



New South Wales

Legislative Council

PARLIAMENTARY DEBATES (HANSARD)

**Fifty-Sixth Parliament
First Session**

Wednesday, 21 November 2018

Authorised by the Parliament of New South Wales

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LEGISLATIVE COUNCIL

Wednesday, 21 November 2018

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

The PRESIDENT read the prayers.

Bills

COMMUNITY PROTECTION LEGISLATION AMENDMENT BILL 2018

First Reading

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

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

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

Declaration of urgency agreed to.

The Hon. DON HARWIN: I move:

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

Motion agreed to.

Committees

PORTFOLIO COMMITTEE NO. 2 - HEALTH AND COMMUNITY SERVICES

Government Response

The Hon. GREG DONNELLY: I move:

That Standing Order 233 be varied so as to require that the Government response to the report of Portfolio Committee No. 2 - Health and Community Services on the inquiry into the implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales be provided by 28 February 2019.

Motion agreed to.

Business of the House

FORMAL BUSINESS

The PRESIDENT (11:04): Order! I indicate to members that calling out the word "cover-up" is not appropriate. I will call members to order if they continue to do so. It seems to have become a habit lately. It is not appropriate.

Motions

INVICTUS GAMES

The Hon. NATASHA MACLAREN-JONES (11:04): I move:

- (1) That this House notes that:
 - (a) the 2018 Invictus Games was held in Sydney from 20 October 2018 to 27 October 2018;
 - (b) the event involved over 500 wounded and injured service men and women from 18 different nations;
 - (c) the event hosted 11 different sports that highlight the remarkable journey and service of ex-service men and women; and
 - (d) the selfless acts of support by the families and friends of wounded service men and women during the event.
- (2) That this House notes that:
 - (a) the opening ceremony for the Invictus Games occurred on 20 October 2018; and
 - (b) in attendance were the following special guests:
 - (i) His Royal Highness Prince Harry, the Duke of Sussex;

- (ii) Her Royal Highness Meghan Markle, the Duchess of Sussex;
 - (iii) His Excellency General the Hon. Sir Peter Cosgrove, AK, MC (Ret'd), Governor General of Australia;
 - (iv) the Hon. Scott Morrison, MP, Prime Minister of Australia;
 - (v) former Prime Minister of Australia, the Hon. John Howard, OM, AC;
 - (vi) the Hon. Gladys Berejiklian, MP, Premier; and
 - (vii) the Hon. David Elliott, MP, Minister for Counter Terrorism, Minister for Corrections, and Minister for Veterans Affairs.
- (3) That this House commends the 500 participants of the Invictus Games for their display of athleticism, resilience and perseverance.
- (4) That this House commends the event organisers of the 2018 Invictus Games for hosting a terrific sporting event that captured the mateship and comradery of our service men and women.

Motion agreed to.

HYDE PARK ANZAC MEMORIAL CENTENARY EXTENSION

The Hon. NATASHA MACLAREN-JONES (11:04): I move:

- (1) That this House notes that:
- (a) on 20 October 2018 a service was held to open the Anzac Memorial Centenary Extension at Hyde Park in Sydney;
 - (b) those in attendance were:
 - (i) His Royal Highness Prince Harry, the Duke of Sussex;
 - (ii) Her Royal Highness Meghan Markle, the Duchess of Sussex;
 - (iii) the Hon. Scott Morrison, MP, Prime Minister of Australia;
 - (iv) the Hon. Gladys Berejiklian, MP, Premier;
 - (v) His Excellency General the Hon. David Hurley, AC, DSC (Ret'd), Governor of New South Wales; and
 - (vi) the Hon. David Elliott, MP, Minister for Counter Terrorism, Minister for Corrections, and Minister for Veterans Affairs.
 - (c) that from 11 November 2018 the Anzac Memorial Centenary Extension will be made open for the public to pay their respects, remembering all the Australians who have served their country.
- (2) That this House commends the Hon. David Elliott, MP, Minister for Veterans Affairs, for his championing of the Anzac Memorial Centenary Project since being appointed to the Veterans Affairs portfolio in 2015.
- (3) That this House notes that:
- (a) the memorial is a physical expression of the legend of Anzac, dedicated to the remembrance of Australians who have served in the Defence Force;
 - (b) 1,701 soil samples from 1,701 New South Wales towns, cities and districts have been collected since March 2017 to make up the Hall of Service display in the Anzac Memorial; and
 - (c) the display was created with the generous help of hundreds of public volunteers and New South Wales State and commercial surveyors.

Motion agreed to.

FOODBANK AUSTRALIA

The Hon. COURTNEY HOUSSOS (11:05): I seek leave to amend Private Members' Business item No. 2600 outside the Order of Precedence standing in my name on the *Notice Paper* for today by omitting paragraph 2 (c).

Leave granted.

Accordingly, I move:

- (1) That this House notes that:
- (a) Foodbank is the largest food relief organisation in Australia; and
 - (b) on Monday 15 October 2018, Foodbank released its 2018 Hunger Report, which revealed that:
 - (i) Four million Australians had experienced food insecurity in the last 12 months;
 - (ii) 51 per cent of those seeking assistance are employed;

- (iii) those living in regional Australia are a third more likely to face food insecurity than their city counterparts;
 - (iv) females are 31 per cent more likely than males to experience food insecurity; and
 - (v) the situation is getting worse, with half of Foodbank's charity partners reported an increase in the number of people seeking assistance.
- (2) That this House:
- (a) consistent with the recent Legislative Council inquiry into fresh food prices, recognises that food insecurity is a growing problem faced by individuals and families across New South Wales, especially in regional and remote areas; and
 - (b) thanks Foodbank for the important work it does.

Motion agreed to.

POLISH INDEPENDENCE DAY ANNIVERSARY

The Hon. TAYLOR MARTIN (11:06): I move:

- (1) That this House notes that:
- (a) on 11 November 2018 Poland celebrated National Independence Day which was the anniversary of Poland's reclamation of its independence 100 years ago;
 - (b) more than 52,000 people of Polish ancestry call New South Wales home who, along with their predecessors, have worked hard to build successful lives while continuing to celebrate their traditions and culture;
 - (c) on Friday 26 October 2018 the Polish Association of Newcastle held its 100th anniversary of Poland regaining independence celebration and the official opening of the "Commemorating 100th anniversary of Poland regaining independence and celebrating Poles in Australia, Newcastle and Hunter Valley" exhibition at the Polish Cultural Centre in Broadmeadow;
 - (d) the exhibition and celebrations featured historical displays, Polish arts and crafts, short Polish films, Polish national costumes, exhibition of paintings, Greta Migrant Camp display, Polish music and Polish food tasting;
 - (e) one of the Poles who feature as part of the exhibition was Pawel Strzelecki who first identified rich coal deposits in the Hunter Valley that would transform the region into an industrial powerhouse; and
 - (f) the following people attended the celebration:
 - (i) the Hon. Taylor Martin, MLC, representing the Minister for Multiculturalism, the Hon. Ray Williams, MP;
 - (ii) the Federal member for Newcastle, Sharon Claydon, MP;
 - (iii) Councillor Matthew Byrne from Newcastle City Council;
 - (iv) Ms Janina Sulikowski, President, Polish Association of Newcastle; and
 - (v) other members of the Polish Association of Newcastle committee.
- (2) That this House:
- (a) acknowledges and commends the work of the Polish Association of Newcastle's Committee; and
 - (b) extends its congratulations and best wishes to the Polish-Australian community on the occasion of its National Independence Day.

Motion agreed to.

HMAS SYDNEY II COMMEMORATION

The Hon. DAVID CLARKE (11:06): I move:

- (1) That this House notes that:
- (a) on Monday 19 November 2018 a memorial and wreath-laying ceremony hosted by the HMAS *Sydney* Association Inc. was held at the Cenotaph, Martin Place, Sydney to mark the seventy-seventh anniversary of the battle between HMAS *Sydney II* and the German naval vessel KSM *Kormoran* off the coast of Western Australia on 19 November 1941 and the subsequent sinking of HMAS *Sydney II* with the loss of her crew of 645 sailors and airmen;
 - (b) those who attended the ceremony included:
 - (i) Commodore Braddon Wheeler, RAN, Chief of Staff, Australian Fleet and former Commanding Officer of HMAS *Sydney IV*, representing Rear-Admiral Jonathan Mead, AM, RAN, Fleet Commander;
 - (ii) Rear-Admiral Andrew Robertson, AO, DSC, RAN (Ret'd), Co-Patron, HMAS *Sydney* Association;

- (iii) the Hon. Gai Brodtmann, MP, Federal shadow Minister for Cyber Security and Defence, representing the Hon. Richard Marles, MP, Federal shadow Minister for Defence;
 - (iv) the Hon. David Clarke, MLC, Parliamentary Secretary for Justice, representing the Hon. Gladys Berejiklian, MP, Premier;
 - (v) the Hon. Greg Donnelly, MLC, representing Mr Michael Daley, MP, Leader of the Opposition;
 - (vi) Mr Doug Price representing the Hon. Tony Abbott, MP, Federal member for Warringah and former Prime Minister of Australia;
 - (vii) Senator Jenny McAllister, shadow Assistant Minister for Families and Communities, representing the Hon. Tanya Plibersek, MP, Federal member for Sydney;
 - (viii) Chaplain Bob Durbin, HMAS *Sydney* Association Chaplain;
 - (ix) Mr Haydn White, representing the Deputy Commissioner NSW, Department of Veterans' Affairs;
 - (x) Mr Brian Yeo, HMAS *Sydney* Association, master of ceremonies;
 - (xi) representatives of War Widows' Guild of Australia NSW Ltd, RSL Australia (NSW Branch), Naval Association of Australia (NSW Division); Federation of Naval Ship Associations; RAAF No.9 Squadron Association; The Infants Home-Child and Family Services; Australian National Maritime Museum; Totally and Permanently Incapacitated Veterans Association (NSW); and HMAS *Kuttabul*; and
 - (xii) relatives and decedents of those who lost their lives on the HMAS *Sydney II* on 19 November 1941.
- (c) HMAS *Sydney II* was a light cruiser of the modified Leander class, commissioned on 24 September 1935, which served during World War II with distinction in the Mediterranean whilst under the command of Captain J. A. (later Sir John) Collins, taking part in the first bombardment of Bardia and the sinking of the Italian destroyer *Espero* on 28 June 1940; and
- (d) additionally on the morning of 19 July 1940, when north of Cape Spada near the western end of Crete, HMAS *Sydney II* struck a mighty blow against the Italian Fleet when she sank the cruiser *Bartolomeo Colleoni*.
- (2) That this House:
- (a) commends the HMAS *Sydney* Association Inc. for organising and hosting the seventy-seventh anniversary memorial and wreath-laying ceremony held at the Cenotaph, Martin Place, Sydney on Monday 19 November 2018 and note that this is the thirtieth year that the association has held the memorial service;
 - (b) remembers with sadness the loss of HMAS *Sydney II* and its entire crew of 645 officers and men on 19 November 1941 in its encounter with German naval vessel KSM *Kormoran* off the West Australian coast;
 - (c) extends its sympathy to the families and relatives of those 645 crew members who gave their lives; and
 - (d) records:
 - (i) its gratitude to those 645 servicemen who gave their lives for our nation; and
 - (ii) that their service will never be forgotten.

Motion agreed to.

The PRESIDENT: Order! I call the Hon. Shaoquett Moselmane to order for the first time.

SURF LIFESAVER PETER WYLLIE

The Hon. TAYLOR MARTIN (11:07): I move:

- (1) That this House notes that:
- (a) Terrigal Surf Life Saving Club member Peter Wyllie has recently achieved 75 years continuous service with the club;
 - (b) Mr Wyllie is the first ever surf life saving volunteer from the Central Coast to reach the 75-year milestone;
 - (c) during Mr Wyllie's 75 years of membership, he competed for 40 years and has participated in activities including swimming, rescue and resuscitation, paddling surfboards, and sweep on the surfboats;
 - (d) Mr Wyllie has been a life member of the club for more than 50 years and is currently club patron; and
 - (e) in 2017 Mr Wyllie was awarded an Order of Australia Medal for his services to surf life saving;
- (2) That this House congratulates Peter Wyllie on his dedication to Terrigal Surf Life Saving Club over 75 years.

Motion agreed to.

ALSTONVILLE SHOW 130TH ANNIVERSARY

The Hon. BEN FRANKLIN (11:08): I move:

- (1) That this House notes that:

- (a) the 130th Alstonville Show was held on Friday 26 and Saturday 27 October 2018;
 - (b) the show is a celebration and recognition of continued efforts and achievements of hardworking community members in the pastoral, agricultural and horticultural industries; and
 - (c) the 2018 show included cattle events, show jumping, pig races, woodchop showcases and tug-o-war battles between local sporting clubs.
- (2) That this House acknowledges and thanks the Alstonville Agricultural Society President, Sam Stevens, and all of the show society committee for their hard work and dedication to making the Alstonville Show a tremendous success.

Motion agreed to.

TRIBUTE TO DR MAX SHAW

The Hon. PAUL GREEN (11:08): I move:

- (1) That this House notes that:
- (a) Dr Max Shaw was one of the early pioneers in the Christian schools movement;
 - (b) Dr Shaw, who was a world-renowned food technology research scientist and a lecturer at the University of New South Wales, also became the first Home Science teacher at Redeemer in 1981;
 - (c) in 1974 Dr Shaw was a founding elder of Redeemer Baptist Church;
 - (d) alongside his lifelong friend, Pastor Noel Cannon, Dr Shaw led the fellowship of Redeemer Baptist Church as the community formed the vision for Redeemer Baptist School, which commenced as the annexe of Christian Community High School in Thornleigh in 1981;
 - (e) Dr Shaw was Headmaster of Redeemer Baptist School for 22 years, and a very active Headmaster Emeritus from 2008;
 - (f) Redeemer's extended household ministry has provided a bulwark for young people, and others, who need the support of a family to give hope for healing and change in troubling life circumstances;
 - (g) Dr Shaw and his wife, Elva, welcomed dozens of young people and others with particular needs into their "Koinonia" household in the Redeemer community at Castle Hill from 1974 to 2003 and then at Oatlands from 2004 to 2018;
 - (h) when Redeemer was granted the option of purchasing its current campus at North Parramatta in the old Burnside Homes in 1994, Dr Shaw and his wife sold their home and provided the proceeds from the sale to Redeemer Baptist School unconditionally;
 - (i) Dr Shaw was one of the founding elders of the Centre Director of The Hills Regional Skills Centre, the Registered Training Organisation of Redeemer Baptist School, the first registered training organisation belonging to an independent school in Australia, Dr Shaw established vocational education as a popular option for all students in Redeemer's senior school and taught hospitality from 1994 to 2016;
 - (j) as a leader in the Christian schools movement since 1981, Dr Shaw was elected President of the Association of Executives of Christian Schools for a term commencing in 2006;
 - (k) sadly, Dr Shaw passed away on Saturday 20 October 2018;
 - (l) Dr Shaw's contributions as headmaster, teacher, elder and friend have left a lasting legacy; and
 - (m) Dr Shaw is survived by a school that delivers excellence with a Christian worldview in education, with Redeemer students continuing to draw recognition for excellence in science, technology, engineering and mathematics, literacy, the creative arts and athletics, and for contributing to genuine reconciliation through charitable programs providing significant infrastructure at the request of Indigenous communities in remote and regional New South Wales.
- (2) That this House acknowledges that Dr Shaw's legacy in the school and the church is enormous and thanks him for his faithful leadership and service.

Motion agreed to.

TRIBUTE TO JOSEPH "JOE" MERCHARD

The Hon. SCOT MacDONALD (11:09): I move:

- (1) That this House notes:
- (a) with sadness the passing of Guyra Community Leader, Joseph "Joe" Merchard George on 9 November 2018, aged 98 years;
 - (b) Mr George's funeral Mass was held at St Mary of the Angels, Guyra on Thursday 15 November 2018 and he was subsequently laid to rest at the Guyra Lawn Cemetery;
 - (c) Mr George's beloved wife, Gloria, sadly passed away in May 2018 and he is survived by his son and daughter-in-law, Joe and Wendy, and his cherished grandchildren, Jeremy and Donna, Dominic and Monique, Brittany and Brad, and his great-grandchildren, Ari and Frank;

- (d) Joe's parents migrated to Australia from Lebanon in the 1920s, leaving Joe behind with relatives and once established in Australia, Joe, eight years old, was put on a ship and travelled all the way to Australia by himself;
 - (e) Joe could not speak English and had a tough time at school in the 1930s, which was also the period of the Great Depression;
 - (f) in adulthood Joe established a transport business carrying local vegetables, especially peas and potatoes, to markets in Brisbane and with his wife, Gloria, later established George's Department store, selling women's and men's clothing, bedding and haberdashery, as well as owning a farm east of Guyra;
 - (g) Joe served with distinction as a Guyra Shire Councillor for more than two decades and was a much-respected and loved figure in Guyra, with many people calling him "Uncle Joe";
 - (h) in honour of his outstanding service to the community, in 1994, Joe was named Guyra's Citizen of the Year, in 2007 awarded a Paul Harris Fellow by Guyra Rotary Club, after decades of club service, and in 2005, received a special papal award from the Catholic Church which made him a "knight" of the Church, or similar; and
 - (i) Joe quietly helped many people in Guyra and other towns, did not seek any recognition and would help people, and many struggling would find their bills paid, or a load of wood delivered to them in winter and were never told who helped them.
- (2) That this House acknowledges and commends the outstanding service to the community of Mr Joseph "Joe" Merchard George and extends its sympathy to his family and loved ones on their loss of an iconic figure of the Guyra community.

Motion agreed to.

NSW COUNCIL OF SOCIAL SERVICES COST OF LIVING REPORT

The Hon. COURTNEY HOUSSOS (11:09): I move:

- (1) That this House notes that:
- (a) the NSW Council of Social Service held its launch for the 2018 Cost of Living Report on 20 September 2018 at Parliament House, with speakers Ms Penny Wood, Coordinator, for St Vincent de Paul Community Hub, and Dr Kathy Chapman, then Interim chief executive officer of NCOSS;
 - (b) the Cost of Living Report 2018 focuses on the issue of food security, focusing on the challenges faced by low-income households in accessing affordable, healthy and nutritious food;
 - (c) this report is the fifth in a series of reports focusing on the cost of living in New South Wales and the impact this has on people experiencing poverty and disadvantage;
 - (d) for the report NCOSS surveyed 402 people on low incomes, finding that 39 per cent of respondents had experienced food insecurity in 2017, due to a range of access and affordability factors, which is notably higher than the reported 6.9 per cent overall rate of food insecurity in New South Wales in 2014;
 - (e) for many socio-economically disadvantaged families, food can account for a large portion of their weekly income, with the report finding that those on the lowest income, less than \$512 per week, were spending 29 per cent of their income on food, meaning they experienced "food stress", whilst simultaneously being priced out of a healthy diet; and
 - (f) the report also highlights general cost-of-living pressures, particularly the impact high electricity prices has on the affordability of healthy food.
- (2) That this House:
- (a) acknowledges the valuable work that NCOSS does with and for people experiencing poverty and disadvantage in New South Wales to advocate for positive change in the community;
 - (b) recognises that food insecurity is a growing problem in New South Wales; and
 - (c) congratulates NCOSS on the release of its Cost of Living Report 2018.

Motion agreed to.

ST MICHAEL'S ANTIOCHIAN ORTHODOX PARISH CHURCH FEAST OF ST MICHAEL

The Hon. DAVID CLARKE (11:11): I move:

- (1) That this House notes that:
- (a) on Sunday 11 November 2018, at St Michael's Antiochian Orthodox Parish Church, Kirrawee, a Divine Liturgy Service to celebrate the Feast of St Michael was conducted by Metropolitan Basilios Kodseie of the Antiochian Orthodox Church in Australia, New Zealand, and the Philippines, assisted by the Very Reverend Father Fadi Nemme, Parish Priest, St Michael's Antiochian Orthodox Church, Kirrawee;
 - (b) following the Divine Liturgy Service, a celebratory luncheon was hosted by Reverend Father Fadi Nemme, Kirrawee Parish Priest, together with the Antiochian Parish Council and Community of St Michael's Church, Kirrawee; and
 - (c) those who attended included:

- (i) Metropolitan Basilios Kodseie of the Antiochian Orthodox Church in Australia, New Zealand, and the Philippines;
 - (ii) the Very Reverend Father Fadi Nemme, Parish Priest of St Michael's Church, Kirrawee;
 - (iii) the Hon. Victor Dominello, MP, Minister for Finance, Services and Property;
 - (iv) Mr Mark Coure, MP, member for Oatley, and Parliamentary Secretary for Transport and Infrastructure;
 - (v) Dr Stepan Kerkaysharyan, AO, Chair, Cemeteries & Crematoria NSW, and Mrs Hilda Kerkaysharyan;
 - (vi) Councillor Kent Johns, Sutherland Shire Council; and
 - (vii) members and friends of the Antiochean Orthodox Community.
- (2) That this House:
- (a) extends greetings to the Very Reverend Father Fadi Nemme and the Parish community of St Michael Antiochian Orthodox Church on the occasion of the Feast of St Michael; and
 - (b) commends the Antiochian Orthodox Church and community for their ongoing contribution to the religious, cultural and community life of New South Wales.

Motion agreed to.

ARCHEOLOGIST MICHAEL BENDON

The Hon. DAVID CLARKE (11:12): I move:

- (1) That this House notes that Dr Michael Bendon:
- (a) is a prominent Australian archaeologist, wartime historian, lecturer and author with postgraduate qualifications in:
 - (i) archaeology;
 - (ii) maritime archaeology;
 - (iii) cultural heritage; and
 - (iv) education, higher education administration and linguistics.
 - (b) has worked for more than 30 years as an archaeologist on numerous projects on sites in Europe and the Mediterranean region including Israel, Turkey, Syria, Jordan, Portugal, Germany and Greece;
 - (c) has been associated with:
 - (i) the excavation of what may well be the first shipwreck discovered from the Minoan period;
 - (ii) excavation and research of Phalasarna, a large Classical/Hellenistic maritime city in Western Crete;
 - (iii) excavation of a medieval church and cemetery in Northern Germany; and
 - (iv) locating off the coast of Phalasarna, Crete two British World War II wrecks ascertained to be part of a flotilla of vessels secretly commissioned by British wartime Prime Minister Winston Churchill with unique specifications to facilitate the landing and evacuation of allied troops in difficult geographical locations including thousands of Australian troops in the North African, Cretan and Greek campaigns.
 - (d) authored a book published in 2014 titled *The Forgotten Flotilla, The Craft of Heroes, Greece, Crete and North Africa-1941*, which records the unique design and wartime service of the flotilla of vessels commissioned by British wartime Prime Minister Winston Churchill and their significance in the rescue of thousands of Australian troops in World War II;
 - (e) has assembled an historic collection of artefacts and memorabilia relating to Australian troops who served in the Greek, Cretan and North African campaigns of World War II, which he exhibits throughout Australia;
 - (f) works closely with Hellenic-Australian organisations, including the Joint Committee for the Commemoration of the Battle of Crete and the Greek Campaign, to assemble information and advance knowledge relating to the contribution of Australian troops in the Greek, Cretan and North African campaigns in World War II; and
 - (g) lectures widely throughout Australia to numerous community organisations as a public service to:
 - (i) create a greater understanding of Australian participation in the Greek, Cretan and North African campaigns of World War II; and
 - (ii) publicise the personal experiences and reflections of Australian troops who fought in those campaigns.
- (2) That this House pays tribute to Dr Michael Bendon and commends him for:
- (a) his services to archaeology;

- (b) his prolific research into Australia's part in the World War II campaigns in Greece, Crete and North Africa;
- (c) assembling an historic collection of artefacts and memorabilia relating to the personal experiences and reflections of Australian troops who fought in the World War II campaigns in Greece, Crete and North Africa; and
- (d) lecturing widely throughout Australia as a public service to create a greater knowledge of Australia's participation in those World War II campaigns.

Motion agreed to.

TYPHOON HAIYAN FUNDRAISING CONCERT

The Hon. DAVID CLARKE (11:12): I move:

- (1) That this House notes that:
 - (a) on Sunday 4 November 2018 a fundraising concert organised by a coalition of Filipino-Australian not-for-profit community organisations and attended by over 600 members and friends of the Filipino-Australian community was held at Blacktown Workers Club to:
 - (i) provide ongoing assistance to those who suffered in Typhoon Haiyan which devastated much of the Philippines in 2013; and
 - (ii) express thanks to the Filipino-Australian community and the wider Australian community for its generosity since 2013 in making Australia the third highest nation in contributions to Typhoon Haiyan relief.
 - (b) the typhoon, which was one of the most powerful ever recorded, caused the death of more than 6,000 people, the displacement of six million more and the destruction of two million homes;
 - (c) the concert was primarily organised by:
 - (i) Plaza Filipino Inc, led by its President, Michelle Baltazer;
 - (ii) Adhika Inc, led by its President, Josefina Musa;
 - (iii) Flagcom and Friends, co-founded by Charles Chan and Albert Prias; and
 - (iv) NARRA Co-op, led by its President, Jaime Lopez.
 - (d) those performers who participated included:
 - (i) The One Voice Kids comprising Jared Lesaca, Natasha Bracken, Alyzandra Almario, Daneal Gardiner, Elouise Pelaez, Kaitryel Pelaez, Matthew Dino, Olivia Bosworth, Bridgit Bosworth, Ysabella Sibucan, Branca Ignacio and Vocal Teacher Tina Bangel;
 - (ii) Fasika Ayallew, *The Voice* Australia 2017 winner;
 - (iii) The Sonata Singers;
 - (iv) Herizon, comprising vocalists Bernadette Marquez, Taylan Jade Michelle Albert and Gabrielle Ellyze Montalbo;
 - (v) Lillian de los Reyes;
 - (vi) Robyn Russell;
 - (vii) June and Trinity Young;
 - (viii) Cleo Diana and Laurencio "Dong" Labayo;
 - (ix) Marcus Riveraa with the Alliance of Voices singers;
 - (x) Jersay and Brian Lorenz; and
 - (xi) Daisy Cumming.
 - (e) hosts for the event were former Miss Philippines Australia winners comprising Ms Melanie Balagtas, 2013; Ms Rica Sey, 2015; and Ms Kymberlee Street, 2017;
 - (f) others involved in the organisation of the event included:
 - (i) Chi de Jesus, Creative Director;
 - (ii) Marcus Rivera, Musical Director;
 - (iii) Charles Chan, Talent Co-ordinator;
 - (iv) Tess Manese, VIP and Audience Relations; and
 - (v) Andrew Russell, Video Director.
 - (g) those who attended as guests included:
 - (i) Ms Teresa Taguiang, Consul-General for the Philippines in Sydney;

- (ii) the Hon. David Clarke, MLC, Parliamentary Secretary for Justice, representing the Hon. Stuart Ayers, MP, Minister for Western Sydney, Minister for WestConnex, and Minister for Sport;
 - (iii) Councillor Stephen Bali, MP, Mayor of Blacktown, and member for Blacktown;
 - (iv) Mr Kevin Connolly, MP, member for Riverstone; and
 - (v) representatives of numerous Filipino-Australian community organisations.
- (2) That this House:
- (a) congratulates all those who assisted in organising and participating in the fundraising concert held on Sunday 4 November 2018 at Blacktown Workers Club to assist relief efforts for those who suffered in the Philippines Typhoon Haiyan disaster in 2013; and
 - (b) commends the Filipino-Australian and wider Australian community for its generosity in providing relief assistance to the Philippines Typhoon Haiyan Disaster Fund since 2013.

Motion agreed to.

POLISH INDEPENDENCE THANKSGIVING MASS

The Hon. DAVID CLARKE (11:13): I move:

- (1) That this House notes that:
- (a) on Saturday 10 November 2018 at St Mary's Cathedral, Sydney, the Consul-General of the Republic of Poland in Sydney together with the Polish Chaplaincy in Australia and Federation of Polish Associations in New South Wales hosted a Thanksgiving mass on the occasion of the centenary of the regaining of independence by Poland in 1918;
 - (b) the Thanksgiving mass was celebrated by His Grace Bishop Darius Kaluza, MSF, Diocese of Goroka, Papua New Guinea;
 - (c) those who attended as guests included:
 - (i) Ms Irena Juszczak, Acting Consul-General of Poland in Sydney, and other members of the consulate's staff;
 - (ii) Reverend Father Tadeusz Przybylak, SChr, Coordinator of Polish Chaplaincy in Australia and New Zealand, and Polish clergy working in New South Wales;
 - (iii) Ms Ivica Glasnovic, Consul-General of Croatia in Sydney;
 - (iv) Mr Klaus Steitz, Deputy Consul-General of Germany in Sydney;
 - (v) the Hon. David Clarke, MLC, Parliamentary Secretary for Justice;
 - (vi) Mrs Malgorzata Kwiatkowska, President, Polish Community Council of Australia;
 - (vii) Mr Adam Gajkowski, President, Federation of Polish Associations in New South Wales and Mrs Gajkowski;
 - (viii) Mr Zak Stanislaw, President of Polish Ex-Servicemen;
 - (ix) Ms Mary Lewicka, Acting Deputy Director New South Wales Department of Foreign Affairs and Trade;
 - (x) school students representing the Polish schools in Sydney; and
 - (xi) representatives of the Polish Scouts and numerous other Polish community organisations.
 - (d) those who assisted in the Thanksgiving mass included:
 - (i) Polish priests in New South Wales;
 - (ii) St Mary's Cathedral Assistant Director of Music and organist, Simon Niminski;
 - (iii) folk dance groups Kujawy, Lajkonik, Podhale, and Syrena;
 - (iv) the Choir Polonia; and
 - (v) students from the Polish Saturday School.
 - (e) banners were held for the Association of Our Polonia, Scout Troop Krakow—Polesie, Polish Combatants Association, Polish Home Army, and Polish Association Cabramatta.
- (2) That this House:
- (a) commends the Consulate-General of Poland in Sydney, members of the Polish Chaplaincy, the Federation of Polish Associations in New South Wales, together with all those who volunteered their services to assist in the Thanksgiving mass celebrating the centenary of the regaining of independence by Poland, which was held at St Mary's Cathedral, Sydney, on Saturday 10 November 2018; and
 - (b) congratulates the Polish-Australian community on the occasion of the centenary of the regaining of independence by Poland.

