individual chooses to challenge their fine in court. However, challenging a fine could see an individual faced with a maximum penalty of $2,200. This is double the current maximum penalty that a magistrate can impose for a low-range drink-driving offence. There is a distinct likelihood that this substantial penalty could deter individuals from using the court system to seek an outcome consistent with the possibilities of judicial fairness. An on-the-spot penalty for first-time, low-range drink-driving offences not only precludes the possibility of a section 10 "no conviction" outcome but will immediately stand as a first offence in the event of any subsequent offences. It is debatable whether this aligns with the principles of procedural fairness.

Like my colleagues, I also have some misgivings over the provisions of the bill in relation to extending the existing Mandatory Alcohol Interlock Program to include all middle-range prescribed concentration of alcohol offences and offences for the use or attempted use of a vehicle under the influence of alcohol or any other drug. Currently only second or subsequent offences are covered by this program. I am aware that in 2015 Austroads—the successor to the National Association of Australian State Road Authorities—produced a report entitled "Options to Extend Coverage of Alcohol Interlock Programs". In its conclusion, the report recommended an approach where first-time low- and mid-range offenders received an administrative order to fit an alcohol interlock. The report stated:

> We believe that the widespread fitment of alcohol interlock units to vehicles driven by offenders, and ultimately all vehicles, would achieve a significant reduction in the number of alcohol-related deaths and injuries on Australasian roads.

It is hard to fault the basic logic in that proposition but I do consider conversely that courts should have the possibility of discretion to provide for exemptions in the case of interlock orders. As members are very aware, successive New South Wales governments have put in place driver education programs. The Traffic Offenders Intervention Program is a Local Court program aimed at reducing the likelihood of people committing further

alcohol- or safety-related traffic offences. This is done through a series of education sessions that are designed to increase people's understanding of their legal and social obligations as road users; the seriousness with which the courts treat certain offences and the punishments applicable; the impact that traffic offences can have on the community; and the steps that people can take to avoid reoffending.

A study of an accompanying program, the Sober Driving Program, concluded that it was, "an effective intervention that complements other sanctions for drunk-driving". The new legislation permits Roads and Maritime Services to require persons convicted of certain alcohol- and other drug-related driving offences to complete education programs. This similarly appears to be an acceptable measure. In conclusion, while in general agreement with the thrust of this legislation, I find myself concerned at the overall lack of consultation with all parties likely to be affected and also with the lack of detail, particularly with regard to the issue of testing for prescription drugs.

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

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

Visitors

VISITORS

The PRESIDENT: On behalf of all members I welcome into the public gallery students from the University of Sydney undertaking the Parliament and Democracy course coordinated by Associate Professor Nicholas Rowley and being conducted at the New South Wales Parliament.

Questions Without Notice

WAGGA WAGGA BY-ELECTION

The Hon. ADAM SEARLE (14:29): My question is directed to the Leader of the Government, Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. In light of the Minister's statement in question time yesterday when he said, "Wagga Wagga will be back in the family of this Government after the next election", have the Minister and his Government learned nothing from their total repudiation by the community in Wagga Wagga?

The PRESIDENT: Order! I remind the Hon. Walt Secord that he is already on one call to order and we have just started question time. I also remind the Hon. Rick Colless that he will be called to order if he continues to interject.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:30): They are suckers for punishment. Yesterday when it was pointed out to those opposite that they are the worst performing Opposition in recent memory because of their by-election record, with a 4 per cent drop in their primary vote, I would have thought they would have learned something. They have gone backwards in every booth apart from four, two of which were tiny booths where the movement of one or two votes can skew the results. It was a shocking performance. I fervently hope that the Wagga Wagga community will come back into the Berejiklian Government's family after the next election. There would be every reason for that community to come back to us, given the record we have of delivering for it.

The Hon. Scott Farlow: Point of order: My point of order relates to the amount of interjection from those opposite. The Minister is trying to answer the question posed by members opposite. I would have thought they would have wanted to listen to his answer.

The PRESIDENT: I remind members of the ruling of then President Primrose in December 2007 that members should allow Ministers to answer their questions without interruption. I will add to that. I have noticed on occasion that members like to interrupt me when I am giving a ruling. That is far worse than interrupting and interjecting on another fellow member.

The Hon. DON HARWIN: As I was saying yesterday, I certainly hope that the people of Wagga Wagga will be back with the family of the Berejiklian Government. We will keep on doing what we have been doing for them for the past seven years. We will be delivering for them in the form of the Wagga Wagga Base Hospital, the courthouse, the upgrade at Wagga Wagga railway station, the ambulance station, the levy upgrade, and the list goes on. Yesterday I said that we listened and we have heard what they had to say. We will keep faith with the community of Wagga and keep delivering for it regardless of who was chosen a week ago as the member for Wagga Wagga.

The Hon. Mick Veitch: Can you say his name?

The Hon. DON HARWIN: I know him quite well from university politics, but we will leave that alone. As I said, we will keep delivering for the people of Wagga Wagga and we have every reason to hope that they will be back in the family of the Government after the next election.

ARTS AND CULTURAL INFRASTRUCTURE

The Hon. NATALIE WARD (14:34): My question is addressed to the Minister for the Arts. Will the Minister update the House on how the New South Wales Government is incorporating public art into major infrastructure projects?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:34): I thank the Hon. Natalie Ward for her question. Currently a transformative New South Wales Government investment is underway in the State's cultural infrastructure, such as the $100 million Regional Cultural Fund; $645 million to relocate the Powerhouse Museum to Parramatta, expand the storage at the Museums Discovery Centre, and plan for a creative industries precinct at Ultimo; $244 million towards the Sydney Modern Project at the Art Gallery; $207 million for the Sydney Opera House renewal program; and $219 million to rejuvenate the Walsh Bay Arts Precinct.

But it is not just about cultural infrastructure. There are opportunities to integrate art into other forms of public infrastructure to help embed art into the everyday lives of the people of New South Wales. Globally, integrating art into public transport has proven its value by elevating the customer experience and contributing to place activation, such as the Transport for London's Art on the Underground. With this in mind, our Government is supporting the delivery of public art programs and cultural engagement on the Newcastle Light Rail, the Parramatta Light Rail and the Sydney Metro City and Southwest stations.

These projects will reimagine transport hubs and deliver a cultural legacy through internationally renowned and diverse public art. The Newcastle Light Rail project is a key component of the Newcastle transformation project, which will connect the heavy rail interchange to Newcastle Beach. Expressions of interest were sought earlier this year for the design and provision of an original public artwork as part of the project, and three shortlisted applicants have been invited to prepare a proposal. These three concept designs will be considered by the art advisory group shortly when the successful art for the Newcastle Light Rail will be announced. I look forward to the announcement of this exciting public art project for Newcastle, which will help enliven the experience of Newcastle light rail commuters. By the way, Newcastle Light Rail is a fantastic project. The changes in central Newcastle are extraordinary.

The Hon. Dr Peter Phelps: Opposed by them.

The Hon. DON HARWIN: I well remember Opposition members in this House trying to stop it and I well remember how it passed. Major construction work will be finished by the end of the month and will be open to passengers in early 2019. It will be Australia's first wire-free light rail system and it will be at the centre of a modern Newcastle. We are delivering for the people of the Hunter just as we do all over New South Wales. We can do this because we have balanced the books, paid down Labor's debt and done the work to deliver great infrastructure projects such as this.

We are planning for the future, we are building for the future and we are ready for the future, and all we get from Labor members is the disaster of the past and what they suggest we should do in the future. For 16 years Labor took the votes of the people of Newcastle for granted and it did nothing for them. The people of the Hunter cannot trust Labor to build infrastructure, as its record shows. When those opposite were in government they promised 12 rail lines, had nine transport master plans and six transport Ministers, and delivered only half a rail line. That is their record. We cannot trust them and the people of the Hunter should not forget that. [*Time expired.*]

GOVERNMENT DEPUTY WHIP

The Hon. WALT SECORD (14:38): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, Minister for the Arts, and Leader of the Government. In light of concerns about bullying in the Coalition, what action has the Minister taken to respond to the serious threat made by the Deputy Whip, the Hon. Wes Fang, to a colleague and former Minister the Hon. Matthew Mason-Cox when he texted, "F...ing well come after you"?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:39): The question is not about any matter for which I am responsible.

The Hon. Penny Sharpe: Point of order: The Minister is the Leader of the Government in this House and he represents the Premier in this place. It is entirely in order for the member to ask that question because it is within the Minister's remit.

The Hon. Walt Secord: Protect him like Gareth Ward.

The PRESIDENT: Order! I call the Hon. Walt Secord to order for the second time. The member has asked a question and I am giving it consideration in the context of a point or order. That does not give the member the right to scream at another member in the Chamber in an offensive manner. I refer to a ruling of then President Johnson in October 1986. The ruling states:

> For a question to be admissible it must comply, inter alia, with Standing Orders 29 and 32A [now SO 64 & 65]. Those standing orders provide, first, that to be in order a question addressed to a Minister must relate to public affairs. This implies that a question must relate to a matter within the government's responsibility or which could be dealt with by an administrative or legislative action.

I rule the question out of order.

VEHICLE ADVERTISING

The Hon. PAUL GREEN (14:41): I direct my question to the Minister for Primary Industries, representing the Minister for Roads, Maritime and Freight. For more than a decade, Wicked Campers has spread its harmful anti-women messages by using degrading artwork and slogans on its vehicles, which travel widely on Australian roads. The company is notorious for its sexually explicit slogans and imagery. Some advocate rape and extreme violence against women, including murder. Complaints to Ad Standards have been ignored and community concerns have been treated with mockery. When will the New South Wales Government introduce legislation to ensure that any vehicles registered in New South Wales carrying derogatory or sexist slogans or images can be deregistered and are no longer able to travel on our roads?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (14:42): I thank the Hon. Paul Green for his question. The slogans and images on the vehicles of one campervan hire company have popped up from time to time because they are offensive. It is difficult for parents to have control over the language and expressions to which their children are exposed when they are passing or overtaking those vehicles or when they are parked on the side of the street. People have also complained about offensive stickers affixed to vehicles.

Some vehicles are not inspected because of their age, so it is very difficult to determine what may or may not be appropriate. The question was asked of the Minister for Roads, Maritime and Freight and I am answering it as her representative in this place. Given that, I do not have specific details about what action has been taken or may be taken by the Minister or Roads and Maritime Services. I know the member is concerned about this issue. The material that he described in his question is offensive not only to him but also to the public and to members of this House. I am more than happy to take the question on notice, to refer it to the Minister and to provide the member with a response.

PRIMARY INDUSTRIES

The Hon. RICK COLLESS (14:45): I address my question to Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Will the Minister update the House on New South Wales' world-class primary industry sector?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (14:45): I thank the Parliamentary Secretary for his question. When our primary industry sector is strong, our regional communities are strong and so is our State's economy. The primary industry sector, which underpins the economic, social and cultural fabric of our regional communities, includes agriculture, fisheries and forestry. In 2017 the New South Wales primary industry sector reached a record $15.44 billion in the gross value of production. It is an economic powerhouse that supports more than 100,000 jobs in regional New South Wales. Even in times of drought the industry has proven its resilience through innovation and hard work, coupled with drought-assistance measures provided by the Government.

There is no better time than now to reflect on our primary industries when strawberry growers are taking such an unnecessary hit. The idea that someone would deliberately contaminate otherwise quality strawberries is beyond our comprehension. I am glad to see the NSW Police Force now joining the investigation. The attack on strawberry farmers has sadly sparked stupid copycat attacks. One of the shocking aspects of this scenario is seeing tonnes of strawberries being dumped on the ground. Public health and safety is this Government's number one priority and the Government takes the warnings from the police and industry seriously. We all have a role to play in this situation. We can still safely consume strawberries by slicing them. That would alleviate the need for so much good fruit to be wasted. The food waste caused by this crisis will hurt our strawberry farmers for a very long time.

Food security is a global issue and it is usually linked with those parts of the world that do not have access to quality produce. Despite that, a high-quality product grown here in Australia under the best conditions

must be dumped on the ground when it is ready to be eaten. Our farming families and our consumers cannot afford to have that happen. I ask everyone, please, to cut them up, not cut them out. Rather than popping a whole strawberry in our mouths without thinking about it, we should spend a few moments getting out the chopping board and dicing a delicious, Australian-grown strawberry. This is an attack not only on our strawberry growers but also on our national primary industry sector. I know that everyone in New South Wales is looking for ways to help our farmers, especially now. Let everyone be empowered to fight back against this food vandalism by continuing to support strawberry producers.

I am pleased to update the House that the NSW Police Force has matched the Queensland Police Service in offering a $100,000 reward to anyone who has information that leads to finding the culprit who perpetrated this insane attack. We know that the majority of the strawberries that are on shelves at the moment come from Queensland. Strawberry producers have a large sector in Queensland. We feel for them but we cannot forget that we also have a strawberry industry in New South Wales and we are approaching the start of our strawberry season. We may be only small—around $6 million compared to approximately $130 million from Queensland producers—but it will have a ripple effect throughout the country. We stand by those producers in Queensland. We ask everyone to cut them up and not to cut them out. We hope the police catch these mongrels and that they are dealt with swiftly and appropriately.

LYN DAWSON MURDER CASE

Reverend the Hon. FRED NILE (14:49): My question without notice is directed to the Leader of the Government, representing the Attorney General. What have been the results of the DNA tests or other tests on the favourite cardigan of Mrs Lyn Dawson that was found buried on the Dawson property? As the Dawson twin brothers have adjoining properties, has any investigation taken place on Mr Dawson's twin brother's property? Finally, what investigations have taken place as a result of police reports that the Dawson brothers knew their phones were being tapped by the NSW Police Force?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:50): I thank the Hon. Fred Nile for his question. I am not necessarily sure that the Attorney General is the Minister who is best able to help him with his inquiry but I will certainly refer it to the Attorney General and I am sure the Attorney General, if it is a question that is better directed to the Minister for Police, will assist to ensure that the member gets his answer.

GOVERNMENT DEPUTY WHIP

The Hon. WALT SECORD (14:51): Mr President, in light of the published text of the Government Deputy Whip—

The Hon. Niall Blair: Point of order: Will the member commence by addressing the Minister to whom he directs his question so we know who has responsibility for answering the question?

The PRESIDENT: I uphold the point of order.

The Hon. WALT SECORD: My question without notice is directed to the Leader of the Government. In light of the published text of Government Deputy Whip the Hon. Wes Fang to former Minister the Hon. Matthew Mason-Cox when he said, "F...ing we'll come after you", what administrative steps has the Berejiklian Government taken to reassure the community that it takes bullying seriously?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:52): I will not try my luck a second time.

The PRESIDENT: No, I think I got it right this time.

The Hon. DON HARWIN: I make the following observation, unless the Hon. Walt Secord is prepared to tell me otherwise, I presume he has not seen the text.

The Hon. Walt Secord: Point of order: I have seen the text.

The PRESIDENT: That is not a point of order.

The Hon. Walt Secord: I just wanted to assist the bumbling—

The PRESIDENT: I remind the Hon. Walt Secord that he is already on two calls to order. He should not compel me to make it three calls to order. The member is more than capable of making a personal explanation if he wants to do so. That is not a point of order.

The Hon. DON HARWIN: I just checked with the Hon. Wes Fang who assures me that he has not shown the Hon. Walt Secord his phone. The Hon. Walt Secord can only be relying on hearsay or on a newspaper

report. I have no idea whether or not the newspaper report is accurate. I will say this, Mr President, I have seen the Hon. Wes Fang and the Hon. Matthew Mason-Cox interacting all week and I detected nothing that requires—

Mr Scot MacDonald: Point of order—

The PRESIDENT: The Minister will resume his seat. What is the member's point of order?

Mr Scot MacDonald: Mr President, I cannot hear the reply of the Leader of the Government because there are too many interjections from Opposition members.

The PRESIDENT: I uphold the point of order.

The Hon. DON HARWIN: As I was saying, I have seen the Hon. Matthew Mason Cox and the Hon. Wes Fang interacting all week. I have seen them in meetings together and there is nothing that requires my intervention as Leader of the Government. As far as I am—

The Hon. Walt Secord: Point of order: My point of order relates to relevance. After consulting with the learned Clerk of the Parliaments, I emphasised the administrative steps undertaken by the Berejiklian Government to reassure the community that it takes bullying seriously. The Minister should be brought back to the question.

The Hon. DON HARWIN: To the point of order: I believe the first part of the question was "In light of".

The PRESIDENT: Correct.

The Hon. DON HARWIN: So the question was predicated on particular—

The PRESIDENT: May I rule?

The Hon. DON HARWIN: Therefore, in my view, it does not arise.

The PRESIDENT: The Minister is being generally relevant.

The Hon. DON HARWIN: As I said, Mr President, in light of the fact that I see no evidence of the behaviour that the Hon. Walt Secord is talking about, there is no reason for me to intervene. I know that the Hon. Walt Secord has an interest in this because, as we all know, back in 2016 he complained about bullying by his own leader. I will quote directly from an article in the *Daily Telegraph* which states:

> So it was with great surprise that Secord received a series of what has been described to me as abusive emails from Luke Foley when he was stuck in China. Secord had fallen and broken his ankle and was being treated in a remote Chinese hospital.

The Hon. Penny Sharpe: Point of order: My point of order relates to relevance. The answer strays well and truly beyond what was asked. It was a very specific question about action being taken in relation to allegations of bullying.

The Hon. Scott Farlow: To the point of order: As the Hon. Walt Secord said, the question related to what the Government is doing about bullying allegations. Of course, the Minister is concerned about the Deputy Leader's welfare and the bullying allegations in the Labor Party.

Mr David Shoebridge: To the point of order: Mr President, that comment is in breach of your rulings to not include debating points in points of order.

The PRESIDENT: I indicate to the Parliamentary Secretary—

The Hon. Walt Secord: You are covering up for Gareth Ward.

The PRESIDENT: I remind members that interjecting when I am speaking is about the worst thing that can happen. That applies to all members. I call the Hon. Scott Farlow to order for the first time. I will not have points of order used as an excuse for debating points, no matter how cute or funny members may think they are. It will cease. The Minister was being generally relevant. I do not uphold the Hon. Penny Sharpe's point of order.

The Hon. DON HARWIN: I will not respond to interjections from members opposite and in particular from the Hon. Walt Secord that suggest I do not take bullying seriously. A number of Opposition frontbench members are well aware how bullying has affected me in my life, in particular, when I was at school. I take bullying extremely seriously. I also find it disturbing when people try to conflate particular behaviour and claim that it is bullying. To me, that undermines the seriousness with which we should all regard bullying. As we all know, politics can be a robust business. I remember well—I think it was while Kristina Keneally was Premier—watching two Labor members going at each other in the Chamber. It is on tape; I am happy to get it to demonstrate. The Hon. Peter Primrose and the Hon. Greg Donnelly were going at each other at a volume that was unbelievable.

I will never forget it. This is a robust business. To suggest—if it is true—that the text was bullying diminishes the seriousness with which we should all take the issue.

MESSAGE STICK

The Hon. SCOTT FARLOW (14:59): My question is directed to the Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education. Will the Minister update the House on the introduction of the message stick in the Legislative Council.

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (15:00): I am sure many members will have been honoured, as I was, to be in this Chamber with Aboriginal language speakers from around the State as the New South Wales Liberal-Nationals Government became the first jurisdiction in Australia to introduce the Aboriginal Languages Bill. On that historic and momentous day, First Peoples from around New South Wales came to witness this Government's commitment to nurturing and growing Aboriginal languages in New South Wales. Probably all members of this House will fondly and proudly remember the message stick ceremony held right here.

Aboriginal language speakers, young and old, filled this Chamber with the sounds of Aboriginal languages. Never before had this occurred in this Parliament's history. Aunty Irene Harrington was one of those speakers in the ceremony and she spoke in Bundjalung, the first language of the Far North Coast of New South Wales. Aunty Irene also kindly gave the message stick that was used in last year's ceremony—created by her grandson—to the upper House. The message stick embodies both the Bundjalung culture and the Aboriginal languages' journey of renewal. I express my gratitude to Aunty Irene for the message stick and for her leadership in the reawakening of the Bundjalung language. Message sticks are an ancient form of communication that have been used for tens of thousands of years and continue to be used today. Carved from wood, with symbols and decorative designs, message sticks convey information across the hundreds of first languages in Australia.

The message stick used in last year's ceremony now has a permanent place in this Chamber, in a display case with a specially designed stand. The message stick will be used for important ceremonial occasions in both Houses of Parliament, such as the start of a new Parliament. Aboriginal elders will be invited to participate in these ceremonies. I hope the message stick becomes an important part of this House, a constant reminder of our commitment to the First Peoples of New South Wales. The New South Wales Government understands how important Aboriginal languages are to our First Nations' people. The Aboriginal Languages Act 2017 acknowledges Aboriginal custodianship of languages and the Act's objective is focused and coordinated and sustains efforts to strengthen, nurture and grow Aboriginal languages.

The Government's role is to facilitate and resource Aboriginal communities to further develop their languages and to raise awareness of Aboriginal languages across government and the wider community. As part of the budget process in June, the New South Wales Treasurer, Dominic Perrottet, and I announced that $2.8 million will be available in this year's State budget for the establishment of the New South Wales Aboriginal Languages Trust. The trust will be made up of Aboriginal people who have knowledge and experience in Aboriginal languages and who have standing within an Aboriginal community. The trust's first task will be to develop a five-year strategic plan. I acknowledge the Aboriginal Languages Establishment Advisory Group and its advice on establishing the trust.

The Aboriginal Languages Act 2017 and the incorporation of Aboriginal cultures and languages into parliamentary processes are attracting national and international attention. I understand that President Ajaka will soon share his experience of organising and participating in the ceremony at an international conference in New Zealand. I conclude by acknowledging President Ajaka and the Office of Parliamentary Services for their efforts in consulting with Aboriginal community leaders and Aboriginal Affairs on the future storage and use of the message stick. As I said at the beginning of this answer, the message stick will serve as a constant reminder of our commitment to respect, acknowledge and support the First Peoples of New South Wales, their languages, cultures and heritage. I am sure that all members will agree that it is great to come into the Chamber and see the message stick on display. It is something that we should all be very proud of.

ANIMAL WELFARE

The Hon. MARK PEARSON (15:04): My question is directed to the Minister for Primary Industries, the Hon. Niall Blair. At the Select Committee on Landowner Protection from Unauthorised Filming or Surveillance, the secretary of the Minister's department, Scott Hansen, stated that the RSPCA has 31 inspectors and carries out more than 14,00 inspections annually. That statistic equates to two investigations completed each working day by each inspector. The RSPCA also conducted 97 prosecutions last year. Given that the RSPCA receives total government funding of $424,000 per annum specifically to fund these activities, how can the

Minister be satisfied that the welfare of animals is not compromised when this funding averages out to a paltry $30 per investigation, inspection and prosecution?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:05): I thank the Hon. Mark Pearson for his question which, not surprisingly, is a question on animal welfare. I am not a member of that select committee. I would be more than happy to take the evidence that was given by my director general as a given because I have every confidence in the New South Wales Department of Primary Industries, particularly the director general. I will take the balance of the question on notice to confirm the figures cited by the member—not because I do not think that the number of inspections et cetera are right but because we need to get a better understanding of other types of income sources that the RSPCA may have which can be directed to its operations. The member quite clearly cited the income that the RSPCA New South Wales receives from the New South Wales Government, but the RSPCA has a lot of supporters. A lot of people are willing to give generously through donations and fundraising activities.

The Hon. Trevor Khan: And bequests.

The Hon. NIALL BLAIR: And bequests. I acknowledge the interjection by the Hon. Trevor Khan. The RSPCA in New South Wales—there is also a Federal body of the RSPCA—also carries out a range of business activities in order to raise funds. I will take the question on notice so that I can give a full answer to the member. I think that the member, by using the two figures of the government contribution to the RSPCA and the total number of inspections to equate how much each inspection on each day will cost the organisation or the funds that are allocated to it, may be missing other funding sources that could be used for those operations. I do not have that information in front of me, so I will take the question on notice.

Before coming back to the member, I will speak to the RSPCA to get further clarification around other income sources. Sometimes it can be hard to distinguish between the Federal and State branches of the RSPCA, particularly with respect to products that are stamped with the RSPCA logo on supermarket shelves or in other places. Those products that are RSPCA approved or RSPCA certified also potentially provide an income stream. I need to get further clarification on whether it is the Federal RSPCA certification or State RSPCA certification on products and the funds that may flow between those organisations. I need to seek clarification on what percentage or proportion of those funds is used to complement government funding in relation to compliance activities. I again thank the member for the question. There are a number of variables that I would like to check. I will take the question on notice and come back to the member in due course.

GOVERNMENT DEPUTY WHIP

The Hon. GREG DONNELLY (15:08): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, Minister for the Arts, and Leader of the Government. As Leader of the Government, what is the Minister's response to senior Coalition members' calls to strip the Hon. Wes Fang from his role as Deputy Whip after his threats to the Hon. Matthew Mason-Cox have made it difficult for him to carry out his public responsibilities as a member of this House?

The Hon. Dr Peter Phelps: Point of order: I refer to Standing Order 64 (1). The honourable member—and I give him the full benefit of the doubt—may not be aware that in the Coalition the Whips are not appointed by the Executive; they are elected by the party room. On that basis, there is no administrative or authoritative role that the Leader of the Government has in the role that the Whips play. I accept that in other jurisdictions Whips are appointed by the Executive and usually by the leader. That is certainly the case in the Federal sphere and the Westminster sphere. But in our Parliament the Coalition Whips are not the heavy men of the Executive. A more accurate description of them would be the shop stewards of the backbench. As such, the question is out of order because the specifics of that role do not fall within the direct authority of the Leader of the Government.

The PRESIDENT: Order! This is an important point of order. Members may not want to listen to what is being said but I do. I want to hear the member in silence.

The Hon. Penny Sharpe: To the point of order: While I understand the point that the Hon. Dr Peter Phelps was making, Standing Order 64 (1) states:

> Questions may be put to Ministers relating to public affairs with which the Minister is officially connected …

How the Whips are appointed is irrelevant to the question. The question concerns the management and good order of the House and how the Leader of the House is dealing with the allegations. I believe that the question is well in order.

The PRESIDENT (15:11): Standing Order 64 (1) states in full:

> Questions may be put to Ministers relating to public affairs with which the Minister is officially connected, to proceedings pending in the House, or to any matter of administration for which the Minister is responsible.

On 22 October 1986 then President Johnson ruled:

> For a question to be admissible it must comply, inter alia, with Standing Orders 29 and 32A [now SO 64 & 65]. Those standing orders provide, first, that to be in order a question addressed to a Minister must relate to public affairs …

On 31 August 2000 then President Burgmann ruled:

> Questions must relate to the conduct of public affairs within the government's responsibility which could be dealt with by legislative or administrative action.

On 28 May 1997 then President Willis ruled:

> A question not affecting the public affairs of New South Wales is out of order.

I find it difficult to line up the question with the rulings of former Presidents. I uphold the point of order that the question is out of order.

MINEWORKER SAFETY

The Hon. LOU AMATO (15:12): My question is addressed to the Minister for Resources. Will the Minister update the House on the rescue of two trapped workers from the Tahmoor coalmine shaft in the wonderful Wollondilly area?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:13): I thank the Hon. Lou Amato for his question about an issue in the local government area in which he lives. Safety is an issue that we can never take for granted, particularly when it comes to the mining industry. Recent events at the Tahmoor coalmine south of Sydney reinforced the need for strong health and safety laws as well as coordinated and effective government responses to significant incidents. Two mineworkers were trapped inside the mine shaft at the underground coalmine on 5 September because of a problem with the number three shaft winder. The winder cage reportedly struck the counterweight of the winder as it was hoisting to the surface, shutting the winder down.

The mineworkers were eventually rescued safely and without injury from the mine shaft after about nine hours. The rescue operation involved the combined efforts of the NSW Police Force, Fire and Rescue NSW, NSW Ambulance, inspectors from the Resources Regulator and mine staff. Fortunately, the workers were uninjured during this incident—but that has not always been the case, which highlights the importance of safety in our mines. The tragic events in the Pike River coalmine disaster in New Zealand and the Hazelwood mine fire in Victoria highlight the inherent risks associated with mining operations and their often complex emergency situations.