Motion agreed to.**GRAND DIWALI PARTY**

The Hon. DAVID CLARKE (11:13): I move:

- (1) That this House notes that:
 - (a) on Saturday 20 October 2018 the India Club Inc hosted a Grand Diwali Party at the Cherrybrook Community and Cultural Centre, attended by approximately 300 members and friends of the Indian-Australian community;
 - (b) those who attended as guests included:
 - (i) the Hon. Matt Kean, MP, Minister for Innovation and Better Regulation;
 - (ii) Mr Julian Leeser, MP, Federal member for Berowra, and his wife, Mrs Joanna Davidson;
 - (iii) Councillor Michelle Byrne, Mayor of Hills Shire Council;
 - (iv) Mr Damien Tudehope, MP, member for Epping, and Mrs Diane Tudehope;
 - (v) Mr Kevin Conolly, MP, member for Riverstone; and
 - (vi) representatives of numerous Indian-Australian community organisations.
 - (c) the India Club Inc, under the leadership of its President, Mrs Shubha Kumar, and Chairman, Dr Aksheya Kumar, has for some years been active on the issue of the rights of the elderly and is campaigning against domestic violence.
- (2) That this House congratulates the India Club Inc on the holding of its Grand Diwali Party 2018 and commends the club for its ongoing campaign for the rights of the elderly and against domestic violence.

Motion agreed to.**TRANSFORMERS INTERNATIONAL AID PROGRAM**

The Hon. SCOT MacDONALD (11:13): I move:

- (1) That this House notes that:
 - (a) former Newcastle and Penrith National Rugby League [NRL] player Mr Clint Newton and Australian Gender Equality Council's Laura Steele have recently co-founded the Transformers program, which involves high-profile rugby league players providing physical aid in overseas countries in need of assistance;
 - (b) recently six high-profile rugby league players—Jayson Bukuya, Cronulla Sharks; David Nofoluma, Wests Tigers; Victor Radley, Sydney Roosters; Corban McGregor, Sydney Roosters; Junior Tatola, South Sydney Rabbitohs; and Sam Bremner, St George Illawarra—travelled to Narere in Suva, Fiji, to volunteer in local kindergartens, classrooms and lead sports clinics as well as contribute physically to construction and renovation initiatives that will help address the needs of the community;
 - (c) the Transformers program is the first of its kind, uniquely blending sport with personal transformation, community building initiatives and research through a specially designed program, and the week-long camp will not only focus on making a valuable contribution to the community but also empower participants to learn more about themselves and the positive impact they can have on those around them;
 - (d) by partnering with International Volunteer Headquarters, the organisation facilitates human aid volunteering concurrently with a structured program with an emphasis on a growth mindset and challenging individual belief systems, with the key difference of this philanthropic endeavour being that it will inspire players and all participants to be the catalyst for ongoing change and contribution in the communities of which they are a part; and
 - (e) the program has been greatly assisted by Steve Johnson, program facilitator, Wellbeing Science Institute; Johnny Tuivasa-Sheck, content creator; and Job Toa, content creator.
- (2) That this House acknowledges the formation by Mr Clint Newton and Laura Steele of the foundation of the Transformers program and the work of the NRL players involved in performing aid work on their recent visit to Fiji.

Motion agreed to.**INDIGENOUS COMMUNITY LEADER WENDY DALTON**

The Hon. SCOT MacDONALD (11:14): I move:

- (1) That this House notes that:
 - (a) Indigenous community leader Mrs Wendy Dalton won the Northern Rivers Region's Adult NSW Volunteer of the Year award and Overall Region Volunteer of the Year award and is in the grand final of the NSW Volunteer of the Year awards to be held on 30 November 2018 at the Norths Club;
 - (b) Mrs Dalton has dedicated many years of service to the New South Wales North Coast and Far West of New South Wales and continues to provide support for young Aboriginal people, elders and Aboriginal women around the Grafton and Brewarrina communities;

- (c) due to Mrs Dalton's tireless work, many local young Indigenous people and students have been able to pursue their interest in sport, dance and art;
 - (d) Mrs Dalton assists with arranging travel for Aboriginal sportspeople, helps train and mentor young dancers to help them perform in Sydney and in theatres throughout regional New South Wales, and leads art classes with senior citizens and youngers members of the community to ensure inclusion and family bonds; and
 - (e) a breast cancer survivor, Mrs Dalton has courageously battled through her cancer but also been inspirational and supporting of many other women who have been diagnosed with cancer.
- (2) That this House acknowledges and commends the outstanding community service of Mrs Wendy Dalton and congratulates her on being awarded Northern Rivers Region's Adult NSW Volunteer of the Year award, and Overall Region Volunteer of the Year award.

Motion agreed to.

INDIGENOUS COMMUNITY LEADER DAVID LIDDIARD, OAM

The Hon. SCOT MacDONALD (11:14): I move:

- (1) That this House notes that:
- (a) on Friday 19 November 2018 at Barangaroo a commemorative celebration was held to mark the retirement of Indigenous leader David Liddiard, OAM, as President of the National Aboriginal Sporting Chance Authority and as a Director of RU OK?;
 - (b) for three decades Mr Liddiard has been committed to closing the education, health and wellbeing and employment gaps between Indigenous and non-Indigenous Australians;
 - (c) Mr Liddiard is a Ngarabal man from northern New South Wales and was a successful sportsman, playing in the National Rugby League, Parramatta, Penrith and Manly; was recipient of the Dally M Rookie of the Year in 1983; played in two grand finals for the Parramatta Eels in 1983 and 1984; and won the Premiership in 1983;
 - (d) on returning to Australia from a stint with Hull Football Club, England, Mr Liddiard founded the National Aboriginal Sporting Chance Academy [NASCA], which provides opportunities for Aboriginal youth in sport and education, having seen first-hand what opportunities can be opened through sport;
 - (e) the NASCA has had impressive success with thousands of Indigenous youth being involved and this success has broadened into other areas, such as education, health and employment with one of NASCA's programs, ARMTour [Athletes as Role Models on Tour], taking high profile athletes out to remote communities and interacting with Indigenous communities, providing Indigenous youth with positive role models and encouraging completion of schooling and transitioning to a career;
 - (f) in addition to his role as founder and chief executive officer of NASCA, Mr Liddiard has spearheaded initiatives, which provide practical support to businesses large and small with workplace participation strategies for Indigenous talent and has worked with programs at national, State and Territory levels, which focus on economic leadership development and has presented at numerous forums, conferences and events in this arena;
 - (g) in 2004 Mr Liddiard was instrumental in the formation of the Indigenous owned business Message Stick, an Indigenous telecommunications company, and appointed as its first chairperson;
 - (h) from 2008 Mr Liddiard led the Indigenous Corporate Partnerships strategy for Dare to Lead, working with Principals Australia to assist in building strong links between schools and business to further strengthen education, transition and employment opportunities for Indigenous youth;
 - (i) in 2009 Mr Liddiard was awarded a Churchill Fellowship in the area of Minority Supplier Diversity and on his return he played a key role in the establishment of the Australian Indigenous Minority Supplier Council, now named Supply Nation, and in 2010 he established CorporateConnect.AB, through which he engaged in Indigenous community economic development and employment initiatives in partnership with government and private sector support; and
 - (j) Mr Liddiard has been recognised for his tireless work and commitment to Indigenous Australia and awarded the Gold Harold award in 2010 for services to Aboriginal Health and Education, the NSW Outstanding Community Service award in 2013, and the Medal of the Order of Australia for service to Indigenous youth, sporting and employment programs in the 2014 Australia Day Honours List.
- (2) That this House acknowledges and commends Mr David Liddiard, OAM, for his outstanding service to Indigenous youth, sporting and employment programs and wishes him well in retirement.

Motion agreed to.

NSW VOLUNTEER OF THE YEAR BRETT MCGRATH

The Hon. SCOT MacDONALD (11:14): I move:

- (1) That this House notes that:
- (a) Mr Brett McGrath was named Macarthur Region's 2018 NSW Volunteer of the Year and on 30 November 2018 will be in the grand finals for the NSW Volunteer of the Year award;

- (b) Mr McGrath received the award for his outstanding work as President of the Macarthur Law Society and Vice-President of the Greater Narellan Business Chamber;
 - (c) Mr McGrath has been a strong and long-time advocate for increased community access to the justice system and more court facilities in Macarthur;
 - (d) Mr McGrath has advocated for Legal Aid, community legal centres and the restoration and/or upgrade of local courthouses;
 - (e) Mr McGrath was also involved in securing Campbelltown Local Court as a location in the rollout of therapy dogs for court users;
 - (f) in 2017 the Law Society of New South Wales formed two parallel committees to scrutinise draft legislation for the legalisation of same-sex marriage, and Mr McGrath served as a committee member and helped the Law Society present advice and commentary on the legislation to Federal Parliament; and
 - (g) Mr McGrath was elected as a Law Society of New South Wales Councillor.
- (2) That this House:
- (a) acknowledges and commends the outstanding work in the community of Mr Brett McGrath;
 - (b) congratulates him on being awarded the Macarthur Region's 2018 Volunteer of the Year award; and
 - (c) wishes him well in the grand final of the NSW Volunteer of the Year awards.

Motion agreed to.

POLISH INDEPENDENCE RECEPTION AND AWARDS CEREMONY

The Hon. DAVID CLARKE (11:15): I move:

- (1) That this House notes that:
- (a) on Monday 12 November 2018 a reception was held at the Polish Consulate in Sydney to celebrate the 100th anniversary of Poland regaining its independence in 1918;
 - (b) the reception was also the occasion to award Poland's Cross of Freedom and Solidarity to five Polish-Australian recipients, namely:
 - (i) Mr Adam Marian Gajkowski;
 - (ii) Mr Bogdan Lisowski;
 - (iii) Mr Jan Andrzej Michalak;
 - (iv) Mr Wieslaw Pastuszka; and
 - (v) posthumously to the late Mrs Mirosława Anna Zgirska with the cross being received on her behalf by her daughter Ms Iga Bajer;
 - (c) the Cross of Freedom and Solidarity, which was awarded by the decision of the President of the Republic of Poland, His Excellency Mr Andrzej Duda, and at the request of the President of Poland's Institute of National Remembrance, was presented to the awardees by the Deputy President of the Institute of National Remembrance, Mr Jan Baster, on behalf of the President of Poland, and President of the Institute of National Remembrance;
 - (d) the cross was awarded to the five awardees for their activities for the independence and sovereignty of Poland and also for their efforts in support and respect for human rights in the former Communist regime in Poland;
 - (e) established on 5 August 2010, the Cross of Freedom and Solidarity honours members of the democratic opposition in Communist-ruled Poland who between the years of 1956 and 1989 were killed, seriously wounded or injured, arrested, imprisoned or interned for at least 30 days or who lost jobs or were expelled from school or university for at least six months as a result of their activities for the benefit of a free and democratic Poland;
 - (f) those who attended the event held on 12 November 2018 included:
 - (i) Mrs Irena Juszczak, Acting Consul-General for Poland in Sydney;
 - (ii) His Grace Dariusz Kaluza, MSF, Diocese of Goroka, Papua New Guinea, together with representatives of the Polish clergy in New South Wales;
 - (iii) Mr Jan Baster, Deputy President of the Institute of National Remembrance;
 - (iv) the Hon. David Clarke, MLC, Parliamentary Secretary for Justice, and Mrs Marisa Clarke;
 - (v) Mrs Małgorzata Kwiatkowska, President of the Polish Community Council of Australia;
 - (vi) Mr Adam Gajkowski, President of the Federation of Polish Associations in New South Wales, and Mrs Grazyna Gajkowski;
 - (vii) Mr Stanislaw Zak, President of Polish Ex-Servicemen;
 - (viii) Mr Adam Biziuk, President, Polonia Sports Club;

- (ix) Dr Rafał Leskiewicz and Mrs Agnieszka Jedrzak, assisting staff from the Institute of National Remembrance in Warsaw; and
- (x) representatives of Polish schools, Scout groups and numerous Polish Australian community organisations.
- (g) following the formal proceedings a short concert featuring the works of the Polish composer Frederic Francois Chopin was presented by prominent Polish pianist Mr Krzysztof Malek; and
- (h) the reception was catered for by Mr Bohdan Szymczak, co-owner of Mazzaro Restaurant in Sydney.
- (2) That this House congratulates:
 - (a) the people of Poland and the Polish-Australian community on the occasion of the 100th anniversary of Poland regaining its independence on 11 November 1918; and
 - (b) those who were awarded Poland's Cross of Freedom and Solidarity at a ceremony held at the Polish Consulate in Sydney on Monday 12 November 2018.

Motion agreed to.

Documents

TABLING OF PAPERS

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

- (1) Annual Reports (Departments) Act 1985—Reports for year ended 30 June 2018:
 - Crown Solicitor's Office
 - Department of Industry, incorporating:
 - Independent Liquor and Gaming Authority
 - Department of Justice
 - Department of Planning and Environment
 - Judicial Commission
 - Office of the Director of Public Prosecutions
 - Office of Sport
- (2) Annual Reports (Statutory Bodies) Act 1984—Reports for year ended 30 June 2018:
 - Art Gallery of New South Wales Trust
 - Australian Museum Trust
 - Cobar Water Board
 - Dams Safety Committee
 - Library Council of New South Wales (trading as State Library of NSW)
 - Local Land Services
 - New South Wales Institute of Sport
 - New South Wales Rural Assistance Authority
 - NSW Education Standards Authority
 - NSW Food Authority
 - NSW Skills Board
 - NSW Trustee and Guardian
 - Rice Marketing Board
 - State Sporting Venues Authority
 - Sydney Living Museums
 - Sydney Olympic Park Authority
 - Sydney Opera House Trust
 - Trustees of the Anzac Memorial Building
 - Trustees of the Museum of Applied Arts and Sciences
 - Venues NSW
 - Veterinary Practitioners Board

- (3) Annual Reports (Statutory Bodies) Act 1984 and Growth Centres (Development Corporations) Act 1974—Reports for year ended 30 June 2018:
 Central Coast Regional Development Corporation
 Hunter Development Corporation
 Ministerial Development Corporation
- (4) Anti-Discrimination Act 1977—Report of Anti-Discrimination Board of New South Wales for year ended 30 June 2018.
- (5) Civil and Administrative Tribunal Act 2013—Report of NSW Civil and Administrative Tribunal for year ended 30 June 2018.0
- (6) Coal Innovation Administration Act 2008—Report of Coal Innovation NSW Fund for year ended 30 June 2018.
- (7) Crimes (Administration of Sentences) Act 1999—Reports for year ended 30 June 2018:
 Serious Offenders Review Council
 State Parole Authority
- (8) Electricity Supply Act 1995 and Gas Supply Act 1996—Report of Independent Pricing and Regulatory Tribunal entitled "Annual Compliance Report: Energy network operator compliance during 2017-2018: Annual Report – Energy Networks Compliance", dated October 2018.
- (9) Environmental Planning and Assessment Act 1979—Report of Independent Planning Commission for year ended 30 June 2018.
- (10) Jobs for NSW Act 2015—Report of Jobs for NSW for year ended 30 June 2018.
- (11) Law Reform Commission Act 1967—Report of Law Reform Commission for year ended 30 June 2018.
- (12) Legal Aid Commission Act 1979—Report of Legal Aid New South Wales for year ended 30 June 2018.
- (13) Legal Profession Uniform Law Application Act 2014—Reports for year ended 30 June 2018:
 Legal Profession Admission Board
 Legal Services Commission
 Legal Services Council, incorporating Commissioner for Uniform Legal Services Regulation
 New South Wales Bar Association
- (14) Parliamentary Remuneration Act 1989—Parliamentary Remuneration Tribunal: Annual Report and Determination, dated 16 May 2018.
- (15) State Owned Corporations Act 1989—Report of Water NSW for year ended 30 June 2018.
- (16) Statutory and Other Offices Remuneration Act 1975—Reports and determinations under section 13:
 Court and Related Officers Group: Annual Determination, dated 7 August 2018
 Governor of New South Wales: Annual Determination, dated 4 October 2018
 Judges and Magistrates Group: Annual Determination, dated 7 August 2018
 Public Office Holders Group: Annual Determination, dated 7 August 2018
- (17) Water Industry Competition Act 2006—Report of Independent Pricing and Regulatory Tribunal entitled "Licence compliance under the Water Industry Competition Act 2006 (NSW): Report to Minister: Annual Compliance Report - Water", dated October 2018.

I move:

That the reports be printed.

Motion agreed to.

Committees

SELECTION OF BILLS COMMITTEE

Report: Evaluation of the Selection of Bills Committee Trial

The Hon. NATASHA MACLAREN-JONES: I table report No. 17 of the Selection of Bills Committee entitled "Evaluation of the Selection of Bills Committee trial", dated November 2018. I move:

That the report be printed.

Motion agreed to.

The Hon. NATASHA MACLAREN-JONES (11:16): I move:

That the House take note of the report.

Debate adjourned.

PRIVILEGES COMMITTEE

Report: Review of the Members' Code of Conduct 2018

The Hon. MATTHEW MASON-COX: I table report No. 76 of the Privileges Committee entitled "Review of the members' Code of Conduct 2018", dated November 2018, together with submissions and correspondence relating to the inquiry. I move:

That the report be printed.

Motion agreed to.

The Hon. MATTHEW MASON-COX (11:17): I move:

That the House take note of the report.

As members would be aware, the Privileges Committee is required to review the code of conduct for members every four years under section 72 (5) of the Independent Commission Against Corruption Act 1988, and the resolution of a Legislative Council appointing the committee. In the current review, the committee was assisted by submissions from the Audit Office, the Independent Commission Against Corruption, the Parliamentary Ethics Adviser, the Department of Premier and Cabinet, and the Clerk of the Parliaments. The committee noted that in June 2018 the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics recommended a substantially revised code of conduct for adoption by the Legislative Assembly.

Taking into account the desirability of having a consistent code for both Houses, this committee has recommended the adoption of the revised code developed by the Legislative Assembly committee with some slight modifications. The committee also recommended amendments to the pecuniary interests disclosure regime to provide for annual returns with the exception of reporting any changes in line with the submission from the Audit Office. The committee hopes that the reforms will lead to a consistent approach in both Houses relating to the code of conduct and members' pecuniary interests disclosures.

I also note that the committee considered in detail disclosures by related third parties. I note in particular a number of representations of the committee and refer members to them at pages 34 and 35 of the report. The Privileges Committee, as constituted in this Parliament, strongly supported the expansion of the regulation to include the disclosure of third-party interests. In the course of the inquiry the committee explored the implication of such disclosures on a member and their family. There are complexities of which members are very well aware. It is clear that such a move will put partners of members into a disclosure regime that previously did not require their active participation. The current committee is concerned that such a move would provide an appearance of increasing integrity while ignoring the reality that disclosure requirements can easily be evaded by a member who wishes to conceal his or her affairs by vesting interest in an associate or relative outside his or her immediate family.

Requiring the disclosure of third-party interests is likely to have no impact on the small minority of members who may be intent on avoiding scrutiny and created an unwarranted intrusion into the lives of the majority of members whose interests do not impinge on the performance of public duties. The committee also noted that members' spouses and partners have not sought election to Parliament and are not responsible to the electorate and have the right to privacy in the conduct of their own affairs. Nevertheless, despite these significant misgivings, the committee continues to support the introduction of reforms to provide for the disclosure of certain third-party interests in view of the recommendations made by the committee in 2014 and submissions to the current review. I note in particular the views of independent commissions of corruption in this regard and the weight that was given to that by the committee.

I also note the recommendation that the Constitution (Disclosure by Members) Regulation 1983 be amended to provide for the disclosure of interests of related parties in the terms proposed by the Privileges Committee in recommendations Nos 2 and 3 of its prior report, tabled in June 2014. If this recommendation is not adopted by the Government, the committee noted that it is open to the suggestion made by the Legislative Assembly committee in 2014 for the disclosure of family interests to the Parliamentary Ethics Adviser. Currently the Parliamentary Ethics Adviser can advise members on conflicts of interests involving family members. An amendment to the resolution establishing the Parliamentary Ethics Adviser could be made requiring members to report family interests' confidentiality to the ethics advisor and empowering the ethics advisor to publish any advice prepared regarding conflicts of interest and family members.

I note in particular that the committee in the Legislative Assembly is considering this matter and will table a report tomorrow in that regard. I certainly believe the committees of both Houses need to work together to sort through these issues because consistency is important. I believe this is a matter for the next Parliament. With

those few words, I thank all members of the committee for their work and the secretariat for the sterling job it always does in compiling reports on behalf of members and this House.

Debate adjourned.

PUBLIC WORKS COMMITTEE

Reference

The Hon. TAYLOR MARTIN: On behalf of the Hon. Robert Brown: In accordance with paragraph 8 of the resolution of the House establishing the Public Works Committee, I inform the House that on 20 November 2018 the Public Works Committee resolved to adopt the following reference:

- (1) That the Public Works Committee inquire into and report on the impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales, including:
 - (a) the extent to which limitations on container port operations currently in place following the sale of the Port of Newcastle contribute to increased pressure for transport and freight infrastructure in New South Wales, specifically:
 - (i) the WestConnex Gateway project;
 - (ii) the Port Botany rail line duplication;
 - (iii) intermodal terminals and rail road connections in south-west and Western Sydney; and
 - (iv) other additional public road infrastructure requirements due to the additional road freight movements in Sydney under the existing ports strategy.
 - (b) the nature and status of the port commitment deeds, the extent to which they contain limitations on container port movements, and the terms and binding nature of any such commitments;
 - (c) the extent to which container port limitations contribute to additional costs for New South Wales industries who are importing or exporting from New South Wales, especially in the Port of Newcastle catchment; and
 - (d) any other related matters.
- (2) That the committee report by 28 February 2019.

Visitors

VISITORS

The PRESIDENT: I welcome into the President's Gallery Mr Nicholas "Nick" Blunt, the youngest son of the Clerk of the Parliaments, who is on work experience this week in the Procedure Office. He clearly takes after his mother.

Petitions

PETITIONS RECEIVED

Shark Management Strategy

Petition calling on the Government to support non-lethal, science-based and community-driven approaches to reducing the risk of shark bites in New South Wales, including programs such as Shark Watch, tagging and monitoring programs, and personal deterrent devices, and to reject the use of shark nets that do not guarantee public safety, received from **Mr Justin Field**. [*During the giving of notices of motion*]

Notices

PRESENTATION

The PRESIDENT: Order! I call the Hon. Trevor Khan to order for the first time. I remind the Hon. Shaoquett Moselmane that he is already on one call to order.

Business of the House

POSTPONEMENT OF BUSINESS

The Hon. DON HARWIN: I move:

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

Motion agreed to.

*Bills***SNOWY HYDRO CORPORATISATION AMENDMENT (SNOWY 2.0) BILL 2018****Returned**

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

JUSTICE LEGISLATION AMENDMENT BILL (NO 3) 2018**CRIMES LEGISLATION AMENDMENT (VICTIMS) BILL 2018****GOVERNMENT INFORMATION (PUBLIC ACCESS) AMENDMENT BILL 2018****Second Reading Debate****Debate resumed from 20 November 2018.**

The Hon. SCOTT FARLOW (11:40): On behalf of the Hon. Don Harwin: In reply: I thank members for their contribution to the debate—namely, the Hon. Adam Searle, Reverend the Hon. Fred Nile and Mr David Shoebridge. Before concluding, I wish to address some particular matters raised in the debate by these members. I will now deal with the concerns raised by members about increasing the age of judicial retirement. In his speech last night, the Hon. Adam Searle said:

However, the prospective change to the pension age from 60 to 65 will create two classes of judges serving side by side in the same courts. As a matter of principle that is highly problematic and I understand there is great unease in the profession and among the judiciary about this aspect of the legislation.

I understand that in its original iteration it was proposed that these provisions would operate retrospectively—that is, to any judicial officer currently serving, who at the time of appointment would have been able to retire at age 60 after 10 years service.

The Government is unaware of any unease about applying the pension age increase only to new judges. Further, the Government never intended to apply the pension age increase to existing judges. In his speech last night, the Hon. Adam Searle said:

The Government needs to come clean with the Parliament and the community about who put this on the table, who pursued it, and why is it being done, because the stated reasons simply do not add up.

The present impetus for reform came from an initial approach by the New South Wales Bar Association to the Government. The New South Wales Bar Association claims that it initiated the reform. On 20 September 2018 the New South Wales Bar Association issued a media release, which commenced as follows:

The New South Wales Bar Association has welcomed the NSW Government's commitment today to raise the ... statutory judicial retirement age from 72 to 75 ... The Association initiated this reform because it formed the view that there were compelling reasons in favour of increasing the retirement age for judicial officers serving in NSW'.

On 18 August 2017 the then President of the Bar Association wrote to the Attorney General, stating:

The Bar Council considers that an increase in the judicial retirement age in NSW to 75 years would be appropriate. Such an increase would ensure that the skills of experienced judicial officers can be available for longer and can be justified in light of the current trends in the average life expectancy among the population and the general state of health among older Australians.

The letter continued in the next separate paragraph:

The Bar Council also supports a related amendment which would lift the age that judges currently qualify for a judicial pension after 10 years' service from 60 to 65. Such a proposal would only apply prospectively to judges appointed with the new retirement age of 75 years.

While the second of these two paragraphs explicitly stated that the change to the minimum judicial pension age should apply only to new judges, the letter was silent on whether the change to the maximum retirement age should apply to existing judges. Given this contrast in the same letter, and whatever the Bar Association's intended position was in fact, a reasonable interpretation of the letter at the time was that the Bar Association supported changing the maximum retiring age for all judges, including existing judges. It was on that basis that the Government started consultation with other stakeholders, including the judiciary and the Law Society of New South Wales.

The Government understands that at least some other stakeholders interpreted the Bar Association proposal in this way, although the Government accepts that at least some time ago the Bar Association has clarified its position. The Government raises this history now not to criticise anyone but in response to the Hon. Adam Searle's demand that the Government "come clean" on how this proposal started. The Government respects the views of the Bar Association but it is not persuaded by them in this instance and notes that the Law Society of New South Wales, with at least 10 times as many members, supports applying the new retiring age to existing

judges. In response to the concerns regarding the independence of the judiciary, I refer to the Attorney General's comments in the other place:

... let me put this on the record: the Chief Justice of New South Wales, the President of the Court of Appeal, the Chief Judge at Common Law, the Chief Judge in Equity, the Chief Judge of the District Court and the Chief Magistrate of the Local Court support the current proposal that the increase in the maximum retirement age to 75 years of age be available to all existing and future judges and magistrates.

One would expect that those heads of jurisdiction would be in an impeccable position to determine whether applying these changes to maximum retirement ages not only to future appointments but also to existing judicial officers would in any way undermine the rule of law or be a threat to the independence of the judiciary. Those heads of jurisdiction, including what I will call subsidiary heads of jurisdiction—the Chief Judge at Common Law and Chief Judge in Equity and the President of the Court of Appeal—all support the current proposal applying to existing judicial officers. The contention that the changes are retrospective and create a dangerous precedent is erroneous.

I also note the Law Society's support for the proposal. I now refer to the concerns expressed by the Hon. Adam Searle and Mr David Shoebridge about the impact of extending the retirement age of current judges on the diversity of the judiciary. As to the Hon. Adam Searle's assertion that the proposal will amount to a "preservation order on older, white men", it is important to get the facts straight. Currently 21 per cent of the Supreme Court judges are women, 34 per cent of District Court judges are women and 45 per cent of Local Court magistrates are women. Those statistics are to be contrasted to the proportion of senior counsel who are women: just over 10 per cent. Female barristers make up approximately 23 per cent of the profession, regardless of seniority.

We still have a long way to go to improve diversity, but it is clear that female representation in the judiciary is no worse than at the bar. This is not to criticise the work of the Bar Council for greater diversity but to point out that increasing the retirement age for the judiciary, with their consent, is unlikely to superficially impact the effort for greater gender diversity on the bench. Further, to deny this change to current judges is to deny approximately 100 female judicial officers the chance to continue contributing to the justice system. The other problematic aspect about the refusal to extend the proposal to current judges is the doubtful claim that three years is the difference between the current bench and an ideally diverse bench. No evidence has been proffered in support of that proposition.

I am advised by the Department of Justice that only 40 per cent of existing judicial officers are anticipated to consent to the increased retirement age. So in reality the proposal by the Government is that less than half of the existing judiciary, which broadly reflects the current constitution of the legal profession, will continue their appointment as judicial officers for three more years. I am advised by the Department of Justice that an estimated \$50 million in savings in Crown liability from the judicial pension scheme will be saved if the proposed increase in judicial retirement age is applied to existing judges, with their consent.

I will now turn to debate about the Government Information (Public Access) Amendment Bill 2018. The Opposition alleged that the Information and Privacy Commission [IPC] suffers from chronic delays processing external reviews. The IPC service standards require 80 per cent of complaints and reviews to be finalised within 90 days of lodgement. I am advised that for the financial year ended 30 June 2018 the IPC has finalised 86 per cent of information access reviews within service target time frames. This compares to 43 per cent in 2015-16. I am also advised that over the same period 70 per cent of privacy reviews were finalised within the service target time frames. This compares with 68 per cent in 2016-17. I wish to acknowledge the hard work of the Information Commissioner and the Privacy Commissioner and their staff in achieving those improved outcomes.

The Opposition referenced the NSW Civil and Administrative Tribunal decision in *Salmon v Corrective Services NSW*, citing it as authority for the proposition that there are no sanctions for systemic issues in how agencies approach the Government Information (Public Access) Act. I would begin by noting that if there are deficiencies in sanctions under the Government Information (Public Access) Act, the Opposition is in no position to point fingers: it introduced the Act in 2009. The IPC has been working closely with agencies to instil a culture of open government.

For example, the IPC strategic and business plans commit to enhancing the capacity of agencies to deliver open government and elevate agency compliance. Throughout 2017-18 this has been achieved by undertaking a follow-up agency information guide audit to measure improvements in compliance with Government Information (Public Access) Act requirements since May 2016. The review found significant improvements in compliance across all agencies. These results demonstrate a commitment to compliance by agencies. The development of agency dashboards to ensure citizens can review the compliance and performance of individual agencies against established Government Information (Public Access) Act measures is also an important accountability measure.

The Greens expressed concern that the amendment at schedule 1 [44] might be used to exclude information that should properly be the subject of public scrutiny. The amendment arises from concerns that other jurisdictions are not sharing the law enforcement and public safety documents with New South Wales due to

concerns that such documents are not adequately protected from public access. The documents captured by the Government's amendment do not include all documents involved in law enforcement and public safety, only those created by a small group of entities that are responsible for collecting criminal intelligence.

The Government understands The Greens' contention. However, the sort of information excluded from public access by this amendment is not information that is suitable for public scrutiny. Rather the information excluded is information for which there is a strong public interest in confidentiality. Relevant information includes inter-jurisdictional intelligence about, for example, serious organised crime. It is important that this type of information be kept confidential. If it were not, criminal organisations could learn about and potentially undermine law enforcement activities. I commend the bills to the House.

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

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): I will deal with the cognate bills—the Justice Legislation Amendment Bill (No 3) 2018, the Crimes Legislation Amendment (Victims) Bill 2018 and the Government Information (Public Access) Amendment Bill 2018—separately. There being no objection, the Committee will deal with the Justice Legislation Amendment Bill (No 3) as a whole. I have three sets of amendments to the bill: Opposition amendments on sheet C2018-155A, The Greens amendments on sheet C2018-164A and The Greens amendments on sheet C2018-168E.

Mr DAVID SHOEBRIDGE (11:53): I indicate for the benefit of the Committee that I will not be proceeding with The Greens amendments Nos 1 to 3 on sheet C2018-168E, nor The Greens amendments Nos 1 and 2 on sheet C2018-164A.

By leave: I move The Greens amendments Nos 4 to 6 on sheet C2018-168E in globo:

No. 4 Time limit for summary proceedings

Pages 17 and 18, Schedule 1.15 [1] and [2], line 33 on page 17 to line 11 on page 18. Omit all words on those lines.

No. 5 Time limit for summary proceedings

Page 23, Schedule 1.15 [12], lines 8-12. Omit all words on those lines.

No. 6 Time limit for summary proceedings

Page 23, Schedule 1.15, lines 21-27. Omit all words on those lines.

These amendments would remove the provisions in the Justice Legislation Amendment Bill (No 3) 2018 that allow, effectively, a backup set of charges where criminal proceedings have been instituted and dealt with on a summary basis. As I understand it, that is where a primary charge has been brought, a conviction has been recorded and the matter is then appealed, perhaps to the District Court, and the prosecution is set aside. The Government's proposed amendment would allow the prosecution to bring a backup charge within a period of an additional six or 12 months of the alleged offence occurring. Ordinarily with summary offences there is a six-month time limit. The proposed amendment would extend that time limit to 12 months. I may be wrong on the time frame, but the amendment allows an additional period, six or 12 months, to run a backup charge. Existing provisions are in place for this to occur on indictable offences. The question is whether it is appropriate to extend that regime to summary offences in the Local Court.

I understand from the rationale of the prosecution that if the prosecution fails on the primary charge, it may want to return for a second go on a backup charge that previously has not been presented. I also understand from a prosecutor's point of view that that may be convenient. Previously I have suggested a modest reform to our double jeopardy laws in New South Wales that contains all the checks and balances in order for a matter to go before the Court of Criminal Appeal. It is not appropriate to have a second go at a defendant in Local Court proceedings once a primary charge is dealt with. This amendment to the bill—to allow the prosecution to have a second go with a backup charge in circumstances where defendants in the Local Court may have had 12 or more months of criminal process and the initial prosecution has been set aside or defeated—contains elements of a breach of the rule of double jeopardy. I accept it is an imperfect analogy, but The Greens do not believe this amendment is an appropriate course of action.

If changes are to be made, they should be done by way of a standalone bill, which would allow a great deal more scrutiny than is happening with this compendium amendment bill. In addition to our concern in principle that a person may be prosecuted twice over the same set of factual circumstances, the Government has not identified the impact on resources of the Local Court or on the already stressed conditions of the magistracy. For those combined reasons, The Greens commend amendments Nos 4 to 6 to the Committee.

The Hon. SCOTT FARLOW (11:57): The Government opposes The Greens amendments to the Justice Legislation Amendment Bill (No 3) 2018. The provision in the bill addresses an existing practical issue with the time limit for summary proceedings which prevents backup summary charges being re-laid after a conviction for an indictable offence arising from the same factual circumstances is overturned. The issue arises when an accused person is charged with an indictable offence and a backup summary offence, the accused person is convicted of the indictable offence, and following that conviction the backup summary offence is withdrawn by the prosecution and dismissed.

The offender then appeals against the conviction from the Local Court to the District Court and a conviction in relation to the indictable offence is set aside by the District Court. Currently, in those circumstances, the prosecution cannot re-lay the summary charge that was laid in the original Local Court proceedings if the six-month time frame has passed. This means that the person could avoid prosecution because he or she was originally convicted of the more serious offence. The provision would make the position for summary offences consistent with the existing procedure where the backup offence is an indictable offence and there is no time limit bar to the backup being re-laid.

It will not enable a person to be charged with a new or different offence outside the six-month time frame, nor does it displace the rule against double jeopardy or the general power of the court to stay proceedings on the basis that they are an abuse of process. The provision simply puts the person back in their original position in relation to the backup summary offence in the original Local Court proceedings. For that reason, there is no risk that the extended time frame will lead to unfairness by surprising an accused person with fresh charges after the offence was alleged to have occurred. For these reasons, the Government does not support the amendments moved by The Greens.

The Hon. ADAM SEARLE (11:59): For very similar reasons to those outlined by the Parliamentary Secretary, the Opposition will not be supporting The Greens amendments Nos 4 to 6.

Mr DAVID SHOEBRIDGE (11:59): I appreciate the contribution of the Parliamentary Secretary. The concern of The Greens is not about surprise; it is about being prosecuted twice over the same factual circumstances. The Government has said that it does not offend the rule against double jeopardy, and maybe on a very refined view of double jeopardy that is true, but it gets very close. I say again: If we are going to make these kinds of changes, and seek to justify them, the appropriate way is not to do it in the middle of an extraordinarily large compendium bill where the profession and this Chamber has so little chance to scrutinise it. I continue to commend these amendments.

The CHAIR (The Hon. Trevor Khan): Mr David Shoebridge has moved The Greens amendments Nos 4 to 6 on sheet C2018-168E. The question is that the amendments be agreed to.

Amendments negatived.

The CHAIR (The Hon. Trevor Khan): We now move to the Opposition amendments on sheet C2018-155A.

The Hon. ADAM SEARLE (12:00): By leave: I move Opposition amendments Nos 1 to 8 on sheet C2018-155A in globo:

No. 1 Application of new judicial retirement age

Page 33, Schedule 2.2 [1], lines 29–35. Omit all words on those lines. Insert instead:

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides for the increased retirement age to apply only to Judges appointed on or after the day that section 44 was amended.

No. 2 Application of new judicial retirement age

Page 34, Schedule 2.3 [1], lines 5–12. Omit all words on those lines. Insert instead:

Section 44 of the *Judicial Officers Act 1986* was amended on the increased retirement age day by the *Justice Legislation Amendment Act (No 3) 2018* to increase the maximum retirement age for judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides for the increased retirement age to apply only to judges appointed on or after that day.

No. 3 Application of new judicial retirement age

Pages 35 and 36, Schedule 2.4 [3], line 43 on page 35 to line 2 on page 36. Omit all words on those lines. Insert instead:

This section, as amended, has increased the maximum retirement age for judicial officers (including Magistrates) to 75 years. Clause 9 of Schedule 6 provides for the increased retirement age to apply only to judicial officers (including Magistrates) appointed on or after the day this section was amended.

No. 4 Application of new judicial retirement age

Page 36, Schedule 2.4 [4], lines 8–25. Omit all words on those lines. Insert instead:

The amendments made to section 44 by the *Justice Legislation Amendment Act (No 3) 2018* apply only to judicial officers (including Magistrates) appointed on or after the day on which those amendments commenced.

No. 5 **Application of new judicial retirement age**

Page 36, Schedule 2.4, lines 29–33. Omit all words on those lines. Insert instead:

Item [4] provides that the increased retirement age applies only to judicial officers (including Magistrates) appointed on or after the day on which the amendments made by item [2] commenced. Item [1] makes a consequential amendment concerning the status of a note that is being inserted by item [3].

No. 6 **Application of new judicial retirement age**

Page 36, Schedule 2.5 [1], lines 42–48. Omit all words on those lines. Insert instead:

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides for the increased retirement age to apply only to Judges appointed on or after the day that section 44 was amended.

No. 7 **Application of new judicial retirement age**

Page 37, Schedule 2.6 [1], lines 16–22. Omit all words on those lines. Insert instead:

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Magistrates to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides for the increased retirement age to apply only to Magistrates appointed on or after the day that section 44 was amended.

No. 8 **Application of new judicial retirement age**

Page 38, Schedule 2.8 [1], lines 34–41. Omit all words on those lines. Insert instead:

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Judges and associate Judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides for the increased retirement age to apply only to Judges and associate Judges appointed on or after the day that section 44 was amended.

These amendments collectively address the concerns I outlined at reasonable length in my contribution to the second reading debate about the retrospective increase in the maximum retirement age for judicial officers, noting that it applies also to magistrates and other statutory office holders. I take this opportunity to address a couple of the matters addressed by the Parliamentary Secretary in his speech in reply and that were also touched on by the Attorney General in the other place

With respect to the retrospectivity with which we take issue in this bill about maximum judicial retirement ages, the Government has not as yet come clean about who proposed the retrospective effect. The Parliamentary Secretary went into a lot of chapter and verse about correspondence going backwards and forwards, but we are none the wiser as to exactly where the idea came from. The Government will wear the blame for this, and it ought to because the Government is bringing this into the Parliament, but conditions that apply to judicial officers should never be the subject of partisan controversy.

That is exactly what the Government is doing in this matter. The Parliamentary Secretary outlined the list of senior judges who approved this package, but neither he nor the Attorney General in the other place have disclosed who the chief beneficiaries are, including the Chief Justice of this State, and by not disclosing that he has brought the subject of judicial retirement ages into a matter of political controversy. He has not been clean, open or transparent about this.

The CHAIR (The Hon. Trevor Khan): I remind the member that his observations should be made through the Chair and not directed at a particular individual.

The Hon. ADAM SEARLE: I will do so. The Parliamentary Secretary also indicated that there was no gender imbalance in who would benefit from this retrospective change. I ask the Parliamentary Secretary: How many of those judicial officers who, under the current situation would not obtain full pensions and full benefits but who, if this change is enacted, would have that opportunity, are men and how many are women? I suspect, overwhelmingly, that men will benefit from these retrospective changes. So the concerns articulated by the Bar Association in New South Wales about the gender imbalance impact of these changes is real. The Parliamentary Secretary is free to come back to me with chapter and verse about how many judicial officers would benefit and the gender breakdown, but I doubt that he will. It is no secret in the profession, or for anyone who has watched this, that it is the older white men who make up the majority of those senior judicial officers who will overwhelmingly be the beneficiaries of this package.

It is disturbing that the Attorney General and the Government have not been open and transparent about who the chief beneficiaries of this package will be. Indeed, one does not have to be a detective to work it out.

These judicial arrangements will be the subject of political controversy because of the way in which the Government has bungled the way in which it has undertaken this matter. It ought not do so, and it need not have come to this. There is a legitimate debate to be had about whether the maximum retirement age of judicial officers should be 72 or 75. I note the Parliamentary Secretary's quote from the then president of the Bar Association of New South Wales, and as people stay healthier for longer and work longer it may be appropriate to adjust upwards those changes.

However, in keeping with the usual approach those changes should be prospective, not retrospective—just as the changes in the pension arrangements proposed in the bill are being dealt with prospectively, not retrospectively. This really gives the game away because if retrospectivity is such a great thing, why is the whole package not retrospective? Some of the changes would benefit the judicial officers and some would hurt them. As I said, there is either a principle against retrospectivity or there is not. This Government, in losing itself in the details of the particular package, has yet again failed to keep an eye on the wider consequences of this action—and I am sure it is not the only one in this process to have done so.

This is an opportunity for this Parliament to draw a line in the sand, to uphold the separation between the Parliament and the judiciary and to not infringe upon the independence of the judiciary or the perception that the judiciary are self-interested. That is the risk of the retrospective changes. It is not the only consideration of retaining the outstanding skills and expertise of a number of judicial officers for a bit longer—I understand that is the policy objective being pursued here and I am not cavilling with that—but that has to be weighed against the consequences for the institution of the judiciary from these retrospective changes. As I said, in the way the changes are being proposed by the Government at the very serious risk of bringing the judiciary and its senior membership into disrepute. That should not be the case, and that is on the Government for doing it.

I ask honourable members to join with the Opposition to embrace Opposition amendments Nos 1 to 8 and make these changes prospective only. I note the Attorney General also mentioned in the other place that there were a number of financial savings hanging off these changes. So the case theory works like this: Those who can benefit, do benefit, and stay on for longer—the Government will not then be paying for their pensions and having to backfill the vacant judicial office. Given the damage that could be done by these retrospective changes, the cost of those savings is much heavier than warranted in all the circumstances. I ask honourable members to join with the Opposition and make these changes prospective only.

The Hon. SCOTT FARLOW (12:09): I reiterate what the Attorney General said in the other place about the Opposition amendments that would deprive New South Wales of the benefit of allowing current judicial officers to serve for a further three years and of the associated savings. The Opposition agrees with increasing the maximum retirement ages for judges but would restrict the change to future appointments. There are a number of problems with the Opposition's position. The amendments would deprive New South Wales taxpayers of a \$50 million reduction of liability for the judges pension scheme because most of the savings in the measure arise from the additional years current judges would serve instead of being paid the pension. There is also a question about whether carving out existing judicial officers from the change would be inconsistent with section 55 of the Constitution Act 1902, which uses the language "all judicial officers" when referring to fixing or changing the retirement age for judges. If limits were placed on the application of the retirement age to future appointments only the amendments could be open to challenge. A successful challenge could imperil the new retirement age in its entirety.

Insofar as the composition of the current bench is concerned, women are underrepresented compared with the general population. However, as the Attorney General submitted in the other place, compared with the bar there is a better representation in most courts of women on the bench than women at the bar. For women coming through the system we have achieved better diversity—albeit there is a long way to go in courts so far as gender is concerned. As I outlined in the speech in reply, more than 100 women would be beneficiaries. There is no lack of transparency here. Appointment dates and ages are a matter of public record which the Opposition can ascertain. The implied attacks on members of the judiciary, in particular the Chief Justice, going beyond the Bar Association's submissions are most regrettable in this debate.

Finally, it has been argued that enabling current judges to opt in to an increased retirement age is retrospective, threatens judicial independence and will affect the morale of judges by putting pressure on them to retire later. The proposed legislative changes do not retrospectively interfere with the substantive right of a judicial officer unless they opt in. The Chief Justice of New South Wales, the President of the Court of Appeal, the Chief Judge at Common Law, the Chief Judge in Equity, the Chief Judge of the District Court and the Chief Magistrate of the Local Court all support the proposal. One would expect those heads of jurisdiction to be in an impeccable position to determine whether applying changes to maximum retirement ages not only to future appointments but also to existing judicial officers would in any way undermine the rule of law so as to be a threat to the independence

of the judiciary or the morale of judges. I also note that the Law Society, which has at least 10 times as many members, supports the Government's proposal.

Mr DAVID SHOEBRIDGE (12:12): This is—I hope—the second last day that this Parliament will sit before the general election.

The CHAIR (The Hon. Trevor Khan): I think you can be safely assured of that.

Mr DAVID SHOEBRIDGE: We all join in that hope. This change is not urgent. I know the Government wants a budget saving, and this will produce a budget saving in the order of \$50 million a year. If retired judges are brought back on as acting judges they receive both their pension and the acting judge's allowance. It is expensive. Obviously there is a budget saving if those judges just carry on with their existing single judicial salary instead of retiring. I understand the budget saving, but that is not a reason to rush this legislation through between now and March. There is very real controversy over the retrospective changes. I think everybody in this Chamber is on board with increasing the retirement ages of judges to 72. I do not think it is true to say there is unanimity in the profession. There is some concern about it, but overwhelmingly the profession and all political parties in this State are on board with raising the retirement age for reasons that have been expressed repeatedly. It is the retrospectivity that is really causing concern.

As I understand it, the Government is in receipt of legal advice that says it has a constitutional requirement to apply at least the option of the increased retirement age because on its reading of the New South Wales constitution what it does to one it has to do to all. The constitution says that a government cannot by legislation pick out individual judges and suspend them, retire them or sack them. If a government wants to make changes to the conditions of judges, it has to do it to all of them.

That constitutional protection is only about the suspension or the termination of office. It is not about offering increased conditions to a class of judges going forward. I have seen the advice to the Bar Association from eminent senior counsel that makes that clear. According to that advice, there is no constitutional requirement to increase the retirement age not just prospectively to future judges but also retrospectively to the existing class of judges. I understand there is a divergence between the three eminent senior council of the Bar Association and the constitutional position of the Government. It has different advice that says that there may be a constitutional requirement.

Even on the Government's version and on the Bar Association's version, there is nothing unconstitutional about giving a retrospective option to judges to increase their retirement age. However, it is not just my view but also the view of the eminent senior counsel who provided advice to the Bar Association that there is no constitutional requirement to retrospectively increase the retirement age to existing judicial members. If the measure is not constitutionally required, we just need to work out whether or not it is good public policy. The Greens do not believe it is good public policy. We join with the Labor Party in having real concerns about entrenching the existing judiciary for yet another two years.

I heard the Parliamentary Secretary say that only 10 per cent of the current class of senior counsel at the bar are women but 21 per cent of the Supreme Court bench is women. Therefore, if we cleaned out a proportion of the current bench and replaced them with a proportional representation from senior counsel there may be a reduction in women on the Supreme Court bench. That is the numbers argument that the Parliamentary Secretary has presented. I believe that argument is plainly false. Any government that is looking to replace any vacancy on the Supreme Court bench must look beyond the current group of senior counsel for the reason that the Parliamentary Secretary identified, which is that only 10 per cent or 11 per cent of senior counsel are women. There is a problem at the bar that not enough women in the profession are being supported or facilitated to get the title of senior counsel. We should acknowledge that. I think the Bar Association needs to look at itself and work out how to greatly improve the number of women senior counsel at the bar.

If we are talking about replacing the existing crop of Supreme Court judges as they retire it would be deeply wrong on public policy grounds to limit it to the class of senior counsels. There are experienced senior junior women barristers who could easily, competently and professionally fulfil the job of a Supreme Court judge. There are extremely talented senior solicitors and female partners in some of the largest firms in the State who could readily fill some of the vacancies on the Supreme Court bench. We could elevate magistrates who have proven themselves to be capable and competent judicial officers to the district and supreme courts. There is more than one way to fill vacancies on the Supreme Court bench other than simply being limited to the current pool of senior counsel. That is not a reason to delay what I think is an essential changing of the guard so that the members of the Supreme Court bench far more closely reflect the society that they are presiding over and judging. For those reasons, we support the Opposition's amendments.

The Hon. ADAM SEARLE (12:19): Working backwards, I thank Mr David Shoebridge for his contribution. We do not share the view that section 55 of the Constitution Act requires this retrospective change. Reasonable minds may legitimately differ on matters of law and its construction, but I do not think any of the judges or magistrates who may be affected by these changes would be rushing off for a declaration. I do not think there is a practical legal impediment created by section 55 of the Constitution, irrespective of your reading. I understand that the Parliament and the Government would only propose laws that it feels are constitutional, but there is also a reading of section 55 that would permit the increased retirement age to be prospective only.

Turning to the Parliamentary Secretary's contribution, let me make this point very clear, because there should be no doubt about it: My contribution did not reflect any criticism of the judiciary, or any member of it. It was quite the reverse. My criticism which was not implied; it was explicit, was reserved for the Government, its bungling of this package, the way in which it has gone about this matter and the way in which it has drawn the issues of judicial retirement ages into being a matter of political controversy when it ought not. I can place on record that I have the highest professional opinion of the Chief Justice and the other senior judges at the Supreme Court. I make no criticism of them, implicit or explicit. The criticisms I make are about the policy in the bill—in particular, the policy of retrospectivity—and the way in which the Government has grotesquely mishandled this matter. I hope that matter is put to rest and I hope not to hear that suggestion again, in this place or anywhere else.

The CHAIR (The Hon. Trevor Khan): I understand the degree of sensitivity that exists. We are going to address the amendments, but if Mr David Shoebridge wants to say something on this specific point, I understand why.

Mr DAVID SHOEBRIDGE (12:21): It must be clear for the record that no member participating in this debate is critiquing the judiciary or its members. I will not name any individual. I want to be clear: As I understand the debate, there is no critique of the judiciary. The critique is directed at the Government for moving its amendments, which have, unfortunately, politicised the judiciary. That is not the doing of the judiciary; it is the doing of the Government. There were solutions to this issue. The first and most obvious solution was pulling back the bill today and taking a bit of time to work through the issues so we could come to an agreed position in the middle of next year without having an unseemly political battle over something which we should be all uniting about, and that is having a non-politicised judiciary.

The CHAIR (The Hon. Trevor Khan): The Hon. Adam Searle has moved Opposition amendments Nos 1 to 8 on sheet C2018-155A. The question is that the amendments be agreed to.

The Committee divided.

Ayes 15
Noes 19
Majority 4

AYES

Donnelly, Mr G (teller)
Graham, Mr J

Faehrmann, Ms C
Houssos, Mrs C

Field, Mr J
Moselmane, Mr S
(teller)
Searle, Mr A
Shoebridge, Mr D
Walker, Ms D

Pearson, Mr M
Secord, Mr W
Veitch, Mr M

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

NOES

Ajaka, Mr
Colless, Mr R
Farlow, Mr S
Harwin, Mr D

Blair, Mr
Cusack, Ms C
Franklin, Mr B
MacDonald, Mr S

Clarke, Mr D
Fang, Mr W (teller)
Green, Mr P
Maclaren-Jones, Mrs
(teller)
Mason-Cox, Mr M
Phelps, Dr P

Mallard, Mr S
Mitchell, Mrs
Ward, Mrs N

Martin, Mr T
Nile, Revd Mr

PAIRS

Mookhey, Mr D

Amato, Mr L

PAIRS

Wong, Mr E

Taylor, Mrs

Amendments negatived.

The CHAIR (The Hon. Trevor Khan): The question is that the Justice Legislation Amendment Bill (No 3) 2018 as read be agreed to.

Motion agreed to.

The CHAIR (The Hon. Trevor Khan): I will now move on to the Crimes Legislation (Victims) Bill 2018. There being no objection, the Committee will deal with the bill as a whole. I note that I have no amendments in respect to that bill. I will therefore put the question that the bill as read be agreed to.

Motion agreed to.

The CHAIR (The Hon. Trevor Khan): I will now move on to the Government Information (Public Access) Amendment Bill 2018. There being no objection, the Committee will deal with the bill as a whole. I note that I have two sets of amendments, being The Greens amendments on sheet C2018-166 and Opposition amendments on sheet C2018-158.

The Hon. ADAM SEARLE (12:31): By leave: I move Opposition amendments Nos 1 and 2 on sheet C2018-158 in globo:

No. 1 **Access applications**

Page 3, Schedule 1 [6], lines 18–20. Omit all words on those lines. Insert instead:

- (a) it must be in writing sent by post or electronically to, or lodged at, an office of the agency concerned,

No. 2 **Access applications**

Page 3, Schedule 1 [9], lines 29–32. Omit all words on those lines. Insert instead:

[9] **Section 41 (2)**

Omit the subsection.

These amendments to the Government Information (Public Access) Amendment Bill address a concern comprehensively outlined by the shadow Attorney in the Legislative Assembly and by myself in my contribution to the second reading debate to ensure applicants have a right to make an application under the GIPA legislation electronically and to ensure that that right cannot be in any way watered down or defeated. As I understand it, the legislation permits electronic lodgement but leaves it to an agency as to whether that is to be permitted. From the report, a part of which I read onto the record in the debate, the reasoning seems to be an acknowledgement that the current arrangements act as a barrier to members of the public making freedom of information requests. The report disclosed a concern that if electronic lodgement was given as a right there would be a significant increase in applications which agencies would not be able to handle.

I acknowledge the practical difficulty but as we are now well into the twenty-first century, nearly having reached the end of the second decade of this century, to not have electronic lodgement of application as a right in something as important as freedom of information seems, politely, very old-fashioned. To give it a less-positive construction, it looks as if the Government and its agencies are trying to stifle public access to information. The Opposition urges the Government and all honourable members to support these amendments to ensure that this right is put in place so that every member of the public has the right to make an application electronically.

The Hon. SCOTT FARLOW (12:34): The Government opposes Opposition amendments Nos 1 and 2. As the Attorney said in the other place, the Opposition's proposed amendments would remove the discretion for agencies to receive applications as they see fit, restricting the means by which an access application can be made to be either in writing or electronically. Not all agencies currently have the ability to accept electronic applications—in particular, electronic payment of application fees—so it is appropriate that a discretion exist at this time. It may be appropriate that all agencies be required to accept electronic applications in the future. However, they will need to be given notice of this in order to prepare.

The Opposition amendments would also remove the ability of agencies to approve additional payment facilities. The Government considers that this provision should be retained to ensure that electronic payments can be accepted where possible. The government bill covers the scope of the Opposition's proposed amendments by

allowing agencies to accept electronic applications where possible. For those reasons the Government opposes the Opposition's amendments.

Mr DAVID SHOEBRIDGE (12:35): The Greens support Opposition amendments Nos 1 and 2. It is an enormous frustration for thousands of people across the State to have to send in a hard copy of a Government Information (Public Access), or GIPA, application. They then have to find an uncle or an aunt who still has a cheque account to write out a cheque for \$30 or they have to trot down to the post office and pay an additional \$5 for a money order. That is the kind of steam-powered freedom of information laws that the current Government has in place. It is 2018. The Opposition's amendments, which The Greens support, require that every agency needs to be in a position to accept electronic lodgements of GIPA forms and every agency in the State Government needs to have an online credit card payment facility. If the Government cannot deliver that it is a problem. Apparently after eight years in office this Government's agencies cannot simply accept a freedom of information form online and have a credit card payment facility, which shows a serious problem in the machinery of government.

I assume there will be some challenges to get all agencies to that place, but let us pass the law and make it a requirement and let us make sure the agencies get on board. No Government should be defending an agency that in 2018 is saying people need to put an application in the snail-mail with a cheque for \$30 or a money order from the post office that costs an additional \$5. That is just not acceptable and for those reasons The Greens support the amendments.

The CHAIR (The Hon. Trevor Khan): The Hon. Adam Searle has moved Opposition amendments Nos 1 and 2 on sheet C2018-158. The question is that the amendments be agreed to.

Amendments negatived.

Mr DAVID SHOEBRIDGE (12:38): By leave: I move The Greens amendments Nos 1 to 3 on sheet C2018-166 in globo:

No. 1 Advance deposit for payment of processing charge

Page 5, Schedule 1. Insert after line 42:

[24] Section 68 Advance deposit for payment of processing charge

Insert after section 68 (1):

- (1A) An agency must not require an advance deposit unless the agency has first determined whether the applicant is entitled to a reduction under section 65 and 66.

No. 2 Advance deposit for payment of processing charge

Page 5, Schedule 1. Insert after line 42:

[24] Section 69 Maximum advance deposit

Omit "(ignoring any reduction in processing charge to which the applicant may be entitled)" from section 69 (1).

No. 3 Cabinet information

Page 8, Schedule 1 [40], lines 22–25. Omit all words on those lines.