Both the Royal Commission into the Pike River Mine Tragedy and the Hazelwood Mine Fire Inquiry recognised the need for regulators and emergency services agencies to work closely with mine operators to develop best practice emergency management plans. In this respect, the Resources Regulator has a dedicated team to ensure that if an emergency occurs, mine operators, emergency services and government agencies all work together seamlessly. The team members engage with industry and emergency services across the State, promoting collaboration and raising awareness about mining emergency planning arrangements and the role of the Resources Regulator. The team is an active member of local and regional emergency management committees, attends industry forums and workshops, and is directly involved in mine rescue exercises and emergency simulations.

The well-coordinated and organised response by the Resources Regulator and other State emergency service agencies was clearly evident in the response to the Tahmoor coalmine shaft incident. I congratulate the Resources Regulator for the great work it does and the important role it plays in assisting the mining industry and emergency services to work collaboratively. The Resources Regulator has also commenced a causal investigation into the Tahmoor coalmine winder incident. A causal investigation involves all stakeholders working collaboratively under a "no blame" model to enable the quick and full understanding of the cause and circumstances of the winder failure.

The operator of Tahmoor Coal, representatives of the mineworkers in the Construction, Forestry, Maritime, Mining and Energy Union and the Resources Regulator have already formed the investigation team and are investigating the incident. This is a positive initiative for work health and safety in the New South Wales mining industry. I take this opportunity to thank all those involved in the rescue of the trapped miners for the great work they do in keeping our mineworkers safe.

MUSIC FESTIVAL POLICING

Mr DAVID SHOEBRIDGE (15:17): My question without notice is directed to the Hon. Niall Blair, representing the Minister for Police. Given the multiple reports from festival attendees at Defqon.1 that police were following people from the one stall at the festival that sold a small number of reagent pill tests and were

waiting near the stall and discouraging people from approaching it, does the Government support this use of police resources at music festivals?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:17): I thank Mr David Shoebridge for his question to me, representing the Minister for Police in this House. The deaths of two young people and the hospitalisation of more than a dozen others is a tragedy for those young people and their family and friends, and we must acknowledge their loss. It is clear that the use of drugs that turned deadly or near deadly at this event was on such a scale that we must consider the future of such events. We have to stop the far too many deaths that are occurring at Australian dance parties and music festivals from attendees consuming illicit drugs.

Each of the tragic deaths highlight the risks posed by these substances. Let me make it clear: no-one can ever be certain of what they are taking or how it might affect them, which is why police cannot sit by. We all know that there is part of the community that thinks that taking drugs at dance parties and music festivals is normal behaviour. I am advised by the Minister that the New South Wales Government wants a safe environment for young people to enjoy large events, recognising that most participants are doing the right thing most of the time. However, possession and use of illicit drugs in New South Wales are criminal offences.

The NSW Police Force and other government agencies have continued to work with event organisers to try to ensure that the bad behaviour of a few individuals does not spoil the atmosphere or create an unsafe environment for the rest of the public. But it is clear that that just does not seem to be enough, which is why the Minister and his agencies have had to rethink their approach. That is why yesterday the Minister and the Premier announced the appointment of an expert panel to provide advice on what else we can do to keep people safe at music festivals. A panel comprising the Commissioner of Police, the Chief Medical Officer and the Chair of the Independent Liquor and Gaming Authority will provide advice on whether new offences or increased penalties are required to stop drug dealers endangering lives, how music festival promoters and operators can improve safety at their festivals and whether improved drug education is required to address the increase in illegal drug use in our community.

The war against drugs cannot be won alone. Government agencies, including the NSW Police Force and emergency services, require the continued support of and collaboration with festival organisers and festivalgoers if we have any chance of beating this scourge. We want everyone to have a great time but we will not tolerate behaviour of any sort that places others at risk. I assure the House that our hardworking police will continue to conduct large-scale police operations at festivals throughout the year. The loud and clear message to those who are planning to bring drugs into any event is pretty easy to understand: forget it. If you are caught with drugs or you are using drugs, then you should expect to either leave in the back of a police car or be out on your ear while the party goes on without you. In line with the Government's commitment to tackling drug possession and dealing, any person found with any drugs and displaying aggressive and antisocial behaviour will be appropriately dealt with.

Mr DAVID SHOEBRIDGE (15:21): I ask a supplementary question. Will the Minister elucidate how exactly having police discourage people from getting pills tested helps to achieve the goal that he says the Government wants to achieve, which is to create a safe environment in which to enjoy music events?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:21): I thank Mr David Shoebridge for his supplementary question. As I indicated earlier, I represent the Minister for Police and I am pleased that he has enabled me to provide more information to the House in relation to pill testing. I note that the President of the Australian Medical Association, Tony Bartone, has been cited in the media as backing calls for pill testing; yet those very same reports also note that the association he represents says that proper and coordinated clinical trials are needed to determine if there is a role for pill testing. The peak body, the Australian Medical Association, is saying it does not think the science is in.

The best pill testing in the world remains inherently dangerous and provides a false sense of confidence that a drug a person is intending to take will not harm or kill them. The Government will not be approving pill testing, which certainly will not be permitted on any property where a government authority is the landowner. Let us all be clear, even if testing were to be perfected it can provide only limited information about a particular pill, based on the substances for which it tests. It does not take into account a range of other factors about a particular person and what they have already ingested. Even if there is a distinctive logo on a particular pill, it does not mean that some dodgy person has put the same ingredients in each pill. It will indeed be luck rather than quality domestic science that two pills that look alike actually have the same chemical composition. This is a critical flaw in proposals to test pills at dance parties and music festivals. Pill testing could be viewed, and no doubt will be, as providing tacit approval of the taking of illicit drugs. [*Time expired.*]

LIBERAL PARTY BULLYING ALLEGATIONS

The Hon. LYNDA VOLTZ (15:23): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, Minister for the Arts, and Leader of the Government. What administrative steps is his Government taking given allegations of bullying during Liberal preselection contests in the Federal electorate of Gilmore and the State electorate of Wollondilly and the allegations made by the member for North Shore, Felicity Wilson, that she was actively discouraged from falling pregnant by senior Liberal Party figures? Does the Minister's political party have a problem with women?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:24): I will begin by responding to the last part of the question first. My answer is absolutely not. The Government is proudly led by an outstanding woman, who is doing a fantastic job as the Premier. The Premier is providing the State with the type of leadership that it needs to take it to even better places than this Government already has taken it. The Liberal Party has no problems with women. We are proudly led by a woman and we have excellent women who are serving in the Cabinet as well as more excellent women serving in the party room. I celebrate the contribution that they have made.

I note that the rest of the question related to a Federal preselection. That could not possibly be relevant so I will not be making any comment on that at all. However, I simply make the point that there has been no preselection for Gilmore. Despite that part of the question not being relevant, I simply make that point. Frankly, the remainder of the question was such drivel that I cannot even remember what it was. I will not give it any credence.

The PRESIDENT: Order! If Opposition members want the clock to continue while they continually interject, with the consequence of not having an opportunity to ask a question, that is a matter for them.

MARINE PROTECTION

The Hon. BEN FRANKLIN (15:25): My question is directed to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Will the Minister update the House on the Government's plans to protect our marine environment?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:26): I thank the Parliamentary Secretary for his question. Last month a proposal by the Marine Estate Management Authority [MEMA] for 25 marine park sites between Newcastle and Wollongong was released for public comment. The Government encouraged local communities to have their say so that we could make an informed decision on a final marine park strategy. To date the consultation has been robust, to say the least, but has been vital to ensuring that we deliver our final strategy and get the balance right for everyone. The consultation has been particularly agitating for anglers across the State. As a keen fisherman, I understood their concerns. While consultation will continue to the end of next week, it has become apparent to me over the past few weeks that fishers are not part of the problem; in fact, they are part of the solution.

That is why early this week I announced that any future marine park would not involve MEMA's proposal to lock out our fishers. We understand that for years grandparents have taken their grandkids to fish in Camp Cove, we all know that people have fished safely from the same rock platform off Coogee during their lifetime, and none of that will change. MEMA's work identified areas that require better management to ensure their sustainability. Against the backdrop of a growing population and increased pressure on fish stocks, those concerns cannot be ignored. I am confident that we can deliver measures that protect our marine habitats, species and the environment we all know and love, but we will do that with the help of our fishers. In making fishers part of the solution, we can consider bag limits, restrictions on anchoring boats and even restrictions on catching certain species when they are spawning.

Delivering a marine park strategy was never going to be easy. It is always difficult to strike the right balance, especially when we are talking about the protection of some of the State's most iconic environment, which is a big blue backyard to millions of people. But what do Opposition members plan to do? Does anyone know? On 16 August in the hours after the Government announced the public consultation, the shadow Minister wasted no time in accusing the Government of a half-baked plan demanding a single marine park for Sydney. Fast forward to 31 August when the Leader of the Opposition told Ray Hadley, "We've no plans for locking out recreational fishers." Fast forward again to the shadow Minister speaking to Robbie Buck on ABC Radio in Sydney on 11 September when asked if Labor's plans include zones in which fishing is not allowed. The transcript indicates that there was a long pause and the shadow Minister then replied, " … quite possibly, but then again we need to talk to all people involved".

Of course we expected it because in 2014 they said they wanted a marine park from Pittwater to Port Hacking. I look forward to receiving the final feedback from the community, including NSW Labor, during the

week and delivering a balanced and sustainable approach to our marine estate in the coming weeks. As I clearly said, we will ensure that those who pose a medium- to low-risk—the line fishers and spearfishers—can continue with the recreational activity they love. We want to ensure that our fishers are part of the solution. We believe that we can engage them because they are also interested in the sustainability of our marine environment. We want more fishing, not less. We want to ensure that we clean up areas that need to be cleaned up and that we maintain the key habitats and species that are thriving in this State. We want the economic and social contribution that fishing makes to this State to continue long into the future. Fishing is good for New South Wales and New South Wales is good for fishing. We are going to get the balance right.

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

Deferred Answers

OYSTER INDUSTRY INVESTMENT

In reply to **the Hon. MICK VEITCH** (15 August 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:

> I am advised that the decision to invest in the particular business as an equity partner followed all the adequate probity measures and was done at arm's length of government. The Department of Primary Industries' [DPI] role is to provide research and advice to the sector. The DPI also advises the New South Wales Government on the oyster industry.
>
> It is important to note that in 2015 the NSW Oyster Industry Strategy was released following an industry working group and outlined the vision for a prosperous oyster industry. The strategy identified sourcing finance as being one of the top priorities for the oyster industry. It stated, "The oyster industry clearly needs additional capital to develop" since banks can be unreliable in lending against oyster leases. As such, the New South Wales Government's investment aligns with the oyster industry's own priorities.
>
> With respect to this proposal, the DPI was asked for general advice about the oyster industry and responded that it was a good time to invest in the industry, due to factors such as a shortfall in production that has been recognised by both individual oyster farmers and companies.

WATER LICENCING

In reply to **the Hon. ROBERT BROWN** (15 August 2018).

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

> I am advised:
>
> > The Office of Environment and Heritage [OEH] does not hold licensed entitlements of 730,000 megalitres and is not able to access 450,000 megalitres of "rules-based" water in the Murray and Murrumbidgee valleys.
> >
> > In the Murray Valley, borrowing provisions in the water sharing plan have enabled irrigators to use 235,000 megalitres of planned environmental water to supplement existing allocations. The plan requires this water to be paid back when allocation to irrigators improves during the year.
> >
> > On 26 August 2018 I announced that up to 15,000 megalitres of New South Wales water previously reserved for environmental purposes will be made available for purchase by farmers within the Gwydir, Macquarie, Lachlan, Murrumbidgee and Murray-Lower Darling valleys. Proceeds raised from purchases of this water will be held in trust with the Department of Primary Industries and used for priority drought-related projects.
> >
> > An additional 450 megalitres of groundwater held by OEH will also be made available in the Riverina area.

Bills

ROAD TRANSPORT LEGISLATION AMENDMENT (PENALTIES AND OTHER SANCTIONS) BILL 2018

Second Reading Debate

Debate resumed from an earlier hour.

The Hon. DANIEL MOOKHEY (15:31): I speak in debate on the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018. I am indebted to the Hon. Penny Sharpe and the other Labor speakers who have set out in substance Labor's concerns with this bill. In the wake of such eloquence I will keep my contribution relatively short, sharp and pertinent. Of course, I have tremendous sympathy with the objective of removing impaired, drugged drivers from our road. I spent a large part of my early working life heavily focused on this issue and the intersection of road law, occupational health and safety law as well as transport law insofar as all of them affected that particular objective. I colour my contribution with that experience. There is a nexus between licence suspension and the cessation of a person's employment. That is well known.

There is a nexus between licence suspension and the mass incarceration of this State's First Nation peoples. That is also known. Any substantive effort that is designed to deal with the mass incarceration of First Nation peoples will start with licensing laws for car and other vehicle use. The third nexus I refer to specifically is between impaired drug use and occupational heavy vehicle transport. The extent to which that nexus is the cause of the economic structure and the way in which work is performed in that industry is much more contested. I remember vividly helping to coordinate an occupational health and safety inspection of a mid North Coast trucking company. As we issued subpoenas and accessed our powers of discovery under occupational health and safety laws, we received evidence of three things.

First, every morning in that yard a truck driver would arrive and receive the keys to the truck, the manifest and trip schedule and accompanying them would be the speed. The speed was distributed by their employer. This is not an unknown nor a novel problem. It is a well-documented problem in that industry. The inability to resist such pressure is virtually impossible, particularly for people who have heavily indebted trucks. That is part of the reason why there has been a bipartisan push for supply chain regulation in the heavy vehicle industry. That is the only way to remove the economic incentives and pressures that result in that exchange each morning. Of course, no-one excuses people who engage in that behaviour. No-one excuses at all the operators of the companies or the drivers for engaging in those practices.

What has been learnt over 20 or 30 years is that great nuance is required for laws like this. The ability to adjust for individual circumstances and the need to be able to account for the circumstances that each person confronts is required, especially when all the evidence says that drug dependency can be made far worse if actions are taken that result in that person losing their employment. More people are shifted to the margins. With that experience, when I examine the clause of this bill that says instead of allowing a person access to a court they will be issued with a penalty notice, that is designing a legal regime that would preclude the ability of a person to have the nuance of their individual cases acknowledged by a court of law. That is a right that all citizens should have when they are to be sanctioned under the law. I have no doubt that that may not be the intended effect of this adjustment.

It is a good thing that this issue is going to a hearing of the Law and Justice committee of this House on Monday morning, however brief, in which this issue and others can be explored. As a member of the Standing Committee on Law and Justice, I look forward to participating in that inquiry. I sincerely hope that following the inquiry and when we get to the Committee stage of this bill we are able to amend the bill so that people such as me who have great sympathy for the cause of removing drug-impaired drivers from our roads can support it The bill requires amendment in a manner that acknowledges that the interaction between licensing law and employment is crucial, that there is a need for such nuance to be recognised, and maintains the rights of people to have access to a court.

The Hon. CATHERINE CUSACK (15:37): On behalf of the Hon. Niall Blair: In reply: I thank the Hon. Penny Sharpe, the Hon. Paul Green, Mr David Shoebridge, the Hon. Ernest Wong and the Hon. Daniel Mookhey for their contributions to the debate. I address some particular matters that have been raised in debate by members and I note the intention of the Labor Party to move amendments. The current penalty framework, which has been enhanced over time, is combined with ongoing police enforcement and public education campaigns, has brought us a long way in reducing trauma. Drink- and drug-driving is no longer socially acceptable at any level. The 0.05 blood alcohol limit has been in place for almost 38 years in New South Wales and enforced through roadside breath testing for almost 36 years. We all know the law. Despite this, last year 55 people lost their lives to drink-driving and 81 died in crashes involving a driver with an illicit drug in their system. As at 16 September this year preliminary data shows there have been 34 fatalities from alcohol-related crashes, up from 13 at the same time last year.

If we want to continue to change driver behaviour and save lives, we cannot just continue to treat these offences as we always have and expect different outcomes. There is sound and consistent evidence that removing a driver's right to drive is an effective strategy to prevent drink-driving. Currently, this is not happening for lower range offenders with as much certainty as it should. Over the three-year period ending June 2017, 56 per cent of low-range drink-driving first offences resulted in a non-conviction order in court, typically a section 10. Similarly, 36 per cent of first offences for driving with the presence of an illicit drug resulted in non-conviction. This means that offenders who are proven to have committed an offence do not lose their licence and they do not spend time off the road.

With this reform, our message to all lower range drink and drug-presence first-time offenders is simple: They can expect to spend at least three months off the road. Where we can take action to remove driving privileges swiftly so that we immediately reduce risk of reoffending, we will. All drink drivers, whether at a low-, medium- or high-range level, will receive an immediate licence suspension. They will be off the road. A licence is a privilege, not a right. It carries with it responsibilities to other road users, and if a driver fails to take personal

responsibility it stands to reason that their privilege should be removed. Certainty and swiftness of licence sanction, alongside greater certainty of being caught, which this Government is delivering through enhanced enforcement by the NSW Police Force, combine to deter all drivers from taking the risk.

I would also like to outline that an independent review will be undertaken once the reforms have been in place for 12 months. This will identify initial court outcomes, operational delivery and any unintended consequences. This review will include input from Transport for NSW, the NSW Police Force, Justice, the Bureau of Crime Statistics and Research and relevant stakeholders. The reforms will also be evaluated in the longer term for potential impacts on road safety outcomes, such as crashes. As recommended by the Audit Office, five years of crash data is typically required to make a valid conclusion on the impact of crashes.

Lastly, the proposal to mandate education courses for drink- and drug-driving offenders will await the development of a comprehensive strategy. This measure highlights the commitment of the New South Wales Government to educating and supporting offenders to complement their penalties. A key part of the strategy will concern the delivery of education in rural and regional communities, including the option of online delivery modules as well as face-to-face courses. As outlined in my second reading speech, Transport for NSW will work with the departments of Premier and Cabinet, Health, Education and Justice to examine best practice in the delivery of evidence-based adult education and targeted courses for different types of offenders to treat diverse patterns of behaviour. This will also include reviewing and leveraging the best from programs and approaches in other States and consultation with existing course providers in New South Wales.

As we stated in the Road Safety Plan 2021, achieving our aspirational goal of moving towards zero trauma will require ongoing, whole-of-government collaboration and support and action from business, road safety advocates and every member of our community. We have backed these words with funding. The New South Wales Government will spend a record $1.9 billion over the five years from 2018-19 to deliver across the six priority areas of the Road Safety Plan 2021. This commitment includes an extra $600 million for infrastructure safety works and enforcement, especially in country New South Wales. The additional funding will support the rollout of life-saving safety barriers and audio tactile line markings to make country roads safer.

Our roadside mobile drug testing program will double to 200,000 tests per year and we will deliver more highway patrol officers in country New South Wales to target the road toll and deliver more random breath testing. I am sure that honourable members will agree that these reforms, which are intended to improve the safety of our roads by addressing drink and drug driving, should be supported. I commend this bill to the House.

The DEPUTY PRESIDENT (The Hon. Trevor Khan): According to resolution of the House on 18 September 2018, the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 now stands referred to the Standing Committee on Law and Justice for inquiry and report.

CRIMINAL PROCEDURE AMENDMENT (PRE-TRIAL DISCLOSURE) BILL 2018

Second Reading Speech

The Hon. SCOTT FARLOW (15:44): On behalf of the Hon. Don. Harwin: I move:

That this bill be now read a second time.

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

Leave granted.

INTRODUCTION AND OVERVIEW

The Government is pleased to introduce the Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2018.

The purpose of this bill is to reduce delays in criminal trials by expanding pre-trial disclosure requirements for indictable criminal matters in the New South Wales District and Supreme Courts.

Specifically, the bill requires the defence to disclose four additional matters, including: any expert reports that it intends to rely on; whether it intends to challenge the continuity of custody of a prosecution exhibit; whether it will seek to amend the indictment or make an application for separate trials; and whether it will seek edits to audio or video evidence the prosecutor intends to rely on.

Courts already reserve a discretion to require the defence to disclose three of these matters. The Law Reform Commission has suggested that their disclosure be made mandatory, a recommendation on which this bill delivers.

The bill also imposes two additional obligations on the prosecution: to provide transcripts of audio or visual evidence it proposes to adduce; and to give notice if it disputes edits to audio or video evidence proposed by the defence.

By expanding mandatory pre-trial disclosure in these selective ways, the bill seeks to make trials more efficient and transparent.

POLICY RATIONALE FOR PRE-TRIAL DISCLOSURE

There is a strong policy rationale for mandatory pre-trial disclosure.

As the Law Reform Commission noted in a 2012 report, pre-trial disclosure "can result in shorter and more streamlined trials" by focusing the trial, and prosecution and defence resources, on the main issues in contention.

Late disclosure of disputed matters can lead to trials being delayed, adjourned or vacated, sometimes on their first day.

This impacts court backlogs as well as prosecution and defence resources, and places strain on victims and witnesses who are on stand-by to give evidence.

For many victims, preparing to give evidence is hugely stressful. Some witnesses may also have to travel long distances to get to court, or take time off work. It is therefore desirable to minimise situations where victims and witnesses arrive at court only to find out that a trial is delayed.

Mandatory pre-trial disclosure of commonly disputed matters enables issues to be ventilated before trial, allowing more trials to proceed on the listed start day.

In this way, mandatory pre-trial disclosure promotes fairness and reduces the length of trials, which is in the best interests of all parties involved.

BACKGROUND

Mandatory pre-trial disclosure has been a feature of criminal trials in New South Wales since 2001.

The scope of the State's pre-trial disclosure scheme was expanded in 2009 and again in 2013, including by requiring disclosure of much of the prosecution's case.

Last year, the Department of Justice undertook a statutory review of those 2013 amendments to determine whether they had been effective in reducing delays and promoting efficient management of trials.

The review found that the pre-trial disclosure scheme had been largely effective at achieving those aims. It also recommended expanding the scheme in specific and targeted ways.

This bill delivers on that recommended expansion.

It also ties in to other actions that the Government has taken to improve court efficiency and reduce delays since 2015, including by: appointing more judges, prosecutors and public defenders to cut through backlogs; and implementing early-resolution measures and case management initiatives such as early guilty pleas, case conferencing and a specialist rolling list court.

These measures have been highly successful. For example, in January, data from the Bureau of Crime Statistics and Research revealed rolling list cases are taking 28 per cent less time to progress to finalisation than three years ago.

The Early Appropriate Guilty Plea reform, which commenced in April this year, will bring experienced prosecutors and defence counsel into matters earlier with a view to encouraging defendants to plead guilty before a case goes to trial. This will provide greater certainty for both victims and offenders, and will reduce the number of matters that need to go to court.

The bill builds upon these court efficiency achievements, as well as the success of the 2013 reforms.

I turn now to the main detail of the bill.

FIRST ADDITIONAL PROSECUTION OBLIGATION: TO PROVIDE TRANSCRIPTS OF RECORDINGS

Item [1] of Schedule [1] of the Bill will amend s 142 of the Criminal Procedure Act to insert a new provision—s 142(1)(c1)—providing that, where a prosecutor proposes to adduce the transcript of an audio or visual recording, it must provide the defence with a copy of that transcript.

Currently, the prosecution is only required to provide the defence with the recording itself, not a transcript. Late service of transcripts causes inconvenience to the defence and can delay trials if the recorded evidence or transcript need to be edited at short notice. The new provision will therefore address defence concerns about not receiving transcripts or receiving them very late.

The note to this new provision will clarify that it does not affect the operation of Part 4B of the Act, which allows domestic violence complainants to give evidence in the form of recorded statements. Transcripts of such statements will not need to be provided to the defence unless the prosecutor intends to provide the transcript to the jury as an aide-memoire. This exception preserves the NSW Government's sensitive treatment of victims of domestic violence.

FOUR ADDITIONAL OBLIGATIONS FOR THE DEFENCE

Item [2] of Schedule 1 will amend s 143 of the Criminal Procedure Act to require the defence to disclose four additional matters.

(A) DISCLOSE EXPERT REPORTS

First, under the newly created s 143(1)(h), the defence will be required to disclose any expert report that it intends to rely on in a trial. This will replace the discretionary disclosure that already exists in s 143(2)(a).

Other jurisdictions, including Victoria and Queensland, also have this requirement.

It is a matter of fairness that defence expert reports should be disclosed to the prosecution before trial. After all, the prosecution must already disclose copies of expert reports that they intend to rely on.

Disclosure of expert reports by the defence is also a matter of efficiency. Late or non-disclosure of can lead to delays or adjournments if the prosecution requires time to consider a report and adduce additional evidence to rebut it.

It is important to note that the new provision will only apply to reports on which the defence intends to rely. There will be no obligation to disclose expert reports obtained for the purpose of background information, or on which the defence does not intend to rely.

(B) INTENTION TO CHALLENGE THE CONTINUITY OF CUSTODY OF A PROSECUTION EXHIBIT

Second, the bill requires the defence to disclose whether or not it intends to challenge the continuity of custody of a prosecution exhibit. The newly created s 134(1)(i) will replace the existing discretionary disclosure requirement in s 143(2)(c).

The issue of continuity of custody commonly arises in matters involving drugs or DNA evidence. For example, drugs seized by police are placed into a sealed exhibit bag, taken to a police station, and then transported for scientific analysis.

If challenged by the defence, the prosecution may be required to prove every step of this process by calling every witness in the chain of custody, as well as any corroborating witnesses.

In practice, continuity of custody is rarely disputed. However, the prosecution must spend time preparing for this potential line of questioning.

Requiring the defence to disclose in advance whether it will challenge this evidence will save the prosecution preparation time, allowing them to focus on the key issues in dispute.

It will also reduce inconvenience to witnesses by informing them in advance whether or not they are needed at the trial. This is particularly significant in the case of police and specialist witnesses who have limited availability to appear due to the nature of their important work.

(C) ISSUE WITH THE FORM OF THE INDICTMENT, SEVERABILITY OF THE CHARGES, OR SEPARATE TRIALS FOR THE CHARGES

Third, under the new s 143(1)(j), the defence will be required to disclose whether it will seek to amend the indictment or, if there are multiple charges, make an application to have the charges severed and heard in separate trials.

This new requirement will replace the discretionary disclosure requirement in s 143(2)(f).

The defence often makes such applications on the first day of the trial, particularly in sexual and child sexual assault matters with multiple charges and victims.

This delays trials in two ways. Firstly, a trial cannot start until both parties have made their arguments as to why a separate trial application should or should not be granted.

Secondly, if an application is granted, a trial must be aborted and new dates for separate trials set.

Last-minute adjournments or trial vacations add to the stresses and trauma of victims who have bravely attended court to give evidence, often after years of waiting to be heard.

Mandatory disclosure of the defence's intentions in this regard will allow such issues to be resolved before the first day of trial.

The New South Wales Government has a strong track record supporting victims in criminal matters. This amendment ties into these reforms by reducing instances of this significant stress for victims in criminal trials, without impacting on an accused's rights.

(D) NOTICE OF REQUEST FOR EDITS TO AUDIO OR VIDEO EVIDENCE

Fourth, under the new s 143(1)(k), the defence will now be required to give notice of whether it will seek edits to audio or video evidence that the prosecutor intends to use at trial.

There is currently no requirement, mandatory or discretionary, for the defence to give notice of proposed edits to electronic evidence such as surveillance, CCTV footage, lawful telephone intercepts and listening device recordings.

This has been the case notwithstanding frequent objections to parts of recordings which the defence considers prejudicial or irrelevant. Often the defence will not raise these objections until the first day of the trial, which can result in the trial being delayed while the material is edited.

When you consider the volume of evidence contained in electronic forms, you can begin to appreciate how time-consuming editing these materials must be.

In addition to being complex, this task can only be carried out by specially trained staff at the Office of the Director of Public Prosecutions. As a result, last-minute requests for edits have the potential to seriously delay trials.

Mandating early defence disclosure of proposed edits will address this issue, alleviating a modern pressure on court backlogs and ODPP staff.

Item [3] of Schedule 1 will repeal s 143(2)(a), (c) and (f). These sections will be replaced by the new provisions which I have just discussed.

SECOND ADDITIONAL PROSECUTION OBLIGATION: TO NOTIFY DEFENCE OF OBJECTION TO REQUEST FOR EDITS OF AUDIO OR VISUAL EVIDENCE

As regarding the second new obligation that this bill introduces for the prosecution, item [4] of Schedule 1 of the bill will insert a new provision into s 144 of the Criminal Procedure Act to require the prosecution to notify the defence about whether it disputes requested edits to audio or visual evidence.

As I have already stated, trials can be delayed when the defence objects to portions of recorded evidence on the first day of trial. Further delays can occur if the prosecution doesn't agree to the edits the defence is seeking.

In these circumstances, the judge will hear submissions from both parties and make a decision. If the defence is successful, then the edits that the defence requested have been delayed. Requiring the prosecution to give notice of whether it disputes requested edits prior to trial will allow time to have the matter listed and argued before a judge if necessary.

PENALTIES, SANCTIONS AND WAIVERS

It is important to note that the bill does not introduce penalties for breaches of these provisions.

This is because the current pre-trial disclosure scheme has shown that penalties are not required. Existing sanctions in the Criminal Procedure Act—such as refusing to admit evidence, or allowing juries to draw unfavourable inferences about evidence that was not disclosed—are adequate for ensuring courts have the power to enforce compliance.

Under this bill, the court will retain the ability to waive compliance with pre-trial disclosure in circumstances where it would not be in the interests of justice. This may be the case where an accused is unrepresented or poorly represented, or when the prosecution has failed to comply with its obligations, making it impossible for the accused to respond. In this way, the bill strikes a balance between the need to increase trial efficiency with the need to ensure matters are dealt with appropriately.

CONCLUSION

This bill puts the days of ambush tactics and excessively adversarial trials behind us, by setting an expectation that the defence and prosecution will participate in information sharing at an earlier point.

The reform will help ensure the smooth running of criminal cases in the higher courts through effective and efficient pre-trial disclosures.

These disclosures will help to reduce delays in the criminal justice process and promote fairness to both prosecution and the accused.

It is appropriate that disclosure of the matters that I have discussed be made mandatory. It is inefficient to require the court to specifically consider each matter when it arises.

The bill will continue to deliver on the Government's strong track record of reform that enhances the efficiency of trials and promotes procedural fairness. I commend this bill to the House.

Second Reading Debate

The Hon. ADAM SEARLE (15:45): I lead for the Opposition on the Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2018. The Opposition does not oppose what appears to be a non-controversial bill based largely on the recommendations of the statutory review of the Criminal Procedure Amendment (Pre-trial Disclosure) Act. The provisions of that legislation commenced in September 2013 and a statutory review was required within three years. The object of the bill is to amend the Criminal Procedure Act. The specific amendments proposed to the principal Act include requiring the prosecution to disclose certain material relating to audio or visual evidence in the notice that the prosecution is required to give to the accused person.

This bill also requires that the notice that the accused person in turn gives to the prosecution discloses material relating to expert evidence, gives notice of any proposal to raise any issues relating to the continuity of custody of exhibits and any significant issues relating to the form of the indictment and the prosecution of the counts of the indictment, and includes any request to edit any audio or visual recording or the transcript of any audio or visual recording that the prosecution has disclosed an intention to adduce at the trial and details of the edits required. Finally, the bill requires the prosecution to respond to any request by the accused person to edit audio or visual recordings or transcripts of them. These provisions resulted from the recommendations of the statutory review. Recommendation 1 of the review provided that the principal Act should be amended to require the defence to disclose the following material without a court order:

(i) A copy of any expert report that the defence intends to rely on

(ii) Notice as to whether the defence disputes the continuity of custody of any proposed prosecution exhibit;

(iii) Notice as to whether the defence will seek to amend the indictment or seek a separate trial on any of the counts on the indictment; and

(iv) Notice as to whether the defence proposes any edits to audio or video evidence the prosecutor intends to use in the trial.

Recommendation 2 provided that the Criminal Procedure Act:

> … should be amended to clarify that the prosecution must serve any transcripts of recordings where it proposes to adduce the transcript at trial, and that the prosecution must provide a timely response to any edits to audio or video evidence proposed by the defence.

It is worth noting that not all proposals made to the departmental statutory review were adopted by the review. There have been various steps towards mandatory disclosures at different points of time. There was legislation in 2001, 2009 and 2013. The requirements now are set out in legislation as clear obligations rather than being left to the discretion of the court. Section 148 of the Criminal Procedure Act importantly allows the court to waive any of the requirements if it is in the interests of the administration of justice to do so.

Reducing unnecessary disputes and reducing the time spent on uncontested elements of a case is a good thing if it can be done in a fair way. It makes sense and is an entirely comprehensible basis for the development of pre-trial disclosure. However, as both the statutory review and the Attorney's second reading speech make clear, there is another powerful motivating factor behind such changes. That factor is the overwhelming and often catastrophic delay currently being occasioned in the District Court criminal trial system. The New South Wales Law Reform Commission report entitled "Encouraging appropriate early guilty pleas" dates from 2014. The commission at that stage—four years ago—described the District Court criminal trial system as being in a state

of crisis. Not much has changed since, even though it is now four years later. Delay means the memories of witnesses are potentially less reliable, the quality of justice is perhaps less certain, the anguish of victims is extended, uncertainty for the accused is increased, and prosecutors, defenders and police are all tied up for longer. None of these are good public policy outcomes. To quote from page 2 of the statutory review that gave rise to the bill:

> The time it takes for a criminal trial to be listed and to be heard has increased significantly over the last decade ...

It decreased slightly from 2009 to 2011 but has been on an upward trajectory ever since. The report emphasised at page 3:

> Trial delays and longer trials have a significant impact on the criminal justice system, including increased cost burdens on the courts, the police, the prosecution, and legal aid providers, as well as a detrimental impact on juries, victims of crime, accused persons and witnesses.

For those people held on remand who are subsequently acquitted or not sentenced to a custodial term, leaving aside the personal tragedy of holding them in jail unnecessarily, what about the unnecessary cost to taxpayers for holding those people in jail? We have been reminded of these issues by the letter from President of the Law Society of New South Wales Doug Humphreys to the Premier dated 14 August 2018. The number of matters committed for trial from the Local Court to the District Court from 2012 to 2016 rose by around 36 per cent while the number of matters committed for sentence rose about 24 per cent.

Mr Humphreys pointed out that the 2017 Productivity Commission Report on Government Services [ROGS] showed that the New South Wales criminal justice system was the most inefficient in Australia. This status has arisen as the workload of the courts has increased—perhaps to breaking point. None of the individually worthy projects and proposals intended to help around the edges with delay, such as this bill, will make a real impact without the allocation of additional resources to the strained court system. The Government's response is to talk of the policy of appropriate early guilty pleas. I will be interested to see that when it happens. This policy was recommended four years ago and still has not effectively commenced in this State.

We on this side of the House are concerned by the increasing number of senior legal practitioners who have expressed reservations as to whether it will work. As was said when earlier legislation was debated, in theory it is an entirely sensible strategy and policy, and the Opposition welcomed the Law Reform Commission's recommendations when they came out. However, we are increasingly concerned at the number of persons who are sceptical about its practicability. The Labor Opposition does not oppose the bill, but we feel that a great deal more is required to deal with the District Court crisis. Legislation such as this, that goes to procedures, is important to be contemplated and implemented where it may be effective, but none of this is a substitute for the adequate and proper resourcing of the administration of criminal justice in this State, particularly the system of criminal trials and ensuring appropriate judicial resources.

Mr DAVID SHOEBRIDGE (15:52): The Greens do not oppose the Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2018. This bill expands the requirement for pre-trial disclosures for criminal matters in the district and supreme courts, with the stated intention of reducing court backlogs. Under this bill, the defence will be required to disclose any expert reports it intends to rely on, whether or not it intends to challenge continuity of custody of an exhibit, whether or not it will seek to amend the indictment or make an application for separate trials, and whether or not it will seek to edit video or audio evidence that the prosecutor intends to rely upon. The bill will also put additional obligations upon the prosecution. The prosecution will be required to provide transcripts of audio or video evidence it proposes to admit, and to give notice if it disputes any edits to audio or visual evidence proposed by the defence.

These changes follow the 2012 Law Reform Commission report, which identified that pre-trial disclosures can result in shorter and more streamlined trials. At the time, the Law Reform Commission indicated that there were significant benefits not only to the courts and to the prosecution but also in many cases to the defence in having shorter and more streamlined trials where the real substance in dispute between the parties is crystallised at an earlier point. Following the 2012 Law Reform Commission report, this Government has already put in place a number of pre-trial disclosure reforms. Those are still working their way through the system, although they have now had a couple of years in practice. The Government then instituted a statutory review of the mandatory pre-trial defence disclosure reforms in the middle of 2017. That statutory review was stated to be in relation to whether or not the pre-trial disclosure scheme had delivered efficiency benefits to the justice system. That review has now recommended expanding the scheme, which is what brings the bill to this House.

Whilst The Greens do not have any specific criticism of these elements proposed by the Government requiring early disclosure of expert reports, if the defence is going to do something such as challenge the continuity of custody for an exhibit, seek to make a significant amendments to an indictment or make an application for a separate trial—which are often the same thing—then it would appear sensible to have the prosecution put on

notice about that as soon as possible to avoid the waste of prosecution resources and also to crystallise the real matters between the parties. The criticism we do have is that the statutory review focused pretty much solely on efficiency. It gave scant regard to whether or not those efficient outcomes also support a more just outcome. I understand why the Attorney General and the Department of Justice investigated efficiency gains, particularly in the District Court where delays are becoming extremely damaging to the outcome of justice. However, I would hope that when the Department of Justice puts out a review it looks not only at efficiency but also at just outcomes of matters. Unfortunately, that was not the case here.

New South Wales already has a number of requirements for pre-trial disclosure. Some of those have been in place since as early as 2001. As the Attorney General identified in the second reading speech, those were added to in 2009 and again in 2013, following the 2012 Law Reform Commission report. We have been advised that this statutory review was focused on determining the efficiency of the reforms, so we ask the Parliamentary Secretary to comment in his reply on what, if any, consideration was given during the review to the impact on justice of these proposed reforms and the impact on justice of the reforms that have been made to date.

We note that these reforms will go some small way to addressing the real backlog that exists in the New South Wales court system, but these efficiency reforms can only take matters so far. There is a fundamental need for more judges and magistrates in this State, given the caseload that is presented both to district and local courts. Whilst we do not oppose these changes, they really do need to be coupled with a commitment from this Government to properly resource our courts so that we do not have justice being delayed and therefore denied.

The Hon. SCOTT FARLOW (15:57): On behalf of the Hon. Don Harwin: In reply: I thank members for their contributions to the debate, in particular the Hon. Adam Searle for the Opposition and Mr David Shoebridge for The Greens.

Mr David Shoebridge: You are not being particular: That was everyone.

The Hon. SCOTT FARLOW: It was everyone, but in particular. There were a couple of people who grunted during the debate. The amendments will expand mandatory pre-trial disclosure in criminal trials in the district and supreme courts. As the Attorney General responded in the other place, administration of serious criminal cases in the District Court has been under considerable pressure, which has led to a large backlog of criminal trials and delays in finalising cases. The current District Court backlog is not unique.

Backlogs peaked in 1988 and in the year 2000, as noted in the Bureau of Crime Statistics and Research Justice Bulletin 184, entitled "Trial court delay and the NSW District Criminal Court", published in August 2015. The principal causes of substantial backlog are, firstly, an increase in the number of persons charged with indictable offences and, secondly, the number and proportion of matters set down for trial. The third cause is the increasing length of criminal trials due to an increase in prosecutions for complex and serious offences such as sexual assault, robbery, prohibited weapons charges and drug trafficking for which there is a higher incidence of people pleading not guilty, and an increase in the use of sophisticated policing methods such as telephone interceptions, physical surveillance and forensic evidence in prosecuting those trials.

In October 2017 the New South Wales Bureau of Crime Statistics and Research publication entitled "Trends in NSW Police clear up rates" demonstrated that, while there has been a decrease in incidents of crime, there has been an increase in police clear-up rates, which explains why a decrease in crime does not lead to a decrease in workload for the District Court. Measures introduced by the Government have been effective in stabilising the backlog over the past 18 months. They include additional judges and additional sitting weeks; case management activities, including special call-overs, readiness hearings and the rolling list court; and additional public defenders. The Government is also addressing a number of long-term systemic issues that have contributed to the strain on the criminal justice system, particularly through the table offence reform and early appropriate guilty plea reform, which, incidentally, commenced in April.

In December 2015 the Government approved an allocation of $20 million to fund a program of immediate measures to address the backlog. It announced a further $39 million as part of the 2016 budget, which represents five additional District Court judges, four additional public defenders, additional sitting weeks and case management measures, including rolling list court funding and special call-overs. A further $27.1 million has been allocated in the 2018-19 budget to address the backlog. Mr David Shoebridge raised the issue of justice. I am pleased that he and his Greens colleagues support this bill. He acknowledged that pre-trial disclosure crystallises the issues in dispute earlier in the trial process, which is a good thing. His comment that the review of the 2013 reform did not consider fairness and focused only on efficiency is not true. The third term of reference considered whether the 2013 reform affected the interests of justice.

Mr Shoebridge also referred to the maxim that justice delayed is justice denied. According to clause 80 of schedule 2 of the Criminal Procedure Act 1986, the statutory review of the 2013 amendments specifically

required the Department of Justice to consider whether mandatory pre-trial disclosure affected the interests of justice in relation to parties. Stakeholders, including Legal Aid NSW, generally agreed that the amendments did not have a negative impact on the interests of justice. Their view is that the New South Wales mandatory pre-trial disclosure regime is not unfair. The Department of Justice is confident that mandatory pre-trial disclosure does not affect the interests of justice in relation to parties to proceedings—in fact, mandatory pre-trial disclosure promotes fairness for parties. By making clear the issues that will be relevant at trial, pre-trial disclosure assists parties to plan their resources according to priorities. This is fair to both the prosecution and to the defence.

Fairness in trials is not only about the defence or prosecution; it is also about victims and witnesses. The bill will also reduce circumstances that can lead to trials being delayed or adjourned on their first day, for example, because the defence seeks to amend the indictment. This can be very stressful for victims and witnesses who have arrived at court expecting to give evidence, only to discover the trial is being adjourned or vacated. That is not fair. This bill will help to reduce situations where this unfairness may arise.

The amendments in the bill will expand mandatory pre-trial disclosure in criminal trials in the district and supreme courts. Specifically, it requires that the defence must disclose the following matters: any reports by experts it intends to rely on, whether it intends to challenge the continuity of custody of any prosecution exhibit, whether it will seek to amend the indictment or make an application for separate trials and whether it will seek edits to audio or video evidence the prosecution intends to use in the trial. The bill also provides that the prosecution must provide the defence with a transcript of any audio or video evidence it proposes to adduce and provide timely notice if it disputes any edits to such evidence proposed by the defence.

Pre-trial disclosure has been used in New South Wales since 2001. Pre-trial disclosure provisions attempt to address those issues by requiring the defence and prosecution to disclose evidence and aspects of their case within a reasonable period prior to the trial. The bill expands on an existing process by placing additional obligations on both the defence and prosecution prior to trial. This is to ensure that both parties can focus on the issues that will be disputed at trial and that the possibility of late adjournments and delay is minimised. 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.

Motion agreed to.

Third Reading

The Hon. SCOTT FARLOW: On behalf of the Hon. Don Harwin: I move:

That this bill be now read a third time.

Motions agreed to.

RSL NSW BILL 2018

Second Reading Speech

The Hon. SCOTT FARLOW (16:04): On behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the RSL NSW Bill 2018.

In this year, the final year in the Centenary of Anzac, it is important that we reflect on the achievements that this Government has made in the Veterans portfolio. We are redeveloping the Anzac Memorial in Hyde Park. We are investing in the preservation of war memorials in every corner of this State. We are providing school students with opportunities to travel to the overseas battlefields where the Anzacs fought. We are supporting our veterans as they transition back into civilian life through the highly successful Veterans Employment Program. We have secured the Invictus Games, which will be held in Sydney later this year.

In each of these areas there have been achievements and successes that prove the New South Wales Government is serious about preserving the legacy and heritage of our Anzacs as well as supporting our modern veterans who may struggle with issues of employment and stable home life following discharge from defence.

The RSL has been a much-loved institution to people across the State, and this bill is about helping the RSL to get back to its core responsibilities of supporting our veterans.

The RSL NSW Bill 2018 proposes a number of amendments to strengthen RSL NSW's governance arrangements. The amendments facilitate accountability and transparency of the entity to its members. The changes do not increase Government control in the entity. However, RSL NSW has been accorded a special place in the cultural life of New South Wales and consequently, the changes facilitate the Government having visibility over the entity's dealings and confidence in its corporate governance.

The findings of the inquiry under the Charitable Fundraising Act 1991 by the Hon. Patricia Bergin, SC, which investigated RSL NSW's fundraising activities following allegations of financial misconduct, were handed down in a report delivered to the Government on 31 January 2018 and made public on 12 February 2018. Those findings indicated that the current corporate governance framework of RSL NSW is not sufficient to ensure the organisation is accountable to its members. With such serious allegations of misconduct, the Government had to take action.

The reforms in the RSL NSW Bill 2018 aim to assist RSL NSW with the reform and rebuilding that was put into evidence during the inquiry. The proposals have been developed closely with RSL NSW and are intended to support changes that RSL NSW is making internally. The bill does not directly address the recommendations of the inquiry as they concern the charitable fundraising activities more generally which are regulated by the Charitable Fundraising Act 1991, administered by the Minister for Innovation and Better Regulation. The Government response to the recommendations regarding charitable fundraising is currently being considered.

The Returned and Services League of Australia (New South Wales Branch) is a body corporate established under the Returned and Services League of Australia (New South Wales Branch) Incorporation Act 1935.

The RSL NSW Bill will repeal and replace the existing Returned and Services League of Australia (New South Wales Branch) Incorporation Act 1935 and modernise the language of the Act constituting the body corporate. The bill will constitute a legal entity rather than incorporating the members of the league as a body corporate. The approach taken in the bill is the modern way in which statutory corporations are constituted.

I will now outline the details of the bill.

Part 1 - Preliminary, provides definitions for terms used throughout the bill which reflect the modern language of the statutory corporation by using the terms "board", and "director ".

Part 2 - Constitution and management of RSL NSW, incorporates RSL NSW as a body corporate being a continuation of and the same legal entity as the entity constituted by the former Act. It also clarifies that RSL NSW does not represent the Crown.

Section 5 introduces new provisions establishing a framework for the board of directors, including prescribing the following features:

- The board is to consist of at least three, but not more than 10 directors;
- The directors—other than the independent directors—are to be elected in accordance with the constitution by members of RSL NSW;
- The board must appoint at least one, but not more than two persons who are independent of RSL NSW—that is, individuals who are not members of RSL NSW.

The board's procedures, including how meetings are called and how business is conducted, are to be determined by the board.

Part 3 - Functions of RSL NSW, replicates portions of the former Act in relation to RSL NSW being the guardian of the Cenotaph in Martin Place and the Anzac Memorial Building. However, it also adds new provisions requiring RSL NSW to prepare an annual report each financial year and provide that report to the Minister.

Section 7 ensures that RSL NSW has the powers necessary to function as an incorporated body, and these are supplemented by the powers given to all statutory bodies in the Interpretation Act 1987. Section 11 ensures that RSL NSW is able to delegate its functions to a director or employee.

Part 4 - Miscellaneous, includes key provisions relating to the reform of RSL NSW. Section 12 provides a codified regime for the disclosure of pecuniary interests of directors. Codifying this obligation will promote transparency and accountability, prevent conflicts of interest, and give members of RSL NSW certainty in respect of the process to be followed by directors.

Section 13 provides safeguards for RSL NSW members in the event that RSL NSW moves to remunerate its directors. This section provides a framework within which director remuneration is to be set and prohibits manifestly excessive remuneration. This framework is subject to any restrictions in the RSL NSW constitution or other laws; such as the Charitable Fundraising Act 1991.

The section requires RSL NSW to have regard to how the remuneration of its directors compares to remuneration paid to directors of comparable organisations.

This reform provides RSL NSW with flexibility in setting remuneration while providing a safeguard to ensure it will not be unreasonable. This provision does not authorise payment of remuneration—all necessary approvals under the entity's constitution and under any law must still be obtained.

Sections 14 establishes a mechanism for the entity to sign documents and section 15 provides a mechanism for documents to be served on the entity.

Schedule 1 deals with savings, transitional and other provisions. In particular, it provides a mechanism for the transition from the current State Council to the new board and the appointment of the independent directors.

The bill omits provisions of the current Act that were transitional from the original incorporation of the league in 1935 and, unlike the current Act, does not seek to replicate issues that are dealt with in part 8 of the Interpretation Act 1987.

This bill modernises the establishing act of the RSL NSW and makes important reforms to the corporate governance of the RSL NSW to provide additional accountability of the entity to its members.

The amendments will commence on the date of assent.

I commend the bill to the House.

Second Reading Debate

The Hon. LYNDA VOLTZ (16:05): I lead for the Opposition in debate on the RSL NSW Bill 2018. The objects of the bill include the constitution of a corporation with the name of the Returned and Services League of Australia (New South Wales Branch) to provide that RSL NSW is a continuation of the corporation constituted by the Returned and Services League of Australia (New South Wales Branch) Incorporation Act 1935; the establishment of a board of directors—the board—to govern and act for RSL NSW, the provision that the directors of the board are to be elected by RSL NSW service members and will include at least one independent director; the requirement for RSL NSW to provide an annual report to the Minister to be tabled in Parliament; the requirement for directors of the board to disclose any pecuniary interests in matters being considered by the board; and the provision for the remuneration by RSL NSW of the directors of the board.

There would be few Australians who have not had any contact with an RSL sub-branch. Australia has been involved in many conflicts over the past century and our citizens—many of whom have come from countries on the other side of those conflicts—are well versed about the RSL and its functions, particularly through the education system. The Minister for Veterans Affairs introduced the bill in the other place during the last parliamentary sitting week. Since then, Labor members of the other place have written directly to their local sub-branches about this legislation and sought their views on the proposed changes. Those RSL sub-branches that have responded have raised a number of concerns that I will address later in my contribution. However, it would be useful to provide some background.

In December 2016 the Minister for Veterans Affairs issued a press release stating that he had approached the NSW Police Force about fraud allegations at RSL NSW. In January 2017, it can be assumed in response to that approach, NSW Police Force officers attended RSL NSW to execute a search warrant. On 15 May 2017 the Minister for Innovation and Better Regulation appointed the Hon. Patricia Anne Bergin, SC, as an authorised inspector under the Charitable Fundraising Act 1991 to investigate the RSL NSW, RSL DefenceCare and its Trustees and RSL LifeCare Limited.

At present there is no indication as to the outcomes of the NSW Police Force investigation, which has been ongoing from some time, or whether a brief has been provided to the Director of Public Prosecutions [DPP]. The Bergin inquiry also recommended that former President Mr Don Rowe be referred to the NSW Police Force. That action had already been taken. Justice Bergin also raised concerns about the failure of the RSL NSW executive to refer this matter to the NSW Police Force. She also proposed that that failure to refer should be referred to the Australian Securities and Investments Commission [ASIC], along with the taking of fees by directors of RSL Lifecare, including by a former member of the other place, Mr Jim Longley, and that these matters be raised with the Australian Charities and Not-for-profits Commission [ACNC].

Undoubtedly the ongoing allegations and inquiries into the RSL NSW have undermined public confidence in the organisation, particularly with regard to transparency. This bill goes some way to ensuring that that transparency process is restored by the requirement for annual reporting by the RSL NSW to the New South Wales Parliament. It is disappointing that members have not had the benefit of seeing whether any of the other recommendations of the Bergin inquiry in relation to the Charity Act will be introduced, because that would have been useful to ensure that the changes in this bill are encompassed by the appropriate legislation. Perhaps in reply the Parliamentary Secretary or the Minister will be able to inform the House if and when changes to the Charities Act will be introduced to implement the recommendations of the Bergin inquiry.

As I said, Labor members of Parliament have received numerous responses from RSL sub-branches regarding the proposed changes to the Act. While they welcome the greater transparency, they have raised a number of concerns. There was overwhelming objection to one of the proposed changes in the current, that being the inclusion of remuneration for directors of RSL NSW. Indeed, Justice Bergin referred directors of RSL LifeCare to the Australian Securities and Investments Commission and the Australian Charities and Not-for-profits Commission regarding the receipt of directors' fees. It is therefore surprising that this amendment has appeared in the RSL NSW Bill 2018, rather than the Government introducing changes to the Charities Act.

It should be noted that Justice Bergin specifically requested that the amendment of payment of fees be made within the Charities Act. There was no recommendation, implied or otherwise, to include the payment of remuneration to the RSL NSW executive in any proposed changes to the RSL NSW Bill 2018. Justice Bergin noted at 14.62 of her report:

> It is recommended that consideration be given to amending section 48 of the Charities Act to clarify that it is the approval to act as an officer rather than the approval to receive fees.

To include it in this bill would have the potential to put this piece of legislation in conflict with the Charities Act. Indeed, the amendment in this bill is unnecessary, as the Charities Act already provides for a mechanism for remuneration. Section 48 of the Act states:

Remuneration of board members of charitable organisations

(1) A person is not prohibited (despite any law to the contrary) from holding office or acting as a member of the governing body of a non-profit organisation having as one of its objects a charitable purpose merely because the person receives any remuneration or benefit from the organisation if:

The Minister by order published in the Gazette has declared that this section applies to that office, or

The Minister has given prior approval of a person who receives any such remuneration or benefit holding that office or acting in that capacity, or

The person concerned holds that office or acts in that capacity by virtue of his or her office as a minister of religion or a member of a religious order.

(2) An approval under this section is subject to any conditions imposed by the Minister when giving approval.

(3) An approval under this section is to be in writing. Applications for such approvals must be addressed in writing to the Minister by the organisation concerned.

It should be remembered that members of the RSL sub-branches are themselves returned service veterans and former defence personnel. They give up their free time to provide assistance to other veterans and defence personnel voluntarily, often dealing with complexities of the Federal Department of Veterans Affairs. It is an organisation run by those who have themselves served to ensure help is provided to those who have served and suffered loss or injury, and they are charged with ensuring the ongoing remembrance of conflict in Australia's past and the sacrifices of those who were lost. Overwhelmingly, responses received by Labor members of this Parliament indicate that RSL sub-branch members universally believe that the New South Wales Government is removing from them the decision-making ability regarding the payment of directors' fees and enforcing it within legislation. The Labor Opposition agrees that the RSL sub-branches themselves should be the arbiters in this regard and should be empowered on the issue of remuneration, rather than the implied obligation to do so under the current amendments proposed in this Act.

On numerous occasions prior to the introduction of this legislation, I made it clear to Secretary of RSL NSW James Brown that there was a significant concern about remuneration being included in the RSL NSW Bill 2018. Indeed, there are a number of veterans' organisations, including organisations such as Soldier On Australia and other charities, such as drought charities and church organisations, where directors' fees may or may not be appropriate. Across the board, the Government must form a view on the payment of remuneration of those directors, not just for the RSL NSW but for everyone, and that must be made clear in the Charities Act. To include it in this bill would place this bill in conflict with the Charities Act. We have made that clear to James Brown on a number of occasions.

Another area of concern is the insertion of State participation into the restructuring of the RSL NSW executive. To set a minimum of only three directors elected by the membership, down from the current 14, is problematic, has the potential to significantly centralise the decision-making of this organisation to a small handful—despite the requirement for annual reports to the Parliament—and would hinder transparency rather than be an improvement. As a result, the Opposition will also move amendments relating to that. I also note that, from the statement released by the RSL today, the issues raised in the proposed amendments are issues which the RSL NSW State Council is aware of and has tried to address in its draft constitution. It is expecting to have a board consisting of at least 10 directors. The proposal to decrease that to five would not be outside the concerns that the RSL has identified.

As I stated earlier, the current structure of the RSL NSW allows for significant regional and rural representation. It is not doubted that presently the bulk of the membership of the RSL is resident in the Greater Western Sydney area and has the potential to reduce representation outside the Sydney metropolitan area. Many RSL members also believe that the proposed structure will eliminate regional and rural representation from the executive of this body. Again, this is a legitimate concern and the Labor Party will deal with these concerns in committee.

I will now deal with one part of the Bergin inquiry that seems to have escaped the attention of the Minister for Veterans Affairs—that is, the diversion of funds for veterans to the Liberal Party of New South Wales and the Federal Liberal Party. As Justice Bergin noted in her final report:

> Any member of the public who donates funds to a charity should be able to have confidence that their funds are not being used to support a political party or for the election or re-election of a particular political party or candidate. Clear guidance needs to be given to charities, and in particular those engaging in charitable fundraising, to ensure that the donating public can have confidence in how their money is being spent.