The CHAIR (The Hon. Trevor Khan): Having spoken to Mr David Shoebridge first, I understand that when the question is put I will move each seriatim.

Mr DAVID SHOEBRIDGE: I seek The Greens amendments Nos 1 and 2 be put together and, assuming that we are all gathered here in a comradely fashion, we will have a short bell on The Greens amendment No. 3. In a case that, much to my shame, I lost was the matter of *Shoebridge v Office of Environment and Heritage* [2018] NSWCATAP 144.

The Hon. Greg Donnelly: Get another lawyer.

Mr DAVID SHOEBRIDGE: I was very badly represented, having run the case myself.

The Hon. Dr Peter Phelps: You know what they say.

Mr DAVID SHOEBRIDGE: That was all I could afford, to be honest. Having run and lost the case, it hinged upon when an agency is required to determine an application for a 50 per cent reduction on the basis that the freedom of information application under the Government Information (Public Access) Act has some kind of public interest to it. We have previously run a case—and succeeded, I am pleased to say—to work out what is the nature of the public interest. What is or is not public interest is a very broad consideration. That is good, but the question is when the agency should determine whether there is a public interest. That is important because if the

question of public interest is determined in the applicant's favour, there is a 50 per cent reduction in the processing charges. If it is not determined in the applicant's favour or they do not know, there is a great deal of uncertainty about what the final processing charges are likely to be.

I will give a simple example. Assume an application is made to Roads and Maritime Services for some records about Windsor Bridge. The application is for a confined set of records over six months with a specific set of search times. The agency comes back and says, "Well, on an initial view, we think to do that will cost \$1,000. It will take 35 hours of staff time to hunt for and find all of those records and respond—a \$1,000 charge. And because it will be \$1,000, we want a \$500 upfront advance deposit before we start doing any of this work." The applicant may be willing to pay \$500 for the information but might think that \$1,000 is far too much. They do not have \$1,000 but they would be willing to pay \$500.

That is why applicants need the question of whether there is a special public interest to be determined upfront. Otherwise, it is a gamble; they pay the \$500 deposit and then, after the agency gathers all the documents together, it looks at them and says, "Well, no, there is no public interest here. You're going to have to pay the full \$1,000." That often defeats the purpose of the application. But if an applicant knows at the outset that they will get the special public interest reduction of 50 per cent, they are then in a position to proceed with their application.

There are countless occasions where this happens. An application is made and the initial response is that it will cost \$300. The applicant thinks, "Well, it's kind of a marginal issue. I don't know if I want to spend \$300 on that information but \$150 might be okay." There are cases involving crucial matters in which the charge could be \$5,000 and a community group may be wanting it. They might have \$2,500 to get the information but not \$5,000. Applicants need certainty as soon as possible. According to the decision in *Shoebridge v Office of Environment and Heritage*, it is up to the agency when it makes the decision. Sometimes it might decide on the basis of what is in the application and it will know enough at the beginning, but sometimes it will need to gather together all of the documents to work out whether there is a public interest.

The public interest should be apparent from the nature and terms of the application. From that it can be seen whether there is a question of public interest. On most freedom of information forms—in fact, I think on all of them—applicants can identify the nature of the alleged public interest. If an agency wants more information about whether there is a public interest, it can and should request that at the outset. The Greens amendments Nos 1 and 2 state that that is how the law should operate: the public interest reduction should be determined at the outset.

The Greens amendment No. 3 relates to Cabinet information, which I addressed in my contribution to the second reading debate. The Government wants to expand the scope of exclusions under the Government Information (Public Access) Act by expanding the scope of Cabinet information to exclude yet more information from the public. The Greens do not support that. In fact, The Greens are firmly of the view that the existing exclusions relating to Cabinet information are already overly protective of the Government and get the balance wrong by excluding far too much legitimate information from the public. We cannot sit here quietly and allow yet more exclusions to happen; that is why we are seeking to omit those words on page 8 in schedule 1, item 40 to the bill. I commend the amendments to the House.

The Hon. SCOTT FARLOW (12:43): The Government opposes the amendments moved by The Greens. Amendment No. 1 inserts a new subsection (1A) in section 68 to prevent an agency from requiring an advance deposit until the agency has first determined whether the applicant is entitled to a reduction. Amendment No. 2 omits from section 69 the bracketed words:

(ignoring any reduction in processing charge to which the applicant may be entitled)

These words will be rendered obsolete. The Government opposes these amendments on the basis that the Government Information (Public Access) Act already contains sufficient mechanisms to provide relief to applicants who are experiencing financial hardship. Under section 64, agencies have a discretion whether to impose a processing charge at all. Under section 127, an agency may also waive, reduce or refund any fee or charge payable or paid under the Government Information (Public Access) Act in any case the agency thinks appropriate.

The Government is aware that in relation to section 66 dealing with special public benefit, in *Shoebridge v Office of Environment and Heritage* [2018] NSWCATAP 144 Mr Shoebridge put forward the position that an agency should be obliged to determine an application for a discount on the basis of the information applied for and not on the basis of the information eventually obtained. However, the Government considers that discounts on processing charges under section 66 should be determined on the basis of the information eventually obtained. Otherwise the agency may be required to determine the processing charge before having a full appreciation of the resources involved in processing the application. An agency may also be in a better position to satisfy itself that the information applied for is of special benefit to the public under section 66 once that information has been located and reviewed.

Greens amendment No. 3 would remove schedule 1 [40] to the bill, which clarifies that a Cabinet document containing a combination of factual and non-factual information falls within the definition of "Cabinet information". Cabinet confidentiality goes to the heart of collective decision-making, ensuring that Cabinet is a forum where robust discussion and decision-making can occur. In *Commonwealth v Northern Land Council* [1993] 176 CLR 604, the High Court of Australia found:

... it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential ...

The statutory review of the Government Information (Public Access) Act recommended clarifying the definition of "Cabinet information", as clause 2 of schedule 1 to the Act is not entirely clear. In particular, the concern was to what extent a document falls within the term "Cabinet information" if the document partially consists of factual materials. The Government amendment clarifies this position. The amendment will not affect the ability of a department under section 74 of the Act to release relevant material with redactions or to create a new record and facilitate the release of information under section 75. For these reasons, the Government opposes the amendments.

The Hon. ADAM SEARLE (12:46): The Opposition supports The Greens amendments Nos 1, 2 and 3. Amendments Nos 1 and 2 address the issue of advance deposits for payment of processing charges; for the reasons outlined by Mr David Shoebridge, the Opposition accepts them. This is a measure to break down the barriers to accessing information, which is a good thing and we support it.

In relation to amendment No. 3, we on this side of the House understand the importance of preserving Cabinet confidentiality. Those matters have been extensively canvassed in this Chamber this very year in relation to returns to order made by the House regarding the Powerhouse Museum and other matters. There has been an extensive dialogue between this House and the Government regarding Cabinet confidentiality. However, this amendment addresses a quite narrow point. The Parliamentary Secretary is right about at least one thing: The relevant part of schedule 1 to the Government Information (Public Access) Act is not terribly clear.

Mr David Shoebridge: It is underestimated.

The Hon. ADAM SEARLE: I acknowledge that interjection. It says that Cabinet information that is factual information only is not Cabinet information and then goes on to set out a number of qualifications: unless it reveals the deliberations of Cabinet; unless it reveals the opinion of a Minister or so on. The point is this: If a piece of information is merely factual information, it cannot have the effect then enumerated by those other parts of schedule 1. It is either simply factual information or it is processed information—factual information mixed up with other information or opinion—which may bring it within the scope of Cabinet confidentiality. This amendment simply says that information that is purely factual is not Cabinet in confidence, which seems to be a commonsense proposition. All sorts of information is provided to Cabinet and its Ministers. Some of it is for noting; some of it is for information; some of it supports Cabinet proposals.

Mr David Shoebridge: Some of it informs an opinion that is eventually given.

The Hon. ADAM SEARLE: I acknowledge that interjection. But that type of material does not itself disclose the deliberations of the Cabinet or its members or the opinion disclosed for the purposes of Cabinet discussion of any Cabinet member. It is only that latter category that really needs to have that shroud of secrecy, that cloak of protection, put over it. In the case quoted by the Parliamentary Secretary and many others that have been canvassed in this place, even information that is provided to assist Cabinet with its deliberations should not be given the cloak of protection if it is purely factual. This amendment is common sense. It clarifies what is a very confusing provision which has been litigated to death and to confusion in the NSW Civil and Administrative Tribunal and other places. It really does need to be fixed, so we on this side urge all members to support this amendment.

The CHAIR (The Hon. Trevor Khan): As requested, I will put the questions seriatim. Mr David Shoebridge has moved The Greens amendments Nos 1 to 3 on sheet C2018-166. The question is that The Greens amendments Nos 1 and 2 be agreed to.

The Committee divided.

Ayes15

Noes19

Majority.....4

AYES

Donnelly, Mr G (teller)
Graham, Mr J

Faehrmann, Ms C
Houssos, Mrs C

Field, Mr J
Moselmane, Mr S
(teller)
Searle, Mr A

Pearson, Mr M

Primrose, Mr P

AYES

Secord, Mr W
Veitch, Mr M

Sharpe, Ms P
Voltz, Ms L

Shoebridge, Mr D
Walker, Ms D

NOES

Ajaka, Mr
Colless, Mr R
Farlow, Mr S
Harwin, Mr D

Blair, Mr
Cusack, Ms C
Franklin, Mr B
MacDonald, Mr S

Clarke, Mr D
Fang, Mr W (teller)
Green, Mr P
Maclaren-Jones, Mrs
(teller)
Mitchell, Mrs
Taylor, Mrs

Mallard, Mr S
Nile, Revd Mr
Ward, Mrs N

Martin, Mr T
Phelps, Dr P

PAIRS

Mookhey, Mr D
Wong, Mr E

Amato, Mr L
Mason-Cox, Mr M

Amendments negatived.

The CHAIR (The Hon. Trevor Khan): The question is that The Greens amendment No. 3 be agreed to. Is leave granted to ring the bells for one minute?

Leave granted.**The Committee divided.**

Ayes15
Noes19
Majority.....4

AYES

Donnelly, Mr G

Faehrmann, Ms C
(teller)

Field, Mr J

Graham, Mr J
Pearson, Mr M
Secord, Mr W

Houssos, Mrs C
Primrose, Mr P
Sharpe, Ms P

Moselmane, Mr S
Searle, Mr A
Shoebridge, Mr D
(teller)
Walker, Ms D

Veitch, Mr M

Voltz, Ms L

NOES

Ajaka, Mr
Colless, Mr R
Farlow, Mr S
Harwin, Mr D

Blair, Mr
Cusack, Ms C
Franklin, Mr B
MacDonald, Mr S

Clarke, Mr D
Fang, Mr W (teller)
Green, Mr P
Maclaren-Jones, Mrs
(teller)
Mitchell, Mrs
Taylor, Mrs

Mallard, Mr S
Nile, Revd Mr
Ward, Mrs N

Martin, Mr T
Phelps, Dr P

PAIRS

Mookhey, Mr D
Wong, Mr E

Amato, Mr L
Mason-Cox, Mr M

Amendment negatived.

The CHAIR (The Hon. Trevor Khan): The question is that the Government Information (Public Access) Amendment Bill 2018 as read be agreed to.

Motion agreed to.

The Hon. SCOTT FARLOW: I move:

That the Chair do now leave the chair and report to the House the Justice Legislation Amendment Bill (No 3), the Crimes Legislation Amendment (Victims) Bill and the Government Information (Public Access) Amendment Bill without amendment.

Motion agreed to.**Adoption of Report**

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

That the report be adopted.

Motion agreed to.**Third Reading**

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

That these bills be now read a third time.

Motion agreed to.

The PRESIDENT: 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 honourable members, I welcome to the public gallery Councillor Mitchell Griffin, the deputy mayor of Maitland, who is a guest of the Hon. Taylor Martin. I also welcome James Peters of Newcastle Grammar School, who is undertaking work experience in the office of the Hon. Taylor Martin.

*Questions Without Notice***DEPARTMENT OF PLANNING AND ENVIRONMENT AND RIDGELANDS RESOURCES**

The Hon. ADAM SEARLE (14:30): I direct my question to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. Will the Minister confirm that staff in that part of the planning department that supports him as Minister attempted to reduce the Ridgелands Community Fund obligation from \$5 million to just \$500,00?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:31): I have been asked this question many times and have given many answers. The honourable member has canvassed this matter not only in this House but also in budget estimates and he has been given many answers. In case members of the House are not aware, Ridgелands holds exploration licence [EL] 8064 in the upper Hunter Valley near Muswellbrook. The Department of Planning and Environment issued the EL in February 2013 for five years. Condition 58 required Ridgелands to establish a \$5 million community fund as soon as reasonably practicable after the granting of the licence. In August 2017 the Government became aware that Ridgелands had not established the \$5 million community fund. This was immediately referred to the Resources Regulator to determine if the conditions on its licence had been breached.

From October 2017 Ridgелands deposited \$5 million into the community fund in three payments: \$500,000 on 1 October 2017, \$500,000 on 25 January 2018 and \$4 million on 9 February 2018. Ridgелands' exploration licence was due to expire on 27 February 2018. On 23 February 2018 Ridgелands lodged a renewal application for six years. Under the Mining Act 1992, the existing exploration licence and its conditions remain in force until the renewal is determined. The renewal application was placed on hold while the regulator completed its investigation. The regulator has now concluded its investigation.

On 22 June the regulator accepted an enforceable undertaking proposed by Ridgелands. The enforceable undertaking includes an additional \$200,000 to be contributed to the community fund with improved governance for the dispersal of the fund. The enforceable undertaking also requires that approved projects are funded within six months and that the entire \$5.2 million fund is spent on approved projects by 30 June 2019. With this matter

now settled, the department started an assessment of the renewal application in accordance with the Mining Act and relevant policies, guidelines and procedures. Following the assessment, a recommendation will be made to me as Minister. In determining the renewal application, the department will consider the performance of the licence holder over the previous five years, including compliance with the conditions of the licence.

In terms of the variation in the work program, under condition 55 of its exploration licence Ridgeland was required to complete the exploration work program on 27 February 2018. On 28 March 2017 Ridgeland wrote to the department to request a reduction in its planned 2013 to 2018 exploration work program. It cited delays in the granting of the title, the sharp downturn in coal prices and difficulties negotiating land access for exploration. On 27 April 2017 the department provided written approval of the work program variation under ministerial delegation— *[Time expired.]*

The Hon. ADAM SEARLE (14:35): I ask a supplementary question. Will the Minister elucidate that part of his answer that discussed the renewal application and indicate to the House whether, as part of that process, he also will be looking at the actions of his departmental staff and whether any of them sought to reduce the obligation on Ridgeland from \$5 million down to \$500,000? It is a straight question and he should give a straight answer, instead of fencing.

The PRESIDENT: The last part is commentary and not part of the supplementary question.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:35): As I was saying, on 27 April 2017 the department provided written approval of the work program variation under ministerial delegation. The letter explicitly stated that this variation applied to condition 55 of exploration licence 8064.

REGIONAL ARTS AND CULTURE

The Hon. DAVID CLARKE (14:36): I address my question to the Minister for the Arts. Will the Minister update the House on how the Government is supporting arts and culture in regional New South Wales?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:36): I thank the Hon. David Clarke for his question and note his ongoing passion and support of the arts in regional New South Wales. In fact, the artistic sensibilities of the honourable member are well known to anybody who has visited his office, but I digress. Earlier this month I had the pleasure of opening the 2018 Artstate conference at the Mitchell Conservatorium of Music at Bathurst, alongside the fantastic local member for Bathurst, Paul Toole. The New South Wales Government is the strategic partner of this annual conference, which is hosted by Regional Arts NSW in partnership with the network of 14 regional arts development organisations and is held in a different regional location each year.

Artstate is attended by artists and industry leaders across the arts, screen and cultural sectors who have a common interest in growing the sector across regional New South Wales. Through a curated program, Artstate highlights excellence in regional arts practice and explores the potential for arts and cultural development across the State. This year's conference, which was co-hosted by Arts Outwest, had two overarching themes: A Sense of Place and Robust Regions. Those themes are very appropriate for what is a vibrant and diversified arts and cultural sector across regional New South Wales. Those conference themes are also consistent with the Government's commitment to bolstering a sense of place and engendering robust regions where arts and cultural activity flourish across regional New South Wales.

Artstate has quickly become a hugely important event on the annual arts and cultural calendar, bringing the community together to celebrate the excellence of regional arts and culture, including First Nations work. It provided a crucial opportunity for networking, partnerships and the sharing of ideas and knowledge. This year's Artstate conference showcased the rich artistic and cultural identity of the State's Central West, through the conference and through its accompanying arts festival program, which was embraced by the people of Bathurst. The Central West is a fabulous place for established artists to work and to foster the development of a new generation of talented artists. Artstate featured a range of arts and cultural leaders from across regional New South Wales, Australia and overseas. This was the second year of the New South Wales Government's sponsorship of the event.

I pay tribute to the chairman of Regional Arts NSW, Stephen Champion, who is from Bathurst, and the director of the festival, Adam Deusien. They both did a great job. Next year the conference heads north to Tamworth. With its deep roots in music and live performance, Tamworth will be the perfect host for Artstate 2019. Artstate is not the only event the Government supports to foster arts and culture in regional New South Wales. As an example, earlier this month, I was pleased to announce that 17 regional tours will share in \$674,000 as part of the Regional Arts Touring funding for 2018-19. That is an increase of more than double the funding in previous

years. The Government is able to provide that funding because of our strong economy. We are a good government that believes that every community in New South Wales deserves its fair share of arts funding. [*Time expired.*]

HEALTHCARE AND HOSPITAL PRIVATISATION

The Hon. WALT SECORD (14:41): My question is directed to the Leader of the Government, representing the Premier. Given the unprecedented problems at the Northern Beaches Hospital, which was opened two days ago by the Premier, and this morning's resignation of the hospital's chief executive officer, does the Minister's Government stand by the privatisation of health care, or will the Minister follow Labor and declare his opposition to the privatisation of health and hospitals?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:41): The shadow Minister probably could have directed that question to the Minister—

The PRESIDENT: Order! The Clerk will stop the clock. Not only am I and Hansard unable to hear the Minister, I doubt the Minister can hear himself because of the interjections from Government and Opposition members. I have tried to be tolerant but all interjections will cease.

The Hon. DON HARWIN: This question probably should have been directed to the Hon. Niall Blair, representing the Minister for Health.

The Hon. Walt Secord: He is the weak link.

The Hon. DON HARWIN: The honourable member can sledge me as much as he likes sotto voce from the other side of Chamber but I am well and truly used to that.

The Hon. Walt Secord: It wasn't sotto voce. It was very loud.

The Hon. Trevor Khan: Point of order: Mr President, you have indicated that interjections are disorderly and that we are, in essence, on a final warning. The Deputy Leader of the Opposition has ignored your rulings and proceeds to interject.

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

The Hon. DON HARWIN: The honourable member asks me a question about the Government's record of expenditure on health and on our policies for the Northern Beaches Hospital. From all the colleagues I have spoken to, I have to say that the response to the Northern Beaches Hospital has been overwhelmingly positive and I have seen many reports of people who are very happy with the service. I am not aware of comments by the Minister for Health as I have been busy doing other things over lunch. However, I will say that this Government and its record on health will stand up very well against all comers. We have delivered 77 major hospital upgrades to hospitals and health facilities and there are 9,397 more doctors, nurses and midwives compared to the numbers in April 2017.

The PRESIDENT: Order! I call the Hon. Penny Sharpe to order for the first time.

The Hon. DON HARWIN: Timeliness of surgery has improved to over 97.5 per cent. That is the highest result across Australia. It is a great outcome. A record 92 per cent of ambulance patients arriving in emergency departments are with a hospital clinician within 30 minutes. In seven years, we have invested more in health infrastructure than Labor did in all of its 16 years. The record of those opposite is that they closed more than 2,000 hospital beds. During a period in which the population of New South Wales grew by 1 million, they shut 2,000 hospital beds. In 1995 they promised to halve public hospital waiting lists, but when they left office waiting lists had grown by over 50 per cent and wait times had doubled. That was their record, and they have to own it. They promised hospital upgrades at Wagga, Parkes and Tamworth and they did not deliver any of them.

The Hon. Walt Secord: Point of order: It goes to relevance. The question was about the privatisation of Northern Beaches Hospital, a major failure, having been opened two days ago by the Premier, and would the Minister restate his support or opposition to privatisation. The question was very clear.

The PRESIDENT: The question asked by the Hon. Walt Secord in its entirety, including the last part, was a general question. The Minister clearly was being generally relevant to at least that part of the question. There is no point of order.

The Hon. DON HARWIN: Not only did those opposite promise those three hospitals and not deliver them, Labor promised the Northern Beaches Hospital. They did nothing about the Northern Beaches Hospital, just as they will do nothing for the Northern Beaches if the State is unfortunate enough to have Labor in government after March. We know that they will axe the Northern Beaches link. People can believe that because Labor failed to build the hospital despite it promising to do so.

The Hon. Shaoquett Moselmane: Point of order—

The PRESIDENT: As I have previously indicated, I should not have to scream when I ask the Minister to resume his seat.

The Hon. Shaoquett Moselmane: There is too much noise with the chorus of "shame" coming from those opposite. I cannot hear the Minister speak.

The PRESIDENT: I uphold the point of order.

The Hon. DON HARWIN: I have made the point. To be lectured by the Opposition shadow Minister about the Northern Beaches Hospital—a hospital that this Government built after Labor promised to do it for 16 years and did not—it is hard to take anything the member says seriously.

The Hon. WALT SECORD (14:47): I ask a supplementary question.

The PRESIDENT: Order! Members will not scream; I can hear them.

The Hon. WALT SECORD: Will the Minister elucidate his answer and indicate who he was referring to when he said that the response had been "overwhelmingly positive"? Name one.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:48): The Hon. Natalie Ward, for starters. A number of my lower House—

The Hon. Walt Secord: She was a private patient!

The Hon. Trevor Khan: Point of order—

The PRESIDENT: Order! I call the Hon. Walt Secord to order for the second time. I can assure the member that if he pulls a stunt like that again he will be removed from the Chamber.

The Hon. DON HARWIN: This morning when I started reading the newspapers at about 4.45 a.m., I was delighted to see letter after letter in the *Sydney Morning Herald* and other news outlets congratulating the Government on the Northern Beaches Hospital and outlining the excellent treatment that those people's family members had received at that hospital. Thanks for that own goal, Walt. But, honestly, our record on health more than compares with anybody else who is—

The Hon. John Graham: The back bench isn't very happy you're reading the *Sydney Morning Herald*.

The Hon. DON HARWIN: Well, of course, naturally I went straight to the *Sydney Morning Herald* this morning because it had such an excellent article about Sydney Modern, announcing that we have—

The PRESIDENT: Order! The Minister is not being relevant and the Minister will cease responding to interjections. Has the Minister completed his answer?

The Hon. DON HARWIN: Yes, I have.

WATER CONSERVATION

Mr JUSTIN FIELD (14:49): My question is directed to the Minister for Resources, and Minister for Energy and Utilities. When will Sydney Water's water conservation report for 2017-18 be released? Can the Minister confirm that water leakage rates have worsened since the 2016-17 report and that the time to fix priority leaks has also blown out?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:50): I thank Mr Justin Field for his question. Obviously Sydney Water manages a large and complex water network of approximately 22,000 kilometres. It is well known that prolonged dry spells cause soil movement, leading to an increase in the number of water main breaks and leaks. This issue confronts water utilities around the world. Nevertheless, by world standards Sydney Water performs extremely well. Sydney Water operates to an economic level of leakage of 108 megalitres per day, which puts Sydney Water into the top band of the World Bank's Infrastructure Leakage Index. This level is substantially reduced from a peak of around 190 megalitres per day in 2002-03.

In managing the increase in leaks and breaks, Sydney Water crews continue to work to the highest standard to minimise the impact to customers. In some cases this results in increases to the time it takes to complete repairs. Repairs will be delayed to minimise customer impacts that would occur if the repair was completed immediately. For example, while responding to a major water main break at Hillcrest Avenue, Hurstville, in 2017, crews took the opportunity to complete an additional condition assessment at the site of the break. They discovered the pipe was at risk of future breaks, and increased the scope of repairs significantly to reduce the risk of further community disruption. The residents were very pleased with the way that was resolved.

Sydney Water is investing in new technology that will help it to perform better in the future. This includes installing smart sensors on the network to help pinpoint leakage and allow earlier response to leaks and breaks. In relation to the report referred to by the member, I will take that part of his question on notice and endeavour to come back to him with an answer by the end of question time on the current situation with the release of the report.

Mr JUSTIN FIELD (14:52): I ask a supplementary question. Given the acknowledgement by the Minister that leakage rates have worsened, will the Minister elucidate his answer and indicate by how much it has worsened? What is the current daily leakage rate?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:53): I did indicate in my answer that the level has substantially reduced from the peak of around 190 megalitres per day in 2002-03 to 108 megalitres per day currently.

PRIMARY INDUSTRIES NATIONAL AG DAY

The Hon. WES FANG (14:53): My question is addressed to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Will the Minister update the House on National Ag Day and the performance of New South Wales primary industries?

The Hon. NIAL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (14:53): I thank the member for this important question. Today marks National Ag Day, which was held for the first time last year. National Ag Day acknowledges and celebrates the remarkable contribution of primary industries to the economy and to society. It provides a wonderful opportunity to stop and consider how agriculture makes the world a better place and how it drives the successes of New South Wales—because a State with a clean green reputation and where people can trust the integrity, safety and provenance of our produce is a State that is winning.

This morning I launched the New South Wales Government's "Primary Industries Performance Insights and Data" publication. I am pleased to say that, despite the impact of the continuing drought, the future of the sector remains very bright. In 2017-18 the New South Wales primary industries sector reached an estimated output of \$17.5 billion. Some of the strongest results were in cotton production, which increased the value of outputs by 22 per cent in 2017-18, thanks to improved growing conditions and rising global consumption. Wool was up 20 per cent, lamb and mutton increased by 15 per cent, and beef remained steady despite the adverse seasonal conditions. The value of the State's fishing industry is estimated to be \$161 million, up 1 per cent year on year, and in forestry the total log harvest was more than 5.9 million cubic metres, which is up 5.9 per cent year on year. This is in recognition of the economic and social benefits to the New South Wales economy, particularly in regional areas. China, Japan and the United States were the largest destinations of primary industries exports from New South Wales, with total export earnings being \$5.4 billion.

While we look forward to better seasons ahead for all our primary producers, this year's results underline the continued resilience of our farmers and the contribution they make to our State, year in and year out. The 2018 National Ag Day theme is "Grow for Good", to celebrate the good that our farmers do. Our State's primary producers use scientific advances in research and development to deliver world-class food and fibre. The New South Wales Government's \$1 billion commitment through the 2018-19 budget will ensure our State's primary industries are supported. This investment will deliver essential programs to increase on-farm productivity, support farmers in drought, safeguard the State's strong biosecurity status, battle pests and weeds, and ensure sustainable fishing stocks for recreational and commercial fishers.

In addition, our World-Class Food and Fibre Infrastructure Program, launched this year, cements New South Wales as Australia's leader in agriculture, fisheries and biosecurity research. This investment will deliver a new generation of scientific breakthroughs such as drought-tolerant crop varieties; data-driven, on-farm decision-making; fast-tracked genetic improvements in beef and lamb; and revolutionary biological control of pests. Those on this side of the House remain committed to supporting our primary producers and rural communities. The biggest threat to our primary producers are those sitting opposite, particularly if they want to get into bed and into cahoots with The Greens.

The Government is going to take that more than \$17 billion and build on it by supporting our farmers. But from the Opposition we hear an attack on farmer's property rights and a commitment to the shutting down of industries, including the forestry industry, because they want The Greens to help them to get on this side of the House. Every day between now and 23 March, the Government will remind the people of New South Wales that we stand up for our farmers. We will back them in all the way, just as we have for the past eight years. There is more to come. They are worth our support. [*Time expired.*]

STATE FOREST LOGGING OPERATIONS

Ms CATE FAEHRMANN (14:57): My question is directed to the Minister for Resources, representing the Minister for the Environment. Will the Minister confirm that the Government ruled out logging in national parks, including through tenure swaps with State forests, in its 2013 response to the 2012 Legislative Council inquiry into the management of public land in New South Wales? Is any planning underway to augment timber supply by either de-gazetting existing national parks or allowing logging in any national parks? If so, what are those plans and what areas are being investigated?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:58): I thank Ms Cate Faehrmann for her question, which I am very happy to refer to the Hon. Gabrielle Upton for a full answer. I will get a response for her as quickly as I possibly can.

DEPARTMENT OF PLANNING AND ENVIRONMENT AND RIDGELANDS RESOURCES

The Hon. PENNY SHARPE (14:58): My question is directed to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. Given Muswellbrook Shire Council has confirmed that at a meeting with Ridgeland's consultants it was informed that the then Department of Resources and Energy had agreed to reduce Ridgeland's obligations to establish a \$5 million community fund, is it the case that the Minister's own department colluded with Ridgeland's to reduce its obligations under condition 58 in its consent?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:59): If the honourable member had been listening properly, she would know that that matter was directly answered in my previous question.

The Hon. Penny Sharpe: No, it was not.

The Hon. DON HARWIN: Yes, it was.

The Hon. PENNY SHARPE (14:59): I ask a supplementary question. Will the Minister elucidate his answer by expanding on the issue of whether his department agreed to the reduction of the community fund from \$5 million to \$500,000?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:00): I will answer that question. I made this very clear. Condition 58 is the condition that requires the establishment of a minimum contribution of \$5 million to be paid to a community fund over the five-year term of the licence. If the member had been listening carefully, she would have heard the answer I gave, which is that on 27 April 2017 the department provided written approval of the work program variation under ministerial delegation. The letter explicitly stated that this variation applied to condition 55 of the exploration licence.

The Hon. Penny Sharpe: If you want that to be your answer, good, fine.

The PRESIDENT: I allowed the Hon. Penny Sharpe to ask a supplementary question. There is no need for her to keep going.

EARLY CHILDHOOD EDUCATION

The Hon. TAYLOR MARTIN (15:01): My question is addressed to the Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education. Will the Minister update the House on how the New South Wales Government's record spending on early childhood education is supporting community preschools in Sydney electorates?

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (15:01): I thank the honourable member for his question and the opportunity to talk about our Government's investment in early childhood education and how it is benefitting children in the city. Often I speak about visiting regional services and, as a proud member of The Nationals and a Gunnedah girl, I have a strong connection to and a passion for regional issues. But, along with my colleagues on this side of the House, I also understand the importance of providing services to all areas of this State. I take great pride in being able to stand here in this House and update the members on my visits to regional communities. I take just as much pride in being able to update the House on how we are delivering quality early childhood education in our cities and suburbs.

Earlier this month I had the opportunity to visit the Parramatta electorate with the charismatic local member, Geoff Lee. We attended the United Airline Preschool and discussed with the staff how they have improved the quality of their service as a result of Coalition Government funding. I am proud to say that under our Start Strong initiative that service is receiving 57 per cent more funding than under the previous funding model.

Recently the service was successful in receiving a grant of nearly \$15,000 for the installation of new grass to create a large outdoor play area for the children. While at the service we met with the director, Akram, and some of the children—they showed us their favourite parts of preschool. It was great to see them in their new play area, which had been difficult to access. It was exciting to see how the new grassed area has made a difference to the children and their play. The staff also told me that they are looking forward to the future possibilities for their service due to the increase in Government funding support—particularly through the Quality Learning Environments program.

This month I also spent some time in the Holsworthy electorate with another hardworking local member, Mel Gibbons. As a young working mother, Mel understands—absolutely and unquestionably—the importance of early childhood education—

The Hon. Bronnie Taylor: She is living it.

The Hon. SARAH MITCHELL: —because she is living it, that is right. I commend Mel for her advocacy on behalf of her constituents in this portfolio. Funding to Holsworthy Preschool has increased by 71 per cent thanks to the Start Strong initiative. Recently it received a grant to improve its physical environment, which it will use to install a worm farm to compost food and paper scraps and install a water tank for gardening and children's exploratory play. The director, Lynda, enjoyed taking us around the service. I commend the staff and the parents for how engaging the children were—I find that that is always a great mark of a quality service. The children at Holsworthy Preschool were a great example.

Another local member who cares deeply about quality early childhood education in his electorate is the member for Seven Hills, Mark Taylor. Last week it was a pleasure to accompany Mark to Lalor Park Preschool. This preschool is rated as "Exceeding" in the National Quality Framework and has seen a 75 per cent increase in funding thanks to Start Strong. Recently, through quality learning, the service received more than \$12,000 for general maintenance and repairs, including fencing, gutters and the veranda, installation of a new outdoor kitchen—where we had a bit of play with the children—and a large blackboard. I thank the director, Julie, the staff and children, and Mark for showing me around the service. I look forward to keeping informed and seeing how the preschool continues to grow. Finally, I was happy to spend some time at KU Padstow Preschool in East Hills—

The PRESIDENT: Order! The Minister will resume her seat. The Clerk will stop the clock. I paused for a while because I am having extreme difficulty working out who is worse: Government members or Opposition members. How about I say that they are as bad as each other with their continual interjections. I am happy to keep stopping the clock as long as possible if the interjections continue. This is our second last day. As reluctant as I am to evict members from the Chamber, I feel that members will ultimately compel me to do so. The Minister has the call.

The Hon. SARAH MITCHELL: As a recipient of our Quality Learning Environments program, KU Padstow Preschool in East Hills was able to make improvements to its outdoor space. It was wonderful to visit these fantastic services with the local members, seeing the work that we are doing on the ground and the difference it is making to early childhood education. We understand how important our littlest learners are and we are committed to investing in them. [*Time expired.*]

HUON AQUACULTURE PROJECT

Mr JUSTIN FIELD (15:06): My question without notice is directed to the Minister for Primary Industries. Has the full report by the Department of Primary Industries that assessed the impacts on the local marine environment from the accidental release of more than 20,000 kingfish from Huon's Aquaculture pens in Port Stephens been released? If not, why not? Will the report be released before the trial recommences?

The Hon. NIAL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:06): I thank the member for his question in relation to the Huon Aquaculture project in the New South Wales waters near Port Stephens. The New South Wales Department of Primary Industries [DPI] is collaborating with Huon Aquaculture, an Atlantic salmon producer from Tasmania, to develop yellowtail kingfish aquaculture in New South Wales waters. Research is under way to monitor the growth and environmental performance of yellowtail kingfish in sea pens some nine kilometres offshore from Hawks Nest. This is part of the Government's efforts to increase sustainable seafood supply and provide economic growth in regional areas. The New South Wales DPI has the responsibility of providing fingerlings at cost and undertaking feed research at its Port Stephens Fisheries Institute. Huon Aquaculture is responsible for infrastructure and daily operations on the research lease. The Department of Planning and Environment's approval for a Marine Aquaculture Research Lease [MARL] off Port Stephens comprises—

The PRESIDENT: Order! I call the Hon. John Graham to order for the first time.

The Hon. NIALL BLAIR: —stringent operational and environmental monitoring conditions that will set the standards for sustainable aquaculture in marine waters of New South Wales. A wealth of water quality and sediment data is collected and analysed independently by Newcastle University and there is an ongoing program of marine fauna interaction monitoring. These results, as well as regular stakeholder updates, are loaded to the web and emailed to the community, local businesses, agencies and interested parties to keep them informed as the project proceeds. The second Annual Environmental Management Report has been submitted to the New South Wales Department of Planning and Environment and once approved will be loaded onto the web. I am advised that the fish have grown extremely well and two successful harvests have been completed.

In January 2018 a severe storm with 11.27 metre waves damaged one sea pen, which resulted in fish escapement. Huon's recapture efforts recovered some 5,000 fish, more than 3,000 were caught by commercial fishers and many were caught by recreational fishers. As the regulator, the Department of Planning and Environment's Compliance Branch visited the research lease to assess the operation in light of the fish escape and to review an incident response report prepared to identify the cause of the escape.

Huon was issued with a \$15,000 fine for a breach of one approval condition—failure to maintain infrastructure. Huon is making improvements to the lease infrastructure based on knowledge and data acquired from both the research lease and its offshore operations in Tasmania. The latest technology will be installed on the lease. The Department of Primary Industries and Huon have also updated and approved several management plans in response to the events around the January storm, including a greater focus on managing the structural integrity of the sea pens and maintaining the infrastructure.

The information learned from this trial to date has been incorporated in the recently approved NSW Marine Water Sustainable Aquaculture Strategy, which outlines a regulatory and best practice framework for offshore aquaculture in New South Wales. A summary of the investigation report can be found on the website of the Department of Primary Industries, along with stakeholder updates and a frequently asked questions document. The full report into the fish escape earlier this year is commercial-in-confidence. It is important to note that the New South Wales Department of Planning and Environment engaged an independent consultant to review the potential environmental impact of the January storm incident, in particular the escape of yellowtail kingfish. The consultant concluded that the loss of yellowtail kingfish from the research lease does not represent a serious or irreversible environmental impact. [*Time expired.*]

DEPARTMENT OF PLANNING AND ENVIRONMENT MINING TITLES UNIT

The Hon. GREG DONNELLY (15:10): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. In an answer given yesterday, the Minister committed to receiving a "full briefing" on matters raised by Rebecca Connor. What role will Acting Deputy Secretary of Planning Michael Wright have in preparing the Minister's "full briefing", given community concerns that senior departmental figures were involved in Ms Connor's termination and knew of her attempted protected disclosure?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:11): It is absolutely vital for any government to demonstrate its commitment to address any allegations that could undermine public confidence in its work in an open and transparent manner. I indicated yesterday to the House that I would be seeking a full briefing. This Government does not take the allegations that were raised in the media lightly, and we have acted swiftly to address them. The Secretary of the Department of Planning and the Environment has informed me that she has referred the allegations to the Independent Commission Against Corruption. I support the decision.

The Hon. GREG DONNELLY (15:12): I ask a supplementary question. In light of the Minister's answer, and specifically the part that referred to the Secretary of the Department of Planning and Environment, can the Minister confirm whether the Acting Deputy Secretary of Planning will be having anything to do with the preparation of the briefing?

The Hon. Penny Sharpe: Good question.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:12): It is actually a very silly question. That was more than amply covered in the answer I gave. I received the briefing from the secretary and she said that she has referred it to the Independent Commission Against Corruption. It would be inappropriate for me to give any further response on any other aspect of this matter.

ENERGY SECURITY

The Hon. BEN FRANKLIN (15:13): My question is addressed to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. Will the Minister update the House on energy security in New South Wales this summer?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:13): Energy supply security is a high priority the Parliamentary Secretary for Renewable Energy and Northern NSW, the Hon. Ben Franklin, and I. We have completed extensive work, and will continue to do more, to ensure that the State is ready for the challenges that extreme weather presents to the electricity system. We have a good mix of energy sources. An additional 307 megawatts of new supply has been commissioned since last summer and more is forecast to start generating over this high demand summer period.

Our Australian Renewable Energy Agency [ARENA] demand response program will continue into its second year this summer, after a successful first year. Under this program, the New South Wales Government has partnered with ARENA to provide \$14 million in funding over three years for four pilot demand response projects. The Australian Energy Market Operator [AEMO] can use this demand response capacity to help manage electricity demand during extreme system peaks and prevent impacts to customers. We are continuing to work closely with AEMO and energy infrastructure operators to implement our summer readiness plan. This work follows on from its successful implementation last summer. The plan includes maximising supply from existing power stations, mitigating risks to power station fuel supply, maximising electricity transmission system capacity and reliability, contracting directly with demand response providers, and conducting emergency event planning and exercises.

In May 2018, AEMO released its "Summer Operations Report 2017-18". The report highlighted the importance of government planning and collaboration with AEMO and industry in delivering a secure, reliable and cost-efficient system to Australian consumers last summer. Overall, the pre-summer planning for last summer was effective. We have further built on this work for the upcoming high demand period by implementing the intent of all the recommendations of the NSW Energy Security Taskforce. I have also requested that the NSW Chief Scientist and Engineer establish a panel to review our readiness ahead of the upcoming summer, and the summer readiness report is due to be presented very soon. We have also taken action to do the long-term work that is necessary to minimise disruption as our energy system transitions by developing the Transmission Infrastructure Strategy, investigating technology trials to reduce network costs and working with WaterNSW to make available 38 WaterNSW dams through a public expression of interest process for prospective hydro and pumped-hydro developers.

Given the interconnected nature of the National Electricity Market, we must also be mindful that events, particularly weather events, in other jurisdictions can impact on New South Wales. My department works closely with officials in the Australian Capital Territory, Queensland and Victoria, as well as with AEMO, to ensure that all jurisdictions are coordinating and communicating effectively. This includes a number of meetings and exercises prior to summer. However, as AEMO has identified in its "Summer 2018-19 Readiness Plan", released this month, there are risks, including "a particular risk of the reliability standard not being met in Victoria under some peak demand conditions". We must remain vigilant. So with the extensive actions I have instructed my department to take and, the forecasting received from AEMO, New South Wales is well prepared. [*Time expired.*]

ST MERKORIOUS CHARITY

The Hon. PAUL GREEN (15:17): My question without notice is directed to the Minister representing the Minister for Local Government. The St Merkorious Charity was opened by the Hon. Ray Williams in August 2017. Its mission is to relieve hunger and poverty by providing those in need with access to healthy food, clothing and essential items for day-to-day living. Recently this charity tried to apply for a grant under its local council's Community Services Grants Program. The guidelines for that program identify that funding will not be provided for "political parties or religious instruction". While I understand the premise of the guideline, I do not agree that the services St Merkorious provides to our most vulnerable qualify as providing "religious instruction", yet it has been excluded from this funding opportunity. What protections are in place to ensure that Christian and charitable faith-based organisations are not excluded from community funding opportunities such as this, given that they feed the poor and the homeless?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:18): That is a good question. It is also a very specific question for which I do not have material to provide a precise answer on this occasion. The member has indicated that he would like me to take the question in my capacity as the Minister representing the Minister for Local Government, which I am happy to do. I will forward the question to the Minister and seek her response at the earliest possible opportunity.

NAMBUCCA HEADS PUBLIC LIBRARY

The Hon. PETER PRIMROSE (15:19): My question without notice is directed to the Minister for the Arts. In light of the Minister's commitment on 5 June that he would be more than happy to visit Nambucca Heads Library, how was the visit and has he now reconsidered his Government's rejection of Nambucca Shire Council's bid for funding to upgrade its local library?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:19): I go to lots of places, but I am afraid that the mid North Coast has not been on my recent schedule. I had been planning a visit to Coffs Harbour, Nambucca Heads and Bellingen but there was a change to my schedule at the last minute and it had to be cancelled. There has not been time to reschedule it, which is very disappointing. However, I am advised that the library made an application for round two funding from the Regional Cultural Fund. I am not quite sure how that application has gone. I believe the assessment panels have been meeting; therefore, I probably will be briefed fairly soon. The way that the Regional Cultural Fund works is that I and the Deputy Premier have to jointly make the decision. After I have considered the matter I will naturally be sitting down and talking with the Deputy Premier about it. We will wait and see if there is good news or otherwise for Nambucca Heads Library.

The Hon. Walt Secord: Just announce it like you did the last time.

The Hon. DON HARWIN: It is very tempting, but I will not do that. A process is going to be gone through. I will mention that we have made a commitment to increase library funding generally over the next four years should we be re-elected to government. The \$60 million announcement has been very well received by the general community.

The Hon. Wes Fang: Great news.

The Hon. DON HARWIN: It is great news indeed. Nevertheless, that has not stopped councils from applying for grants under the Regional Cultural Fund that are much larger than those available under the existing Public Library Infrastructure Grants program. A number have been successful. It may well be that Nambucca is also successful when we see the results from the panels. The Regional Cultural Fund has been an outstanding success. It is one of things I will be most proud of at some very distant point in the future when I look back on my record as Minister for the Arts. I am also proud of all other people who have supported the initiative such as the Hon. Ben Franklin, my predecessor the Hon. Troy Grant and, of course, the Deputy Premier. It is an excellent initiative that is completely transforming regional arts as well as regional communities across New South Wales. I think it has made a great difference.

I lived in a regional community for 18 years in the Jervis Bay area. We had an excellent local museum, a really good small cinema and the SeeChange biennial arts festival. They were some of things that gave vibrancy to the community in which we lived. No doubt they also helped people who wanted to stay living there. That story is replicated all around New South Wales. The vibrancy of communities including through things such as arts and culture is what makes places unique and what attracts people to them in the first place. The Regional Cultural Fund is a huge success and something that this Government can be proud of. We have made sure that every community in New South Wales has got its fair share of arts and culture funding.

The Hon. PETER PRIMROSE (15:23): I ask a supplementary question. Will the Minister please elucidate his answer by advising whether he expects to be able to visit Nambucca Heads Library sometime in his remaining few months?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:23): There are dozens and dozens of months ahead of us, given the record of this Government on many things, not just arts and culture. As we heard, 77 hospitals have been upgraded and 2,500 new classrooms have been built.

The PRESIDENT: Order! The Minister will resume his seat. The Clerk will stop the clock. Members are aware that the granting of supplementary questions is at the discretion of the Chair. I tend to grant supplementary questions to Opposition members. Once a supplementary question has been asked the very least Opposition members can do is sit quietly and allow the Minister to answer. It otherwise seems pointless to grant a supplementary question when I cannot hear what the Minister is saying. As a courtesy to the Hon. Peter Primrose, who asked the supplementary question, Opposition members will remain quiet and allow the Minister to answer it. The Minister has the call.

The Hon. DON HARWIN: If I do visit Nambucca Heads I will probably be driving. I recently drove to Port Macquarie to see some very good projects there. Thank goodness this Government has upgraded the Pacific Highway, including duplicating 145 kilometres of the highway from Port Macquarie to Coffs Harbour. I have

already seen the great work that has been done at Port Macquarie. If I go to Nambucca Heads I will be able to see the new 125-kilometre duplication as well. It will be fantastic. I have not been to Nambucca Heads for many years. Our family used to take the caravan up to Valla Park. It is a lovely area. I will be trying to get back to Nambucca Heads before the election campaign starts. Hopefully, it will be with good news.

WORLD FISHERIES DAY

The Hon. SCOTT FARLOW (15:26): My question is directed to the Minister for Primary Industries. Will the Minister please update the House on World Fisheries Day?

The Hon. Greg Donnelly: And are there any alternate policies?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:26): We will get to that. I thank the Parliamentary Secretary for his question. How good is fishing? Fishing is a sport, a lifestyle and a business. As a keen recreational fisher, I understand how fishing connects people with their environment, sustains businesses and is a healthy and fun outdoor activity.

The PRESIDENT: Order! The Minister will resume his seat. The Clerk will stop the clock. I call the Hon. Bronnie Taylor to order for the first time. I call the Hon. Mick Veitch to order for the first time. It is incredibly difficult to hear the Minister when the person behind him and the person in front of him continually interject. The Minister has the call.

The Hon. NIALL BLAIR: Fishing is a fun outdoor activity that brings generations of families and friends together. Today is World Fisheries Day, and it is celebrated every year on 21 November by fishing enthusiasts and businesses around the world. World Fisheries Day reminds us of the value we place on fish. It also reminds us of the challenges we face in managing our impact on fish stocks. Consumers of seafood across the State, across Australia and around the globe recognise the quality of our seafood in New South Wales. In New South Wales we are proactively ensuring the sustainability of our fisheries resources. We have many programs and policies to support that goal.

Today a Seafood Industry Advisory Council gathering was held in Parliament House. It was good to see members from all sides at the event to support the sector right through the supply chain. Today those we rely upon to catch the fish, our co-operatives and wholesalers, our processors and our retailers came together at Parliamentary House to celebrate World Fisheries Day and also pay homage to an important section of the New South Wales economy. I know many members in the Chamber were there. The Hon. Mark Pearson was probably tempted to duck down and put a few fish into his belly. He was here a minute ago; it is shame he is not here now to celebrate World Fisheries Day with us in the Chamber.

New South Wales has a vibrant recreational sector as well as a vibrant commercial sector and the fishing sector will continue to enjoy much success and growth in New South Wales in the future. Not only do we have a wild-caught sector in this State; we also have an agricultural sector. After my recent trip to China and Vietnam, I learned those countries have one thing in common: They love seafood from New South Wales. Today we heard the head of the Sydney Fish Market run through some of the statistics about the number of Chinese visitors to the Sydney Fish Market. One statistic that was mentioned to me today in conversation is that more people go through the Sydney Fish Market than visit the Great Barrier Reef. Although people like to see the fish, they like to eat them as well.

Many members from all sides of politics not only enjoy fish and seafood as a healthy and safe food source but also enjoy the recreational activity of fishing. Over the summer I hope many people get out and about with their families to wet a line and enjoy the great outdoors in New South Wales. They will contribute to local economies as I do—I spend a lot of money on lures that I end up losing. I pay homage today on World Fisheries Day to the contribution that this sector makes to New South Wales and around the world.

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

STATE FOREST LOGGING OPERATIONS

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:31): Earlier in question time Ms Cate Faehrmann asked whether there are any plans to allow logging in national parks. I can advise her that the Government does not support commercial logging in national parks. It is not legally permissible under the National Parks and Wildlife Act 1974.

WATER CONSERVATION

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:31): Mr Justin Field asked a question about Sydney Water's "Water Conservation Report". I am advised that Sydney Water has submitted the "Water Conservation Report" to the Independent Pricing and Regulatory Tribunal, as required. Sydney Water's normal practice is to publish the report shortly after its annual report is published, which is generally in late November each year.

Deferred Answers

GO NSW EQUITY FUND

In reply to **the Hon. MICK VEITCH** (17 October 2018).

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

I was advised by a member of my staff that the investment in Australia's Oyster Coast had been approved a few days prior to the announcement.

Bills

RETIREMENT VILLAGES AMENDMENT BILL 2018**BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2018****FAIR TRADING LEGISLATION AMENDMENT (MISCELLANEOUS) BILL 2018****PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (ASBESTOS WASTE) BILL 2018**

Returned

The PRESIDENT: I report receipt of messages from the Legislative Assembly returning the abovementioned bills without amendment.

COMMUNITY PROTECTION LEGISLATION AMENDMENT BILL 2018**Second Reading Speech**

The Hon. SCOT MacDONALD (15:32): 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.

The Government is pleased to introduce the **Community Protection Legislation Amendment Bill 2018**.

This bill introduces a number of reforms aimed at keeping the community safe, including from the risk of terrorism and other high risk offenders, from bushfires, from child sexual abuse and from dangerous drug use. This bill also allows for the release of information relating to applications for the exercise of the Royal prerogative of mercy and petitions submitted under section 76 of the Crimes (Appeal and Review) Act 2001.

Schedule 1 of the bill amends a number of Acts to facilitate the implementation of the Terrorism (High Risk Offenders) Act 2017, which protects the community from offenders who have reached the end of their prison sentence and pose an unacceptable risk of committing a future serious terrorism offence.

Terrorism continues to present a serious and ongoing threat to the safety and security of New South Wales, Australia and the international community.

The events in Melbourne last week are a tragic reminder of the terrible impact caused when the threat of terror manifests itself. It is important to be vigilant and address new challenges as they arise, including in our counter-terrorism framework.

The post-sentence supervision and detention scheme introduced by this Government is a key tool in that framework. Amendments introduced by Schedule 1 of this bill will facilitate the implementation of this scheme.

Schedule 2 of the bill will amend the Crimes Act 1900 to:

- Introduce a new offence of supply of drugs causing death;

- increase the maximum penalty for the dedicated bushfire offence;
- introduce a staggered penalty regime for the offences of concealing a serious indictable offence and concealing a child abuse offence; and
- include additional former offences into the list of offences in Schedule 1A as relevant to various provisions that refer and apply to historical child abuse offences.

Schedule 3 of the bill will amend the Crimes (Appeal and Review) Act 2001 to allow for the release of information relating to all petitions made for the exercise of the Governor's powers relating to the Royal prerogative of mercy.

Detail of the Community Protection Legislation Amendment Bill 2018

I now turn to the detail of the **Community Protection Legislation Amendment Bill 2018**.

Schedule 1.1 [2] amends the Children (Detention Centres) Act 1987 to allow an offender subject to a continuing detention order or interim detention order under the Commonwealth high risk terrorist offenders scheme to be housed and managed in a Juvenile Justice detention facility.

Offenders subject to a Commonwealth continuing detention order can currently only be housed and managed in a Corrective Services NSW correctional centre, even if they are currently held in a Juvenile Justice detention centre.

This amendment will provide the Court the discretion, if an offender is currently held in a Juvenile Justice detention centre because they are under the age of 21 and 6 months, to place the offender in a Juvenile Justice detention facility.

Schedule 1.1 [3], Schedule 1.2 [1], Schedule 1.3 [3], and Schedule 1.7 [1] will amend the definitions of "convicted NSW terrorism activity offender" under the Terrorism (High Risk Offenders) Act 2017 and "terrorism related offender" under the Children (Detention Centres) Act 1987, Children (Detention Centres) Regulation 2015 and the Crimes (Administration of Sentences) Act 2009 in order to:

- ensure the definitions capture previous associations or affiliations an offender had with individuals, deceased or alive
- clarify that an organisation or group with which the person has association or affiliation may be currently advocating or may have previously advocated, support for terrorist acts or violent extremism
- apply the definitions to both plural and singular persons, organisations and acts; and

Schedule 1.1 [4], Schedule 1.2 [2], Schedule 1.3 [4], and Schedule 1.7 [2] will clarify the meaning of "advocating support" and "association or affiliation" for the purposes of determining whether a person is a "convicted NSW terrorism activity offender" or "terrorism related offender".

Clarification will be provided through the insertion of a non-limited list of examples of action that falls within the meaning of "advocating support for terrorist acts or violent extremism" and "an association or other affiliation with a person, group of persons or organisation".

Examples of advocating support for terrorist acts or violent extremism include:

- downloading from websites or viewing material (including speeches, propaganda or videos) knowing it to be material concerning terrorist acts or violent extremism
- making a pledge of loyalty to a person, organisation or ideology that supports terrorism acts or violent extremism
- using or displaying images or symbols associated with a person, organisation or ideology that supports terrorist acts or violent extremism
- making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism.

Examples of a personal or business association or affiliation with any person, group or organisation that is or was advocating support for any terrorist act or violent extremism include:

- networking or communicating with the person, group or persons or organisation
- using social media sites or any other websites to communicate with the person, group of persons or organisation.

These amendments will clarify that "advocating support" for terrorism activity or violent extremism is distinct from the actual commission of a terrorism offence.

Advocating support for terrorism activity or violent extremism is an indicator of the potential risk posed by the offender. A determination of actual risk is made by the Supreme Court.

The Supreme Court must still be satisfied to a high degree of probability that the offender poses an unacceptable risk in order to make a post-sentence order under the Terrorism (High Risk Offenders) Act 2017.

Schedule 1.7 [1] and [2] will further amend the definition of "convicted NSW terrorism activity offender" under the Terrorism (High Risk Offenders) Act 2017 by including the term "violent extremism", to ensure consistency with the definitions under the Children (Detention Centres) Act 1987 and the Crimes (Administration of Sentences) Act 2009.

Consistency of the definitions of "convicted NSW terrorism activity offender" and "terrorism related offender" across these Acts is particularly important to ensure that the limitation on the release on parole of terrorism related offenders in the Children (Detention Centres) Act 1987 and the Crimes (Administration of Sentences) Act 2009 can operate effectively.

In the context of the amendments to the Terrorism (High Risk Offenders) Act 2017, these amendments will also address difficulties that have arisen in establishing that an offender falls within the eligibility for post-sentence orders. For example, an offender who had associations with a now deceased individual who voiced support for terrorism may not fall within the current definition of "convicted NSW terrorism activity offender" simply because the individual is no longer alive.

If an offender falls within the definition of "convicted NSW terrorism activity offender", the Supreme Court must still be satisfied to a high degree of probability that the offender poses an unacceptable risk in order to make a post-sentence order under the Terrorism (High Risk Offenders) Act 2017.

Schedule 1.1 [5] and **Schedule 1.3 [1]** amend the Children (Detention Centres) Act 1987 and the Crimes (Administration of Sentences) Act 1999 to enable the State, through the Commissioner for Corrective Services NSW, to provide information to the State Parole Authority and the Children's Court in relation to a terrorism-related offender.

The Commissioner of Corrective Services NSW already has the ability to make submissions to the State Parole Authority under sections 141A and 160AA of the Crimes (Administration of Sentences) Act 1999, but this does not currently extend to information obtained under the Terrorism (High Risk Offenders) Act 2017.

Schedule 1.7 [20] inserts new section 71A into the Terrorism (High Risk Offenders) Act 2017 to authorise the use by the State of relevant information obtained under that Act in proceedings for parole under the Children (Detention Centres) Act 1987 and the Crimes (Administration of Sentences) Act 1999.

Relevant information includes:

- Offender information provided under Part 5
- Information provided to a relevant agency of the State under a co-operative protocol under section 65 go Information provided under a terrorism information exchange agreement under section 67; and
- An expert report (within the meaning of section 71) about an eligible offender

The State will be authorised to use relevant information in parole proceedings, but only with the consent of the provider of the information, under new section 71A(2).

Schedule 1.1 [6] and **Schedule 1.3 [2]** insert new provisions in to the Children (Detention Centres) Act 1987 and the Crimes (Administration of Sentences) Act 1999 to enable the State or prescribed intelligence authority to withdraw the information provided under the authority given by section 71A of the Terrorism (High Risk Offenders) Act 2017 at any time before proceedings are determined.

Any offender information that is withdrawn from the consideration of the Children's Court must not:

- Be used in making submissions for the State in the proceedings, or
- Taken into consideration by the Children's Court in determining the proceedings.

These amendments will ensure that information that is available for the purposes of determining whether or not to seek a post-sentence order is also available to parole authorities in determining whether or not an offender poses a terrorism risk.

This government introduced amendments, through the Terrorism Legislation Amendment (Police Powers and Parole) Act 2017, which created a presumption that parole will not be granted to offenders who have demonstrated support for, or have links to, terrorist activity.

Division 3A of the Crimes (Administration of Sentences) Act 1999 and Division 5 of Part 40 of the Children (Detention Centres) Act 1987 also create a presumption against parole for these offenders. The effect of these provisions is that the State Parole Authority and the Children's Court must not make a parole order for a terrorism related offender unless satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts or violent extremism.