Tens of thousands of dollars were diverted from RSL LifeCare to the NSW Liberal Party, and not one member on the other side of this Chamber has apologised to the veterans around New South Wales. This legislation gives them the opportunity to do that—although the Liberal Party is yet to come clean on how much the Federal Liberal Party has actually received. These issues have been centred on former Liberal Minister Jim Longley who was not

only receiving a parliamentary pension and being paid as a director of a government agency but also diverting funds from RSL LifeCare to the Liberal Party of New South Wales, on top of being paid directors' fees for being a member of the RSL LifeCare board. If one is to understand why public trust in politicians is so low, the example set by Jim Longley is a significant reminder. Since the Minister for Veterans Affairs has failed to move amendments to ban the payment of political donations, such as those the Liberal Party and, in particular, the member for Pittwater have received, Labor will enshrine it in this legislation, returning—

The Hon. Don Harwin: He's not the member; he's the former member. Don't slur Rob Stokes.

The Hon. LYNDA VOLTZ: Point of order: I take a point of order on the Leader of the Government, who must have missed the point. The donations were indeed received by the member for Pittwater, Rob Stokes.

The Hon. Don Harwin: I withdraw.

The Hon. LYNDA VOLTZ: Labor will enshrine the ban in this legislation, returning RSL NSW to the position it has always held in New South Wales, which is that of a non-partisan organisation that represents the services of those from all arms of the defence forces. The Labor Party will move these amendments but, if they fail, we will not oppose the legislation.

A number of other issues were raised in the Chamber—which the Secretary of the RSL approached me about—regarding the RSL Women's Auxiliary. At the last congress there was some confusion over the role of the name change of the women's auxiliary, and that is an issue that was raised with me and other members of Parliament. James Brown would like me to place on record that he had no intention to mislead the RSL NSW Congress regarding that name change. I have a letter from Ms Pauline James, State President of the Central Council of RSL Auxiliaries. Essentially, Pauline would like to put on the record that the Central Council of Women's Auxiliaries [CCWA] voted on a proposed name change put forward by the Wingham Sub-Branch, but that was done by the central council.

On 22 May 2018 at Albury, during the women's auxiliary congress, Mrs James spoke to the delegates. During his speech she stated that a vote would be held on 23 May at the RSL New South Wales State Congress in relation to the name change of RSL Women's Auxiliary to RSL Auxiliary. She informed the CCWA congress delegates to confirm by 7 p.m. on 22 May whether the majority of the CCWA delegates supported the change and that, if so, she would inform the RSL NSW delegates of the result. Ms James goes on:

> During the CCWA congress, a discussion was held amongst the CCWA delegates about the name change. I informed the delegates that the CCWA delegates had no power or authority to change the name from RSL Women's Auxiliary to RSL Auxiliary as that power and authority was held by the RSL New South Wales delegate. However, I did suggest that we discuss the name change and possible names that could be used. This would enable the RSL NSW congress delegates to make an informed decision with our input.
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> Several names were offered, such as RSL Welfare Auxiliary, RSL Support Auxiliary and RSL Auxiliary. It was decided that the preferred name was RSL Auxiliary. A show of hands was called for, for this name. That decision on which was the preferred name was then relayed to the Secretary of the NSW RSL.

That was not a decision on the name change, which was made at the congress; it was a decision on what the name should be changed to, based on the decision of the NSW RSL. The Women's Auxiliary is a hardworking organisation full of women—many of whom have, for more than half a century, put their heart and soul into the organisation—who feel strongly about their organisation. That is to be commended. It would appear that there has been misinformation about the process, because the CCWA congress does not have the authority to change the name, and about who is responsible for that.

At the end of the day, President of the NSW RSL James Brown has undertaken to talk to any member of the organisation who feels that that process was not clear and to outline what process the organisation went through to move forward on that. James Brown was certainly keen to have those views put on the record, and I am happy to do that on his behalf. I will leave it there, because there will be more debate in the committee stage of this bill. I particularly commend the transparency section of the bill to the House.

Reverend the Hon. FRED NILE (16:22): I am pleased to support the RSL NSW Bill 2018 on behalf of the Christian Democratic Party. I have been a member of the RSL for about 50 years after serving in the Army Reserve until 1974, when I retired as the infantry commander of 4 RNSWR. I am pleased to take part every year in the Anzac Day march through the city streets. This Friday I will host the Army Reserve forces lunch at Parliament House for the first time. I hope it will become an annual event thereafter.

This bill proposes a number of amendments to strengthen the RSL NSW governance arrangements. The amendments facilitate accountability and transparency of the entity to its members. Complementary reforms have already been introduced by the Government, including the successful veterans employment program, the $40 million Anzac Memorial upgrade, which will be completed in October, and bringing the Invictus Games to Sydney later this year. The main guest for that event, who will come from the United Kingdom, is Prince Harry.

The Returned and Services League of Australia (New South Wales Branch) is a body corporate established under the Returned and Services League of Australia (New South Wales Branch) Incorporation Act 1935. The changes do not increase the Government's control of the entity. However, RSL NSW has been accorded special place in the cultural life of New South Wales, and consequently the changes facilitate the Government having visibility of the entity's dealings and confidence in its corporate governance.

The reforms in the RSL NSW Bill 2018 aim to assist RSL NSW with the reform and rebuilding that formed part of the evidence in the inquiry into the Charitable Fundraising Act 1991, which investigated RSL NSW fundraising activities following allegations of financial misconduct. That was a sad event in the life of the RSL. The misconduct should never have occurred, and I am sure that the RSL will make certain that in the future all financial matters are handled correctly according to law.

The bill does not directly address the recommendations of the inquiry, as they concern charitable fundraising activities more generally, which are regulated by the Charitable Fundraising Act 1991, administered by the Minister for Innovation and Better Regulation. The Government response to the recommendations regarding charitable fundraising is currently being considered. The Government has worked closely on the development of the bill with President of the RSL NSW James Brown.

The bill incorporates RSL NSW as a body corporate, being a continuation of and the same legal entity as the entity constituted by the former Act. It introduces new provisions which: establish a framework for the board of directors, including that the directors other than the independent directors are to be elected in accordance with the RSL NSW constitution by members of the RSL NSW; require RSL NSW to prepare an annual report each financial year and provide that report to the Minister; provide a codified regime for the disclosure of pecuniary interests of directions, which will promote transparency and accountability and give members of the RSL NSW certainty in respect of the process to be followed by the directors; and, finally, provide a framework within which director remuneration is to be set and which prohibits manifestly excessive remuneration, which I fully support. This framework is subject to any restrictions in the RSL NSW constitution or other laws.

A number of delegations have come to see me about the bill. I have had contact with and worked with James Brown, President of RSL NSW, who, like the RSL itself, supports the bill before the House, but there are some branches that have reservations. Being democratic, I am always prepared to speak to those sub-branches that have concerns about the bill. I think some of those concerns are based on misunderstandings. I have also received a statement from the President of the RSL NSW, writing on behalf of the RSL and making it clear that the RSL is a charity with the mission of ensuring that veterans and their families are respected, supported and remembered. The President says:

> The RSL NSW Bill 2018 was extensively discussed at the RSL NSW Annual Congress in Albury in May 2018 by representatives from both the government and opposition.
>
> RSL NSW was not consulted on the proposed amendments to the RSL NSW Bill 2018 and is unable to resolve, as a council, a formal position on them prior to the second reading debate in the NSW Legislative Council.

That is a pity. Mr Brown continues: We are grateful for the acknowledgement by parliament of the importance of the RSL to local communities, and the engagement with this bill by representatives from all parties. The issues raised by the proposed amendments to the RSL NSW Bill 2018 are issues which the RSL NSW State Council is aware of and has addressed in the new draft constitution being recommended to RSL NSW members for their consideration at an extraordinary congress in December 2018. The current draft RSL NSW constitution, developed through close consultation with a member nominated Constitutional Review Panel, has been sent to the RSL NSW membership for their consideration and feedback. It includes the following components:

- The RSL NSW board will consist of 10 directors: two directors who are independent of RSL NSW and eight elected service members of RSL NSW who are veterans.
- A new Regional Representative Council will be constituted to preserve the voice of regional and country members. This council will have a formal role to advise the RSL NSW board on regional and country issues, as well as new powers to trigger an extraordinary general meeting, should it be necessary to vote out the board. Council members will be elected from regional areas and budgeted to coordinate and improve league operations in regional areas.
- The preservation of the existing voting system which gives country and regional RSL members an outsized voice in voting on constitutional change and policy motions at our annual general meeting.

> The heart and soul of our league is our engagement in local communities, particularly on Anzac Day and Remembrance Day.
>
> For one hundred years RSL NSW has been a strictly non-partisan organisation, and a charity. It would be entirely inappropriate, under existing legislation and the RSL NSW constitution, for RSL NSW to use its resources for partisan political purposes. There is no record of RSL NSW funds having been used for political donations. In recent times, however, it was detected that former directors and staff of RSL LifeCare had used that company's funds to attend functions hosted by political parties. The current leadership of RSL NSW publicly disendorsed those donations and took immediate action to see that the funds were returned. The board of RSL LifeCare has significantly changed since those donations were made and RSL LifeCare now has strict policies forbidding attendance at political functions.

> The State Council of RSL NSW will recommend to RSL members that they vote to approve remuneration for board directors of the charity. This is entirely appropriate given the size, complexity, and accountabilities of the league and the workload expected in transitioning from a representative council to a board. The new RSL NSW board will be directly and indirectly responsible for nearly 3,500 staff, 2,200 aged-care beds, approximately 200 properties, and nearly $2 billion of charitable funds and assets held on behalf of veterans and their families in New South Wales. Failing to attract quality leaders to run the RSL in recent decades has had obvious consequences for the league. To ensure we can attract the best possible members to lead the league into the future, and to allow future directors to devote appropriate time to their significant responsibilities, State council will recommend that directors be remunerated.

I add that I believe the Government should observe that to ensure that the remuneration is in line with the roles board directors have and is not excessive or an abuse of the RSL funds. The directors should not be able to vote to increase their own payment for their services as directors. The RSL statement goes on to say:

> It would be inappropriate for RSL NSW State Council members to approve their own remuneration. Independent analysis, benchmarked against comparable charities, will form the basis of a remuneration proposal to be put to members for their decision at an extraordinary congress to be held in December. It will be in the hands of grassroots members to decide whether it is approved or not.
>
> The RSL NSW President, State councillors, and staff have been travelling across New South Wales for the past two weeks meeting members to hear their concerns and ideas for the future of the league. Our membership are keen to return to fundraising to help veterans and their families, concerned to ensure our new constitution works, and ready to put the crisis of the past year behind us. RSL members are also excited to be a founding partner of the Sydney Invictus Games. The RSL NSW Bill is a major step towards completing the reform of this proud organisation.

That is the statement that I received from President James Brown on behalf of RSL NSW. I have received other submissions that I will not go into detail on today from the Rockdale RSL Sub-Branch, the Western Metropolitan Regional Council, which felt very strongly about some of the aspects of the bill, the Cumberland RSL Sub-Branch and members of the Maitland RSL Sub-Branch. I believe that the Government, in cooperation with RSL NSW, has come up with a workable formula, but its implementation needs to be closely observed to ensure that it meets its objectives. The Government should be flexible to make any changes that are necessary in the future. I am pleased to support the bill.

Mr JUSTIN FIELD (16:35): The Greens will not oppose the RSL NSW Bill 2018. We support members of the RSL NSW. The issues of financial misconduct have been well ventilated in this place and in public. I note that the bill does not address the recommendations of the inquiry that looked into those matters, but it is clear that members of the RSL deserve to see their organisation and its governance and accountability strengthened. I will not read out the statement that has been released by the RSL—Reverend the Hon. Fred Nile has read that in full—but it is clear that the RSL has been working alongside the Government to develop both the bill and the draft constitution, which is being put together and put forward in line with the bill.

I recognise that the RSL is doing substantial work to develop a new constitution to address the issues that have come up concerning the transparency and accountability of the board. Financial management flows from the ability of the directors of an organisation and they have oversight of what is happening within the organisation. The constitution will have the appropriate powers to deal with that. I note the concerns that have been raised by the Labor Party and I will add my own concerns during the Committee stage of the bill. Given how clear it is that there has been a relationship between the Government and the RSL in the development of this bill and that the RSL has put out a statement outlining how many directors it will have, it makes little sense that the bill suggests a radically different minimum number.

It does not make sense that that would be enabled in legislation when it is manifest to anyone who has seen what has happened within the RSL that if there were as few as three directors—which this bill would enable—the organisation would not have in place the structures to ensure that its compliance, appropriate management and fiscal responsibilities and its reporting requirements are met. The organisation has outlined how it intends to deal with those questions. I do not understand why the bill is so radically different to that. With regard to remuneration—and I will discuss this further during the Committee stage—the organisation has outlined how it intends to deal with remuneration through the recommendation to its members. It is good that it recognises that it is inappropriate for the board to determine any remuneration.

It is difficult to see how the membership of an organisation at an annual general meeting would be able to ensure the organisation's compliance with legislation that outlines the different requirements that that organisation is obliged to address relating to remuneration. How can the membership of the organisation ensure compliance with this legislation? There are some real problems with how that would be done. I understand that that is one of the issues that Labor will address at the Committee stage.

In conclusion, I reiterate that The Greens will support the bill. We support the RSL moving forward from challenges it faced in the past for the sake of its members, many of whom are ageing and who rely very much on the services that RSL NSW provides. RSL NSW members rely on funding provided to RSL NSW to be used in the most effective way to meet their needs in the future. The Greens support the bill.

The Hon. GREG DONNELLY (16:40): I participate in debate on the RSL NSW Bill 2018 to take the opportunity to acknowledge and thank the Opposition shadow Minister for Veterans Affairs, the Hon. Lynda Voltz, for all the work she has done in giving consideration to this important bill. She has been and continues to be a strong voice for veterans in the New South Wales Parliament. The primary purpose of my contribution to the debate is to clarify and correct some comments made yesterday in the other place. Those comments may be found on pages 54 and 55 of *Hansard* from the Legislative Assembly dated Tuesday 18 September 2018 and relate to deliberations on 22 May 2018 at Albury during the Central Council of Women's Auxiliary [CCWA] Congress.

I note that the Hon. Lynda Voltz referred in detail to a letter dated 10 September 2018 to Mr James Brown, who was the President of RSL NSW, from Mrs Pauline James, who is the State President of the Central Council of RSL Auxiliaries. I thank the Hon. Lynda Voltz for doing so. That letter is important correspondence that specifically deals with the issue raised in the other place on the pages to which I referred earlier. Earlier today I spoke to Mrs James and confirmed with her that it is important for the record to be corrected. I indicated to her that I believed it was appropriate to put the correct information on the public record, and that has been done. Mrs James agreed with that suggestion.

I also have spoken to the member for Campbelltown, Mr Greg Warren, MP, and indicated to him my belief that it is important for the record to be corrected. The member for Campbelltown is a proud service member of RSL NSW. As many people know, he served in the Australian Army in both the Infantry and Transport corps. Mr Brown and Mrs James have been doing a good job in assisting veterans and their families across this State. In particular, in November last year Mrs James was acknowledged and thanked in the Legislative Assembly for her tireless work with various quilts projects that raised much-needed funds for our veterans and their families. Mrs James also is involved with the Invictus Games' Quilt and Laundry Bag project, which will provide teams and athletes with quilts and laundry bags when they come to Sydney next month to participate in the Invictus Games.

Mrs James has managed to coordinate quilters from across New South Wales and Australia to make a number of beautiful quilts that will be displayed in Parliament House during the Invictus Games. I will leave my contribution to debate at that. I thank the House for the opportunity to clarify this matter and to correct the record. I again thank the Hon. Lynda Voltz for all the work she has done for the Opposition with respect to this bill. As the Hon. Lynda Voltz already has stated, the Opposition will not oppose the bill but will move a number of amendments at the Committee stage.

The Hon. SCOTT FARLOW (16:43): On behalf of the Hon. Niall Blair: In reply: I thank all members who contributed to debate on the RSL NSW Bill 2018—the Hon. Lynda Voltz, Reverend the Hon. Fred Nile, Mr Justin Field and the Hon. Greg Donnelly. I will address some of the concerns raised by members during the debate, but overall I thank them for the support they expressed for the bill. I note that amendments will be moved at the Committee stage. The Hon. Lynda Voltz, as did members of the other place, raised concerns about rank and file consultation. The bill was developed in consultation with the RSL NSW executive. The RSL NSW executive is supportive of the proposals as a way for the Government to support RSL NSW to deliver more robust and accountable governance arrangements. Further consultation took place following the drafting of the bill with RSL National, ClubsNSW and the RSL & Services Clubs Association.

Consultation also took place with the State Congress, which the Minister for Veterans Affairs attended with the member for Campbelltown, as mentioned earlier by the Hon. Greg Donnelly. I also note the Minister's community engagement activities with the various RSL sub-branches including, but not limited to, Seven Hills, Smithville, Brewarrina, Bonalbo, Castle Hill, Lismore, Tamworth, Wagga Wagga, Scone, Gloucester, Bathurst, Raymond Terrace, Karuah, Armidale, Nowra, Parramatta, Padstow, Liverpool, Kempsey-Macleay, Cumberland, Albury, Queanbeyan, Toongabbie, Taree, The Entrance-Long Jetty, Forster-Tuncurry, Terrigal, Gosford, Coogee, Engadine, Kingscliff and Tweed Heads. The Minister is the everywhere man.

The Hon. Ben Franklin: But not Ballina, though.

The Hon. SCOTT FARLOW: There might be something close to the Ballina electorate. I am sure a request submitted to the Minister for Veterans Affairs, the Hon. David Elliott, would elicit a response in the form of a visit to the Ballina region. With respect to concerns relating to where the minimum of one and maximum of two independent directors will be sourced, that is a matter for RSL NSW to determine. Concerns were also expressed about the potential remuneration of directors. The bill does not authorise RSL NSW to renumerate its directors but states that RSL NSW "may" remunerate its directors provided that certain conditions aimed at preventing excessive remuneration are fulfilled. If RSL NSW chooses to remunerate its directors, the bill requires RSL NSW to have regard to how the remuneration of its directors compares to similar organisations. This bill has the necessary safeguards in place to prohibit manifestly excessive remuneration.

The bill does not authorise RSL NSW to remunerate its directors but of course states in part 4, clause 13 (1) that RSL NSW "may" remunerate its directors. However, the RSL will still be subject to any restrictions in the RSL NSW constitution or other laws, such as the Charitable Fundraising Act 1991, in relation to the payment of its directors. This reform will protect the members against the self-dealing in director remuneration that was brought to light in the inquiry. As noted by Mr Justin Field, the Government's response to the Bergin inquiry report's recommendations is being developed by the Department of Finance, Services and Innovation separately from this bill. Some of the recommendations of the report already have been dealt with, such as referrals to the police, the Australian Charities and Not-for-profits Commission [ACNC] and the Australian Securities and Investments Commission [ASIC], which were made by the Minister for Innovation and Better Regulation.

It is not the aim of this bill to address the recommendations of the inquiry, which were primarily directed towards the charitable fundraising industry in general. This bill is distinct from those reforms. The bill concerns only the corporate governance of RSL NSW, not the wider fundraising sector. 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.

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.

The Hon. LYNDA VOLTZ (16:48): By leave: I move Opposition amendments Nos 1 and 2 on sheet C2018-100A in globo:

No. 1 **Composition of Board of directors**

Page 3, clause 5 (2), line 15. Omit "3". Insert instead "5".

No. 2 **Composition of Board of directors**

Page 3, clause 5. Insert after line 19:

(5) At least 1 of the elected directors is to be a member of a sub-Branch established under the RSL NSW Constitution for a district or area in regional New South Wales.

The first amendment relates to the composition of the board. Currently the legislation provides for a minimum of three directors who are then entitled to appoint another two directors. The Opposition heard from a number of sub-branches that considered this number to be too low, and I agree with them. When there is a rank and file system across a large membership, as those of us involved in the political process know, three people could wrest control of the organisation, depending on how the tickets break down. If those people are then able to appoint two directors, including one financial director, it will significantly reduce transparency. The first amendment is aimed at increasing transparency. I note the comments in the other place that the appointment of three directors is based on what a company normally does. The RSL NSW is not a company; it is a community organisation of volunteers that has more than $1 billion in assets.

Transparency was the main reason for this legislation. These amendments are aimed at fixing that to ensure there is at least some other representation on the board. The second amendment relates to regional New South Wales having representation. The largest number of RSL sub-branch members are in the Greater Sydney area—Wollongong, Newcastle and perhaps the mid North Coast of New South Wales. For that reason it is highly likely that a board could comprise only those members coming from the city. It is important for regional sub-branches, which often are small and are located in struggling towns, to have some representation. The requirement is that one director be elected from regional New South Wales.

The Hon. SCOTT FARLOW (16:51): The Government opposes both amendments. With regard to amendment No. 1, the Australian Institute of Company Directors indicates that three is best practice for the minimum number of directors. Prescribing a minimum of three ensures that minority views do not dominate. A minimum of one and a maximum of two independent directors will support board capacity. Their appointment will be subject to the requirements of the Charitable Fundraising Act 1991. The Government opposes Opposition amendment No. 2. The change to the system of voting will provide the best possible opportunity for RSL NSW to elect directors from regional areas. The Government encourages members of sub-branches from regional areas to stand for board positions. This amendment is not necessary and is not supported by the Government.

Mr JUSTIN FIELD (16:52): The Greens support Labor's amendments. As I alluded to in my contribution to debate on the second reading, the RSL made clear in its statement today that its draft constitution includes the following components: The RSL NSW board will consist of 10 directors—two directors who are

independent of the RSL NSW and eight elected service members who are New South Wales veterans. It does not make sense that the Government will not support Labor's amendment to at least increase that minimum to five. It is inconceivable that that would not result in an improved outcome for members of the RSL as the board could more adequately represent the diversity of its members, whether they are regional members or others.

The Government's argument—that having independent members somehow provides that additional diversity, given that they are to be chosen by the board itself and not by the members—does not hold water. The RSL has made it clear that it intends to have 10 directors. There is a potential risk in the future that its constitution could be changed and it would revert to a maximum of three directors. That would defeat the whole purpose of this bill, which is to ensure the future of the organisation and ensure that it operates in an accountable and transparent way for the benefit of its members and the New South Wales public. The Greens support the amendments.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The Hon. Lynda Voltz has moved Opposition amendments Nos 1 and 2 on sheet C2018-100A. The question is that the amendments be agreed to.

Amendments negatived.

The Hon. LYNDA VOLTZ (16:54): I move Opposition amendment No. 3 on sheet C2018-100A:

No. 3 **Political donations**

Page 4. Insert after line 8:

8 Ban on making political donations

RSL NSW is prohibited from making a political donation within the meaning of the *Electoral Funding Act 2018*.

This amendment will ban the making of political donations. Despite what is in the statement of the RSL NSW that RSL LifeCare was the entity that made political donations to the Liberal Party, there is no denying that RSL LifeCare is owned lock, stock and barrel by RSL NSW.

RSL NSW is and always has been a strictly nonpartisan organisation. It is not true to say that political parties had members attending its functions. The functions were held solely by one political party—the Liberal Party of New South Wales. The Liberal Party was originally identified as receiving $1,400. I wrote to James Brown, the then Treasurer of the RSL NSW, and suggested that he carry out an audit of the books to establish how much had been donated to the Liberal Party. The Liberal Party originally said, "We paid back the $1,400." After the Bergin inquiry was conducted it was revealed that the State branch of the Liberal Party had received nearly $16,000. We still do not know how much the Federal branch of the Liberal Party received because it will not tell us, despite numerous requests.

It is clear that charities should not donate to political parties. The Australian Charities and Not-for-profits Commission [ACNC] makes that clear, but it did not get that then. I accept that there is a new broom in RSL LifeCare but it talks about political donations and dresses them up as functions hosted by political parties when they are not. People did not pay $750 to see the Treasurer—who is now the Premier of New South Wales—and say, "I am paying for a ticket and a meal." That is a political donation. It should be made clear that political donations from the RSL are banned. We know that it has made donations and it is clear that they should be banned. This amendment will include a provision in the Act to ensure that is clearly understood. I do not understand why the member for Pittwater, Rob Stokes, thought it was appropriate to take those donations. He knew the donations were coming from RSL LifeCare—an organisation owned by RSL NSW. Jim Longley, a director of RSL LifeCare, knew all too well that he was giving those donations to the Liberal Party.

Those donations were given by a former Liberal Minister to a current Liberal Minister for attending some high-priced dinners that cost between $700 and $750 for a ticket. The RSL represents people across the political spectrum—not just right-wing members of the Liberal Party. One has only to look at those who have served in this Chamber to see that the weight is with the Left. That is the political reality of the RSL. The RSL is a broad church that represents us all. It represented all those who went through World War I and World War II, which were terrible wars. Not one sector of society was untouched by those wars. That is what the RSL represents. It must remain a nonpartisan organisation. Political donations from the RSL—not made by everybody on the board and certainly not made with the knowledge of the board—must not happen again. The RSL is too important an organisation to be dragged into the political arena because it has made donations.

The Hon. SCOTT FARLOW (16:59): The Government opposes Opposition amendment No. 3. The Government response to the Bergin inquiry report recommendations is being developed by the Department of Finance, Services and Innovation separately from this bill. Some of the recommendations of the report have already been dealt with, being the referrals to the police, the Australian Charities and Not-for-profits Commission

[ACNC] and the Australian Securities and Investment Commission [ASIC], which have been made by the Minister for Innovation and Better Regulation. It is not the aim of this bill to address the recommendations of the inquiry, which were primarily directed towards the charitable fundraising industry in general. This bill is distinct from those reforms. The bill only concerns the corporate governance of the RSL NSW organisation, not the wider fundraising sector.

Mr JUSTIN FIELD (16:59): The Greens support Opposition amendment No. 3. We have a long record in this place of donations reform where it is in the public interest. I make the same point made by the Hon. Lynda Voltz that RSL membership represents the diversity of the Australian public, including their political views, and it is entirely inappropriate that the organisation make political donations. I believe the membership of the RSL and the broader public would not think that it was appropriate either. I believe it is not the intent of the RSL to make political donations, but let us make that clear through either this legislation or future legislation.

I take on board what the Government has said but, given that the Bergin inquiry reported some time ago and that we are coming up to election season, if it is the intention of the Government to address this issue formally in response to that inquiry with changes either to this Act or to the Election Funding Act then we should make that clear now. But I get the sense that that is not the Government's intention and that Government members are hiding behind this assertion in order to oppose this amendment and not address this concern down the track. I think those opposite should be honest about their intention, instead of trying to hide behind the consideration of the inquiry's recommendations. The Greens support this amendment.

The Hon. LYNDA VOLTZ (17:01): In response to the comments of the Parliamentary Secretary, I note that the Bergin inquiry recommended that remuneration be dealt within the Australian Charities and Not-for-profits Commission [ACNC] or under the Charitable Fundraising Act, but we are dealing with remuneration under this bill. That is what we are dealing with and that is what the Government included in this bill. It was not a recommendation of the Bergin inquiry; the inquiry was clear about political donations. Now those opposite want to say that political donations should get dealt with in other legislation. Those opposite brought remuneration into this legislation against the recommendations of the Bergin inquiry, which recommended that remuneration be dealt under the Charitable Fundraising Act.

Those opposite cannot hide behind the Charitable Fundraising Act or some other Act when dealing with political donations. We should be dealing with political donations under the auspices of this bill. The Liberal Party took the donations, not anyone else in this Chamber. The Liberal Party should be the first party out of the stalls to make sure that this will not happen in the future.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The Hon. Lynda Voltz has moved Opposition amendment No. 3 on sheet C2018-100A. The question is that the amendment be agreed to.

The Committee divided.

Ayes 16
Noes 19
Majority.....3

AYES

Buckingham, Mr J	Donnelly, Mr G (teller)	Faehrmann, Ms C
Field, Mr J	Houssos, Mrs C	Mookhey, Mr D
Moselmane, Mr S (teller)	Pearson, Mr M	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	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

NOES

Ward, Mrs N

PAIRS

Graham, Mr J	Blair, Mr
Primrose, Mr P	Taylor, Mrs

Amendment negatived.

The Hon. LYNDA VOLTZ (17:10): I move Opposition amendment No. 4 on sheet C2018-100A:

No. 4 **Remuneration of directors**

Pages 6 and 7, line 37 on page 6 to line 2 on page 7. Omit all words on those lines.