An application for a post-sentence order under the Terrorism (High Risk Offenders) Act 2017 is supported by information from a range of State and Commonwealth enforcement and intelligence agencies. This material is sensitive and sourced from agencies tasked with undertaking complex investigations to protect our community from harm.

It has become clear during operationalisation of the post-sentence scheme that there is more information available for the purposes of determining whether or not to seek a post-sentence order than is available to parole authorities in determining whether or not an offender poses a terrorism risk.

These amendments therefore address the risk that an offender who poses a terrorism risk would be released on parole due to parole authorities being unaware of this risk.

Schedule 1.4 [1] and **Schedule 1.7 [3]** insert section 5AA of the Crimes (High Risk Offenders) Act 2006 and amend section 16 of the Terrorism (High Risk Offenders) Act 2017 to enable offenders subject to a substantive extended supervision order or continuing detention order under either Act to be eligible for an application for an order under the other Act at the completion of the original order.

These amendments address the scenario where the primary risk posed by an offender on a post-sentence order shifts from sex or violent offending to terrorist offending, and vice versa.

The Supreme Court would still need to be satisfied to a high degree of probability that the offender poses an unacceptable risk under the relevant Act before making the order.

Schedule 1.4 [3] and **Schedule 1.7 [6]** and **[9]** insert new provisions under section 9 of the Crimes (High Risk Offenders) Act 2006 and sections 25 and 39 of the Terrorism (High Risk Offenders) Act 2017 to provide that an offender's intention to leave New South Wales is not a valid consideration for the Court to take into account in determining whether or not to make a supervision order.

An offender's intention to leave the jurisdiction, whether temporarily or permanently, should not be a reason to decline to make a supervision order.

Schedule 1.4 [4] and **[5]** insert new subsections into section 11 and 17 of the Crimes (High Risk Offenders) Act 2006 to impose a mandatory condition on each interim and extended supervision order that an offender is not to leave New South Wales except with the approval of the Commissioner of Corrective Services NSW.

This amendment will bring New South Wales legislation into line with equivalent legislation in Victoria and Queensland which both require a Court to impose certain conditions on an offender under a supervision order, including a condition to not leave the jurisdiction without approval.

The Court will retain its discretion to impose other conditions it considers appropriate, but the Court will be required to impose a condition to not leave the jurisdiction without approval.

Schedule 1.4 [6] and **Schedule 1.7 [12]** insert new provisions into section 22 of the Crimes (High Risk Offenders) Act 2006 and section 53 of the Terrorism (High Risk Offenders) Act 2017 to:

- Clarify that, if the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the Court of Appeal may make an interim order for a period not exceeding 28 days revoking or varying an extended supervision order, continuing detention order or emergency detention order the subject of the appeal; and
- Provide that the Court of Appeal may make more than such one interim order provided that the combined periods which any interim orders (whether made by the Court of Appeal or Supreme Court at first instance) are in force do not exceed 6 months in total.

Schedule 1.4 [7] amends section 24AA of the Crimes (High Risk Offenders) Act 2006 to clarify that the meaning of "relevant agency" includes any public sector agency of the Commonwealth, State or Territory that is prescribed by the regulations as a relevant agency.

Each relevant agency is under a legislative duty to cooperate with other relevant agencies in the exercise of functions related to the risk assessment and management of high-risk offenders.

This amendment will provide greater certainty to agencies when sharing information with local and interstate agencies.

Schedule 1.4 [8] amends section 24AD of the Crimes (High Risk Offenders) Act 2006 to clarify that the High Risk Offenders Assessment Committee, responsible for reviewing risk assessments and making recommendations to the Commissioner of Corrective Services NSW, may form sub-committees as constituted to exercise functions under the Terrorism (High Risk Offenders) Act 2017 to exercise those functions for the Committee; and that a sub-committee may include persons who are not members of the High Risk Offenders Assessment Committee.

This amendment will clarify that the Assessment Committee, when exercising a function conferred by the Terrorism (High Risk Offenders) Act 2017, can also create subcommittees to exercise that function.

Schedule 1.4 [9] and **Schedule 1.7 [21]** amend section 28A of the Crimes (High Risk Offenders) Act 2006 and section 73 of the Terrorism (High Risk Offenders) Act 2017 to enable the Commissioner of Corrective Services NSW to issue evidentiary certificates in relation to interim supervision orders, interim detention orders and emergency detention orders.

Evidentiary certificates are authoritative documents setting out the revised end date of an order, typically used when an extended supervision order is suspended due to time in custody.

This amendment will expand the use of evidentiary certificates beyond extended supervision orders to other orders under the Terrorism (High Risk Offenders) Act 2017.

Schedule 1.6 [3] amends section 17 of the Surveillance Devices Act 2007 to insert a new ground on which a law enforcement officer may apply for a surveillance device warrant.

Under new section 17 (1A), a law enforcement officer (or another person on his or her behalf) may apply for the issue of a surveillance device warrant for the use of a surveillance device in a correctional centre if the law enforcement officer on reasonable grounds suspects or believes that:

- an eligible offender within the Terrorism (High Risk Offenders) Act 2017 is an inmate of the correctional centre, and
- an investigation into whether an application for a supervision or detention order under the Terrorism (High Risk Offenders) Act 2017 in respect of an offender is being, will be, or is likely to be conducted on the basis that the offender is a terrorism-related offender,
- the use of a surveillance device is necessary for the purpose of an investigation into whether an application for a supervision or detention order under the Terrorism (High Risk Offenders) Act 2017 should be made to enable evidence to be obtained that would likely support that application.

Schedule 1.6 [2] amends the Surveillance Devices Act 2007 to provide that material obtained through a surveillance device warrant may be used in a proceeding for the parole of a terrorism-related offender, or in a proceeding under the Terrorism (High Risk Offenders) Act 2017.

Surveillance device material will be crucial in determining whether an application should be made in relation to an eligible offender under the Terrorism (High Risk Offenders) Act 2017.

A key part of investigations under the Terrorism (High Risk Offenders) Act 2017 is determining whether there is any evidence of ideology or support for terrorism generally, or associations with people who support terrorism.

Using surveillance device material rather than relying on information provided by an offender's cellmate will also reduce safety risks for confidential informants.

As with the existing grounds for an application for a surveillance device warrant, an eligible judge, and the soon to be established Surveillance Devices Commissioner, will need to be satisfied that the application for the warrant is justified in the circumstances.

Schedule 1.7 [5] and **[8]** amend sections 24 and 38 of the Terrorism (High Risk Offenders) Act 2017 relating to pre-trial disclosure obligations for applications for extended supervision orders and continuing detention orders.

These amendments will require the State to disclose to the offender and their legal representative an index of documents, reports and other information that is relevant to the proceedings on the application.

This will reduce the unnecessary administrative burden imposed on agencies by the current requirement that the State provide all of those documents, whether or not they are intended to be tendered in evidence, as soon as practicable after the application has been made.

In urgent circumstances, the volume of information that is required to be reviewed, redacted and served can be significant.

This amendment does not limit the State's disclosure obligations. Under new sections 24 (2A) (b) and 38 (2A) (b), an offender or their legal representative will be able to request and be given access to a document, report or other information included in the index, or parts of those documents, as are relevant to the proceedings.

Schedule 1.7 [7] amends sections 29 of the Terrorism (High Risk Offenders) Act 2017 to insert mandatory conditions applying to supervision orders. These conditions must apply to each extended or interim supervision order unless the Supreme Court orders differently.

These are standard conditions that are sought by the State and generally granted by the Court under the Terrorism (High Risk Offenders) Act 2017. The conditions to be inserted are:

- to submit to the supervision and guidance of any enforcement officers responsible for supervision of the offender for the time being and obey all reasonable directions of an enforcement officer, including in respect of providing a schedule of movements;
- to wear electronic monitoring equipment as directed and not tamper with, or remove, such equipment;
- to live at an address approved by the offender's enforcement officer and notify an enforcement officer of any change in the offender's living arrangements prior to the change in accommodation;
- not to leave New South Wales except with approval of the Commissioner of Corrective Services NSW or delegate;
- to submit to search of the offender's person and residence, and search and seizure of the offender's vehicle, computer, electronic and communication device or any storage facility, garage, locker or commercial facility under the offender's control;
- to comply with rules or by-laws (or both) of any approved accommodation for the offender;
- not to use prohibited drugs or obtain drugs unlawfully or abuse drugs lawfully obtained;
- to submit to drug and alcohol testing;
- to not possess or use any of the following:
 - a firearm, firearm part or ammunition within the meaning of the Firearms Act 1996;
 - a prohibited weapon within the meaning of the Weapons Prohibition Act 1998,
 - a spear gun;
 - an explosive substance intended, by the person having custody of the thing, to be used in an explosive device;
 - a fuse capable of use with an explosive or a detonator, or a detonator, that is intended by the person having custody of the thing, to be used as a fuse or detonator for an explosive device, as the case may be.
- to be available for interview at such times and places as an enforcement officer (or the officer's nominee) may from time to time direct;
- to undergo ongoing psychological and/or psychiatric assessment and/or counselling as directed by the enforcement officer;
- not to, of their own initiative, start any job, volunteer work or educational course without the approval of an enforcement officer
- to obey any reasonable direction by an enforcement officer about communication, internet access and use of electronic devices (including, but not limited to, approval of devices used, method of communication access to internet and restrictions on deleting information);
- to permit an enforcement officer to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address;
- to notify an enforcement officer of any intention to change the offender's employment if practicable before the change occurs or otherwise at his or her next interview with a responsible officer;
- not to associate (including using third parties) with any person or persons specified by an enforcement officer, whether face to face or by written correspondence or electronic means;
- not to change the offender's name or use any other name without notifying the enforcement officer; and
- not to frequent or visit any place or district designated by an enforcement officer.

Inserting mandatory conditions into the Terrorism (High Risk Offenders) Act 2017 will avoid protracted disputes about monitoring requirements which are essential to protect the community.

The Court will retain its discretion to remove one or more of the conditions, and will also have the ability to add additional conditions in line with the current non-exhaustive list of conditions under section 29 (1).

Schedule 1.7 [10] will amend section 45 (3) of the Terrorism (High Risk Offenders) Act 2017 to extend the disclosure exemptions applying to an emergency detention order application.

The effect of this amendment is that the State will not be required to disclose to an offender or the Legal Aid Commission of NSW any document, report or other information (except in accordance with new Division 3 under Part 5) if:

- the State or a prescribed terrorism intelligence authority intends to make an application under that Division for the document, report or other information to be dealt with as terrorism intelligence, or
- the document, report or other information is the subject of a pending application under that Division for it be dealt with as terrorism intelligence, or
- the Supreme Court has granted an application under that Division for the document, report or other information to be dealt with as terrorism intelligence.

This will mirror the existing provisions in sections 24 (3) and 38 (3), ensuring consistent protection of material over which the State intends to make, or has already made, a terrorism intelligence application.

Schedule 1.7 [16] inserts new Division 3 under Part 5 of the Terrorism (High Risk Offenders) Act 2017 to expand protections for terrorism intelligence.

Terrorism intelligence information is information relating to actual or suspected terrorism activity which, if disclosed, would reasonably be expected to:

- adversely affect the capacity of agencies involved in the prevention of terrorist acts to prevent such acts or carry out their functions
- prejudice criminal investigations or investigations by intelligence agencies
- identify the existence or identity of a source, or
- endanger a person's life or physical safety.

Currently, terrorism intelligence is provided in full to an offender or their legal representative, with the possibility of the Court denying any form of access to the offender, and the possibility of redactions if there is a successful claim of public interest immunity.

The possibility of terrorism intelligence being provided to an offender in full can be a concern, including for other agencies or jurisdictions providing information under the Terrorism (High Risk Offenders) Act 2017.

Insufficient protections of terrorism intelligence under the Terrorism (High Risk Offenders) Act 2017 leaves open the risk that information may be withheld by other agencies or jurisdictions, meaning the Supreme Court would not be fully informed about all relevant matters in an application for a post-sentence order under the Terrorism (High Risk Offenders) Act 2017.

Amendments introduced by the Justice Legislation Amendment Act (No. 2) 2018 provided for more restricted access to terrorism intelligence by an unrepresented offender. Under current section 60 (11) of the Terrorism (High Risk Offenders) Act 2017, the Supreme Court may allow one of the following forms of access:

- providing access to or a copy of the terrorism intelligence that has been redacted to prevent the disclosure of the intelligence
- providing both access to and a copy of the redacted terrorism intelligence and a written summary of the nature of the redacted intelligence
- providing both access to and a copy of the redacted terrorism intelligence and a written statement of the facts the intelligence would be likely to establish.

These amendments addressed the situation where the Court would have ordinarily only granted access to terrorism intelligence to an offender's legal representative, not the offender themselves.

Schedule 1.7 [16] inserts new section 590 into the Terrorism (High Risk Offenders) Act 2017 to extend the ability of the Court to grant that form of restricted access to all offenders, whether they are represented or not. This type of access could be requested by the State or a prescribed terrorism intelligence authority.

New section 590 (3) would also allow the State or a prescribed terrorism intelligence authority to request the material be restricted to the offender's counsel only (as is currently the case for a represented offender under section 60 (10)).

New section 59D also allows the applicant for the terrorism intelligence application or any prescribed terrorism intelligence authority that provided the information to withdraw the relevant material if:

- The Court is not satisfied that the information is terrorism intelligence, or
- the Court did not order the type of release or the level of protection requested.

The Court would consider the material in full and retain the discretion to accord the material the weight that is appropriate for evidence that defence counsel did not have the opportunity to test.

Any material that the State or the prescribed terrorism intelligence authority withdraws could not be considered by the Court in determining whether to make an order. However, the Attorney General would be aware of the information at the point in time when determining whether to make the application under the Terrorism (High Risk Offenders) Act 2017.

New section 59B provides for safeguards in response to the greater level of protection of terrorism intelligence material.

The first safeguard is that, upon the State or prescribed terrorism authority requesting the Court to order most restricted level of protection and access, the Court will be required to appoint an independent third party representative.

This independent third party representative would have full access to the information or terrorism intelligence to test the material on the offender's behalf and could make submissions to the Court on:

- whether or not the information is terrorism intelligence, and
- the level of access to terrorism intelligence that should be given to the offender and/or their legal representative.

This safeguard currently applies to unrepresented offenders during terrorism intelligence applications under current section 60 (5). It will now be applied to all offenders.

The second safeguard inserted by **Schedule 1.7 [16]** is new section 59D (3), which provides that the State or a prescribed terrorism intelligence authority is prevented from withdrawing any material to which a terrorism intelligence application relates if the Court considers that its withdrawal would be manifestly unfair to the offender. This would mirror the existing restriction on the withdrawal of exculpatory material that is subject to a claim of public interest immunity under current section 60A (3).

The Court would be able to redact information as necessary to only release the sections of the material that are exculpatory. For example, one sentence or paragraph on a page of an intelligence report may be exculpatory, and the Court could release the relevant sentence or paragraph, but redact the rest of the document.

I now turn to the detail of **Schedule 2 of the Community Protection Legislation Amendment Bill 2018**.

Supply of drugs causing death

Schedule 2.1 amends the Crimes Act 1900 to insert a new offence at section 25C of supply of drugs causing death.

On 15 September 2018, two young adults lost their lives at the Defqon.1 music festival in Penrith. In addition to their deaths, seven people were admitted to hospital for drug-related illness. Three of the seven people were admitted to intensive care units.

On 18 September 2018, the Premier established an Expert Panel to advise the Government on three key issues:

- 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 Panel was asked to consider input from the community and key stakeholders, including music industry representatives and local government.

The Panel has now handed down its report, entitled Keeping People Safe at Music Festivals, and made seven recommendations.

Recommendation 7 was to investigate introducing a new offence for those who supply illegal drugs, for financial or material gain, to people who then self-administer the drugs and die as a result.

In proposing a new offence for drug supply causing death, the Panel highlighted its strong view that the intent of the offence should be to target drug supply for profit, rather than the "young friends" scenario and stated that, in its view, the harshest penalties should be reserved for drug dealers, rather than drug supply between friends.

The offence that is introduced by this amendment gives effect to Recommendation 7 made by the Panel, and also the Panel's views in relation to targeting drug supply for profit, rather than targeting young people involved in sharing or supplying drugs amongst one another.

A person will be guilty of the new offence if:

- The person supplies a prohibited drug to another person for financial or material gain;
- The drug is self-administered by another person (whether or not the person to whom the drug was supplied); and
- The self-administration of the drug causes or substantially causes the death of that other person.

The maximum penalty for the offence will be 20 years imprisonment. Prohibited drug will have the same meaning as it currently does under the Drug Misuse and Trafficking Act 1985, but will not include a prohibited plant within the meaning of that Act.

In order to establish, beyond reasonable doubt, that a person is guilty of the new offence, it will be necessary for the prosecution to prove that the accused knew, or ought reasonably to have known, that supplying the prohibited drug would expose another person, whether or not the person to whom the drug was supplied, to a significant risk of death as a result of the self-administration of the drug.

It will not be an offence if the drug was supplied by someone authorised to do so under the Poisons and Therapeutic Goods Act 1966.

A safeguard has been included in the offence provision that proceedings for the offence may only be instituted by or with the approval of the Director of Public Prosecutions.

This will ensure that all relevant factors can be considered, in accordance with the Prosecution Guidelines of the Office of the Director of Public Prosecutions, before a prosecution is commenced under the new offence provision, including whether it can be said that there are reasonable prospects of a conviction by a reasonable jury properly instructed as to the law and discretionary factors that may dictate that a matter should or should not proceed.

Finally, section 18 of the Crimes Act 1900 will not apply to this offence. Section 18 defines murder and manslaughter.

Staggered penalty regime for concealing serious indictable offences and concealing child abuse offences

It is important for community safety and in the interest of justice to ensure that offenders responsible for serious indictable offences and for child abuse offences are apprehended, prosecuted and convicted.

It is similarly important that those who have information which is material to the apprehension, prosecution and conviction of those responsible for these serious offences have a strong incentive to report that information to the appropriate authorities, and face suitable penalties where they fail to do so.

Currently, section 316 and section 316A of the Crimes Act 1900 provide for a maximum penalty of:

- 2 years imprisonment for failure to report material information any serious indictable offence, or child abuse offence to the relevant authorities; and
- 5 years imprisonment if person solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for concealing the serious indictable offence of child abuse offence.

The current maximum penalties apply irrespective of the seriousness of the offence that was concealed. This has the effect that concealing an offence that carries a penalty of up to 5 years imprisonment (such as possession a vehicle licence plate unattached to a vehicle) carries the same maximum penalty as concealing an offence that carries penalty of up to 25 years or life imprisonment (such as murder or the new offence of persistent sexual abuse of a child, which will commence shortly).

The Government considers that a staggered penalty regime, where the maximum penalty for concealing an offence increases with the respective severity of the offence concealed, is a pragmatic and proportionate approach.

Schedule 2.2 [1] will amend section 316 (1) to provide that the maximum penalty for concealing a serious indictable offence is:

- **2 years** - if the maximum penalty for the serious indictable offence is not more than 10 years imprisonment;
- **3 years** - if the maximum penalty for the serious indictable offence is more than 10 years imprisonment but not more than 20 years imprisonment; or
- **5 years** - if the maximum penalty for the serious indictable offence is more than 20 years imprisonment.

Schedule 2.2 [1] will also amend section 316 (2) to provide that the maximum penalty for a person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for concealing a serious indictable offence is:

- **5 years** - if the maximum penalty for the serious indictable offence is not more than 10 years imprisonment;
- **6 years** - if the maximum penalty for the serious indictable offence is more than 10 years imprisonment but not more than 20 years imprisonment; or
- **7 years** - if the maximum penalty for the serious indictable offence is more than 20 years imprisonment.

Finally, **Schedule 2.2 [1]** will also amend section 316 to clarify that it only applies to persons over the age of 18 years.

At present, section 316 applies to "persons" who conceal serious indictable offences, while section 316A applies to "adults".

The Government considers that consistency between the provisions, as far as possible, is preferable, and recognises that children and young people can be particularly vulnerable to being pressured into not reporting another person's offending, and may not understand when they have information that might be of material assistance to authorities.

Schedule 2.2 [2] will amend section 316A to provide that the maximum penalty for concealing a child abuse offence is:

- **2 years** - if the maximum penalty for the child abuse offence is less than 5 years imprisonment; or
- **5 years** - if the maximum penalty for the child abuse offence is 5 years imprisonment or more.

Schedule 2.2 [4] will amend section 316 (4) to provide that the maximum penalty for a person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for concealing a child abuse offence is:

- **5 years** - if the maximum penalty for the child abuse offence is less than 5 years imprisonment; or
- **7 years** - if the maximum penalty for the child abuse offence is 5 years imprisonment or more.

Schedule 2.2 [3] amends section 316A (2) to include an additional, limited reasonable excuse to the non-exhaustive list of reasonable excuses for failing to report to the NSW Police Force information that might be of material assistance in securing the apprehension, prosecution or conviction of a person responsible for a child abuse offence.

The additional reasonable excuse will apply in very specific circumstances, namely where:

- The person is a member of staff of a school; and
- The child abuse offence is an "assault at school" for the purposes of section 60E of the Crimes Act 1900; and
- The alleged offender *and* the alleged victim are both school students under the age of 18 years; and
- The offence does not result in any injury other than minor bruising, cuts or grazing of the skin; and
- The person has reported taken reasonable steps to ensure that the incident has been brought to the attention of the incident reporting unit of the Department of Education, or, in the case of a non-government school, the principal or governing body of that school.

By its reference to section 60E ("assaults at school"), section 316A may require schools' members of staff to report to the NSW Police Force minor altercations and bullying between children, that, prior to the commencement of section 316A, would have been reported in accordance with the schools' or the Department of Education's reporting guidelines, and managed through internal disciplinary processes.

While the policy intent of section 316A is to ensure that assaults at school that constitute child abuse are reported to Police, the current reference to section 60E as a whole has:

- Created a significant reporting burden for school staff;
- Risks duplication of reports and investigations by schools and Police;
- May result in Police being inundated with reports of minor incidents between children that will never result in criminal charges; and
- May unnecessarily escalate minor incidents between children and young people that would be better addressed within the school community.

The amendment in **Schedule 2.2 [3]** recognises that assaults at school between school students should be reported, but that, where a member of staff has made a genuine effort to report, and has done so via established reporting practices, this may constitute a reasonable excuse for not reporting to the NSW Police Force.

Schedule 2.3 [2] amends Schedule 1A to the Crimes Act 1900 to include some additional offences to the Schedule's list of former sexual offences.

Schedule 1A lists a number of former sexual offences that are cross-referenced in extant offences and provisions, such as the offence of persistent sexual abuse of a child.

While all efforts were made to ensure Schedule 1A includes all relevant former sexual offences, certain offences relating to "buggery" and "attempted buggery" were inadvertently not included in the list.

- Before June 1984, sections 79 and 80 of the Crimes Act 1900 covered these offences, as well as acts of bestiality.
- From 8 June 1984, the provisions were amended to only refer to bestiality.
- Schedule 2.3 [2] will amend Schedule 1A to include reference to both former versions of sections 79 and 80, to cover a situation where the alleged child sexual abuse may have occurred before 8 June 1984 and the appropriate charge is "buggery" or "attempted buggery" under former section 79 or 80.

Bushfires

Schedule 2.3 [1] amends section 203E of the Crimes Act 1900 (the dedicated bushfire offence) to increase the maximum penalty for the offence of intentionally causing a fire and being reckless as to its spread to vegetation on any public land or land belonging to another person from 14 years' imprisonment to 21 years' imprisonment.

Bushfires have the potential to cause catastrophic damage to land and properties, loss of livestock, injury and death to members of the community, and substantial economic costs to individuals and the state.

Recent data shows that the cost of bushfires to the state is steadily increasing. Audited eligible bushfire expenditure determinations made under the Natural Disaster Relief and Recovery Arrangements:

- Were approximately \$11.4 million in 2015-2016;
- Were approximately \$23.1 million in 2016-2017; and
- Are expected to be approximately \$54.7 million in 2017-2018.

Environmental conditions for the 2018-2019 Summer season are expected to be increasingly conducive to bushfires.

- The year to date has been one of the driest on record, with below average rainfall and above average temperatures projected throughout Spring and Summer, representing a serious bushfire danger.
- Currently, over 98 per cent of the State of New South Wales is in drought, a slight drop from 100 per cent in July.
- Over 18 per cent of the State is in Intense drought.
- The NSW RFS Commissioner varied the statutory bush fire danger period to commence in ten local council regions on 1 August 2018, and in the remainder of the state on 1 September 2018, rather than the normal start date of 1 October.
- Over the 2018 Winter season, there were several severe bushfires across the state, resulting in loss of livestock, properties and homes. In the week to 23 July 2018, New South Wales fire authorities dealt with over 500 bush and grassfires, and the RFS responded to over 140 escaped or illegal landowner burns.

New South Wales's current maximum penalty for the bushfire offence, 14 years imprisonment, is lower than the penalties for comparable offences in all other states and territories except Queensland (which is also 14 years imprisonment).

The Government considers that, in light of the significant risk and consequence of bushfires, the Schedule 2.3 [1] amendment to raise the maximum penalty to 21 years imprisonment is appropriate and proportionate. This will:

- Ensure the New South Wales penalty is no longer equal lowest in the country;
- Provide an enhanced deterrence for this behaviour in the face of growing risk;
- Better reflect the harm that bushfires can cause; and
- Better align with community expectations.

Royal prerogative of mercy

Schedule 3 of the **Community Protection Legislation Amendment Bill 2018** will insert a new provision into the Crimes (Appeal and Review) Act 2001 providing that the release or disclosure of information by or on behalf of the Attorney General in relation to petitions for mercy or review of convictions and sentences is not a contravention of the Criminal Records Act 1991, the Health Records and Information Privacy Act 2002, the Privacy and Personal Information Protection Act 1998, or any other Act.

This amendment will enable the New South Wales Government to release information relating to petitions for the Royal prerogative of mercy and petitions for review of conviction or sentence, as these Acts currently prohibit the release of this information.

This will align the procedures around petitions for mercy and review of conviction and sentence with criminal justice processes and the principles of open justice. Except in special circumstances, persons appealing convictions and sentences via the judicial process are publicly identified, and decisions and reasons for decisions published.

The amendment will allow for the release of information relating to petitions at the absolute discretion of the Attorney General. The exact content of any information that is released will depend on all the circumstances of the petitioner and the petition, and also whether the petition was granted or declined.

For granted petitions, the release will commonly include the general nature of the underlying offence, the fact that the petition was granted, the petitioner's name, brief reasons for the decision, and the date of the decision.

For declined petitions, the release will commonly include the general nature of the underlying offence, the grounds raised by the petitioner, the fact that the petition was declined, and the date of the decision. It is unnecessary to release the petitioner's name or reasons for decision for a declined petition. Declined petitions involve no interference by the executive in the decisions of independent judicial officers, and no alteration of the petitioner's legal rights.

The Attorney General maintains an absolute discretion to refuse to release any and all information. This includes where the release of information may prejudice the safety of the petitioner. For example, the Governor may grant a petitioner a remission of sentence after the petitioner has provided significant post-sentencing assistance at his or her own peril. In such a circumstance, the release of any information would be highly inappropriate, as it may jeopardise the petitioner's safety.

Prior to the release of information, the petitioner will also be contacted and invited to make submissions on the proposed release of information. The Attorney General may take into account any comments made by the petitioner when deciding whether to release information. Where the Attorney General determines that information should be released despite the objections of the petitioner, the petitioner will be given an opportunity to withdraw his or her petition should he or she so choose.

Registered victims relevant to a petition may be contacted and invited to comment on a petition either by the Attorney General or the Department of Justice at the Attorney General's discretion.

The policy of contacting registered victims will ensure recognition of victims, and also consistency with victims' rights legislation. Although victims' rights legislation does not directly apply to petitions, it generally includes victims' rights to remain informed of matters relating to relevant offenders.

The policy will not involve contacting victims who are not listed on a victims' register, or victims who are registered, but have indicated that they do not wish to be contacted. It is important that victims are not re-traumatised, and only contacted where they have indicated that they wish to remain informed of matters relating to relevant offenders. Going beyond the register is inconsistent with a victim's decision to put the offender in his or her past.

The Attorney General will have an absolute discretion to contact or direct contact with a registered victim at any time during consideration of a petition. Where a registered victim is contacted, the registered victim will generally be informed of the fact that a petition was made, the grounds on which the petitioner has sought mercy or review of conviction or sentence, and the relief sought by the petitioner. Registered victims will also be provided with a fact sheet that explains the Royal prerogative of mercy and reviews of convictions and sentences.

The carve-out introduced by **Schedule 3** does not extend to the Court Suppression and Non-publication Orders Act 2010. As a result, any orders made under the Court Suppression and Non-publication Orders Act 2010 will continue to restrict the release or disclosure of any information relating to mercy petitions.

Conclusion

Overall, these bills will improve the operation of courts, law enforcement agencies, and the civil and criminal justice system.

The amendments to the Terrorism (High Risk Offenders) Act 2017, in particular, demonstrate that the protection of the community from the ongoing threat of terrorism is of paramount importance to the New South Wales Government. We will do whatever we can to ensure our intelligence and law enforcement agencies have effective powers at their disposal to keep the public safe, including continuing to monitor our terrorism related legislation to ensure the Government's strong focus on community protection is supported.

Schedule 2 amendments will ensure that the penalties for a number of serious offences provide a suitable deterrent; encourage the reporting of information material to the apprehension, prosecution and conviction of offenders responsible for serious indictable offences and child abuse offences; and reflect community expectations.

And Schedule 3 amendments will have the effect of increasing transparency and ensuring public confidence in the administration of justice.

I commend the bill to the House.

Second Reading Debate

The Hon. ADAM SEARLE (15:34): I lead for the Opposition in debate on the Community Protection Legislation Amendment Bill 2018. The Opposition does not oppose the bill. The purpose of the bill is to amend some of the legislation dealing with the supervision and detention of high-risk offenders and to make a number of amendments to the Crimes Act and an amendment to the Crimes (Appeal and Review) Act. This is a grab bag of

a number of unconnected issues compressed into one bill to again deal with a logjam of legislation that this Government has created at the end of its eight years in office.

Schedule 2 to the bill consists of proposed amendments to the Crimes Act. A new offence is established by proposed new section 25C, which has the heading of "Amendment concerning supply of drugs causing death". The bill explains that this provision makes it an offence to supply a prohibited drug for financial or material gain if the self-administration of the drug by someone else causes or substantially causes that other person's death. It is a requirement to prove that the person who engaged in this supply knew or ought reasonably to have known that the supply would expose a person to a significant risk of harm. The offence will be punishable by imprisonment for a maximum of 20 years. The elements are obvious. There must be gain to the supplier, the supplier must ought to have had a particular knowledge and it applies to prohibited drugs.

Proposed new section 25C (4) provides that prosecutions can be instituted only with the approval of the Director of Public Prosecutions, which is a mechanism clearly designed as an extra precaution, which is appropriate with a quite novel offence that may have unintended consequences. Proposed new subsection (5) states that section 18 of the Crimes Act does not apply to an offence under section 25C. Section 18 is headed "Murder and manslaughter defined". The Opposition does not oppose the bill and it is persuaded that there may be a gap in the law where quite serious criminal behaviour is not murder, manslaughter or a conspiracy but nevertheless should be rendered criminal and this provision is aimed at doing that.

The Opposition received representations from the New South Wales Bar Association recommending opposition to this aspect of the bill. Given the seriousness of the issues, it is appropriate to place the Bar Association's concerns on Parliament's record and the Government is asked to respond to the those concerns. The Bar Association's briefing note states:

The New South Wales Bar Association strongly opposes the proposed amendment for the following reasons.

The first reason is that the proposed provision breaches a fundamental principle of the criminal law in this country and around the common law world that an accused person should only be held criminally responsible for events that the accused caused.

The note further states:

So far as the Bar Association is aware, it has never been the law in this country or on other common law countries that a person can be made criminally responsible for a homicide where no such causal relationship can be established. This is because, for all offences involving prohibited results, it is a fundamental principle that a causal relationship between the actions of the accused and the occurrence of the event must be established.

I note the Bar Association's reference to *Royall v The Queen* and *Burns v The Queen*. The briefing note quotes the High Court authority that argues that the voluntary and informed act of an adult negates causal connection. What an adult of sound mind does is not in the law treated as having been caused by another. The Bar Association also states:

This legislation holds another individual responsible for the choice and act of self-administration of the second person in circumstances where there is knowledge of exposure of the other person to a significant risk of death should the second person take the drug.

The Bar Association also argues: A second reason for opposing the introduction of this new provision is that it may catch friends/acquaintances of the deceased who are involved in the drug supply and have absolutely no idea of the risk with the particular drugs involved (where there may have been some kind of contamination, an unusual concentration of drugs or an unexpected allergic reaction), notwithstanding a general awareness that there is a 'significant risk of death as a result of the self-administration of the drug.' Those persons may also have no idea of whether the person who the drug is supplied to has already ingested other substances or later consumes further substances which may be the substantial reason for death by virtue of a lethal combination. In some cases, it may be the combination of ingestion of alcohol with the drug use that makes for a lethal combination where the drug itself may otherwise be dangerous but not lethal.

We seek the Government's response to those issues. Schedule 2.2 makes amendments to the concealment offences of sections 316 and section 316A of the Crimes Act. As the Opposition has noted in previous debates, historically there has been controversy over concealment offences. For example, in a 1999 report the Law Reform Commission argued to abolish section 316 (1) with a dissenting minority view. Self-evidently, the Government did not accept that view. Some submissions to the inquiry argued that the moral duty to actively assist the police in their investigations should not be extended to a legal one. In June this year Parliament debated the Criminal Legislation Amendment (Child Sexual Abuse) Bill, which introduced a new concealment offence in section 316A. That new provision was aimed at the concealment of child abuse offences and was not restricted to serious indictable offences, as was section 316. The level of knowledge required of the offenders was lesser, extending not just to knowing or believing as in section 316 but also to reasonably ought to know—an objective test rather than that higher bar in section 316. This reflects the heinous nature of offences concealed under section 316A.

The amendments in this bill rewrite section 316 so that its structure more closely mirrors the more recent section 316A. Importantly, the amendment does not alter the knowledge element of section 316 and does not extend to the objective test in section 316A. A graduated penalty regime is instituted for both provisions for both types of offences under these sections—that is, concealment and concealment for benefit. The current maximum penalties for these offences are respectively two and five years imprisonment. The sliding scale makes for a greater maximum sentence if the offence being concealed is more serious. The maximum penalty under new section 316 (1) remains at two years if the maximum penalty for the concealed indictable offence is not more than 10 years. It is three years if the maximum penalty for the concealed offence is more than 10 years but not more than 20 years, and a five-year maximum if the penalty for the concealed offence is more than 20 years. Similar but larger scales apply to new section 316 (2) offences.

For section 316A, the scale is simpler: The current penalty remains in place for concealing a child abuse offence with a maximum penalty of less than five years imprisonment, with a penalty of five years imprisonment where the concealed offence has a maximum penalty of five years imprisonment or more. There are similar changes to the benefit offence in section 316A. The increased penalties are not retrospective, which is entirely appropriate in the law. Item [3] of schedule 2.2 makes what it seems are sensible changes by adding new section 316A (2) (g) to provide a member of staff of a school with an alternative method of reporting comparatively minor assaults at school. Schedule 2.3 increases the maximum penalty under 203E (1) of the Crimes Act to 21 years from 14 years. This is the offence of intentionally causing a fire and being reckless as to its spread to vegetation on public land or land belonging to another person. Item [2] of schedule 2.3 adds items to schedule 1A to the Crimes Act. Schedule 1A is entitled "Former Sexual Offences."

Schedule 3 amends the Crimes (Appeal and Review) Act, which allows the release of information concerning mercy petitions, particularly petitions requesting the exercise of the prerogative of mercy. There is a reasonable number of petitions that are considered for mercy. It is a power that rests with the Governor, although in practical terms applications are considered by the Executive Council, with the real work and consideration being done by the department. In September last year the shadow Attorney General asked the Attorney General on notice on how many occasions since April 2011 the Governor had exercised the royal prerogative of mercy. The reply was that between 1 April 2011 and 19 September 2017 the royal prerogative of mercy was exercised in relation to 123 applicants. I was further advised that during that period the department received 434 applications.

In practical terms it is very difficult to receive a pardon and, given the total number of criminal proceedings, 123 pardons over six years is a comparatively small number. There are undoubtedly cases where it is entirely appropriate for a pardon to be issued. However, as the shadow Attorney General has said publicly, there seems to be something wrong about the lack of transparency surrounding the exercise of the prerogative. The vast majority of convictions and penalties are handed down in open courts. Logically, a comparable amount of public scrutiny should be available relating to pardons. Following an article by Ms Fife-Yeomans, the Attorney General announced a review. Submissions to the Department of Justice were called, with a closing date in February. Given that nothing happened for a period, the shadow Attorney General placed a question on notice on 16 October seeking advice as to what progress has been made, and then the bill was introduced into the House.

Schedule 1 to the bill provides amendments to the Children (Detention Centres) Act and regulation, the Crimes (Administration of Sentences) Act, the Crimes (High Risk Offenders) Act, the Criminal Procedure Act, the Surveillance Devices Act, the Surveillance Devices Amendment (Statutory Review) Act—an Act dealt with recently in Parliament—and the Terrorism (High Risk Offenders) Act and regulation. The Attorney General noted in his second reading speech that the amendments in schedule 1 facilitate the implementation of the Terrorism (High Risk Offenders) Act made last year. There are a number of technical and clarifying provisions and at least two more substantive changes.

New section 17 (1A) allows for application of the issue of a surveillance device in a correctional centre. This relates to the possibility of a continuing detention order or an extended supervision order against someone within the Terrorism (High Risk Offenders) Act. This is an expansion of the current categories for which surveillance devices can be sought. The second substantive change relates to the imposition of a standard form of conditions and obligations upon those subject to an extended supervision order. With those observations, the Opposition does not oppose the legislation.

Reverend the Hon. FRED NILE (15:46): I speak on behalf of the Christian Democratic Party in debate on the Community Protection Legislation Amendment Bill 2018. This bill addresses several major areas of law reform relating to public safety. These include counterterrorism provisions, provisions relating to dealing with drugs causing death, bushfire concealment and sexual offences amendments, as well as provisions relating to the release of information about the royal prerogative of mercy. The bill impacts on the legislative scheme established within the framework of the Crimes (High Risk Offenders) Act 2006 and the Terrorism (High Risk Offenders)

Act 2017. In particular, the reforms under the bill address issues arising in what has been referred to during debate as the operation of the post-sentencing schemes.

In relation to amendments concerning the intentional lighting of bushfires, the bill proposes to increase the penalties so as to meet community expectations. These changes will affect section 203E of the Crimes Act 1900. The maximum penalty will be increased from 14 to 21 years imprisonment. The Crimes (Appeal and Review) Act 2001 is amended by this bill, particularly schedule 3, to allow the release of information relating to petitions for the royal prerogative of mercy and those submitted under section 76 of that Act. The provisions relating to the concealment of child sexual abuse I find to be perhaps the most important aspects of the bill's proposed reforms. There will be a new section 316A added to the Crimes Act for the offence of failing to report child abuse. This is a controversial section as my constituents are naturally concerned about any possible impact this will have on the sanctity of the Catholic confessional.

I have been reassured by the Attorney General that that particular issue is still under consideration by the Attorneys General of all States in the Commonwealth. I am informed that for this section to be activated the Director of Public Prosecutions must consent to a prosecution being brought. The application of this law will therefore be a function of government policy. The bill also seeks to create a new offence of supplying drugs causing death, which is a response to the expert panel established on 18 September consisting of the police commissioner, the New South Wales Chief Health Officer and the chair of the Independent Liquor and Gaming Authority. The offence reflects the panel's recommendation No. 7.

I have received correspondence from the New South Wales Bar Association expressing some strong reservations about aspects of the reforms in the bill. The Bar Association opposes the amendments in new section 25C of the Crimes Act concerning the supply of drugs causing death. Reference is made to common-law precedent in *Royall v The Queen*, a decision of 1991, and *Burns v The Queen*, a more recent decision of the High Court in 2012. The Bar Association states:

The proposed provision breaches a fundamental principle of the criminal law in this country and around the common law world that an accused person should only be held criminally responsible for events that the accused caused.

The word "caused" is emphasised. At the heart of the Bar Association's objections to the new section 25C is that the provision holds an individual personally liable for a homicide where the chain of causation has been broken. The chain of causation is an ancient principle of criminal law that, in the Bar Association's eyes, is being abrogated by this legislation. Moreover, the Bar Association is concerned that the provision will subject friends and associates of the victim to a liability in situations where they had no real knowledge of the circumstances.

The Bar Association made some proposals that it believes would be better alternatives, such as decriminalising the possession of small amounts of narcotics, which the Christian Democratic Party totally opposes. I believe there are other, more appropriate ways in which the use of drugs can be curbed without policies that implicitly allow the drug culture to continue and without draconian legislation that infringes on ancient common-law principles of criminal law. I understand that this particular aspect of the bill is a response to a recent death at a music festival, where a young person passed away after swallowing a dangerous substance—probably tablets she purchased at the festival. The community is rightly outraged that such things can and do happen at music festivals. Why should listening to music now be an extreme or dangerous sport? Why should we tolerate this turn of events?

Because of the urgent need for a legislative response to what is obviously an issue that has roused the anger and grief of the community, I believe the amendments have merit and the Christian Democratic Party supports them. I do, however, urge the Government to revisit new section 25C and inquire about its effectiveness. I see this as a potential subject of further community consultation in the future to see how successful this approach has been in tackling the scourge of drugs amongst our youth, especially at large music festivals. The Christian Democratic Party supports the Community Protection Legislation Amendment Bill 2018.

The DEPUTY PRESIDENT (The Hon. Trevor Khan): I call Mr David Shoebridge, who may wish to thank Reverend the Hon. Fred Nile for prolonging the debate when the Parliamentary Secretary was about to speak in reply.

Mr DAVID SHOEBRIDGE (15:52): I appreciate the fact that Reverend the Hon. Fred Nile made his contribution. I speak in debate on the raft of legislation forming the Community Protection Legislation Amendment Bill 2018. Dealing first with the aspect of the bill that relates to bushfire concealment and former sexual offences amendments, the bill in part responds to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse regarding appropriate offences for the concealment of child sexual abuse matters. Members will remember that only a matter of months ago Parliament passed laws in the form of the new section 316A, which added a new and improved offence in relation to the concealment of child sexual assault and child assault offences.

The Greens expressed concern about that provision, which continues to have what I believe is a totally inappropriate restriction insofar as it requires the permission of the Director of Public Prosecutions before such a prosecution can be brought in relation to a member of a religious order who failed to disclose child abuse in circumstances where the disclosure was made to them in the course of their work—if I can call it that—as a member of a religious order. The Greens continue to hold the view that that restriction is grossly inappropriate. Indeed, we commend the balanced consideration given to this issue by the royal commission, which formed a very firm conclusion that there should be no such limitation on concealment. That, I think, will be a fight for another day after the matter grinds its way through the Federal processes.

However, the bill does some good things in relation to sections 316 and new section 316A. It amends section 316 to apply to adults who conceal serious indictable offences and introduces a staggered penalty regime from two to seven years maximum imprisonment, with the maximum penalty for concealment offences increasing in line with the maximum penalty for the serious indictable offence that was concealed. There is a further additional penalty if the concealment was for a benefit. The amendments to section 316 effectively mirror that as well.

The Greens do not support retrospective legislation in this area. It is often tempting to support retrospective legislation for things like this in order to catch historical offenders and punish them in accordance with the mores of today. But there are such fundamentally good reasons not to do so that, tempting as it is, The Greens do not support retrospective legislation. But these offences will operate in an interesting way: They may cast their net back to concealment that occurred prior to these amendments. If anybody in the community continues to this day to conceal from the police evidence of child sexual or physical abuse, they should be aware that whilst up to the passage of this bill the maximum penalty for that concealment is two years, any concealment that continues on and from the passage of the bill will face potentially significantly higher penalties, with a maximum of seven years.

Whilst the concealment up to this point will be dealt with under concealment laws that are currently on the books—which provide for a maximum two-year penalty—from this moment onwards those people will face a significantly higher penalty if the concealment continues. They should be aware of that; the Government should make them aware of that. If nothing to date has encouraged those people—whether they are in positions of authority in churches or in other organisations—hopefully this should finally encourage them to come forward. If they do not, from this day forward they are on notice that there are significantly higher penalties. That is a good thing. The bill also brings greater transparency to how the royal prerogative of mercy is dealt with in New South Wales. I think most people in New South Wales would not know there is a royal prerogative of mercy.

The Hon. Dr Peter Phelps: I did.

Mr DAVID SHOEBRIDGE: There you go, Peter. Well done.

The Hon. Dr Peter Phelps: Because it is so archaic; it fits me very nicely.

Mr DAVID SHOEBRIDGE: I note that the former Government Whip, with a clear eye to the future, is aware of the fact that there is a royal prerogative of mercy. But there is next to no transparency in the decisions that are made, the applications that are refused and how it operates. It is good to see a commitment to some greater transparency—still with a discretion to withhold information if the Attorney General believes it is appropriate. But in the course of being briefed on the matter—as far as I know it is not on the public record—I found out that in the past year there were approximately 20 pleas for mercy and only one was granted. Maybe there is good reason that so many were refused; maybe they were not meritorious. Going forward, we will be able to assess with greater transparency the Government's degree of mercy. The Greens support those changes.

The Hon. Dr Peter Phelps: Maybe we are merciless.

Mr DAVID SHOEBRIDGE: Yes—Premier Gladys "Ming" Berejiklian, perhaps. I turn to the counterterrorism amendments. The Greens are very wary of supporting any additions to the already highly over-regulated, civil liberty-destroying counterterrorism regime that we see in New South Wales and Australia. For that reason, we do not support the changes that are being proposed to the Crimes (High Risk Offenders) Act, the Children (Detention Centres) Act and the Terrorism (High Risk Offenders) Act. In part they reflect previous changes that have already passed this House that allow control and other provisions that relate to the various Acts to be, if you like, cross-fertilised between the various categories of offenders: crimes high-risk offenders, terrorism high-risk offenders and sexual assault high-risk offenders. The Greens are yet to be persuaded that there is a good reason for these changes and yet to be persuaded that there are clear cases in which it has been required in order to protect public safety. We do not support these changes.

The Greens are also concerned with some of the changes being proposed to the Surveillance Devices Act which enable an application for a surveillance device warrant to be granted in a correctional centre to enable

evidence to be obtained that would likely support a Terrorism (High Risk Offenders) Act. As I understand the bill, there is no requirement for the application to show a prima facie case that the person may be engaged in terrorism or may have a tendency towards terrorism. All that is required to be shown is that the person fits within a category of offenders that satisfies the Terrorism (High Risk Offenders) Act category and that the evidence that is being sought to be obtained may assist them in making such an application. Why surveillance devices applications should be granted without any evidence as to the merits or appropriateness is hard to understand. Nevertheless, that is the proposal of this Government, and The Greens do not support it.

In relation to the new offence of drug dealing causing death, the Government established what it called a high-level expert panel to provide advice on how to keep people safe at music festivals. That followed the deeply tragic deaths of two individuals at the Defqon.1 music festival that was held on a September weekend this year. Unfortunately the panel that was established by the Government did not include anybody from the industry. There was nobody from the music festivals industry or the music industry. There was not a young person in sight, in fact.

The panel consisted of three people, probably none of whom had ever been to a festival. There was Police Commissioner Mick Fuller, who might have been outside a festival with a group of colleagues in uniform but I doubt has been in one, the New South Wales Chief Health Officer, Dr Kerry Chant, and the chair of the Independent Liquor and Gaming Authority, Phil Crawford. Those three, in their wisdom, decided not to recommend the obvious harm minimisation measures for which the industry has been calling for decades and not to do pill testing because they were told by the Premier they could not. Who would set up an expert panel and tell the panel it cannot even consider one of the most likely solutions for harm minimisation? I will answer who would do that: Premier Gladys Berejiklian.

The panel came up with a series of recommendations that seem to have little, if anything to do with making music festivals safer. Indeed, in just the last 48 hours a very modest music festival on the north coast which was seeking to go ahead in a lovely little rural place just south-west of Casino, with 2,500 festival goers, has been shut down by the police. The NSW Police Force initially charged the music festival \$200,000 for some 70 police to be in attendance. That matter went to the Land and Environment Court and the judgement, which was obtained only yesterday, allowed the festival to go ahead but with conditions, including the extraordinary and outrageous charge of \$105,000 to the festival for the provisions of 57 police to police 2,500 people at a music festival where previously there has not been a critical incident in relation to drugs and concerns about violence have not been raised. The effect has been to stop the festival in its tracks. The organisers are looking to Queensland to find an appropriate site for the festival because they know that New South Wales is now closed to music festivals, particularly in the regions.

The impossible, onerous conditions that are being placed on music festivals, following the disastrous recommendations from this so-called expert panel, are already destroying the music festival industry in New South Wales. The one substantive recommendation that came from the expert panel was to introduce a new offence of supply drugs causing death into the Crimes Act. The Government says that this offence will target individuals who supply a prohibited drug to another person for financial or material gain—that could be for as little as \$1 or \$5—and the person who receives the drug self-administers it and dies. The Government is proposing to put in place a maximum penalty of 20 years imprisonment for the offence.

I know that I am not the only member who has received representations from the New South Wales Bar Association. Reverend the Hon. Fred Nile read onto the record representations from the Bar Association. I am persuaded by the association's considered and principled opposition to new section 25C. I will read in part from the submission. The Bar Association says that it opposes the amendment for the following reasons. The first reason is that the proposed provision breaches a fundamental principle of the criminal law in this country and around the common law world that an accused person should only be held criminally responsible for events that the accused caused. The law in relation to homicide has always required causation. Thus, in *Royall v The Queen* [1991] 172 CLR 378, Justice Brennan stated at page 398:

The external elements of crimes of homicide include the doing of an act or the making of an omission by the offender, the death of the victim and a causal relationship between the two.

The Bar Association goes on to say that so far as it is aware it has never been the law in this country or in other common law countries that a person can be made criminally responsible for a homicide when no such causal relationship can be established. This is because for all offences involving prohibitive results, it is a fundamental principle that a causal relationship between the actions of the accused and the occurrence of the events must be established. The association goes on to detail the consideration in *Burns v The Queen*. The association says that new section 25C assumes that the person who dies has self-administered the drug. That is, it is not suggested that this offence is one where the person supplying the drug has any role in the decision of the other person to actually take the drug.

There is no suggestion that the person taking the drug must be someone of unsound mind or that there be any element of mistake, intimidation or other vitiating factor. The person who is supplied the drug makes an independent decision not only to purchase the drug but also to take the drug knowing, it must be assumed, the associated risks. This legislation holds another individual responsible for the choice and act of self-administration of the second person in circumstances where there is knowledge of exposure of the other person to a significant risk of death should the second person take the drug. It follows that the proposed provision makes a person criminally responsible for a homicide in circumstances where basic principles of causation would require the conclusion that the causal link has been broken by the voluntary and informed act of the person who chooses to self-administer the drug.

That is such a longstanding, fundamental principle when it comes to the crimes of homicide, which include manslaughter and murder, that it is remarkable that it is being junked in this way by the Government. It is remarkable that this legislation is being pushed through without adequate scrutiny, and it is remarkable that in all of the contributions on this bill it is only The Greens who are opposing it. These things are fundamental to our criminal law. A young person might buy three or four pills, go into a music festival and provide the pills to friends at cost plus a tiny amount. Maybe the young person bought them for \$30 and sold them for \$35. If a person to whom the young person provided the pill mixes it with other drugs and alcohol and, with the combination of further risk factors, tragically dies, it can be found that the drug that was supplied was a significant cause and, for that act, that young person could be in jail for 20 years. I see the Hon. Wes Fang nodding as though that is what the Government wants to achieve.

The PRESIDENT: Order! It is inappropriate to cast aspersions on other members. The member will return to the bill before the House.

Mr DAVID SHOEBRIDGE: I withdraw the observation. It is remarkable that this House is doing it with such alacrity, that is, junking a century's old fundamental principle of criminal law. For what purpose? There is no evidence that these types of changes—further criminal legal sanctions—will have the slightest effect to reduce drug taking in New South Wales. They will not work and they will not achieve anything other than a headline in the *Daily Telegraph* and an afternoon's churn among shock jocks in New South Wales. In return, young people may have their entire life destroyed because of the appalling operation of these unthinking laws. The Greens will not agree to these changes. We believe they are wrong in principle and will cause grossly unnecessary and inappropriate human suffering in practice. They will not save a single life. I note the other reasons that the Bar Association has for opposing the amendment and I endorse those reasons. The Bar Association notes:

A second reason for opposing the introduction of this new provision is that it may catch friends or acquaintances of the deceased who are involved in the drug supply and have absolutely no idea of the risk with the particular drugs involved.

It further notes:

(Where there may have been some kind of contamination, an unusual concentration of drugs or an unexpected allergic reaction) notwithstanding a general awareness that there is a significant risk of death as a result of the self-administration of the drug. Those persons may also have no idea of whether the person who the drug is supplied to has already ingested other substances or later consumes further substances which may be the substantial reason for death by virtue of a lethal combination. In some cases it may be a combination of ingestion of alcohol with the drug use that makes for a lethal combination with the drug itself which may otherwise be dangerous but not lethal.

The third reason the Bar Association gives for opposing the offence is:

There is no evidence has been provided supporting a conclusion that this radical and highly punitive change to the criminal law would advance any public interest. There is no evidence to suggest that this new offence will save any lives or deter in any way the supply of drugs.

The Bar Association concludes by noting that it is a participating member of the Uniting Church Fair Treatment drug law reform which advocates a fresh approach regarding drug use. It notes:

The campaign recognises that there is a pressing need for legislators to reconsider current laws in relation to illicit drugs.

For those reasons, The Greens will not support this compendium bill, although there are elements of it for which we have strong, in principle, support.

The Hon. JOHN GRAHAM (16:12): I speak on a specific aspect of the Community Protection Legislation Amendment Bill 2018, one of its many elements. I refer to the amendments that were introduced at a later stage in the other place regarding the Liquor Act. Specifically, I want to speak to two amendments. The amendments are in schedule 4, Amendment of Liquor Act 2007. The first amendment adds an additional ability to add a liquor licence and to do so by regulation. The Opposition has indicated that it will not oppose this amendment. The Government has explained why it might be used, such as its potential use for music festivals where, in future, a music festival licence will need to be provided. Under certain circumstances, that may be welcome. I note it was one of the recommendations of the high-level expert panel.

It is important to put that change in context and I note the range of ways we currently regulate and license festivals. Clear evidence was received on this issue during the parliamentary committee music inquiry. I will refer briefly to individual cases to indicate the regulating that is currently occurring in the State. One case study is the Sydney Fringe Festival. During the course of its licensing process, the now well-known licence condition attempted to be applied to its liquor licence of "no DJs, no dancing". When asked about that issue, Liquor and Gaming NSW indicated in its evidence before the Parliament that that was not the case and denied it had occurred. It noted that the licence conditions that were eventually applied were for other matters and that this matter did not proceed.

The committee, in its report, published the precise document which spells out the condition. However, it was not applied after heavy resistance, including from the City of Sydney. But there had been an attempt to put the licence condition on the radical arts festival in Sydney. To put it in context, ballet would have been banned at the festival. We also heard evidence from the Illawarra Folk Festival, a fantastic community event that attracts many older members of that community. The folk festival goers told us that they drive in, camp for four days and drive back out.

Mr David Shoebridge: Dangerous ukulele players.

The Hon. JOHN GRAHAM: I acknowledge that interjection. The members of that community talked about the difficulties they have experienced, which include development applications and site and liquor licenses. The process of seeking licence approvals for this annual festival takes 10 months and approval often happens just weeks before the festival, which makes planning the event incredibly difficult. The members wanted to increase the number of camping sites for the festival and wrote to the Department of Lands asking for guidance about the process. Two years later they have received no answer; the Department of Lands does not know. There are three sites for the festival with seven different site owners. One owner is the Roads and Maritime Services, and a permit is required from the RMS to hold the festival. There is no application process to obtain a permit.

The community members have been told that their next application will have to comply with conditions that apply to year-long permanent camping, which includes requirements for extra washing machines and mirrors. At this point of the inquiry, the respectable members of the Illawarra folk community, who were sitting in the Wollongong Council Chambers, slightly above the committee members as they gave their evidence, both of them with long beards, indicated that after four days of camping at the folk festival the last thing that was needed was a mirror. This amendment will require them to have a mirror.

It is a similar situation in Byron Bay, which is the site of the biggest and most popular festivals on the North Byron Parklands: Splendour in the Grass and the Falls Festival. Tickets for these festivals sell out very quickly. After a five-year trial approval, despite the fact that the organisers own the land, there is no ongoing approval to run the festivals—two of the biggest events in the State. The organisers have invested \$25 million and artists have been booked for next year, but there is no certainty that the festivals will be allowed to go ahead. We are still waiting to hear more about that process. The temporary trial approval included 246 conditions, many of which contained conflicts between the development application and the liquor licence. That is the context of this amendment. I mention also Tamworth where the issue is often about existing venues, such as pubs where the committee received evidence on this issue. The committee was told this about Tamworth:

The issues with the authority in applying for the extension of licence[s] during the festivals for hotels is a massive headache. Basically, you have to apply for 10 separate applications for each day. I have to do triplicates of that. I have to serve one at the council and one at the police. When you attend the council, they say they will not sign it because they feel like they do not know what they are signing and I am only serving the notice. The police are pretty much the same. Then depending on how the officer that you get views that extension, he will ring back and ask for different demands every year.

Every year it is the same event, 10 applications every day in triplicate and a different answer every time. Indeed, that is the context for these amendments. I gave that example to show it is possible that moving to a music festival licence will be better. I hope it is because at the moment in New South Wales it is a shambles. If this is a mechanism to clean it up and to make it easier, more consistent and safer, then it is a very good thing. If it just makes it harder, then we will lose festivals to Queensland and Victoria, and that would be a shame. Labor welcomes this regulation and I can indicate that, in government, we will use it. We will do so to support a policy we have already announced, namely, to look at specific live music licences. I welcome Liquor and Gaming NSW putting this mechanism forward and I indicate that the Labor Party will look to use it in government. I turn now to the second amendment. A new section is to be inserted after section 159 (2) in schedule 4 [2] to the Community Protection Legislation Amendment Bill as follows:

(2A) The regulations may provide that a particular type of licence is not to be granted if the authority is of the opinion that the sale or supply of liquor under the licence will more appropriately be provided under another type of licence.