This amendment seeks to remove the clause relating to payment of remuneration of directors. This is not about whether the RSL might or might not pay remuneration to its directors, because the RSL already has the right to decide to pay remuneration to its directors. That is what makes the closing comments of the second reading speech, delivered by the Parliamentary Secretary, so concerning. On the issue of remuneration, the Parliamentary Secretary said that the Charitable Fundraising Act still applies. The Charitable Fundraising Act already allows ministerial discretion to either allow a charity to pay remuneration or not.

I am even more concerned now that we are putting remuneration into the RSL NSW Bill even though the Minister who administers the Charitable Fundraising Act will have the right to remove the remuneration being paid to the directors, which is the current reading of the Charitable Fundraising Act. It is hugely concerning that this Government has gone against the Bergin inquiry, which recommended that section 48 of the Charitable Fundraising Act be clarified, and has instead decided to put remuneration into this part of the bill.

At the end of the day, if the RSL members want to pay their directors, it should be their decision. It should be the decision of the rank and file of the RSL as to whether to pay remuneration—indeed, they can decide that now. By putting this clause into the proposed RSL NSW Act, the bill does not say whether RSL branches can or cannot pay their directors, but it implies that they can. The Charitable Fundraising Act already allows directors to be paid, but it also allows the Minister to remove that approval to pay remuneration. The Government is walking into a quagmire here.

The Hon. Walt Secord: A tangled web.

The Hon. LYNDA VOLTZ: A very tangled web. My other concern is that the Government has said that it does not want RSL directors to be paid excessively and that a like organisation should be the marker. I would like to hear the Government's indication of a like organisation with regard to who should be paid, because the only organisation outside of the RSLs that the Government has spoken about with regard to this bill is Clubs NSW. Are we to assume that Clubs NSW's remuneration of directors is the mark upon which the Government is setting the pay of RSL directors? I could not find any other organisation where directors were paid. That opens up some interesting areas of inquiry into how much RSL directors should be paid. I am sure the Parliamentary Secretary will step forward now to clarify the conflict between the Charitable Fundraising Act and the proposed RSL NSW Act in regard to remuneration, why payment under the Charitable Fundraising Act at the moment is not sufficient in the Government's mind, and which of the like organisations the Government expects to directors be paid against.

The Hon. SCOTT FARLOW (17:13): The Government opposes the amendment moved by the Hon. Lynda Voltz. The bill does not authorise RSL NSW to remunerate its directors. It states that the RSL NSW may remunerate its directors, provided that certain conditions—which are aimed at preventing excessive remuneration—are fulfilled. The Hon. Lynda Voltz seems to think that it is somehow earth shattering that RSLs would be subject to the Charitable Fundraising Act 1991, but I take her to the legislation, which says a director may, subject to any other Act or law, receive remuneration from RSL NSW.

It does not seem startling in any way, shape or form that RSLs would be subject to any restrictions in the RSL NSW constitution or other laws, such as the Charitable Fundraising Act of 1991, in relation to the payment of directors. It is clear in the legislation. If RSL NSW chooses to remunerate its directors, the bill requires RSL NSW to have regard to how the remuneration of its directors compares to remuneration paid to directors of comparable organisations. Authorisation to remunerate directors requires a constitutional change, and the Department of Finance, Services and Innovation must approve these changes, as required by the Charitable

Fundraising Act of 1991. The RSL NSW is a complex organisation and, in order to attract the best qualified individuals as directors, members may determine—I note again, "may"—that remuneration is appropriate.

Mr JUSTIN FIELD (17:15): The Greens support Labor's amendment No. 4. It is clear from the Parliamentary Secretary's response that the Government has not answered any of the questions raised by the Opposition, which were entirely legitimate. The Hon. Scott Farlow outlined a logical argument that ultimately proved that this legislation around remuneration is redundant at best and quite confusing at worst when it comes to how individual members might make decisions with regard to remuneration of the board, given there are now two Acts that they may need to comply with in making considerations for remuneration.

Given the arguments made by the Opposition that the capacity to make those decisions around remuneration already exist within the Charitable Fundraising Act 1991, it remains unclear how those decisions will ultimately be made, what considerations will need to be taken into account in making these decisions and which other organisations they will be benchmarked against. I recognise that RSL NSW has made clear in its statement today how it intends to go through this process. It is good that it has made clear that it will ensure that this decision is in the hands of grassroots members, but the recommendations that will be made to those members will come from the board itself. I think the safer bet here is to remove those provisions from this Act and allow only the ones in the Charitable Fundraising Act 1991 to apply.

The Hon. LYNDA VOLTZ (17:16): I would like the Parliamentary Secretary to clarify his position. Paragraphs (a) and (b) of section 48 of the Charitable Fundraising Act under "Remuneration of board members of charitable organisations" state:

(a) the Minister, by order published in the Gazette, has declared that this section applies to that office, or

(b) the Minister has given prior approval of a person who receives any such remuneration or benefit ...

If the Minister has not given that approval for a board member to receive remuneration under the Charitable Fundraising Act, we could have the RSL agree to pay remuneration to people under the RSL NSW Act, but at the end of the day it would still have to come back to the Charitable Fundraising Act, paragraphs (a) and (b) of section 48. The RSL would still have to seek the approval of the Minister who has control of that Act and then have that approval gazetted. Not only has the Government not decided to have remuneration paid, but it has also added an additional bureaucratic process into that remuneration. As I have said from the start, the RSL can now pay its directors remuneration under the Charitable Fundraising Act. The Government is proposing a two-pronged approach where RSLs have to apply the RSL NSW Act, then go to the Charitable Fundraising Act and apply to the Minister for permission to be gazetted.

The Hon. SCOTT FARLOW (17:18): It is fairly clear. Again, I remind the Hon. Lynda Voltz that the authorisation to remunerate directors requires a constitutional change and the Department of Finance, Services and Innovation must approve it, as required by the Charitable Fundraising Act of 1991. There is no confusion here. We have been clear as to the process that needs to be applied by the RSL if it wishes to remunerate directors, which the proposed Act allows that it may do. The bill does not require RSLs to do it.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The Hon. Lynda Voltz has moved Opposition amendment No. 4 on sheet C2018-100A. The question is that the amendment be agreed to. Is leave granted to ring the bells for one minute?

Leave not granted.

The Committee divided.

Ayes 16
Noes 19
Majority.....3

AYES

Buckingham, Mr J	Donnelly, Mr G (teller)	Faehrmann, Ms C
Field, Mr J	Houssos, Mrs C	Mookhey, Mr D
Moselmane, Mr S (teller)	Pearson, Mr M	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	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
Ward, Mrs N		

PAIRS

Graham, Mr J	Blair, Mr
Primrose, Mr P	Taylor, Mrs

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. SCOTT FARLOW: 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. SCOTT FARLOW: On behalf of the Hon. Niall Blair: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. SCOTT FARLOW: On behalf of the Hon. Niall Blair: I move:

That this bill be now read a third time.

Motion agreed to.

STRATA SCHEMES MANAGEMENT AMENDMENT (BUILDING DEFECTS SCHEME) BILL 2018

First Reading

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by Mr Scot MacDonald, on behalf of the Hon. Sarah Mitchell.

Mr SCOT MacDONALD: On behalf of the Hon. Sarah Mitchell: I move:

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

Motion agreed to.

Second Reading Speech

Mr SCOT MacDONALD (17:30): On behalf of the Hon. Sarah Mitchell: I move:

That this bill be now read a second time.

I am pleased to introduce the Strata Schemes Management Amendment (Building Defects Scheme) Bill 2018. The bill amends Part 11 of the Strata Schemes Management Act 2015, which commenced on 1 January 2018. Part 11 introduced the strata building bond and inspections scheme, the first of its kind in Australia. The strata building bond and inspections scheme also delivered on a 2011 commitment by this Government to improve and modernise New South Wales strata legislation. The strata building defect bond and inspections scheme introduced a process to streamline the identification and rectification of defects for the benefit of strata residents, builders and

developers. The amendments provided in this bill seek to further improve the operation of the scheme by providing greater certainty, reducing costs and minimising time delays.

This Government recognises the importance of strata schemes for the people of New South Wales. There are currently more than two million New South Wales residents who are working as strata industry professionals, or strata owners, or are living in strata-titled townhouses or units. The amendments in this bill are a result of the New South Wales Government's continuing engagement with the people of New South Wales. When stakeholders requested modifications to improve the operation of the scheme, this bill was created to respond to those concerns and improve the effectiveness of strata laws in this State.

In other words, not only has the New South Wales Government led the way in making it easier for strata owners to enforce statutory warranties, but also the New South Wales Government continues to improve the strata building bond and inspections scheme. Under the scheme, developers are required to lodge a bond of 2 per cent of the total contract price with the Secretary of the Department of Finance, Services and Innovation. This bond can then be used by the owners corporation of a building to rectify the defects that have been identified in that building. The scheme applies to building work and building defects for strata schemes consisting of multi-unit dwellings of four or more storeys. These are buildings that are not covered by the Home Building Compensation Fund. Also, the scheme applies to mixed-use schemes where, for example, there are both commercial and residential lots in the building.

The New South Wales Government supports the inclusion of a five-year review of the operation of the building defects scheme. This is representative of the Liberal-Nationals Government's demonstrated commitment to developing innovative, nation-leading policies and working collaboratively with stakeholders to ensure that these policies remain valid and appropriate.

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

Leave granted.

I turn now to the substance of the bill, starting with the lodgement of the building bond. Section 207 of the Act currently requires the developer to lodge a building bond of two per cent of the contract price with the secretary in relation to the building work before an occupation certificate is issued. The bill amends section 207 to require the building bond to be lodged before an application for the occupation certificate is made. Because the efficient operation of the scheme is dependent on the lodgement of the bond, this will ensure that developers cannot be issued with an occupation certificate have not lodged the building bond with the secretary. Section 207 will also be amended to provide that the building bond must be in terms that are acceptable to the secretary before the secretary is required to accept the lodgement of the building bond.

Section 208 of the Act requires that building bonds in the form of a bank guarantee may only be issued by an "authorised deposit-taking institution" regulated by the Australian Prudential Regulation Authority [APRA]—the prudential regulator. This is a necessary safeguard that will ensure that Fair Trading NSW only deals with a fully regulated bond issuer. To provide a further safeguard, section 208 will also be amended to provide that non-bank bonds may only be issued by an 'approved insurer' as defined in section 4 of the Act. Approved insurers are also regulated by APRA.

Section 209 includes the provisions setting out when the secretary may pay an amount from the building bond. Section 209 (1) (a) provides that whole or part of the amount secured by a building bond may be paid to the owners corporation to meet the costs of rectifying defective building work that has been identified in the final report on the work. The Government is aware that the bond money should be held for the shortest time possible. For this reason, clause 210A of the bill enables the secretary to provide any release necessary to enable a building bond to be cancelled under certain circumstances. Clause 209 currently provides that an amount secured by a building bond must be claimed or realised within either two years after the date of completion of the building work for which it is given, or 60 days after the final inspection report on the building work is given to the secretary, whichever is the later. Fair Trading NSW has recognised that the latter 60-day limit may be insufficient for the secretary or the owners corporation to complete the necessary investigations to determine the amount of money to be drawn from the building bond. Therefore, clause 209 will extend the 60-day time limit to a period of 90 days. This additional month will be fair to both owners corporations and the developer.

The bill prescribes two circumstances where the secretary can release the bond. Firstly, if an interim report on the building work did not identify any defective building work, the secretary can return the bond in full if they think it is appropriate to do so. Secondly, it can be released on the application of the developer, if the owners corporation agrees and if part of the amount secured by the building bond has been claimed or realised by the secretary. Clause 210A will have a regulation-making power to prescribe additional circumstances if this becomes necessary. While clause 209 permits the whole or part of the amount secured by the building bond to be paid to the owners corporation, either on identification of building defects in the final report, or by agreement by both the owners corporation and the developer, Fair Trading NSW has identified other circumstances where payment from the building bond may be required.

Take, for example, where the developer has died or ceased to exist, is bankrupt or insolvent, or after due search and inquiry, the developer cannot be found in Australia. As a result of this situation, the developer is unable to pay the cost of the interim and final inspection reports, or their share of costs for a report for the secretary. Clause 209 will provide that these costs can be claimed or realised from the building bond by the secretary to make these payments. To further ensure that the bond is lodged appropriately, the bill increases the maximum penalty for a developer applying for an occupation certificate without having first lodged the bond from $22,000 to $1.1 million, with a further $22,000 for each day the bond remains outstanding.

The bill also introduces a new penalty for providing false or misleading information. Because a strong deterrent is required for developers who may repeatedly understate or provide false information, developers will now be subject to a new offence provision

for providing false, misleading or deceptive information in relation to the contract price or the building bond. To reflect the seriousness of this offence, a maximum penalty of $110,000 for corporations and $22,000 in any other case will apply. I note that the Home Building Act 1989 has similar offences and penalties. An amendment to section 271 of the Act will also provide that a regulation may create an offence punishable by a penalty not exceeding $22,000.

Presently, part 11 does not have a mechanism for Fair Trading NSW or an owners corporation to determine the cost of rectification of the identified building defects. This limits Fair Trading NSW's ability to quickly determine the amount of money to be released from the building bond to the owners corporation for this purpose. The owners corporation and developer are best placed to determine the amount of funds required to rectify a defect. Clause 209 will therefore require the owners corporation and the developer to both agree on the amount that the secretary should pay to the owners corporation to rectify the building defects identified in the final report. This amount, if any, will then be provided to the owners corporation from the building bond

Clause 209 deliberately does not limit the methods that the owners corporation and the developer can use to determine the cost of rectification and the amount of money they recommend be drawn down from the bond. They can use any means they wish, provided that they both agree on the final amount and provide it to the secretary. They could, for example, use a scope of works provided by a quantity surveyor or any other agreed person. Clause 209A provides that if the owners corporation and the developer cannot reach agreement, the secretary will intervene and use a quantity surveyor, or other means, such as requiring any documentation from either party, to determine the amount of the building bond to be paid to the owners corporation. To provide a further incentive, any costs of obtaining a report by the secretary will be borne in equal shares by the owners corporation and the developer, except in circumstances that will be set out in the regulation. The agreed cost of rectification will only be appealable by way of judicial review, to ensure the decision making process is not undermined by spurious claims.

Another important aspect of the bill is providing authorised officers with the necessary investigative powers to undertake investigations to determine the correct contract price. For example, the bill provides officers with the ability to enter and inspect any premises at any reasonable time, but only if it is necessary to do so to conduct investigations, obtain information or records or to investigate breaches of part 11 of the Act or part 8 of the regulation. The powers therefore cannot be used in relation to any investigation relating to any other part of the Strata Schemes Management Act 2015. Officers will also need to obtain the consent of the occupier or a search warrant to enter a residential address.

Authorised officers will also be able to issue "notices to produce" to a person, requiring them to produce any information or records that the authorised officer may require. In addition, authorised officers will be able to ask, and require answers to questions of people, that they suspect on reasonable grounds to have knowledge of a matter. Furthermore, authorised officers will be able to seize and examine documents and other material or things, and to make copies of them. An obstruction offence will apply to the investigation and compliance powers. The offence will merit a maximum penalty of up to $4,400 in the case of a corporation, and $2,200 in any other case. These powers will enable officers to verify the contract price and do their job properly. These powers will also enable New South Wales Fair Trading NSW to undertake investigations to verify that the amount of the building bond was based on the correct contract price for the build. They also reflect similar powers in other, comparable Fair Trading NSW administered statutes.

The bill also introduces a debt recovery process for when a developer has failed to provide a building bond, or has provided an incorrect building bond amount. In these cases, the secretary will require a way to recover the correct amount of the building bond from the developer. Clause 211A of the bill provides such a debt recovery process. Amounts recovered under this section can be claimed (in whole or in part) by the owners corporation under section 210. This means that once the determined amount is recovered, the owners corporation and developer will still have to determine the amount of the bond required to address the defects. If they cannot agree, the secretary will use an independent quantity surveyor or other means to determine that amount.

Section 211A (6) will provide that an owners corporation must repay the developer any amount that has been paid to the owners corporation and which is not required to rectify identified defects. The owners corporation must also notify the developer when the rectification of defects has been completed. Section 211 of the Act presently provides that the secretary, the owners corporation and the developer can apply to the tribunal for a determination of the contract price on which the 2 per cent building bond is based. It is appropriate for the secretary and the owners corporation to have this right. However, given that the developer was involved in the construction of the property and possesses all of the relevant information, they are usually best placed to determine the contract price. For this reason, the developer should not be able to apply to the tribunal for a determination, because they are the one who has been involved in the construction of the property, unless there are extraordinary circumstances. The only exception to this rule is when the developer has used an independent third party, such as a quantity surveyor, not connected with them, to determine the contract price. In these circumstances, the developer should be able to apply to the tribunal. This issue will be further explored during consultation on the draft amendment regulation.

The first annual general meeting of any owners corporation which is convened by the developer is an important milestone in the life of a strata scheme. It is often the first opportunity owners have to come together after moving into the strata scheme, and have had the chance to examine their lot and identifying possible defects. The examination of building defects is a compulsory agenda item for the first meeting. While the Strata Schemes Management Act requires developers to provide certain documents to the owners corporation before the first annual general meeting, there is currently no requirement for the developer to provide documents to the building inspector. Providing a range of designated documents relating to the construction of the strata scheme will assist the building inspector, and whoever the building inspector appoints, in conducting an effective and efficient inspection to identify building defects. For this reason, clause 198A will require the developer to provide the building inspector with a document that identifies any building defects that the developer is aware of, including any information about defects considered at the first annual general meeting of the owners corporation, and any other documents prescribed by the regulation.

The smooth and efficient operation of the scheme will rely on the building inspectors appointed to conduct the interim and final inspections and to provide the required reports. The building inspectors will be drawn from several professional Industry associations. During consultation on the bill, these associations expressed concern about the role of the building inspector in the scheme, seeking more clarification of the part they will play. Their role is clarified by a range of amendments to part 11. Building inspectors are already required to perform their functions impartially and independently when providing a single expert assessment of the building, to help reduce adversarial disputes. Reducing the risk and liability of building inspectors being targeted or joined in law suits will support this aim.

Accordingly, under clauses 213A and 213B, an inspector or a professional industry association that appointed the inspector to an inspection panel will be protected from being sued for anything done or omitted from being done in connection with an inspection if it was done or omitted "in good faith". This "good faith" protection from being sued is the same protection already provided to members of strata committees under the Strata Schemes Management Act 2015. This protection comes with an accompanying responsibility. Accordingly, the regulation will provide that professional industry associations or the secretary can impose conditions on building inspectors in the exercise of their functions, to ensure that the inspectors' functions are carried out competently.

Section 214 of the Act will also be amended to allow regulations to be made about how people are qualified to be appointed to as building inspectors. An additional regulation making power will also be included in section 214, to enable the creation and maintenance of registers of relevant information about people who are qualified to be appointed as building inspectors. This will help ensure that owners corporations can readily access information about proposed inspectors for their scheme, including any conditions imposed on them, before making any decision about their appointment. It is usual in legislation for the secretary of a department that administers legislation to also be afforded some protection. This was not previously provided for under the Strata Schemes Management Act 2015, as the formal role of the secretary in the Act was limited. However, as part 11 of the Act and the proposed amendments place a range of onerous responsibilities on the secretary and any person acting under the secretary's direction, it is appropriate that this protection now be afforded.

Therefore, clause 257A of the bill excludes the secretary, or any person acting under the secretary's direction, from liability for any matter or thing done or omitted from being done in good faith for the purposes of executing functions under the Act. The exclusion of liability for the secretary or any person acting under the secretary's direction applies to the whole Act, rather than just part 11. The bill makes a number of machinery amendments which clarify the meaning and operation of part 11, but do not affect its operation.

In closing, the provisions of this bill will give Fair Trading NSW the appropriate and necessary powers to deal with developers who fail to complete work to the appropriate and required standard. The enhanced ability for Fair Trading NSW to verify the contract price, and therefore the correct calculation of the 2 per cent building bond will ensure the scheme is fair for all participants. The regulations will contain much of the detail about matters such as the definition of "contract price". Once the regulations are prepared and in place, the amendments to part 11 will commence. The amended regulation will also contain further detail about qualification requirements, the appointment of building inspectors, the oversight of these appointments by the commissioner through established guidelines, and association-maintained registers of building inspectors. Work has already commenced on this, and the first roundtable meeting of industry stakeholders has already been held. This Government is committed to ensuring that the detail contained in the regulations is workable and will provide the best chance of ensuring that the objectives of the legislation continue to be met.

I am pleased to introduce this bill and look forward to the valuable protections it will bring to the public. This bill is about putting consumers and residents first. It will do that by enhancing the Strata Defect Bond Scheme and providing Fair Trading NSW with the appropriate and necessary powers to deal with developers who fail to complete building work to the appropriate and required standard. I commend the bill to the House.

Second Reading Debate

The Hon. MICK VEITCH (17:33): I am pleased to lead for the Opposition in debate on the Strata Schemes Management Amendment (Building Defects Scheme) Bill 2018 and I indicate from the outset that the Opposition will not oppose the bill but will be moving some amendments in the Committee stage. One of the key roles of the Government and this Parliament is to ensure that members of the public are protected from dodgy or defective products, including homes. Our citizens should be able to trust that they are living in safe environments. This is why legislation, such as for the strata building defects scheme, is a vital protection for members of the public buying into apartment buildings. As the cost of living continues to grow in New South Wales, new apartments will continue to increase in popularity as a cheaper alternative to buying a house. Apartment ownership is on the increase in New South Wales. One only has to drive down through Waterloo, Alexandria or Mascot to see firsthand the scale and speed of building in Sydney to accommodate the city's growing population.

In 2017 the number of units under construction across New South Wales hit record highs, and from April this year there were more than 16,500 units approved but yet to be constructed. With growing construction and more people choosing to live in apartments, it is vital that we ensure that units are built to the highest standard possible, with construction underpinned by robust legislation and regulation. The rules and regulations that govern the building of new apartments are not unnecessary red tape—they are vital to ensuring people can live safely and comfortably in their new home. The central tenet of this bill, the requirement that developers lodge a 2 per cent bond, was designed to give owners the confidence that there will be some financial support to assist in rectifying defects in their building in a timely manner.

This bill introduces a number of important changes to the existing scheme which that enhance the existing protections for owners. New section 207 will require the developer lodgement of the 2 per cent bond before an application for an occupation certificate is made. This will ensure that developers are not issued with an occupation certificate until they have lodged their bond. New section 208 states that building bonds provided in the form of a bank guarantee may only be issued by an institution regulated by the Australian Prudential Regulation Authority. Non-bank bonds will only be allowed to be issued by approved insurers, who are also regulated by the Australian Prudential Regulation Authority. This will provide an additional assurance for owners that the bond will be available should there be defects that need rectifying.

New section 209 addresses the role of the secretary in paying out the bond. The increase on the time allowed for the secretary to release funds from the bond will provide greater safeguards. Various other sections, including new section 209A, will give the secretary powers to intervene in the bond process should there be disagreements between developers and the owners corporation. I also note that the increase in penalties for developers will act as a deterrent to bad behaviour. Fines of up to $1.1 million are a far more appropriate deterrent for dodgy players in this industry than the previous maximum of $22,000.

We know that a home is one of the biggest financial investments a person will make in their life. Good regulation will ensure that this investment is sound and that this investment will stand the test of time. We cannot have an approach in this State where regulation is lax and rogue operators are allowed to flourish. The strata defect bond and inspections scheme should act as an important check and balance, ensuring that a building meets all the required standards and that, if there are defects, owners are able to have those defects rectified. The Opposition is acutely aware that when it comes to building and construction, we need to get it right from the start. That is our view, it has always been our view and it will continue to be our view.

I note that concerns were raised in this Chamber by the Hon. Peter Primrose back in in 2015. Back then, developers claimed the bond would add to the cost—the sale price for mums and dads. The Owners Corporation Network [OCN] raised a number of concerns including the adequacy of the 2 per cent bond, and concerns that new and inexperienced strata committees will have to negotiate with the developer within the first 12 months of its existence. Even back then, the OCN recommended that the chief executive for the Department of Finance, Services and Innovation appoint all inspectors. We agreed then that this was a sensible proposal. The shadow Minister, Yasmin Catley, the member for Swansea, has advised me that she has been perusing the Government's report, the "Independent Review of the NSW Regulatory Policy Framework of 2017", which was chaired by the Hon. Nick Greiner.

Apparently there were concerns raised in this review centring on the Strata Schemes Management Act and the regulations. Stakeholders identified that regulatory impact assessments [RIAs] often lack robust evidence and a genuine comparison of the costs and benefits of different policy options. There are also differences in opinion on whether all the relevant impacts are adequately identified and quantified. For example, the Housing Industry Association [HIA] pointed to the recent passage of the Strata Schemes Management Act 2015 and the Strata Management Regulation 2016 as an example of where, in its view, the current arrangements for evaluating policy proposals have not worked. The HIA highlighted concerns that the RIA was only released six months after the Act was passed, during the making of the associated regulations. This was argued to give rise to the impression that the substantive policy changes had already been decided on before a regulatory impact assessment process had been carried out. I would be interested in the views of the Minister in relation to the Greiner report. These concerns are typical of the feedback that stakeholders provide on the lack of due process and transparency in the way this Government makes laws in New South Wales and undermines confidence and trust and delivers poor outcomes for the people of New South Wales.

There are ongoing concerns around the efficacy and effectiveness of the defects scheme. The very fact that we are debating amendments several months after the scheme was introduced should give rise to concerns for us all that the Government is making it up as it goes along. This is hardly the way to introduce confidence into the sector. Is the Minister confident that a thorough impact assessment has been carried out on this scheme? Did the Government get it wrong in 2015? Will the Minister commit to a root-and-branch assessment of the defects scheme and its impacts on the many stakeholders involved? Labor is concerned on all sides. Developers, builders, certifiers, building professionals and strata owners themselves have raised concerns about the whole operation of the scheme.

These protections are more important than ever. I want to take a moment to reflect on the tragedy of Grenfell Tower in London. The devastating events of June 2017 remind us of how vital it is to get building regulations right. When it comes to construction, it can be more than just fixing a defect; it can be a matter of life and death. The ongoing concerns surrounding the use of dangerous cladding on buildings across the State have shone a light on the importance of a robust regulatory system and certainty in the sector. This includes a robust regulatory system covering building defects in strata. However, the fact of the matter is that when it comes to strata management schemes and defects, this Government has had three years to clean up deficiencies in this bill. I do wonder why the Government took so long to clean up the bill with these amendments. These are people's homes and their largest investment; it is vital that we get it right. It is three years on, yet we are only seeing the Minister's fix of the inconsistencies and mistakes in this legislation six months before the 2019 State election.

I turn now to what the Opposition sees as the central deficiency in the bill—namely, the appointment of panels of strata inspectors. If we are not careful and we do not get this legislation right, we will see our community and the taxpayer footing the bill for the Government's incompetence in this area time and time again. These concerns have not just come from the professions but from the strata community itself. The Minister in the other

place alluded to these concerns, but the Opposition does not believe he has addressed them. When you have bodies listed in the regulations who are now advising the Government that they will not participate it should be a huge wake-up call that something is not quite right. The Opposition believes there needs to be a consistent approach to the management of building defects in strata. Advice from industry has suggested that the panels should be overseen by the Government—in particular, the Building Professionals Board.

The Building Professionals Board is a New South Wales Government authority established to oversee building and subdivision certification. It accredits and regulates certifiers in New South Wales to ensure the integrity of the certification system and compliance of the built environment with legislative requirements. The Opposition amendment will amend section 193 of the Act to remove the appointment of various industry strata inspector panels, as provided by clause 45 of the Strata Schemes Management Regulation 2016, and replace it with any panel "approved by the Building Professionals Board". This will allow a consistent approach to the assessment of building defects, rather than having various industry associations maintain their own panels, the standards of which may vary considerably. Having one body to oversee this aspect will not only set a consistent standard, but also maintain it. Industry has been calling for not only greater Government involvement, but also greater certainty and consistency right across the industry. The simple amendment proposed by the Opposition will achieve that aim.

In conclusion, once again we are faced with a bill from this Minister and from this Government that has been met with disbelief from key stakeholders in the sector. The certifiers, building regulators and the like are not there simply to add red tape; they play a key role in ensuring good, safe and compliant buildings—our homes. Concerns about the regulatory environment are not new. It was a centrepiece of the Lambert review and formed a key finding of the Shergold review, yet this Minister and this Government seem to treat such matters as ideological playthings—getting rid of regulation, dumbing down laws and removing key protections. The Grenfell disaster tragically showed what can happen when building regulation goes wrong. Unfortunately, this Government has been playing politics with existing protections around home construction—most recently when the Minister had a hare-brained scheme to remove 13 licences from various building trades.

Just this week we read about the terrible, tragic consequence of kitchen and bathroom benchtop installers contracting silicosis. With correct training and licensing regimes, however, we can be confident that young apprentices will be knowledgeable and will be made aware of the very real risks involved in home building, just as our licensed and trained painters and decorators are aware of the dangers of lead paint and asbestos. The buying of a home is probably one of the biggest decisions a person will ever make. People want to make that decision with the knowledge and comfort that the regulatory environment is sound and they have confidence in the construction of their homes. Unfortunately, there is diminishing confidence in the regulatory environment. It is an environment where financial concerns have been allowed to outweigh the need for safe, solid and secure constructions. Labor's concern is that we—that is, families and individuals in New South Wales—will be paying for this lax regulatory approach for years, and even decades, to come.

The flaws in the bill, and the failure of the Minister to get key stakeholders on board—to the point where groups like the Association of Accredited Certifiers, and the Australian Institute of Building Surveyors have advised the Minister they will not be participating—is a poor indictment of this Minister and the Government's approach to regulation. The Opposition's amendment to have inspector panels under the auspices of one Government body—the Building Professionals Board—will address some of the failings in the bill. Overall, there is a strong sentiment in industry—one shared by the Opposition—that the Government is taking an ad hoc approach to building regulation, which is more knee-jerk and driven by media releases rather than by good, solid policy.

There is much to do to build greater certainty and confidence in the building industry—an industry that contributes approximately $25 billion per annum to the State economy and employs around 10 per cent of the New South Wales workforce. I trust the House will support the very sensible amendment to be introduced by the Opposition. As I indicated at the start of my speech, the Opposition will not be opposing the bill.

The Hon. PAUL GREEN (17:45): On behalf of the Christian Democratic Party, I speak in debate on the Strata Schemes Management Amendment (Building Defects Scheme) Bill 2018. Every individual and family needs a place to call home, as this ensures stability, security and safety. With the rising cost of living, this is under threat and that is why the Christian Democratic Party is committed to tackling housing affordability, both to purchase and to rent, and to improve access to social housing, thus ensuring that every New South Wales resident and family has a place to call home.

Strata title allows individual ownership of part of a property combined with shared ownership in the remainder through a legal entity called the owners corporation—or body corporate, strata company or community association, depending on the State or Territory of residence and the type of scheme. The concept only came into being 50 years ago and there are now more than 270,000 such schemes encompassing more than two million

individual lots across Australia. Our cities are growing at a rapid rate. Apartments account for a large part of this, with strata being the fastest-growing form of residential property ownership in Australia. In Sydney, strata now accounts for more than half of all residential sales and leases because of its popularity with investors. An increasing number of commercial and retail properties are also strata titled.

Research conducted by the University of New South Wales City Futures Research Centre in 2012 found that 72 per cent of apartment blocks in New South Wales had defects, as reported by owners. For newer units, the likelihood of defects is even higher—85 per cent of apartments built since 2000 have defects. This bill aims to introduce a scheme for rectifying building defects in new strata schemes. The scheme proposes to incentivise developers to address building defects early and quickly. In particular, it requires developers to pay, to the Secretary of the Department of Finance, a building bond equivalent to 2 per cent of the contract price for the building work in order to secure funding for the rectification of any building defects. The secretary will release the bond back to the developer when a building inspection clears a building of any defects. The two-year period allows enough time to rectify defects.

The proposed amendments also allow authorised officers of Fair Trading with wide investigative and enforcement powers to gauge a developer's compliance with the bond scheme, particularly a developer's calculation of the amount of the bond and subsequent lodgement of the bond. This may, in turn, mean that a developer faces hefty fines and it will reinforce the need for a developer to be aware of its obligations under the bond scheme. The proposed amendments addressed by the bill include that building bonds in the form of a bond—as opposed to a bank guarantee or another form of security prescribed by the regulations to the Act—would only be able to be issued by an approved insurer as defined by the Act. Bonds in the form of bank guarantees would only be able to be issued by an authorised deposit-taking institution. Developers would need to lodge a building bond before applying for the occupation certificate rather than at any time before an occupation certificate is issued, as is currently required.

The Commissioner of Fair Trading would have the power to enter into premises and use search warrants in order to verify the amount of the contract price or building bond. A developer would be able to apply to the NSW Civil and Administrative Tribunal to have the contract price determined in prescribed circumstances. The owners corporation and the developer would need to agree on the amount to be released from the bond to meet the costs of fixing identified building defects. If they cannot agree, the commissioner would determine this amount. The commissioner would have the power to enforce a debt recovery process to recover unpaid or underpaid building bonds from the developer.

Building inspectors and the professional associations that appointed them would be protected by a new "good faith" liability protection, which would exclude them from liability for anything done or omitted to be done in "good faith" whilst conducting an inspection. The maximum penalty for a developer who fails to lodge a building bond would be increased to range from $22,000 to $1.1 million, with a further $22,000 for each day the offence continues. The bill also introduces an offence for providing the commissioner with false or misleading information in relation to the amount required to be secured by a building bond. The maximum penalty would be $110,000 for corporations and $22,000 for an individual.

In conclusion, as I said in my introduction, everyone deserves a home that ensures stability, security and safety. This bill aims to enhance protections in strata schemes and provide Fair Trading with the necessary powers to deal with developers who fail to complete building works to the required standard. I commend the bill to the House.

Mr JUSTIN FIELD (17:51): I speak on behalf of The Greens in debate on the Strata Schemes Management Amendment (Building Defects Scheme) Bill 2018 and I do so as The Greens' spokesperson on fair trading. The Greens will not oppose the bill, but we are not convinced that the bill will achieve anywhere near the level of protection necessary for people buying a new home, which they expect and which the Government has tried to suggest they will get in the bill. Stakeholders have expressed to me that, despite best intentions at the start of the process and the broad initial support for the principles behind the bill, it seems that investor and developer interests in New South Wales have gotten hold of the bill to ensure that it will be marginally effective at best and, in reality, unlikely to improve the ability of strata owners to ensure their investment is not undermined by defective building works without them having to take longwinded and expensive action.

The bill continues the Government's long record of putting developer interests before community interests. The bill will create a bond scheme that is supposed to enable building defects to be transparently identified and rectified at low cost to all concerned. But when one looks at the detail of the bill, it is clear that it is highly likely there will continue to be significant disputes over the nature of defects and the cost of rectifications. I do not intend to go through every element of the bill in detail; that has been covered by the Government and, to some degree, the Opposition. The concerns that I have raised stem from a couple of key elements of the bill. Ultimately, the developers are the ones who will decide who will inspect the work and conduct the interim and

final reports as part of the program. The reports ultimately form the basis of the discussion about the costs of the rectification of defects and set the body corporate on the path to getting those things resolved as well as how much of the bond should be made available to do that.

In the detail of the bill it is clear that how that process works and the independence of the person determining the cost of rectifying what is identified in the reports are obviously going to lead to ongoing disputes. Why is it not a requirement of the inspector in their final report to provide a scope of works for what needs to be done to rectify the defects? There needs to be some financial amount in the report as a starting point. When the body corporate gets this report it is going to have to commission someone else to do that work before it can form any judgement about how much of the bond would be appropriate to rectify the deficiencies.

The bill asks an organisation of people who have just purchased a home and made a massive investment and who have now found themselves on the strata committee—and not necessarily with the right skills—to face a report that shows potentially substantial deficiencies with almost no guidance about how they should go about working out how much it would reasonably cost to rectify the issues. The bill says it is going to be up to them to agree with the secretary on how much of the bond should be released to have the work done. How long will it take to get sufficient quotes and for them to be well enough informed, as a strata committee, to make that judgement? As I understand it, the secretary can step in and make that happen for them.

The point is that we are going to see disputes over the rectification requirements and disputes over how much it is going to cost. People are going to be left to carry the can and appoint contractors to do the work if they find that it costs more in the end. The reality is that in this space many of the deficiencies of building work are found well after the initial inspection and final report are issued, and this bill does nothing to address that. I recognise that there are other avenues available for strata owners and body corporates to try to address those deficiencies, but that is going back to the longwinded and very expensive process that was supposed to be addressed through the bill.

The Greens have concerns that the bill will not cut the mustard in addressing the real concerns of the many strata unit owners in New South Wales who have made a massive investment in a home only to find that there are serious problems with the building they have bought into. The bill will not address that. It may make some builders and developers who were not paying attention to the building works a little bit more cautious. Obviously they have to pay the bond and that is capital that is not available to them for a period, so there may be some more caution. But that will be on the margins. This bill largely will not address the core issues that the community has faced as a result of—let us be real—dodgy developers who have been prepared to do shoddy works and build buildings and sell them on knowing full well that they have been deficient in some way and that building owners are going to be left to fix that work before they have even started to enjoy their new homes.

The Greens will not oppose the bill; there will be some marginal benefits. I foreshadow that we will support Labor's amendments to the bill and will make some more comments at the Committee stage. We have circulated an additional amendment that I will address in Committee that goes towards ensuring the inspectors who are appointed by the developers are required to do the right thing and ensure that their reporting is of a standard that enables body corporates to make a judgement about the defects and how to rectify them. I will address those issues in the Committee stage. The Greens will not oppose the bill.

The Hon. MATTHEW MASON-COX (17:58): It is a pleasure to support the very important Strata Schemes Management Amendment (Building Defects Scheme) Bill 2018 and to reflect upon its long gestation. I thank the officers of Fair Trading who are here tonight. I wish to reflect upon some of the background stories that led to the bill being introduced in this place tonight and on the package that was agreed upon by various stakeholders prior to the last election, which I had some involvement with as then Minister for Fair Trading. There were long discussions about issues as diverse as what a minor or major defect is, how we will deal with the issues of home warranty insurance and what to do about developments above four storeys high, which are not included in the home warranty insurance scheme.

All the names and nomenclature have changed over time, but the principles are very much the same. In the last term of Parliament, the Government introduced changes to the definitions of minor and major defects, which were designed to take much of the confusion and litigation out of determining what is a minor defect and what is a major defect. In large measure, the clarification has been successful. However, the reality is that although we can define terms—obviously, case law is important in interpretation—the problem is that, in the absence of an owner having a relationship with the building constructor that could result in some accommodating arrangement being made, enforcement of rectification involving expensive major defects, particularly that caused by water damage and fire insulation damage in high-rise apartment buildings, really must be determined by a court.

The State's legal history is littered with cases that involve enormous amounts of money as well as enormous amounts of time and effort. At the end of the day, some of the conclusions reached are not conducive

to improving certainty, nor do they produce good outcomes. The people who have to live with the outcome are the subsequent owners over time. This bill introduces the very important concept of a 2 per cent bond. A whole range of provisions in the bill really give that concept life. Comments have been made about a lack of clarity relating to who does the reports and how reports are dealt with in the process. On my reading of the bill and briefing material that was provided to my office, that is pretty clear. The reality is that, if there are disputes relating to the bond, the secretary of the department has a role to play that is clearly spelled out in the bill.

It is important to note that this bill finally addresses an area that has been long in need of some reform by establishing a system that will provide up-front certainty and comfort to an owners corporation or owners of apartments. The bill also deals with litigious aspects of apartment living that have long been the scourge of the building industry. Having made those brief comments, I strongly commend the bill to the House.

Mr SCOT MacDONALD (18:02): On behalf of the Hon. Sarah Mitchell: In reply: I recognise the contributions to debate by the Hon. Mick Veitch, the Hon. Paul Green, Mr Justin Field and the Hon. Matthew Mason-Cox. As members know, the bill amends part 11—"Building defects"—of the Strata Schemes Management Act 2015, which commenced on 1 January 2018. Part 11 introduced the strata building bond and inspections scheme, which is the first of its kind in Australia. The strata building bond and inspections scheme also delivered on a 2011 commitment by this Government to improve and modernise New South Wales legislation. The strata building bond and inspections scheme introduced a new process to streamline the identification and rectification of defects for the benefit of strata residents, builders and developers. The amendments provided in the bill seek to further improve the operation of that landmark scheme by providing greater certainty, reducing costs and minimising delays.

The amendments in the bill are a result of the Government's continuing comprehensive engagement with the people of New South Wales. When stakeholders requested modifications to improve the operation of the scheme, the Government listened and acted. This bill was created to respond to those concerns and improve the effectiveness of strata laws in this State. Key stakeholders were consulted during the development of the amendments. Their comments and suggestions have been taken into account in finalising the bill. I want to be absolutely clear that the continued operation of the scheme is a key part of the New South Wales Government's strategy to improve confidence in the building and construction sector. This bill will be a major step towards further enhancing that level of confidence.

I turn now to address Labor's comments. It is important to recognise that the scheme establishes a new and innovative approach to managing building defects—a process that is the first of its kind in Australia. NSW Fair Trading has continued to work with stakeholders to develop and fine-tune the operation of the scheme so that it works as intended. This bill demonstrates the Government's commitment to not just listen to stakeholder feedback but act upon it. While the scheme was established in the new Strata Schemes Management Act 2015, the scheme applied only to new strata developments where the construction contract was signed on or after 1 January 2018 or, if there is no contract, the building work commenced on or after that date. NSW Fair Trading has been in ongoing discussions with stakeholders throughout that period. It is through that positive and constructive dialogue that the amendments presented in this bill were developed.

It is incorrect to say that this Government has not followed due process or that stakeholders do not support the bill. Consultation occurred at every step of the way. I am confident that the provisions of the bill will clarify the operation of the strata building bond and inspections scheme. It will give NSW Fair Trading appropriate and necessary powers to verify and secure the lodgement of the 2 per cent building bond to the secretary, which is such an important part of the operation scheme. I commend the bill to the House.

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

Motion agreed to.

In Committee

The TEMPORARY CHAIR (The Hon. Paul Green): There being no objection, I will proceed to deal with the bill as a whole. The Committee will deal first with Opposition amendments and then The Greens amendments.

The Hon. MICK VEITCH (18:06): By leave: I move Opposition amendments Nos 1 to 5 on sheet C2018-104A in globo:

No. 1 **Appointment of building inspectors**

Page 3, Schedule 1. Insert after line 5:

[2] Clause 193 Building inspectors

Omit "prescribed by the regulations" from section 193 (2).

Insert instead "approved by the Building Professionals Board".

No. 2 **Liability of professional associations**

Page 11, Schedule 1 [31], line 1. Omit "**Sections 213A and 213B**". Insert instead "**Section 213A**".

No. 3 **Liability of professional associations**

Page 11, Schedule 1 [31] (proposed section 213B), lines 9–17. Omit all words on those lines.

No. 4 **Functions of professional associations**

Page 11, Schedule 1 [32] (proposed section 214 (1) (a1)), lines 20–22. Omit all words on those lines.

No. 5 **Functions of professional associations**

Page 11, Schedule 1 [32] (proposed section 214 (1) (a3)), lines 25–27. Omit all words on those lines.

The shadow Minister in the other place, the member for Swansea, Yasmin Catley, eloquently presented the Opposition's case in respect of the Opposition's amendments. During the second reading debate I described the rationale for the Opposition's amendments. As such, and being cognisant of the time, I commend the amendments to the Committee.

Mr SCOT MacDONALD (18:07): I will first address Opposition amendment No. 1. The Government does not support amendment No. 1, which would require building inspectors to be of a class approved by the Building Professionals Board instead of a class identified by the regulations. The amendment is not supported because matters such as that are better dealt with in regulations, which are available to the public via the NSW Legislation website.

The Government does not support Opposition amendment Nos 2, 3, 4 and 5. The effect of these amendments would be to remove the protection of inspectors against liability that are set out in the bill. The bill currently proposes that professional associations would not be liable for things done in good faith in executing their functions under part 11 of the Act. The role of the professional associations is set out in the regulations, and it is to appoint persons to the panel of possible inspectors. Because that role is in the nature of a function that is ordinarily performed by a public official, and such public officials often have the benefit of clauses that exclude their liability, it is appropriate for the protection to be extended to the association; otherwise, inspectors would be reluctant to be involved.

Mr JUSTIN FIELD (18:08): The Greens support Labor's amendments. To respond to the Government directly, that is exactly the point: The regulations will put the requirements on the inspectors. If the professional associations would normally perform the job of a public official, it makes sense that the Building Professionals Board, as identified in Labor's amendments, is the appropriate place for the appointment of people who have been approved by that board. That is the appropriate way to ensure that suitably qualified people are doing that job. It concerns me that those professional associations, as mentioned in the Act, feel that they need statutory protections—and I will raise this further when I move my amendment that goes to the same point. When there are professionals doing their job, it would be expected that either they would have professional indemnity insurance or there were suitably sufficient guidelines around how they do their job to ensure that they do not fall foul of the provisions of this Act, which are supposed to protect home owners.

The statutory protections in this bill provide the ultimate get-out-of-jail-free card for doing the wrong thing when it comes to complying with this legislation. They are totally inappropriate. Over the past few months there have been a number of pieces of legislation where critical components of how a bill will be implemented are in regulations. I understand the rationale for it, but it is fundamental to the operation of the bill in practice and the House does not have any idea about how that will apply. I understand that this will probably be a disallowable instrument. It is critical to the inspector element of this bill. That is the element that determines the sort of rectification works that will be done and how much it is likely to cost, and it totally determines how the body corporates can engage in that process to ensure that defects are rectified. It would seem appropriate to either be in the bill or to accept this amendment and have the Building Professionals Boards do that job to give some guarantee to consumers that the bill will work the way the Government has suggested it will. The Greens support the amendments.

The TEMPORARY CHAIR (The Hon. Taylor Martin): The Hon. Mick Veitch has moved Opposition amendments Nos 1 to 5 on sheet C2018-104A in globo. The question is that the amendments be agreed to.

The Committee divided.

Ayes 16

Noes 18
Majority.....2

AYES

Buckingham, Mr J	Donnelly, Mr G (teller)	Faehrmann, Ms C
Field, Mr J	Houssos, Mrs C	Mookhey, Mr D
Moselmane, Mr S (teller)	Pearson, Mr M	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	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	Mason-Cox, Mr M
Mitchell, Mrs	Phelps, Dr P	Ward, Mrs N

PAIRS

Graham, Mr J	Colless, Mr R
Primrose, Mr P	Taylor, Mrs

Amendments negatived.

Mr JUSTIN FIELD (18:19): By leave: I move The Greens amendments Nos 1 to 3 on sheet C2018-108 in globo:

No. 1 **Liability**

Page 11, Schedule 1 [31], line 1. Omit "**Sections 213A and 213B**". Insert instead "**Section 213A**".

No. 2 **Liability**

Page 11, Schedule 1 [31] (Proposed section 231A), lines 3–8. Omit all words on those lines.

No. 3 **Liability**

Page 11, Schedule 1 [31] (Proposed section 213B), line 9. Omit "**213B**". Insert instead "**213A**".

These amendments aim to achieve a similar outcome to the Labor Opposition's amendments, which we have just debated—that is, omitting new section 213A. This new section will give statutory protections against liability to inspectors appointed by the developer. These inspectors are required to have professional skills to identify defects in buildings. Anyone doing that job should have professional indemnity insurance. They do not require statutory protections. If we want to ensure that those inspectors are competent and have the training to do the job that they are engaged to do, at the back of their minds they should know they have protection for doing that work backed by professional indemnity insurance. Under the current provisions of the bill, if they fail to do their job they will be at risk. They should be in a position to get professional indemnity insurance or they should pay extraordinary premiums. That is how we guarantee that they will do their job properly. Providing statutory protections is a get-out-of-jail-free card.

I have been told that it is not clear that these inspectors will be able to get professional indemnity insurance to undertake their role. That is a concern in and of itself. If it is true, it is an indication that the insurance industry knows full well that it will have to deal with defect after defect and that there will be no end of claims against insurance policies. If these inspectors are uninsurable, giving them statutory protections will not cover them. All those protections will do is show up this bill as being ineffective in protecting home owners in New South Wales. I commend the amendments to the Committee.

Mr SCOT MacDONALD (18:22): For the reasons that I outlined in responding to the amendments moved by the Opposition, the Government will not support The Greens amendments.

The Hon. MICK VEITCH (18:22): The Greens amendments highlight that the bill was poorly crafted. We believe there is a looming insurance problem. The application of the good faith clause, and indeed the intent of the good faith clause, raises concerns. In the end, home owners will have to pay one way or the other. We will support The Greens amendments.

The TEMPORARY CHAIR (The Hon. Taylor Martin): Mr Justin Field has moved The Greens amendments Nos 1 to 3 on sheet C2018-108 in globo. The question is that the amendments be agreed to.

Amendments negatived.

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

Motion agreed to.

Mr SCOT MacDONALD: 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

Mr SCOT MacDONALD: On behalf of the Hon. Sarah Mitchell: I move:

That the report be adopted.

Motion agreed to.

Third Reading

Mr SCOT MacDONALD: On behalf of the Hon. Sarah Mitchell: I move:

That this bill be now read a third time.

Motion agreed to.

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2018

First Reading

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

Second Reading Speech

Mr SCOT MacDONALD (18:27): On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

I am pleased to introduce the Workers Compensation Legislation Amendment Bill 2018. The reforms in this bill are designed to simplify the dispute resolution process for injured workers who are required to navigate the workers compensation scheme. It is worth providing some context to this bill by outlining the scale of the NSW Workers Compensation Scheme. Each year more than $3.2 billion in premiums is collected from more than 280,000 New South Wales businesses, and more than $2.7 billion is paid out in benefits to support those injured in the workplace. Approximately 95,000 workers compensation claims are made each year. Of those claims, only around 5 per cent result in a dispute between the injured worker and the insurer.

Despite the relatively small proportion of cases that require formal dispute resolution, the Government acknowledges that there is an unnecessary level of duplication and complexity in the current scheme. This complexity has developed over many years, with significant changes to legislation as well as the composition and functions of decision-making entities within the scheme. It is now more than three years since Parliament passed the State Insurance and Care Governance Act 2015, which separated the former WorkCover into three separate entities: SafeWork NSW, the workplace safety regulator; Insurance and Care NSW [icare], the Government-owned workers compensation insurer; and the State Insurance Regulatory Authority, the scheme regulator of the State's three statutory classes of insurance, compulsory third party motor accidents, home building compensation and workers compensation.

In November 2016 the Legislative Council Standing Committee on Law and Justice commenced its first review of the scheme following the enactment of the State Insurance and Care Governance Act 2015. A key theme that emerged during the law and justice committee review was the complexity of the dispute resolution process, including the interactions and overlapping responsibilities of dispute resolution between the Workers

Compensation Independent Review Office [WIRO], the State Insurance Regulatory Authority [SIRA] and the Workers Compensation Commission. The law and justice committee's report, published in March 2017, recommended that the Government consider establishing a one-stop shop for resolving all workers compensation disputes. This recommendation was subsequently examined in detail. The Department of Finance, Services and Innovation commissioned research examining the experience of injured workers in the current scheme. This research confirmed the need for simplification of dispute resolution processes, and the proposals contained within this bill, which have been the subject of extensive and constructive consultation with both scheme providers and industry stakeholders, seek to achieve this.

I now turn to the objectives of the bill. The Workers Compensation Legislation Amendment Bill 2018 seeks to simplify the workers compensation dispute resolution process and establish the Workers Compensation Commission as the central dispute resolution body in the scheme, improve and clarify key legislative provisions to reduce and prevent disputes, introduce measures to modernise the operation of the workers compensation legislation, and allow SIRA as the scheme regulator to more effectively undertake its regulatory and oversight functions. I now turn to the details of the bill. Schedule 1 to the bill sets out a number of improvements to the workers compensation dispute resolution system. This schedule provides clarity around the roles of the various agencies in the system and simplifies the process of reviewing a work capacity decision of an insurer.

It is important to note that under these amendments work capacity decisions remain a fundamental part of determining workers' entitlements to weekly payments, and the bill does not change this. Work capacity decisions, as provided for by section 43 of the Workers Compensation Act 1987, include decisions made by insurers regarding a worker's pre-injury earnings, current weekly earnings and ability to earn in suitable employment, and whether the worker has a current work capacity or no current work capacity. These original insurer decisions inform the amount of weekly compensation to which each injured worker is entitled.

The bill removes the workers compensation dispute resolution functions of the SIRA in relation to merit review and WIRO in relation to procedural review regarding work capacity decisions. The work capacity dispute resolution function will be provided by the Workers Compensation Commission, fulfilling the Government's commitment to establishing a one-stop shop for dispute resolution, as per the central recommendation of the law and justice committee review. I now turn to the amendments proposed in schedule 1 in detail. The bill provides the Workers Compensation Commission with jurisdiction to hear work capacity disputes by removing section 43 (3) of the 1987 Act, which specifically excludes the jurisdiction of the commission.

The changes to the work capacity decision review process simplify the current three-step process of mandatory insurer internal review followed by merit review undertaken by SIRA and procedural review undertaken by WIRO. Instead, if workers are not satisfied with the insurer's decision, they may still request that the insurer review its original work capacity decision. However, they will now be able to take their dispute directly to the Workers Compensation Commission. To make this clear, the bill removes the note under section 105 of the Workplace Injury Management and Workers Compensation Act 1998 restricting the jurisdiction of the Workers Compensation Commission to determine any dispute about a work capacity decision.

Internal reviews undertaken by insurers are a vital step in any dispute prevention and resolution process, and will be retained as an optional rather than mandatory review mechanism for injured workers. The bill introduces a new division 2 into part 4 of chapter 7 of the 1998 Act that deals with internal reviews of insurers. The bill amends section 287A of the 1998 Act to allow an injured worker to request an internal review of a work capacity decision. The insurer must complete the review and notify a worker within 14 days of the date of application as per the existing requirements for review of liability decisions and other decisions on a claim. The bill omits section 291 of the 1998 Act. This section is replaced by new section 287B, which introduces a new regulation-making power to prescribe requirements covering the notification of decisions of insurers, procedures for conducting internal reviews, and requiring insurers to conduct reviews of decisions in certain circumstances when the worker has lodged an application for review in the Workers Compensation Commission.

For example, this power may be used where an error has been made in the calculation of an injured worker's weekly payments. Complementary changes will be made to schedule 6 to the Workers Compensation Regulation 2016 regarding the payment of legal costs for work capacity decision reviews at the Workers Compensation Commission. Legal advice will be made available to injured workers through the Independent Legal Assistance and Review Service. Insurers will be able to obtain legal advice for work capacity decisions in line with other disputes currently heard before the Workers Compensation Commission. The bill will also enable the Workers Compensation Commission to fast-track disputes that involve work capacity decisions. This will ensure that workers do not experience unnecessary delays with resolving issues about their weekly payments.

Section 297 (1A) of the 1998 Act will be amended so the Workers Compensation Commission is not limited in awarding weekly payments for fast-tracked disputes that involve the determination of a work capacity decision. The bill does not impose a specific time limit on workers to lodge a work capacity dispute about their

weekly payments in the Workers Compensation Commission. Corresponding changes have been made to the stay provisions for work capacity decisions. The bill introduces new section 289B, which provides that a work capacity decision made by an insurer is stayed while the Workers Compensation Commission undertakes its review if an injured worker lodges a dispute in the Workers Compensation Commission prior to the expiry of the period of notice as per section 80.

The bill moves the substantive provisions under section 54 of the 1987 Act to section 80 of the 1998 Act, meaning an insurer still must provide a minimum of three months notice for work capacity decisions that result in weekly compensation being reduced or discontinued. The purpose of the stay is to provide temporary protection to workers by maintaining their current weekly payments while a review is being undertaken. A stay of a work capacity decision does not extend the required period of notice for discontinuation or reduction of weekly benefits and this is made clear in the bill in new section 81. The bill makes provision for any work capacity decision made prior to commencement to be concluded under the existing provisions. That is internal review, a merit review by the SIRA and a procedural review by the WIRO. This will allow work capacity reviews that are currently in progress to conclude without being impacted by these changes. The bill provides a six-month transitional period for these reviews to be completed. This period can be amended by regulation if required.

Schedule 1 to the bill also provides for the creation of a single notice of insurer decisions. This aligns with recommendation 15 of the law and justice committee's report. Currently there are separate notice requirements for an insurer when making a liability decision and a work capacity decision. There is overlap between the notice requirements, which means that insurers may be required to issue multiple notices to injured workers, often on interrelated and concurrent determinations involving liability to pay compensation and work capacity decisions, which are made after liability has been determined. Furthermore, these notices are often lengthy, complex and confusing to injured workers. The proposed amendments will allow insurers to send a single notice to an injured worker to communicate decisions that involve both a liability dispute and a discontinuation or reduction of weekly compensation resulting from a work capacity decision.

The bill allows the Government to specify in regulations the manner in which a notice is required to be given and in what form. Insurers will be required to clearly define and articulate what decision has been made, the type of decision that has been made, the expiry of the period of notice and the review process. Schedule 2 to the bill provides for the Workers Compensation Commission to award permanent impairment compensation without referral to an approved medical specialist. This amendment recognises that, in certain circumstances, the requirement to refer all permanent impairment disputes to an approved medical specialist was unduly delaying proceedings in the Workers Compensation Commission. The amendment will allow arbitrators to make determinations of permanent impairment by removing section 65 (3) from the 1987 Act, which requires all permanent impairment disputes to be referred to an approved medical specialist prior to the Workers Compensation Commission awarding permanent impairment compensation.

However, in order to ensure that disputes are managed appropriately and to provide for transparency in the dispute resolution process, the bill also introduces a regulation-making power that will allow the Government to prescribe the circumstances that will require the mandatory referral to an approved medical specialist and the disputes that cannot be referred to an approved medical specialist. The Government will work with the Workers Compensation Commission following commencement of these provisions to determine the circumstances in which mandatory referrals to an approved medical specialist are required or prohibited. That will be defined in the regulations.

Section 322A of the 1998 Act has been amended to clarify that a determination by an arbitrator is deemed to be a binding assessment for the purposes of the one assessment under section 322A of the 1998 Act. Schedule 3 to the bill provides for a simplified approach to establish the various factors that determine an injured worker's pre-injury average weekly earnings [PIAWE] that are used to inform the amount of weekly payment compensation payable to a worker. The bill addresses concerns with the complexity and inflexibility of the current PIAWE provisions. It establishes a dedicated PIAWE schedule with a definition of earnings that aligns more closely with the actual earnings of a worker over a defined relevant earning period, which is usually 52 weeks. The new PIAWE definitions align more closely to the Motor Accident Injuries Act 2017 by including all earnings of workers in their capacity as workers, such as overtime, shift and other allowances, and loading. In doing so, it removes the routine need for reference to a worker's ordinary earnings under a relevant award or fair work instrument. Consequently, the bill does not exclude shift and overtime allowances from PIAWE after 52 weeks of payments.

Importantly, the new schedule 3 to the Act introduced by the bill provides for a simple and clear method of determining PIAWE. The bill also includes a provision to amend the schedule by regulation. This provides flexibility to keep pace with the changes in the way that workers earnings are determined. This regulation-making power mirrors a similar power introduced in the Motor Accident Injuries Act 2017. Consistent with this adaptable and flexible approach is a regulation-making power to adjust the relevant earning period to accommodate changes

in the worker's earnings circumstances and the ability to align the calculation of weekly payments with an injured worker's normal pay cycles. The regulations may also provide for the adjustment of weekly payments following a work capacity decision if required.

Further, the new schedule 3 to the 1987 Act allows an insurer to accept an agreement between an injured worker and employer regarding the injured worker's PIAWE. This will enable injured workers and employers to focus on the injured worker's recovery and return to health and work. The bill provides a regulation-making power to provide appropriate safeguards to ensure that such agreements are fair and reasonable in the circumstances. The bill removes the need to calculate the monetary value of non-monetary benefits for all injured workers in receipt of these benefits. Instead, the definition of earnings excludes the monetary value of these benefits until the injured worker no longer has the use of it. For example, the monetary value of a company car is to be included as part of PIAWE only when calculating weekly payments from when the injured worker is required to return the car to his or her employer. In this way, the monetary value of non-monetary benefits will need to be calculated only for a small number of injured workers. The new PIAWE provisions will apply to all new injuries upon commencement of the amendments.

SIRA will work with industry stakeholders to develop regulations and guidelines to ensure that the PIAWE reforms are implemented successfully. Schedule 4 to the bill will allow SIRA to improve and to modernise workers compensation data and information collection and sharing. This proposal responds to recommendation 4 of the Legislative Council's Standing Committee on Law and Justice in its December 2017 report on the statutory review of the State Insurance and Care Governance Act 2015. Specifically, the recommendation stated:

> That the NSW Government introduce legislative amendments to give SIRA statutory information collection and sharing powers in the area of workers compensation, modelled on the equivalent provisions in the Motor Accident Injuries Act 2017 for compulsory third-party insurance.

The Government supported this recommendation in its response to the law and justice committee. The proposed amendments align with the provisions under the Motor Accidents Injuries Act 2017 and will enable SIRA to more efficiently collect data and information from across the scheme and to monitor its overall performance and that of the scheme providers. Schedule 4 to the bill also provides the power to impose mandatory reporting obligations on scheme participants in the event of breaches of the legislation. A regulation-making power allows the Government to prescribe classes of scheme participants who must report breaches, and the type of information that must be notified. It is intended that the mandatory reporting provisions will focus on significant, material or systemic breaches of the legislation. These new powers reflect community concern regarding transparency and ethical practice in both the public and private sectors. Similar powers have been vested in several Commonwealth regulatory bodies, with analogous functions to SIRA. These include the Australian Prudential Regulatory Authority and the Australian Securities and Investments Commission.

Schedule 5 to the bill seeks to simplify the approval process governing the indexation of fixed amounts under the workers compensation legislation. Currently, any indexation adjustment to fixed amounts under the legislation requires a lengthy process of approval by either the Governor, the Minister or SIRA through a range of instruments, including a regulation, order and notices published in the *NSW Government Gazette*. The bill will allow SIRA to prescribe the latest index numbers to weekly payments, death benefits and lump sum payments by an order published on the NSW Legislation website. This proposal aligns with the provisions under the Motor Accident Injuries Act 2017 and will benefit injured workers, employers and insurers with indexation adjustments being made available much faster and in a single instrument published on the NSW Legislation website.

Schedule 6 to the bill seeks to address unintended consequences arising from the implementation of the new compulsory third party [CTP] scheme and the interaction between the Motor Accident Injuries Act 2017 and the Workers Compensation Act 1987 in circumstances where a person injured in a motor accident also has workers compensation rights arising from the same injury. At present, and without the proposed amendment, a worker injured in a motor accident on and after 1 December 2017 will receive weekly compensation for lost earnings and compensation for reasonably necessary medical, hospital, and rehabilitation and care expenses from the workers compensation insurer. If the worker recovers damages under the CTP scheme, the worker must pay back from those damages all the compensation paid by the workers compensation insurer. This will include any compensation paid for reasonably necessary medical, hospital, and rehabilitation and care expenses. Further, the worker would not be entitled to motor accident statutory benefits for ongoing treatment and care expenses.

The bill aims to clarify the nature and extent of the workers compensation benefits that may be deducted from CTP damages, and that those injured in motor accidents in the course of their employment have an entitlement to claim ongoing treatment and care, payable by the CTP insurer even after they recover damages. The bill seeks to ensure that a worker's CTP settlement is protected by limiting the amount of compensation the worker is required to pay back to the workers compensation insurer from their CTP damages. The proposed amendments provide that an injured worker who recovers CTP damages will pay back workers compensation

only for lost earnings compensation and will not have to repay compensation paid for medical, hospital, and rehabilitation and care expenses.

The bill also provides that a worker who has received permanent impairment compensation is required to repay that compensation to the workers compensation insurer only if damages are recovered under the Motor Accident Injuries Act 2017 for non-economic loss, for example, pain and suffering and loss of amenities of life. This is applicable only for those with a whole person impairment of 10 per cent or greater pursuant to the medical guidelines currently used in the compulsory third party insurance scheme. The proposed amendments also provide that workers injured in motor accidents are entitled to claim statutory benefits for ongoing treatment and care expenses from the relevant CTP insurer after they cease to be entitled to workers compensation statutory benefits or after they have recovered CTP damages.

These amendments support a fair and equitable outcome and seek to provide workers injured in motor accidents with similar rights to CTP compensation under the Motor Accident Injuries Act 2017 as other people injured in motor accidents. The amendments will be retrospective to cover motor accidents involving workers with concurrent motor accident and workers compensation rights that occurred from the commencement of the Motor Accident Injuries Act 2017, on and from 1 December 2017, to ensure that those workers are not disadvantaged.

Schedule 7 introduces miscellaneous amendments to provide for additional members to be appointed to the State Insurance Regulatory Authority Board, to ensure that the workers compensation legislation is consistent with the National Injury Insurance Scheme [NIIS] and to allow for electronic provision of mandatory workers compensation information by employers to their employees. The State Insurance and Care Governance Act 2015 currently limits the number of members that can be appointed to the SIRA board by the Minister to three. For SIRA to be better positioned to respond to a broad range of issues across all the statutory insurance scheme that it regulates, it is proposed that the number of members that can be appointed by the Minister to the board be increased from three to five.

The bill inserts a new section into division 9 of part 3 of the 1987 Act, the commutation provisions, to ensure that New South Wales legislation is consistent with the minimum benchmarks for the National Injury Insurance Scheme. The NIIS is a Commonwealth Government scheme that complements the National Disability Insurance Scheme. Currently, workers compensation legislation allows injured workers who meet specific criteria to finalise their claim and receive payment for their whole entitlement to weekly payments and medical expenses as a single lump sum—a commutation. The amendments ensure that injured workers who met the definition of "catastrophic injury" in accordance with the NIIS will continue to receive medical benefits under the workers compensation scheme if they commute their weekly benefit entitlements. This restriction on commutation of medical benefits applies only to this very small group of injured workers.

The existing legislation requires that employers display workers compensation information in the workplace in poster form, and that SIRA approves the form of the poster. The proposed amendments allowing electronic display of information support innovation and reflect modern workplace environments, including remote working practices and more widely available electronic communication methods. Specifically, the amendments cover the requirement to post a summary of the Act—commonly known as the "If you get injured at work" poster—and the requirement to post information regarding return-to-work programs. The bill will provide SIRA with the authority to issue guidelines explaining how information should be provided electronically and how employers can demonstrate that they are complying with legislative requirements.

This bill establishes a new framework for workers compensation dispute resolution. This framework and the complementary functional reforms covering inquiries and complaints will reduce the number of formal disputes, provide efficiencies in the current dispute process and simplify the dispute process for all participants in the system. Following the passage of the bill, SIRA will consult on the development of supporting regulations and insurance guidelines. Consultation will occur with a view to the new dispute resolution system commencing later this year. I commend the bill to the House.

Debate adjourned.

COMMUNITY GAMING BILL 2018

First Reading

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

Second Reading Speech

The Hon. DAVID CLARKE (18:53): On behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

I am pleased to introduce the Community Gaming Bill 2018, which replaces the Lotteries and Art Unions Act 1901 and implements the recommendations of the 2017 statutory review. The Lotteries and Art Unions Act holds a special place within the community, as it has regulated gaming activities that charities and not-for-profit organisations have conducted for charitable purposes for more than 100 years. Community games are a key source of funds for New South Wales charities. These charities rely on the funds raised in order to carry out their charitable purposes. It is vital that the existing legislation provides the appropriate level of governance so that the community continues to have sufficient levels of confidence in the regulatory regime and remains willing to participate. For example, raffles are a significant source of fundraising in schools and sporting clubs. Other community games, such as social "housie", bring communities together and provide social networking and support to vulnerable members of our community, including the elderly. Likewise, trade promotions are a key tool for New South Wales businesses to market their products and gain customers.

This bill ensures that the people of New South Wales can continue to participate in these games, raise money for a good cause and promote their businesses. The bill also provides the necessary framework to protect participants and consumers from rogue operators who may try to take advantage of being permitted to operate these games. The people of New South Wales give their hard-earned dollars to enter some of these community games. The bill provides the necessary framework to ensure that all the games are run fairly and that the funds are distributed as promised. The bill also provides NSW Fair Trading with the necessary tools to intervene to address misconduct when it arises. By modernising and streamlining the current provisions in the Act, it will also make it easier for community organisations and ensure the continued effective operation of these important community activities.

The administrative responsibility for the Lotteries and Art Unions Act 1901 was transferred to the Minister for Innovation and Better Regulation on 1 January 2018. Prior to that it was the responsibility of the Minister for Racing. During 2016-17 Liquor & Gaming NSW undertook a review of the Act. During consultation on the Act, stakeholders raised concerns about the complex and archaic requirements that were no longer necessary or relevant in this day and age. Charities, not-for-profit organisations and businesses sometimes find it difficult to navigate the different requirements for the different types of games and trade promotions. The review found that the Act is overly prescriptive, has several inconsistences and is difficult to navigate. Since the transfer, Fair Trading NSW has undertaken targeted consultation with key industry stakeholders to better understand the needs of industry and discuss the proposed changes to the Act.

This bill implements the feedback received from industry during the targeted stakeholder consultation sessions, as well as the recommendations from the review undertaken by Liquor & Gaming NSW. The provisions in this bill ensure that the integrity and fairness of permitted community gaming activities are maintained, as well as the ongoing viability of organisations conducting gaming activities that contribute positively to the community. The bill achieves this by: establishing an authority framework to provide a further layer of oversight; restricting who may conduct and benefit from gaming activities; ensuring appropriate compliance and enforcement responses for fraudulent behaviour and making false representations or falsifying records; regulating permitted gaming activities according to the level of risk; and ensuring the proceeds and profits of permitted gaming activities are applied to the purposes for which the activities are claimed to be conducted.

The key difference between the structure of the regulatory framework of this bill and the current Act is that this bill modernises the requirements of community gaming to ensure that it is fit for purpose in the modern age. This is a bill that was first enacted at the turn of the century. As a result, unlike the current Act, this bill does not contain the detail of the rules of the games or every requirement that applies to conducting those games. To make it easier for participants and organisations conducting games to read and understand the legislation, and in keeping with modern-day legislative drafting, all the day-to-day requirements that operators need to follow are in the one place rather than contained in specific conditions for each type of game and spread across the Act and regulations. Stakeholders are very supportive of this new approach. The advantage of this is that when the rules of the games need to change more regularly with advancing technology and new ways of playing these games, it can be done in a much more responsive and timely way.

I will now go through the bill in detail. Clause 4 of the bill provides the definitions for the Act, including the definitions of permitted gaming activities, prizes and permits issued by Fair Trading. One change is that a permit is now called an "authority". This will streamline the terminology with the terminology used in the Charitable Fundraising Act 1991 to make it easier and more intuitive for charities that must comply with both Acts. Clauses 5 and 6 define in detail what a "gaming activity" means, as well as what constitutes a participant in a gaming activity and what it means to conduct a gaming activity. Clause 7 retains the previous Act's provision regarding how the Act applies to gaming activities conducted in other States and Territories. However, it simplifies

the language used, in order to make this important provision easier to understand. Recently Fair Trading was notified of a raffle being held in South Australia, which was open to the residents of this State as well.

Given the type of raffle being conducted and the total prize value being offered, the gaming operator needed to have a New South Wales permit to conduct this game. While the operator had seemingly complied with South Australian requirements, he was unaware that he also needed a permit in New South Wales. Fair Trading staff contacted the raffle operator and informed him of these requirements. This highlights the need for the Act to be clear, simple and modern. It also highlights the importance of harmonisation with other States and Territories, where appropriate. As part of the development of the regulation, the Department of Fair Trading will consult widely with other States and Territories to share knowledge and insights about regulatory requirements that work well and that can be harmonised.

Clauses 8 and 9 retain the current general prohibitions on gaming activities and advertisements. Clause 10 explains that the regulations may set out permitted gaming activities. The regulatory framework recognises that certain prizes are inappropriate for these types of community and charitable games. Clause 11 provides the secretary with the authority to grant, impose conditions, refuse, suspend and cancel permits for permitted gaming activities. Clause 12 of the bill retains the existing prohibitions on giving certain prizes. This includes tobacco in any form and firearms, as well as other prescribed products or services. The bill also allows the regulations to provide for exceptional circumstances in which a contravention of this provision does not prohibit a permitted gaming activity. These exceptional circumstances may allow Fair Trading to make a judgement when an organisation has unknowingly or unwittingly offered a prohibited prize, or offered a prize where a small component is prohibited. This may also provide the opportunity to organisations to rectify the non-compliance by offering an alternative prize or a refund to participants before the game is conducted.

Clause 13 of the bill provides the requirements for issuing a prize. This is a fundamental part of the regulatory framework for ensuring that gaming operators are bona fide and acting with integrity. This clause also allows the regulations to prescribe requirements for circumstances where an organisation has taken every reasonable action to issue a prize, and it is not possible to issue the prize to a winner. The Bathurst division of Sydney Legacy has conducted a major fundraiser on Anzac Day each year for more than 20 years. This year it was unable to locate the winner of its first prize—a ride-on lawnmower valued at approximately $4,000. When Sydney Legacy rang the mobile phone number given on the winning ticket, the person who answered the call was adamant he was not the winner and had never bought a ticket in a Legacy raffle. Sydney Legacy went to great lengths to try to find the winner, including putting two articles in the local newspaper and participating in two interviews on the local radio station with the president of the Bathurst division.

Still unable to locate the winner, and keen to give out the prize, Sydney Legacy contacted the Minister to request approval to re-draw the prize. However, the Act does not currently provide for a redraw for this type of raffle. The Act prescribes that prizes that remain unclaimed for more than three months must be sold under direction of the Minister, with the proceeds of the sale paid into the fund for which the organisation or lottery was formed. This bill will give power to the regulations to address issues like this, striking the right balance between ensuring the integrity of gaming activities and providing for flexibility regarding the distribution of unclaimed prizes.

Clauses 14 to 17 retain the current offence provisions for misappropriation of funds or prizes, fraudulent activity, falsification of records and false representations. These provisions continue to be critical to ensuring the bill is a strong framework, with key probity and integrity requirements embedded within it. Part 3 of the bill contains the enforcement provisions. Most organisations and businesses are doing the right thing. It is important that the requirements are easy to comply with, and that charities and not-for-profits have easy access to guidance documents and educational material from NSW Fair Trading. It is critical, however, that NSW Fair Trading has the necessary powers and mechanisms to come down hard on those few rogue organisations and businesses that are deliberately doing the wrong thing. The bill does this by providing a range of powers that can be based on the level of non-compliance.

A key element of this bill is an enhanced compliance and enforcement framework, which introduces more flexible remedies for breaches of the Act and regulation. This new framework includes compliance notices, outlined in section 29, which NSW Fair Trading officers can issue to gaming operators if the officer reasonably believes a person or body conducting a gaming activity is contravening or has contravened the Act, regulation or a condition of their permit; penalty infringement notices, which are issued in instances of non-compliance, and paid like a parking or speeding fine; enforceable undertakings, outlined in section 36, which the Fair Trading Commissioner can enter into with gaming operators; and court orders, outlined in section 34, which compel a gaming operator to pay a person or organisation funds or a prize to which they are entitled. This new compliance and enforcement framework gives effect to the review's recommendations to implement a more flexible and

modern compliance and enforcement approach. This is also an approach that does not always rely on taking court action for non-compliance.

Part 4 of the bill provides for the ministerial and secretarial delegations, as well as the regulation-making powers. I emphasise that the bill will not weaken or reduce the existing consumer protections of community gaming regulation. The current level of consumer protection will be maintained, while the bill will reduce the regulatory burden on organisations applying for a permit to conduct a community gaming activity. NSW Fair Trading will continue to work in close collaboration with stakeholders in the development of the regulations. Information and education will be provided prior to the introduction of the new Act to advise and inform stakeholders of the changes that will affect them, and make them aware of their rights and obligations.

Once the bill has passed, the Minister for Innovation and Better Regulation intends to undertake further consultation with the community and industry stakeholders. A draft regulation and regulatory impact statement will be prepared and circulated for public consultation upon the passage of this bill. Once a decision has been made on the final regulation, the sector will be provided with educational and informative material about the new requirements. Adequate time will be provided for the sector to adjust to the new requirements before they commence.

This bill futureproofs the regulation of community gaming and will ensure that the community retains confidence to participate in these games. Charities and not-for-profits will be able to continue to operate games to raise funds for their worthy causes, and businesses will be able to continue to use trade promotions to grow their businesses. The amount of time they can devote to their charitable purposes and businesses will increase, as unnecessary regulatory burden is removed. NSW Fair Trading will also be able to act quickly and appropriately to stamp out rogue operators before they can bring the sector into disrepute. This is a good bill, and I commend it to the House.

Debate adjourned.

WATER NSW AMENDMENT (WARRAGAMBA DAM) BILL 2018

First Reading

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

Second Reading Speech

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (19:09): I move:

That this bill be now read a second time.

In June 2016 the Premier announced the New South Wales Government's strategy to reduce the very significant flood risk in the Hawkesbury-Nepean Valley. The Hawkesbury-Nepean Valley has a long history of dangerous and damaging floods, experiencing five major and 20 other serious floods since Warragamba Dam was completed in 1960, with the most recent in 1990. The valley's unique geography means it can flood widely, deeply and quickly, with catastrophic impacts on floodplain communities. This risk is a result of the valley's "bathtub-like" geography, with five main taps being the main tributaries, the largest coming from Warragamba, but only one "plug hole"—being the narrow Sackville Gorge.

Floodwaters rise rapidly, causing significant flooding both in terms of area and depth. Floodwaters in the Hawkesbury-Nepean Valley are much deeper than most other flood plains in New South Wales and Australia. This "bathtub effect" is unusual as most river valleys tend to widen as they approach their mouths or the sea. This "bathtub" effect and the valley's large existing population are the reasons the Insurance Council of Australia considers the Hawkesbury-Nepean to be the most flood-exposed area in New South Wales, if not Australia. A major flood now would risk many lives and cause billions of dollars in damage. The floodplain is located in the Western Sydney region, one of Australia's largest and most diverse economies, with an annual gross regional product of about $104 billion in 2013-14.

Large flood events would impact not only Western Sydney but also the entire New South Wales economy. While there has not been a major flood in the valley for more than 25 years, major and catastrophic flooding is inevitable. Under climate change predictions, the risk from flooding will increase in the future. Most of the flood risk comes from existing development in the flood plain. There are around 64,000 people in the valley who would need to evacuate in a flood the size that Brisbane experienced in 2011, and there would be more than $2 billion of direct damages, as thousands of homes and businesses could be damaged or destroyed. This is a conservative estimate, and does not account for the additional emotional and social toll. This is not just a risk to the Hawkesbury-Nepean; this is a risk to our community and our economy.

Roads are the only effective means of evacuating large numbers of people from the valley in a flood. Currently the population is unable to safely evacuate in a timely fashion in a major flood event as there is insufficient road capacity. Multiple communities rely on common, constrained road links to make their way out of the flood plain. The undulating topography of the valley would result in many key evacuation routes becoming flooded at low points, long before population centres are inundated. Many of the significant urban centres, such as Windsor, Richmond and Bligh Park, are located on these flood islands, which can themselves then become fully submerged as the waters rise during a major flood event.

Social research completed in the valley indicated that 3 per cent of people who live there would refuse to leave when told to evacuate and 27 per cent would use their own judgement. In a flood the size that Brisbane experienced in 2011, around 64,000 people in the valley would need to evacuate. Even if only 3 per cent do not evacuate, around 2,000 people would be risking their lives. This number is expected to be much higher in larger floods. Currently the Bureau of Meteorology provides around 15 hours warning time for significant floods. But the time required to evacuate the Richmond area, for example, is up to 20 hours. This means that there is currently insufficient time to safely evacuate the whole population using reliable flood forecasts.

This forces the NSW State Emergency Service to either risk many lives or order mass evacuations on uncertain flood forecasts that may not eventuate as predicted. If a flood similar to the record 1867 Hawkesbury-Nepean Valley flood occurred today, there would be more than $5 billion in direct damages and around 90,000 people would need to evacuate. The flood-risk exposure of this area continues to rise significantly with a growing population in the valley. Every month that goes by without a major flood in the valley brings us closer to the next damaging and potentially life-threatening event. A person living to 70 years of age in the valley has a 50 per cent chance of experiencing a flood similar in size to the 2011 Brisbane flood once and 10 per cent chance of experiencing it twice.

Our flood strategy is based on comprehensive analysis and assessments. Work on the Warragamba Dam wall raising proposal started in late 2012 in response to extensive flooding in New South Wales and the 2011 Brisbane floods. The 2013 Hawkesbury-Nepean Valley Flood Management Review reconsidered all options to address flood risk in the Hawkesbury-Nepean Valley and put forward a short list for further investigation. The Government then established a taskforce with an independent chair, which completed detailed investigation of the costs and benefits of the more feasible options. This became the basis of the flood strategy publicly released in 2017.

Our Government has not ignored this significant problem and has committed to reducing the flood risk in the valley. Raising Warragamba Dam for flood mitigation was found to be the most efficient infrastructure solution to reduce this risk. It is the only feasible option that delivers significant regional flood risk reduction and provides more time for evacuation. The Warragamba Dam raising proposal will increase the height of the dam to create new "airspace" above its full water supply storage level. This airspace will only be used in floods. It will not be used for permanent water supply and it will not change the current full water supply storage level. During a flood the "airspace" will temporarily hold back floodwaters from the large Warragamba catchment before they are released downstream in a controlled way. This will provide more certainty of time for people to evacuate.

It will significantly reduce the risk to lives, and reduce damages by 75 per cent on average. Raising Warragamba Dam will not eliminate flood risk—nothing can do that in the Hawkesbury-Nepean Valley—but it will significantly reduce the risk to people's lives, homes and livelihoods as it is a single control point for the largest contributions to floodwaters in the valley. Other options that were assessed included large-scale regional evacuation road upgrade packages, many costing billions of dollars. This is in comparison to the estimated $690 million—in 2015 dollars—for the Warragamba Dam raising proposal. Roads can provide capacity for safe evacuation but they do not change the likelihood of certain flood levels being reached, meaning that they do not reduce property damage. No large-scale regional road package was found to be as cost effective as the Warragamba Dam raising.

A large-scale regional road package costing many billions combined with significant development restrictions would be the only alternative to the Warragamba Dam raising and would not be as effective. Another option investigated was to change the operation of Warragamba Dam by lowering its full supply level to create "airspace" to mitigate the floods. This was found to be not as effective at reducing flood risk as raising the wall, and much less cost effective. Replacing the significant loss of water supply for the Greater Sydney area would cost much more than the dam raising. While the dam-raising proposal is a key element of the Government's flood strategy for the Hawkesbury-Nepean, we are also working across government on a range of other actions needed to reduce flood risk.

As part of the flood strategy a regional land use planning framework is being developed that will outline a strategic planning approach to ensure flood risk to life and property is not increased in the valley as a result of growth. Hard decisions will need to be made on development. For example, residential development in a high-risk

area at Penrith Lakes has been limited. Current development in the valley reflects existing State and local government planning policies. The new land use planning framework will work to better reflect a balance between continuing development and flood-resilient land use planning in line with the principles of the Greater Sydney Region Plan and the Western City District Plan. The principles in the Western Sydney District Plan include providing for less intensive development in areas of higher risk, balanced with managed intensification in areas of lower risk.

The framework will present a valley-wide approach, consistent with these planning principles, to manage the cumulative impact of growth on flood risk. The flood strategy also involves producing better flood mapping and forecasting, with a regional flood study that includes updated flood maps to be available to the public this year. Following extensive user testing, new evacuation signage is also being installed later this year to help direct people out of the flood plain in an evacuation. Under the flood strategy, the Government is also working across government on increasing the valley community's resilience to floods. This includes updating local flood information for community and business, creating new resources for schools, and communication activities to raise the awareness and preparedness of our valley community.

While the flood strategy does not require large-scale regional road upgrades, it includes a package of smaller-scale upgrades, such as increasing the ability of roads to operate during periods of local rainfall. Those priority upgrades will improve access to major evacuation routes during an evacuation. The significant challenge of managing the evacuation and recovery in the case of a major Hawkesbury-Nepean Valley community falls to our emergency and recovery services. Under the flood strategy we are continuing to ensure that the emergency services are in the best position to manage the response and support recovery.

Many agencies and other organisations have important roles to play in helping support communities and businesses during and after flood events. The Government will be testing existing emergency and recovery arrangements and strengthening them to make sure we are in the best position to be able to respond and recover from floods when they happen. These actions are all important. Combined, they will help build the valley's resilience to flood. However, the Warragamba Dam raising proposal is the only part of the flood strategy that can give people more time to evacuate. That is why it is such a key element of this Government's flood strategy.

I know that there has a high level of community interest in the proposal already. People raised concerns about potential environmental impacts while other people have concerns that the project is not progressing quickly enough to reduce the risks to people and their homes downstream in times of floods. The Warragamba Dam raising project is of State significance. New South Wales is going through a thorough assessment process under both State and Australian government legislation. WaterNSW, as the dam owner and operator, is leading the environmental and heritage impact assessment of the dam raising proposal. I reiterate that the raised Warragamba Dam wall will be operated only to manage the capture and release of floods. It will not be used for a permanent water supply or to change the current full water supply storage level. In big flood events, the areas upstream of the dam flood naturally, but with flood mitigation they may be flooded for a longer period—from a number of days to one or two weeks. The extent of this incremental increase in temporary inundation will depend on the size of the flood.

It is very important that we fully understand any potential environmental and heritage impacts, and that we work to mitigate them where possible as part of the dam's design and operation. Community consultation is an integral part of the process. This year the WaterNSW project team has been out and about at shopping centres, community centres and at sites of key events across the region to provide information and seek community views about the proposal. The team also has been holding a series of briefings with key stakeholders including local councils, local Aboriginal groups and special interest groups. WaterNSW is ensuring that the assessment process and methodology are robust and address all key concerns raised by all stakeholders. There will be many more opportunities for people to provide feedback.

These are the early steps in the consultation process in the lead-up to the release of a formal environmental impact statement for public comment in 2019. The Government welcomes the community's ongoing interest and feedback on this important proposal. Following consultation, New South Wales government and Australian government planning and environmental approvals will need to be obtained for the proposal. The New South Wales Government will consider the business case for the dam raising in 2020, subject to the success of the environmental and planning approvals. Construction of the raised dam will take approximately four years to complete.

I now turn to the purpose of the bill. The purpose of this bill is to overcome a technical barrier that exists at present under the National Parks and Wildlife Act 1974 to the proposal to raise the Warragamba Dam wall. Under current legislation, the Minister for the Environment is prevented from granting any lease or easement on national park land that would enable the impoundment of water, even if that impoundment is temporary. The bill amends the Water NSW Act by stipulating that the lease, licence, easement or right of way, which otherwise

would be required under the National Parks and Wildlife Act 1974, will not be required for the temporary inundation of land upstream of the Warragamba Dam wall when operated for flood mitigation purposes. The bill is clear that it applies to this specific case, and only this case, to allow for managed temporary inundation during flood mitigation.

This amendment is not an approval for raising the dam. The environmental impact statement and the required State government and Australian government planning approvals will still be necessary. The proposal will be subject to all the normal merit-based assessments. Because the Government is committed to, and the community expects, a proper and robust assessment process that focuses on the proposal, this amendment needs to be made now. The impediment is a complexity that detracts from the planning and assessment process. For that reason, it must be removed to allow the Minister for Planning to continue carrying out functions under the Environmental Planning and Assessment Act 1979, including the assessment of the planning application for the Warragamba Dam raising proposal. The bill honours the Government's longstanding commitment to reduce the significant risk to life and damage from flooding in the Hawkesbury-Nepean Valley.

I now turn to the specific provisions of the bill. As I mentioned, the bill is an amendment to the Water NSW Act 2014 and will insert a new part 5A containing special provisions relating to the Warragamba Dam raising proposal. The new part will allow the temporary inundation of land upstream of the Warragamba Dam wall when operated for flood mitigation purposes by removing the need for a lease, licence, easement or right of way otherwise required under the National Parks and Wildlife Act 1974. However, no temporary inundation of land is authorised by this part unless approval is given under the Environmental Planning and Assessment Act 1979 for the Warragamba Dam raising proposal. The new part will have no impact on the environmental and planning assessment processes currently underway. The processes will continue to focus on the merits of the proposal.

The bill includes built-in environmental safeguards by way of requiring an environmental management plan to be approved by the Minister administering the National Parks and Wildlife Act 1974 in concurrence with the Minister administering the Water NSW Act 2014. The removal of the need for a lease, licence, easement or right of way for temporary inundation under the new part will not have effect unless an approved environmental management plan is in force. The bill specifies that the environmental management plan will need to address all matters specified by the Minister administering the National Parks and Wildlife Act 1974.

Those matters may include requirements relating to monitoring and addressing the risks associated with the environmental and conservation values of the land that may be affected by the operation of flood mitigation, before and after any flood events. These environmental and conservation values would include biodiversity values, Aboriginal cultural heritage values, heritage values and any values declared on the World Heritage List. Those matters also may include rehabilitation or remediation of the affected land, public reporting on the activities of the environmental plan of management and, finally, reviewing and updating the plan.

The new part also includes provisions for the Minister administering the National Parks and Wildlife Act 1974, in concurrence with the Minister administering the Water NSW Act 2014, to make directions to review or amend the plan, for example, if issues are identified after a flood has occurred, or to ensure that monitoring or rehabilitation works are completed. Finally, the bill also makes provisions for a notice to be provided to the environmental agency head or their nominee by WaterNSW as a dam operator when a flood event is expected, to allow for the necessary arrangements and preparations to be made. I commend the bill to the House.

Debate adjourned.

Adjournment Debate

ADJOURNMENT

The Hon. NIALL BLAIR: I move:

That this House do now adjourn.

GOVERNMENT ENERGY POLICY

The Hon. ADAM SEARLE (19:30): This evening I discuss the absence of any discernible energy policy for New South Wales on the part of the present Liberal-Nationals Government. While this is not a new feature of the present Government's term of office, it has been thrown into sharp relief by the recent abandonment of the National Energy Guarantee [NEG] policy pursued until recently by the Federal Government—also a Liberal-Nationals Coalition. Energy policy has been a political hot potato in Australia for more than a decade. The community and business leaders have long called for clarity and leadership in this area that will lead to stable, long-term policy. This is vital if we are to have the necessary investment in both new electricity generation assets and in strategic upgrades to the network.

The absence of bipartisan energy policy in Australia has been a brake on much-needed new investment. In 2007 there was bipartisan support for both the need to tackle climate change through energy policy and the use of a market mechanism to place a price on carbon through an emissions trading scheme as a key tool to achieve this. That was until the leadership of Tony Abbott, when the cross-party consensus was ripped up, and no further progress has been made to date. As the former Prime Minister Malcolm Turnbull noted in the dying moments of his leadership, the Coalition is incapable of developing a coherent and workable energy policy.

In New South Wales around 75 per cent of our energy comes from coal-fired power stations. Renewables provide between 14 per cent and 19 per cent of our energy, depending on who you ask. The majority of our coal-fired power stations, which have served us well, will come to the end of their lives in the next decade to a decade and a half. Renewable energy is the cheapest as well as the most sustainable form of new energy generation. Even if cost is the only measure, investing in renewable energy generation assets is clearly the best way to secure our energy future and lower energy prices. The limited increase in renewables investment in this State has not come as a result of any action by this Government. It has not in its eight budgets spent even $1 on investing in new energy generation, or made efforts to bring forward such investment. NSW Labor by comparison has committed to investing a significant proportion of the Snowy Hydro proceeds in new renewable energy generation projects to be located in the regions of New South Wales

The limited investment that has occurred has been underpinned by the Federal Renewable Energy Target [RET], which ends in 2020. I note the new Federal Minister for Energy Angus Taylor has today confirmed that the Morrison Government has no plans to replace the RET when it closes. That is at least consistent. The Federal Government elected in 2013 had no plan to secure the next generation of electricity generation, just as the State Government elected in 2011 also had no policy or direction on energy. That was until the NEG. The Berejiklian Government was an early supporter of the NEG, or at least the idea of a NEG, because what the NEG constituted was at best mysterious, and illusory perhaps.

At the time of budget estimates here in New South Wales, the New South Wales Minister for Energy and Utilities could not say what the position of the Commonwealth Government was on this vital area of public policy and had to concede he had not been able to speak to the new Federal Minister for Energy. The Morrison Government has subsequently confirmed the obvious: The NEG is dead. There is now once more a policy void at a national level. This development has revealed again that the New South Wales Berejiklian Government has no plan to secure the energy needs or the affordability and security of energy for our State. Yesterday, the statement by the Minister for Energy and Utilities in Parliament—that the NEG remains the proposal of the Energy Security Board and the policy of the Council of Australian Governments Energy Council—seeks to gloss over the stark reality that our country is staring into the abyss of continuing rising electricity bills for homes and businesses because there is no policy to address the obvious failings of the market, including the retail electricity market.

The Minister for Energy and Utilities has often said that there are up to 14,000 megawatts of mainly renewable energy proposals that have either been approved or are in the planning system seeking approval. But the truth is that less than 10 per cent of this, only 1,225 megawatts, are actually being built here in New South Wales. There remains a brake on the investment we need, and the Berejiklian Government has no plans to address this. By contrast, in Victoria, using a series of technology-specific and technology-neutral reverse auctions, the Andrews Government has had investment in a range of renewable energy projects brought forward: 700 megawatts have been built; 1,700 megawatts are under construction; and a further 928 megawatts were approved on 11 September, when an upper House committee happened to be visiting in Melbourne and we were on hand to hear this news firsthand. That is more than 3,300 megawatts of clean, new energy secured in less than four years. A similar approach has been taken successfully by the Australian Capital Territory Labor Government as well. The contrast with the inaction on the part of the Berejiklian Government, which has no energy policy, could not be more obvious.

DRUG PROHIBITION

Ms CATE FAEHRMANN (19:35): Last weekend two more young lives were tragically lost to drugs, this time at the Defqon.1 dance music festival in Penrith. What is particularly tragic about these deaths is that they may have been avoidable if governments pulled their heads out of the sand and recognised that drug prohibition has not just failed, it has failed spectacularly. It has created a thriving black market, cost the taxpayer billions of dollars and has contributed to countless avoidable deaths. If we are serious about preventing drug-related deaths, it is time we got real about drug use.

Global evidence shows that drug policy is most effective when it is part of the health system, not the criminal justice system. We need a harm minimisation approach with evidence-based solutions such as laboratory-grade pill testing at music festivals. Trials undertaken in conjunction with the police and festival organisers at two United Kingdom festivals last year, and three others this year, have shown pill testing works. At one of these festivals, Secret Garden Party, drug-related hospitalisations fell from 19 the previous year to just one

in 2017. Closer to home, the Australian Capital Territory Government conducted its own pill testing trial this year at the Groovin the Moo festival.

The trial was so successful that politicians from The Greens, Labor and Liberal parties all agreed to further trials. Yet the Premier's response is a textbook head-in-the-sand approach. "There is no such thing as a safe illegal drug," says Premier Berejiklian. The problem with statements such as this is that it does not match up with what hundreds of thousands of people are actually experiencing. Both my parents died from cancer, too early in their lives. They were both very heavy smokers and my mother was addicted to drugs for the last 30 years of her life—legal drugs. As well as tobacco, she was addicted to an extraordinary cocktail of opioids, benzodiazepines and more that our family doctor prescribed her. These took a massive toll on her physical and mental health and on our family.

Meanwhile, I know people who take illegal drugs recreationally. Maybe once a month or a couple of times a year they go to a party or out dancing with friends and take methylenedioxymethamphetamine [MDMA]. Others occasionally smoke marijuana to relax. Others sometimes take cocaine. They are taking drugs which are currently declared illegal—safely. They are not alone. Around 16 per cent, or 3.1 million, of people in Australia aged 14 and over were estimated to have used illicit drugs in the past 12 months, and for 20 to 29-year-olds it is 28 per cent. Of 1,489 accidental overdose deaths from illicit drugs in 2015, the majority were from prescription medications, including painkillers and antidepressants, followed by psychostimulants, such as ice and heroin.

The facts are that millions of Australians consume illicit drugs and when it comes to cannabis and ecstasy the vast majority consume it safely. Most of the harm from drugs is from legal drugs—alcohol, tobacco and pharmaceutical drugs. But let us not let facts get in the way of a government hell-bent on looking tough on drugs. A heavy police presence at music festivals scares people but often does not stop them consuming illicit drugs. In 2010, Perth teenager Gemma Thorns collapsed at the Big Day Out and died in hospital. She swallowed three ecstasy pills at the festival gates to avoid being caught by police.

There were 180 police at Defqon.1. The Greens' Sniff Off campaign reports there was a stall selling pill-testing kits and party-goers have reported people leaving the stall after having purchased a kit only to have undercover cops waiting outside to bust them as they then went to test their drugs. There were also reports of a strong police presence around the medical tent. If you are a young person who has consumed MDMA or other drugs and is feeling unwell, the medical tent is your safe place. But you would have to draw the conclusion that you would steer well clear of it if you saw a bunch of cops milling around outside.

This shows the dangerous disconnect between the zero-tolerance, high-visibility policing mentality of this State Government and the reality on the ground, including what is needed to keep drug users safe. Sydney's safe injecting centre is a harm-minimisation success story allowing illicit drug users to inject in a safe space. Since its opening in 2001 there have been more than one million injections and no deaths. Similar arguments were used against the safe injecting centre that are being used now against pill testing. At the time the then Liberal Opposition Leader Kerry Chikarovski said, "It will convey the wrong message to young people and the wrong message to the community. Indeed, it will not convey to the rest of the world that we are serious about tackling drugs in NSW." That is still what this is about for the Government. Its priority is to look tough on drugs and to send a message that "we've got this under control; we're tackling the drugs problem". Well, you are not. Your zero-tolerance approach is driving users further underground, risking lives. Your zero-tolerance approach to drugs is killing people. Pull your heads out of the sand and look around you. Look at the evidence that says pill testing saves lives, before more lives are lost.

WESTERN SYDNEY AIRPORT

The Hon. SHAYNE MALLARD (19:40): Western Sydney Airport will be a game-changer for Western Sydney. With the bulldozers set to hit the Western Sydney Airport site by the end of this year in a record infrastructure development, this marks the symbolic and physical start of Sydney's long-awaited second airport. The airport will result in thousands of jobs for the region, and new economic modelling confirms that Western Sydney locals are well placed to benefit from these opportunities. Western Sydney is one of the fastest-growing regions in Australia with a population of more than two million people and it is forecast to continue to grow rapidly. However, the region is experiencing a jobs shortage, where every day 300,000 people commute outside Western Sydney for work, meaning there are not enough jobs for the number of workers who reside in Western Sydney.

The second Sydney airport is crucial to the future prosperity of Western Sydney. In the short term the majority of jobs generated by Western Sydney Airport will be in the construction sector. Electricians, builders, labourers, plumbers and engineers are just some of the occupations that will benefit from the Government's $5.3 billion investment in constructing the airport. While the number of jobs during construction phase is significant, the even bigger prize will come once Western Sydney Airport is operational. In the early 2030s there

are expected to be more than 13,000 direct jobs at Western Sydney Airport and many more at the businesses attracted to the region by the airport. Western Sydney Airport will be a world-class facility, and the recent announcement that major domestic airlines including Qantas, Jetstar, Virgin and Tiger Airways will operate there displays a clear indication of the importance they see Western Sydney Airport having in the future of the Australian domestic and international aviation sector.

The New South Wales Government's planning initiatives such as the Western Sydney Priority Growth Area, the Western Sydney city deal and the Aerotropolis Authority are already encouraging new and exciting sectors to the area. Planning for three 30-minute cities is a game-changer for the region. The aerotropolis will make a significant contribution to the estimated 200,000 new jobs for Western Sydney by establishing a new high-skill jobs hub in the region. The aerotropolis and the region surrounding the airport are a priority for both the State and Federal governments, already attracting public investment of more than $20 billion across transport, health and education infrastructure.

Last week, the Premier, Gladys Berejiklian, and the Minister for Western Sydney, Stuart Ayres, announced that four of New South Wales' leading universities are joining forces to create a world-class higher education institution in the heart of the new Western Sydney aerotropolis. This institution will have a clear focus on science, technology, engineering and mathematics education. This university project is the first of its kind in Australia and the first new university built in Sydney in 50 years. It will transform Western Sydney for generations to come. It is not just the State and Federal governments that are excited about this airport. My good friends at Liverpool City Council have warmly welcomed this announcement and Liverpool has been selected as the headquarters of the new Western Sydney Airport. Labor Liverpool City Council Mayor Wendy Waller has finally come on board and stated:

> This is the best possible news for Liverpool ... It sets the city up for a very exciting future—a decade that will firmly establish Liverpool as the jumping-off point for the new airport. The Western Sydney Airport is one of the biggest projects being built anywhere in Australia.

The Federal shadow Minister for Transport and Infrastructure has not been quiet about the Western Sydney Airport. He has stated his support of the airport on a number of occasions. He said in 2017 that the airport "means jobs—high-value jobs for the people of Western Sydney, an area that has been crying out for new employment opportunities". He also stated:

> … airports are proven investment and job magnets.
>
> … the Western Sydney Airport will be much more than a runway and a terminal.
>
> It will be a fully fledged aerotropolis, and western Sydney will be at the forefront of the industries and jobs of the future.

The New South Wales Leader of the Opposition and member for Auburn also supports the Western Sydney Airport stating it is his second priority for Western Sydney. He said:

> The new airport can be the greatest jobs driver for Western Sydney.

But there seems to be some disunity in the Labor Party regarding this project. The Federal member for Macquarie, Susan Templeman, is staunchly against the second airport and has publicly spoken against the member for Auburn, stating:

> Mr Foley's attempt to make the airport more attractive just means more planes, more pollution, more pain for the Blue Mountains and the western suburbs.

There seems to be disunity in the Labor Party with the Blue Mountains Council and the Blacktown City Council, which are controlled by Labor, still opposing the airport. One member of Parliament has been noticeably quiet about the airport and the significant benefits it will bring to his electorate. The member for Liverpool needs to speak up and let the people of Liverpool know where he stands on the second airport and whether he supports jobs for his community. He cannot hide from this issue. Perhaps he should just retire.

KOALA HABITAT PROTECTION

The Hon. PENNY SHARPE (19:46): Last week I attended the Save Our Koalas Summit at Appin with the member for Campbelltown, Greg Warren, and Labor's candidate for Wollondilly, Jo-Ann Davidson. The summit, which was hosted by Wollondilly Shire Council, heard from leading koala experts and advocates about the threats to the large and healthy population of koalas in south-west Sydney. It was a terrific summit attended by many people with genuine care, expertise and passion for this iconic native animal. Yet the unshakable feeling that lingered after the summit was concern, then worry, then anger. I am now very worried and increasingly angry.

I am worried that under the Berejiklian Government, and particularly its Minister for the Environment, we are failing koalas. I am worried that, despite the much-delayed announcement of a New South Wales koala strategy, we remain on the path to losing the koala as a native animal in the wild in this State. I am worried that

even though the Government knows why koalas are dying and populations are plummeting, this Government's priorities are so backwards that there will come a time when it will be too late. If we take Wollondilly and south-west Sydney, for example, it is estimated there are around 400 koalas who call it home, and what is more, none of them are afflicted with the disease chlamydia.

It is the only disease-free koala population in New South Wales. Given the location on the fringe of Australia's largest city, habitat preservation and protected corridors for movement are key for the safety of this colony. Thirty koalas from this population have died in the past year alone after being struck by vehicles on nearby roads. Yet the Government has presented its shiny new koala strategy, boasting about creating new koala reserves to help protect the species. How many hectares of habitat are proposed to be reserved for this healthy koala population in south-west Sydney? That would be a big, fat zero. Not a blade of grass or eucalypt tree in this key habitat area will be reserved under the koala strategy. Yes, I am very worried about the koalas in south-west Sydney and, more importantly, about the koala strategy generally.

Previously, New South Wales had a comprehensive koala recovery plan with detailed actions and a plan of implementation for saving this species. The Government's replacement was a strategy delivered one year late and five years after the previous plan had lapsed. The strategy is not a plan; it is a 21-page glossy booklet to replace a 124-page comprehensive recovery plan. Less than half the funding allocated within the plan is for habitat protection. A major component of the new strategy is the creation of the koala reserves that so far are transfers of land from State forests to the National Parks estate.

Conservation groups have analysed the proposed reserves and found a troubling trend emerging: Large portions of the proposed reserves are in fact not high-quality koala habitat, and many have not reported a confirmed koala sighting in many, many years. It is a koala strategy with no koalas. The Minister for Lands and Forestry let the cat out of the bag during budget estimates. I asked about one State forest, Mount Boss, which is being handed over from his department to the National Parks and Wildlife Service—a forest that has not seen a koala since 1995. The Minister responded that the area was merely "unproductive State forest". Here the Minister proved the point about the complete lack of interest in koala recovery and population growth. Saying the Government is reserving areas for koalas that have no koalas living in them seems fairly silly to me.

It is well documented that the Government's changes to tree clearing and native vegetation laws, the so-called biodiversity reforms, were predicted to let chainsaws and bulldozers rip right around the State. There was also advice from the Office of Environment and Heritage that up to 99 per cent of core koala habitat on private land could also be opened up to clearing. But do not worry—the Minister for Environment has signed away and these laws are now in place. We now know that those predictions came true. According to a recent report covering a third of the State, satellite imagery has found that tree clearing tripled around Moree and Collarenebri after the new laws were introduced. More importantly than that, the Government has released its own data, which shows land clearing was on the up and increased by more than 700 per cent in the lead-up to the reforms—before the laws were even introduced.

There is one thing koalas need more than anything to survive: trees. New South Wales is now a deforestation bonanza thanks to the policies of the Liberals and Nationals. Add to that the deep cuts of more than $100 million from the National Parks and Wildlife Service over the past two years, the loss of experienced staff and park rangers, and the near-cessation of new land for national parks since the Coalition came to office, and we can only describe this as a full-blown conservation crisis. And the koala is right at the centre of it. So much more remains to be done to turn around the decline of our koalas.

While I am worried and increasingly angry about this issue, I also know that there is a lot of hope. There are a lot of excellent communities and people working hard to save their koalas. The people of Wollondilly and their Save Our Koalas Summit are just one of those groups. I congratulate them on their Save Our Koalas Summit and for their petition, which will be debated in Parliament next week and which has gathered more than 13,000 signatures asking for us to save their koalas. Failure to take serious action will mean that by 2050 the only koala you will be able to see in New South Wales will be in a zoo, and that is not where we should be.

NORTH COAST EVENTS

The Hon. BEN FRANKLIN (19:50): I speak on the importance of local events and the role they play in celebrating the very best of our communities, particularly in regional areas. Locally organised and run events, both big and small, bring communities together and celebrate the best of what they have to offer. Through these events, the unique identity of towns is created and promoted. They are an opportunity to showcase our regions and to recognise our local talent. The North Coast is home to some of the best local events in the nation, and I would like to share the stories of just a few of these wonderful events tonight.

While each city, town and village on the North Coast is beautiful, they all carry their own unique characteristics which are highlighted by wonderful local events. One event which embraces the area's unique qualities is Bangalow's Sample Food Festival. The Sample Food Festival is the premier food event in northern New South Wales. It is a celebration of the best produce and food products grown and created in the region. Farmers, producers, chefs and a range of creative individuals from across the region come together to share their products, their passion and their knowledge. The Sample Food Festival is the place where everyone is given the opportunity to sample the best food and beverages which northern New South Wales has to offer.

This year's festival was held on 1 September at the Bangalow Showground and it was a cracking success. I could not possibly name all the outstanding producers, chefs and restaurants who took part in the festival, but I must acknowledge a few of the best: the Balcony Bar and Oyster Co, the Byron Bay Brewery, the Macadamia Castle, the great Northern Restaurant and Bar, and the Harvest Café, who won the Golden Fork Award for the best $10 tasting plate. I thank Remy Tancred, Rose Taylor and the whole Sample Food Festival organisation team for giving us the opportunity to celebrate the wonderful food and beverages of northern New South Wales. I thank them for supporting our local producers and allowing our community to showcase its best products, and I thank them for creating the successful Sample Food Festival Bangalow. I look forward to attending again next year.

Bangalow is host to many wonderful events throughout the year, and the Bangalow Music Festival is another one. The Bangalow Music Festival is presented by the Southern Cross Soloists. It is a chamber music festival which features the highest calibre of professional musicians from around the world. For the duration of the festival, musicians open up dimensions of sound, emotion and sheer pleasure for everyone to appreciate. For this calibre of talent to be available to the small community of Bangalow and its surrounds speaks loudly for the deep appreciation of classical music and the arts on the North Coast. I congratulate all involved.

But music is not the only form of art celebrated in northern New South Wales. On Friday 14 September the Lennox Head Lions Club held its annual Town and Gown Art Show. This is an incredible event which not only provides a platform for local artists but is also a major fundraiser for the Lennox Head Public School. I have spoken previously in this chamber on the magnificent work local Lions Clubs do for our community. This is another example of that wonderful work. President Derek Audus and the whole club are leaders and role models in our community for all their work and support for the people of Lennox Head. I thank Derek and all club members for being genuine champions for our community. The art show is held each year at the Lennox Head Public School. Principal Deb Langfield and her team are incredible in hosting the art show. With more than 170 entries this year, the standard was incredibly high and the three-day event was a stunning success.

Another great local event is Beach Sounds Fest in Lennox Head. The founding story of this event is nothing but inspiring. At just 15 years of age, local Lennox Head high school student Ben Luke established Lennox Groove to support the music industry locally. Through Lennox Groove, Ben strove to achieve as much as he could in the music world. He did interviews, reviews and graphic work for bands, and he organised live gigs. From there Ben created the Beach Sounds Fest, an all ages music festival in Lennox Head. In 2017 the festival was headlined by Lunatics on Pogosticks, who were supported by Miniskirt, VOIID, White Blanks and WHARVES. This is a huge achievement for a 15-year-old. His drive, passion and determination is extraordinary.

But Ben did not stop there; he worked incredibly hard to ensure the successful Beach Sounds Fest returned to Lennox Head for another year. This year's event was even bigger and better. This year's line-up included The Pretty Littles, Eliza and The Delusionals, VOIID, Concrete Surfers, Viral Eyes, Crum, Sook, Garage Sale, No Parade and Mind. It is people like Ben Luke who bring the very best to regional communities. Ben's passion and determination has made Lennox Head home to an outstanding music event which is loved by the community and has become an institution in his town. I am proud to represent the wonderful communities from northern New South Wales in this Parliament. They are some of the most beautiful and unique and inspiring areas in the nation. It has been a pleasure joining with my community's residents to celebrate these events, and I encourage everyone in this Chamber to join us in the Ballina and Byron shires in the coming years for these events.

MOUNT PENNY EXPLORATORY LICENCE

The Hon. Dr PETER PHELPS (19:57): In the brief time remaining, I will talk about the creation of the Mount Penny exploratory licence area [ELA]. In doing so, I refer to various statements made by Julie Moloney, Leslie Wiles, and Harry Bowman in secret testimony which they gave to the ICAC. This material suggests the department, well in advance of the small and medium expression of interest proposal, had determined to hold a closed or selective tender for the smaller assets. The department informed Monaro consultant Harry Bowman of this decision well in advance of its notification of the then Minister Ian Macdonald.

Leslie Wiles created the North Bylong ELA without any outside influence on 30 May 2008, and is adamant that she did it of her own volition. Julie Moloney says that the subsequent creation of the Mount Penny allotment was done without influence and that she named the exploratory licence [EL] herself. Under intense

interrogation, she speculated that Brad Mullard may have directed her, but she cannot remember or recall the details. Leslie Wiles concluded that the Mount Penny ELA was a lower value part of the larger North Bylong proposal. The higher value western end of the larger ELA near Wollar was kept by the department for future exploration and release. Bowman, acting for Monaro at the same time that he was also a consultant for the department, was briefed and addressed by the department on a number of occasions. He was advised to drop his Monaro proposal in favour of assets in the Western coalfields. On Bowman's advice, Monaro sought six remnant areas north of Lithgow.

Bowman was informed on 19 May 2008 by Mullard and others that there would be a closed tender for the small assets. In emails exhibited in the public hearing, Bowman excitedly informed Monaro executives that the ELs proposed by Monaro would be subject to the closed tender and that there would also be a number of other opportunities. This is important because this email traffic predates the ministerial brief to Macdonald and the decision to proceed with the process. Bowman strenuously defends this prior knowledge as being legitimate in the public hearing.

All of the above was not considered by ICAC in its report. This information indicates that the department not only devised the closed tender process in advance of Macdonald knowing of it, but also that the delineation of the areas of the tender was created by two officials within the department and was not subject to outside influence. It also indicates that the subsequent creation of the Mount Penny allotment was also done within the department and without any outside influence. Ian Macdonald may not be innocent, but he is not guilty.

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

Motion agreed to.

The House adjourned at 20:01 until Thursday 20 September 2018 at 10:00.