This was a late amendment by the Government to a government bill. The Minister in the other place gave no justification for it. I invite the Parliamentary Secretary, in his speech in reply, to explain why it is required. There

has been no government justification for it. It may be required; we simply do not know. I also ask the Parliamentary Secretary to clarify the licences to which it applies. Does it simply apply to the new licences that might be created by the regulations to the proposed music festival licence? On the face of it, that is certainly not the case and it applies not just to a music festival licence but to any sort of liquor licence issues in the State. But we do not know the answer because not a single word was spoken in favour of it. What is the justification for it and to what licences does it apply?

I am concerned it is an additional hurdle that has been placed not only on music festivals but also on every potential licensed venue in this State, and they may now face an additional argument with Liquor and Gaming NSW about the type of licence they are allowed to apply for. At the moment they can apply and either meet the conditions or not but an additional hurdle is now being placed in front of, potentially, every licensed venue. To put that in context, I will give one example of the problems. The city of Newcastle is attempting to renew itself. Newcastle train station has a beautiful heritage building that has been there since the nineteenth century. The Hunter Development Corporation and Renew Newcastle have struck a fantastic 18-month deal for a one-off renewal of this site while they make a longer term plan. The site will be used as a fantastic venue that can cater for up to 4,500 people. This will keep things lively and keep the town humming for 18 months while a permanent solution is found. What is the barrier?

The barrier is the condition being applied by Liquor and Gaming NSW to restrict its operation, namely, the bar can be operated only eight times per month. The development application says that it can be run seven days a week and Liquor and Gaming NSW is saying it can run its operations only eight times a month. I predict that this venue will close under those conditions. Such a big venue cannot operate on only a small number of occasions. That is a devastating blow to the centre of Newcastle at this very important time. Liquor and Gaming NSW said in evidence to the committee that it was not a music regulator. If it is not a music regulator, then it should put the pen down and stop placing entertainment conditions on these licences. I support Liquor and Gaming regulating noise and alcohol but stop banning the music. I repeat, if Liquor and Gaming is not a music regulator, then it should stop regulating the entertainment.

Finally, these entertainment conditions are now a hotly contested issue. Minister Toole has said that a three-month process of a review of conditions will be allowed and there will be no fee for those conditions. On the face of it, that looks good. However, I place on record my scepticism because Liquor and Gaming NSW has given that same answer every time these issues have been raised in the past. It says, "Put in an application. We will look at the conditions and if they are silly we will remove them." Why does that not happen? Because venues know if they do submit such an application that all their conditions are up for grabs. One ban on a mirror ball, on vinyl records or on anything other than soft rock music and all of a sudden their hours and conditions are up for grabs.

With the Minister's proposal there will still be full community consultation. The community, police and Liquor and Gaming can still raise a whole lot of objections, but there is no guarantee that other conditions will not be imposed. Venues will save \$100 using the appeal process but they will have to spend a lot of money to go through the process and consult with the community and then it is all up for grabs. I predict that no conditions will be removed; this is simply a summer publicity stunt. We will wait and see when the proposal closes on 28 February if there is a venue in the State of New South Wales that has used this process. That is the context in which I raise questions about both those amendments. Labor will not be opposing either of them. The first amendment we will certainly use in government, and I invite the Parliamentary Secretary to provide clarity for the first time as to why the second amendment is required.

The Hon. SCOT MacDONALD (16:28): On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Adam Searle, Mr David Shoebridge, Reverend the Hon. Fred Nile and the Hon. John Graham for their contributions to this debate. Before I give my reply, I acknowledge that seated in the gallery earlier today were three incredible men: Maitland Pastor Bob Cotton and Hunter survivors and advocates Paul Gray and Peter Gogarty. I have had the opportunity to meet with those three gentlemen on a number of occasions to discuss increasing the maximum penalty for the cover-up of child abuse.

I have been struck by their passion and dedication. For many years they have been on the front line of the fight against the scourge of child abuse in the community. Those men were responsible for collecting more than 13,000 signatures in support of these reforms to ensure that the criminals who cover up child abuse are held to account, that our justice system recognises the very serious nature of the offences and that a safe society is created for children and their families. The Government is proud to stand behind Bob, Paul and Peter and all victims to make these reforms possible for survivors and generations of children to come.

Mr David Shoebridge: They are part of a strong community in Newcastle.

The Hon. SCOT MacDONALD: It is a very strong community. I acknowledge the interjection. Mr David Shoebridge raised a concern in regard to the Director of Public Prosecutions [DPP] consent for the prosecution of certain professions under sections 316 and 316A of the Crimes Act 1900. The DPP consent is appropriate for the relationship of confidence that may exist in those relationships. In regard to the member's concerns over surveillance devices, amendments to section 17 of the Surveillance Devices Act 2007 will enable an application to be made for a surveillance device warrant within a correctional centre if the law enforcement officer suspects or believes on reasonable grounds that: an eligible offender within the Terrorism (High Risk Offenders) Act is an inmate of the correctional centre; an investigation is being, or will be or is likely to be conducted into whether an application for a supervision or detention order should be made under the Terrorism (High Risk Offenders) Act in respect of the offender on the basis that the offender is a terrorism-related offender; and the use of a surveillance device is necessary for the purpose of an investigation into whether an application for a supervision or detention order under the Terrorism (High Risk Offenders) Act should be made to enable evidence to be obtained that would be likely to support the application.

In determining the application, the judge or magistrate must be satisfied that there are reasonable grounds for the suspicion or belief founding the application for the warrant. In determining whether the surveillance device warrant should be issued the judge or magistrate must also have regard to the following factors: the extent to which the privacy of any person is likely to be affected; the existence of any alternative means of obtaining the evidence or information sought to be obtained and the extent to which those means may assist or prejudice the investigation; the extent to which the information sought to be obtained would assist the investigation; the evidentiary value of any information sought to be obtained; and any previous warrant sought or issued under that part of the Act or a corresponding law in connection with the same inmate.

In response to comments by the Hon. Adam Searle based on the Bar Association submission regarding the proposed new drug dealing causing death offence and similar concerns expressed by Mr David Shoebridge, I reiterate the points made by the Attorney General in the other place. In proceedings for the offence it will be necessary to prove beyond reasonable doubt that an accused person knew, or ought reasonably to have known, that supplying the prohibited drug would expose another person, whether or not the person to whom the drug was supplied, to a significant risk of death as a result of the self-administration of the drug. The offence will attribute responsibility to a person in circumstances where the threshold that I have just outlined is met who has supplied a prohibited drug to another person, which is already an offence under the Drug Misuse and Trafficking Act 1985 for financial or material gain, where the drug was self-administered by a person, whether or not the person to whom the drug was supplied, and caused, or substantially caused, their death.

The offence introduced by the bill addresses a gap in the criminal law in New South Wales. Currently, drug dealers who supply prohibited drugs for profit can avoid responsibility for the deaths of people in our community caused by the self-administration of the drugs that they have supplied. As was mentioned, in September two young adults tragically lost their lives at the Defqon.1 music festival in Penrith. The Premier established an expert panel to relevantly advise on whether new offences or increased penalties were required to stop drug dealers endangering lives. The expert panel recommended that the Government investigate the creation of a new offence for those who supply illegal drugs for financial or material gain to people who then self-administer the drugs and die as a result. The Government seeks to give effect to that recommendation by introducing the new offence.

Mr David Shoebridge referred to a concern about the new offence of drug dealing causing death applying to friends and families of drug users. The offence applies only where the drug supply is for financial or material gain. The expert panel recommended that the Government have regard to limiting the new offence of drug supply causing death to those who supplied the drug for financial or material gain. The expert panel went on to say that the offence should be targeted towards drug dealers, rather than the "young friends scenario" when one friend is tasked with obtaining or sourcing drugs for a group of friends and is then reimbursed rather than seeking profit. The offence that the bill introduces clearly reflects the expert panel's recommendation and will apply only in circumstances where a person has supplied the relevant drug for financial or material gain. It is not intended that the offence apply to young people who are sharing drugs amongst each other.

A requirement has been included in the new provision that proceedings for the offence may be instituted only by or with the approval of the Director of Public Prosecutions. That is an important safeguard to ensure that all relevant factors can be considered consistent with the prosecution guidelines by the DPP. Guideline four provides that the general public interest is the paramount criterion in the decision to prosecute. The question of whether or not the public interest requires that a matter be prosecuted is resolved by determining: first, whether or not the admissible evidence available is capable of establishing each element of the offence; secondly, whether or not it can be said that there is no reasonable prospect of conviction by a reasonable jury or other tribunal of fact properly instructed as to the law; and, if not, thirdly, whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest. The third matter requires consideration of many factors, which

may include youth, age, maturity, intelligence, physical health, mental health or special disability or infirmity of the alleged offender, a witness or a victim, and the alleged offender's antecedents and background, including culture and language ability.

I note the comments by Mr David Shoebridge about pill testing. The Government has no plan to introduce pill testing at music festivals. Pill testing gives people a false confidence that drugs are safe. I note that the expert panel made seven recommendations focusing on three key areas. The first is improving the regulation of music festivals by introducing a new, specific and consistent licensing regime to improve safety and to provide certainty for the music festival industry and other stakeholders. The second is strengthening drug and alcohol education and providing more support for frontline health workers at music festivals. The third is strengthening laws to target drug suppliers by introducing a new offence that will hold drug dealers responsible for deaths they cause and trialling on-the-spot fines for drug possession at music festivals.

I emphasise that the new offence relates to drug suppliers, not drug users, and is part of a holistic set of recommendations that have been adopted by the Government. This is not just a law and order approach but part of a holistic approach that addresses the issue of safety at music festivals specifically and drug use generally for the three aspects of the expert panel: regulation, health and law enforcement. I thank the expert panel for its efforts and advice. In its executive summary the expert panel said it was proposing a new offence for drug supply causing death to highlight its strong view that the intention is to target drug supply for profit rather than the "young friends scenario". The expert panel wanted to reserve the harshest penalties for drug dealers rather than drug supply between friends. The expert panel said that if the Government accepts the recommendation it wants to ensure that this intent is met. The bill implements the expert panel's recommendation and its intent.

Mr David Shoebridge also raised concerns about the amendments to post-sentence schemes. New section 5AA of the Crimes (High Risk Offenders) Act 2017 and the amendment to section 16 of the Terrorism (High Risk Offenders) Act enable offenders subject to a substantive extended supervision order or continuing detention order under either Act to be eligible for an application for an order under the other Act at the completion of the original order. The amendments are necessary to ensure community protection where the primary risk posed by an offender on a post-sentence order shifts from sex or violent offending to terrorist offending, or vice versa. The amendments do not constitute a conflation of the two post-sentence schemes, or unnecessary net widening, as the Supreme Court would still need to be satisfied to a high degree of probability that the offender poses an unacceptable risk under the relevant Act before making the order. Reforms introduced by schedule 1 to the Community Protection Bill 2018 will be reviewed by the Department of Justice after three years in operation.

I note the concerns of the Hon. John Graham relating to liquor licensing for music festivals and other events. I am advised that the recommendations will be made following a consultation process. In response to the member's concerns regarding liquor licensing, I note it is intended to apply only to music festival licences. That responds of the loophole that allowed Defqon.1 to use a catering licence. The amendments are intended to make sure that if a person can otherwise apply for a different type of licence such as a limited licence—special event, the authority can require them to apply for a music festival licence. That will ensure that we can impose appropriate controls to respond to the risks associated with an event. 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.

Mr DAVID SHOEBRIDGE (16:40): I move The Greens amendment No. 1 on sheet C2018-177A:

No. 1 **Supply of drugs causing death**

Page 24, Schedule 2.1, lines 2–34. Omit all words on those lines.

We dealt with this issue in the second reading debate. I put on record the reasons why The Greens do not support the new section 25C in the Crimes Act. I will not repeat them. We find the observations from the Bar Association compelling. If there is one aspect of the bill that we want to draw attention to and show an unflinching opposition to it is the proposed change to create this new unknown two-hour legal system offence of supply of drugs causing death with the absence of a causation requirement in it. For those reasons, I commend the amendment to the Committee.

The Hon. SCOT MacDONALD (16:42): The Government opposes The Greens amendment to the Community Protection Legislation Amendment Bill 2018. The Greens amendment will omit a new offence sought

to be introduced by the bill that will address a current gap in the criminal law that prevents those who supply drugs for profit that cause the deaths of members of our community from being held responsible for those deaths. On 15 September 2018, two young adults died after collapsing at the Defqon.1 music festival. Seventy people were charged with drug-related offences. On 18 September 2018, the Premier established an expert panel to advise the Government. The expert panel was comprised of the Commissioner of Police, the Chief Health Officer and the Chair of the Independent Liquor and Gaming Authority. Recommendation seven of the report of the expert panel was that the New South Wales Government investigate introducing a new offence for those who supply illegal drugs.

The Government is seeking to implement this recommendation through the new offence in the bill of supply of drugs causing death. The offence will not target young people who share drugs amongst one another. The expert panel recommended that the Government should have regard to limiting the offence to those who supplied the drug for financial and material gain, and further stated that it wanted to reserve the harshest penalties for drug dealers. Importantly, it will also be necessary for the prosecution to prove that the accused knew, or ought reasonably to have known, that supplying the prohibited drug would expose another person to a significant risk of death as a result of the self-administration of the drug.

There is a strong community interest where this threshold is met in holding drug dealers to account for the deaths that result. This offence responds not only to the recommendation of the expert panel convened after the tragic deaths of those two young adults a few months ago but also to the expectation of the community that those who supply prohibited drugs for profit should not be able to avoid responsibility when a person dies from taking those drugs. The Government opposes the amendment.

The Hon. ADAM SEARLE (16:43): The Labor Party Opposition will not support The Greens amendment.

Mr DAVID SHOEBRIDGE (16:43): The Government says that the bill will not be targeting young people. There is no protection for young people. In my contribution to the second reading debate I put on record the possible circumstances that involve a young person who may buy four pills for \$20 each and then sell them to four friends for \$30 each. That young person, in the words of the new offence, has obtained a financial or material gain. There is no requirement that it be a substantial or significant gain. A gain as little as \$1 would be sufficient. We know these circumstances happen regularly.

Those people are not drug dealers, but they will be treated as drug dealers and will potentially be put behind bars for 20 years. The Government says, "Do not worry, there is a further test that they ought reasonably have known that supplying the prohibited drug would expose another person to a significant risk." The wording is not "cause a risk" and is not "materially caused the death". The wording states "expose another person ... to a significant risk". It is such a low threshold. If people do not know for sure what is in the pill and it was bought from an illegal drug dealer—because that is from whom they buy illegal drugs—by definition, they will be exposing another person to a significant risk.

It is false for the Government to say that the bill is not targeting young people. I hope it does not come to be that within a short time of passing this law we see young people who have their entire lives destroyed as a result of being placed in jail for many years because they bought four pills from somebody, sold them to their friends for marginally more and tragedy ensued. In those circumstances the tragedy already destroys young people's lives. They are not to be blamed for the tragedy in those circumstances because another person voluntarily assumes the risk of taking the pill.

It is another person's decision to take that risk. It is not their decision to force the pill upon them. That is what the criminal law already says. The bill is going to see young people exposed to some of the most severe criminal penalties on record, and that is grossly wrong. We know it will not change people's behaviour. It will randomly, completely and comprehensively destroy young people's lives who will no doubt already be deeply traumatised by the tragedy that has happened to their friends.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): Mr David Shoebridge has moved The Greens amendment No. 1 on sheet C2018-177A. The question is that the amendment be agreed to.

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. 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

The Hon. SCOT MacDONALD: On behalf of the Hon. Don Harwin: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. SCOT MacDONALD: On behalf of the Hon. Don Harwin: I move:

That this bill be now read a third time.

Motion agreed to.

**SURVEILLANCE DEVICES AMENDMENT (STATUTORY REVIEW) BILL 2018
TERRORISM (POLICE POWERS) AMENDMENT (STATUTORY REVIEW) BILL 2018
ROAD TRANSPORT AMENDMENT (NATIONAL FACIAL BIOMETRIC MATCHING
CAPABILITY) BILL 2018**

Second Reading Speech

The Hon. CATHERINE CUSACK (16:49): On behalf of the Hon. Don Harwin: I move:

That these bills be now read a second time.

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

Leave granted.

The Government is pleased to introduce the **Surveillance Devices Amendment (Statutory Review) Bill 2018**, the **Terrorism (Police Powers) Amendment (Statutory Review) Bill**, and the **Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018**.

Surveillance Devices Amendment (Statutory Review) Bill 2018

The **Surveillance Devices Amendment (Statutory Review) Bill 2018** implements:

- Legislative recommendations arising from the Acting Ombudsman's Operation Prospect Report with respect to the use of surveillance devices by officers of the NSW Police Force, the NSW Crime Commission and the former NSW Police Integrity Commission between 1999 and 2002; and
- The recommendations arising from the statutory review of the Surveillance Devices Act 2007.

Surveillance devices are integral to effective law enforcement. Their availability and use can be critical to the covert collection of evidence in situations where other evidence collection methods might otherwise be untenable. They can play a vital role in facilitating the successful prosecution of persons charged with serious offences, particularly in the context of organised crime.

Drawing on the findings and recommendations of Operation Prospect and the statutory review of the Surveillance Devices Act 2007, the amendments set out in the **Surveillance Devices Amendment (Statutory Review) Bill 2018** will enhance the safeguards and scrutiny around the use of surveillance devices in New South Wales.

Operation Prospect

Operation Prospect commenced in October 2012. The four year review examined allegations and complaints about the conduct of officers of the NSW Police Force, the NSW Crime

Commission and the former Police Integrity Commission in relation to certain investigations conducted between 1999 and 2002, including police internal affairs investigations and the application for, and use of, listening devices.

The six-volume final Report, completed and tabled in December 2016, spanned almost 900 pages, and made 93 findings and 38 recommendations.

Many of Operation Prospect's recommendations were directed at the NSW Police Force and the NSW Crime Commission issuing apologies to specified individuals.

I understand that all of those apologies have been made.

The remaining non-legislative recommendations relate to internal procedures and legislative amendments to address deficiencies in law and procedure as it applied from 1999 to 2002.

I am pleased to report that many of the deficiencies identified by the Acting Ombudsman have already been addressed by the NSW Police Force and the NSW Crime Commission. In some cases, these changes were implemented well before the release of the Operation Prospect report.

The **Surveillance Devices Amendment (Statutory Review) Bill 2018** seeks to make amendments to address the legislative recommendations arising from Operation Prospect.

Statutory review of the Surveillance Devices Act 2007

Following the commencement of Operation Prospect, the Surveillance Devices Act 2007 was subject to a statutory review, completed in 2018, which considered whether the Act's objectives remain valid, and its terms remain appropriate for securing those objectives. The finalisation of the review was delayed to avoid inconsistency with the recommendations of Operation Prospect.

The review concluded that the Act's purpose and policy objectives remain valid, but that it would benefit from some minor amendments to ensure that it operates as effectively and efficiently as possible.

Details of the Surveillance Devices Amendment (Statutory Review) Bill 2018

I will now outline the key aspects of the **Surveillance Devices Amendment (Statutory Review) Bill 2018**.

Schedule 1[1] of the **Surveillance Devices Amendment (Statutory Review) Bill 2018** will insert a new provision into the Surveillance Devices Act 2007, to expressly state that its objects are to provide law enforcement agencies with a comprehensive framework for the use of surveillance devices in criminal investigations, to enable law enforcement agencies to covertly gather evidence for criminal prosecutions, and to ensure that the privacy of individuals is not unnecessarily impinged upon by providing strict requirements around the installation, use and maintenance of surveillance devices.

Schedule 1[5] of the bill amends section 17 of the Surveillance Devices Act 2007 to specify what information must be included in all warrant applications for use of surveillance devices, including:

- The alleged offence for which the warrant is sought;
- The kind of surveillance device intended to be used; and
- Information as to whether there is any other alternative means of obtaining the evidence or information sought.

Schedule 1[5] replaces section 17(3) of the Surveillance Devices Act. An application will have to be accompanied by an affidavit that:

- Supports the application and sets out the grounds on which the warrant is sought;
- As far as reasonably practicable, identifies persons who may be incidentally recorded by the surveillance device; and
- Includes any information known to the applicant that may be adverse to the warrant application or, if no adverse information is known, a statement to that effect.

These changes will help ensure that all warrant applications are clearly justified, and that the applicant has considered whether an alternative measure might be possible or more appropriate.

Schedule 1[8] of the bill amends section 20 of the Surveillance Devices Act to clarify the particulars that will be required in a warrant.

Schedule 1[19] of the bill contains the bill's principal and most significant reform.

Schedule 1[19] will amend the Surveillance Devices Act 2007 to insert two new provisions to :

- Establish the new, dedicated statutory office of the **Surveillance Devices Commissioner**; and
- Permit the Attorney General to delegate key scrutiny powers under the Act (currently delegated to the Solicitor General) to the Surveillance Devices Commissioner.

The Surveillance Devices Commissioner will, under delegation from the Attorney General:

- Receive advance notice of applications for warrants and all information provided to the eligible Judge or Magistrate responsible for deciding the application;
- Assess all Surveillance Devices Act 2007 warrant applications against the factors the eligible Judge or Magistrate must take into account, to ensure that the application is procedurally compliant;
- Work with law enforcement agencies to remedy deficiencies in applications before they are lodged with the eligible Judge or Magistrate;
- Have the right to be heard by the eligible Judge or
- Magistrate in relation to the granting of an application for a warrant; and
- Receive the report about the use of a surveillance device warrant from the applicant under section 44 of the Surveillance Devices Act 2007.

The Surveillance Devices Commissioner will also be required to prepare annual reports in the Department of Justice Annual Report outlining for each financial year matters including: the number of warrant applications that were made, withdrawn and refused; and the number of applications in which the Commissioner (under delegation from the Attorney General) was heard by the eligible judicial officer.

The Surveillance Devices Commissioner will be independent of the law enforcement agencies that make applications for warrants, and must be an experienced legal practitioner with at least 7 years' legal practice experience and either be a current or former judge or judicial officer of a superior court of record, or eligible for appointment as a judge or judicial officer to a superior court of record.

The remaining amendments in the **Surveillance Devices Amendment (Statutory Review) Bill 2018** will amend the Surveillance Devices Act 2007 to provide additional definitions, procedural directions and minor clarifications of existing provisions.

This bill will promote transparency, compliance, efficiency and consistency in applications for surveillance device warrants, while also addressing the Ombudsman's recommendations.

Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018

Terrorism continues to present a serious and ongoing threat to the safety and security of NSW, the country and the international community. Australia's National Terrorism Threat Level remains **PROBABLE**, which means that "*credible intelligence, assessed by our security agencies, indicates that individuals or groups continue to possess the intent and capability to conduct a terrorist attack in Australia*".

NSW has taken a lead role in ensuring Australia's counter terrorism framework remains responsive to this evolving threat.

The Terrorism (Police Powers) Act 2002 is a tool in that framework, which:

- Confers special powers on Police Officers to intervene when the risk of terrorism begins to crystallise and to investigate a terrorist act that has occurred;
- Clarifies the conditions for use of force by Police when responding to a terrorist act; and
- Provides for the investigative detention of terrorism suspects, the preventative detention of terrorism suspects, and covert search warrants.

Statutory review of the Terrorism (Police Powers) Act 2002

I now turn to the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018**. It implements recommendations arising from the statutory review of Terrorism (Police Powers) Act 2002, tabled in Parliament in June 2018.

The Terrorism (Police Powers) Act 2002 is subject to statutory review every three years, to ensure its policy objectives remain valid and its terms remain appropriate for securing those objectives.

The 2018 statutory review concluded that purpose and policy objectives of the Terrorism (Police Powers) Act remain valid, but made 13 recommendations to ensure its frameworks for governing special police powers, use of force, investigative and preventative detention, and covert search warrants are operating as effectively as possible.

The key amendments in the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018** will implement the statutory review's recommendations through reforms that:

- Better align the powers that police can exercise under the Act with the police powers under the Law Enforcement (Powers and Responsibilities) Act 2002 ("LEPRA");
- Ensure internal consistency across the Terrorism (Police Powers) Act 2002;
- Add additional safeguards, particularly in relation to detention of minors and vulnerable people;
- Facilitate review and oversight of the scheme governing the use of police powers; and
- Extend the powers under Part 2A of the act, Preventative Detention Orders, for another 3 years.

I now turn to the detail of the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018**.

Detail of the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018

Schedule 1[1] and [2] of the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018** will amend Part 2 ("Special Powers") of the Terrorism (Police Powers) Act 2002 so that authorised police officers issuing directions, requirements or requests to a person under Part 2 (including to disclose his or her identity, submit to searches and surrender things for seizure) need only give a single warning to that person.

Currently, section 23 of the Terrorism (Police Powers) Act 2002 requires that two warnings be given:

- Firstly, **a warning that the person is required to comply** with the Part 2 direction, requirement or request; and
- Secondly, if the person fails to comply with the direction requirement or request after receiving the initial warning, **a second warning that failure to comply is an offence**.

The current two-stage warning process is unnecessarily duplicative. It is inconsistent with the warning process under LEPRA, which was amended in 2014 to require a single warning only.

The amendments in **Schedule 1[1] and [2]** will restore the consistency of the Terrorism (Police Powers) Act 2002 and LEPRA. They will simply the warning process by requiring a single warning to the effect that a person is required by law to comply with a Part 2 direction, requirement or request.

Schedule 1[3] and [14] of the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018** will amend sections 17 and 26V of the Terrorism (Police Powers) Act to align strip search powers and requirements under the Terrorism (Police Powers) Act with those under the LEPRA, and, specifically, enable a police officer to conduct a strip search:

- At a police station or other place of detention if the officer suspects on reasonable grounds that the search is necessary; or
- At any other place if the officer suspects on reasonable grounds that the strip search is necessary for the purposes of a search, and that the seriousness and urgency of the circumstances make the search necessary; and the officer suspects on reasonable grounds that the person is the target of an authorisation to exercise special powers to prevent terrorist acts as conferred under the Terrorism (Police Powers) Act.

The powers to search a person under Part 2 of the Terrorism (Police Powers) Act will be aligned with existing LEPRA powers and safeguards. However, in addition to the existing LEPRA powers and safeguards, a police officer may only strip search a person under these sections if the police officer suspects on reasonable grounds that the person is the target of an authorisation within the meaning of Part 2.

A person who was searched, or whose vehicle or premises were searched under Part 2 of the Terrorism (Police Powers) Act will be able to request a written statement from the Commissioner that states that the search was conducted in pursuance with that Part.

Schedule 1[4] of the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018** amends section 23 of the Terrorism (Police Powers) Act 2002 consequentially to implement the recommendation 7 of the statutory review to align the warning requirements under Part 2 with s.203 of the LEPR, noting that the duplicate safeguards in Part 15 of LEPR will apply.

Schedule 1[5] and [6] of the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018** amend the Terrorism (Police Powers) Act 2002 to insert new sections 24 and 25.

Under the new section 24, the Commissioner of Police must prepare an annual report for provision to the Attorney General and Police Minister and for tabling in Parliament, outlining the exercise of the Part 2 special powers over the course of each financial year. The annual report must include the number of authorisations given in the relevant year, and the powers that were exercised under those authorisations.

Under the new section 25, the Commissioner of Police must prepare an annual report for provision to the Attorney General and Police Minister and for tabling in Parliament, outlining the number of declarations made under Part 2AAA (Police use of force — ongoing terrorist acts').

Part 2AAA introduced last year by way of the Terrorism Legislation Amendment (Police Powers and Parole) Act 2017.

Part 2AAA allows the Commissioner of Police to declare an incident to be a "terrorist act" in relation to which Police Officers are authorised to use force that is reasonably necessary to defend any person threatened by that terrorist act or prevent or terminate a person's unlawful deprivation of liberty (such as occurred in the Lindt Siege).

These amendments will enhance the existing oversight of the exercise of Part 2AAA powers.

Schedule 1[9] of the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018** will amend the Terrorism (Police Powers) Act to insert a new section to modify the existing limitations on when a Police Officer can take identification material from a person who is subject to investigative detention under Part 2AA (investigative detention powers').

Currently, the Terrorism Police Powers Act permits a Police Officer to take identification material from a person subject to investigative detention only if the person consents in writing, or the Officer believes on reasonable grounds that it is necessary to confirm the person's identity, contravention of which carries a penalty of up to two years' imprisonment.

In his 2017 review of Part 2A (Preventative detention orders'), the Acting Ombudsman noted that NSW Police Officers are extremely cautious to avoid taking identification material from detained persons contrary to the Act's requirements, which may have the unintended consequence of preventing or deterring Officers from making proper records, including photographs of detainees that may ordinarily be taken as part of police custody procedures.

The **Schedule 1[9]** amendments will clarify that NSW Police Officers may use photographs or video recordings to record any illness or injury suffered by person subject to an investigative or preventive detention order without fear of prosecution. Any such photograph or video recording may only be used for the purposes for which it was taken, with any other use attracting a penalty of up to two years' imprisonment.

These amendments will promote transparency, help protect the health and welfare of detainees, ensure Police Officers are accountable for any injury that occurs while a person is detained, and protect Officers from false accusations.

Schedule 1[11] of the **Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018** will amend Part 2AA of the Terrorism (Police Powers) Act to insert a new Division comprising three provisions to increase the safeguards available to people subject to investigative detention under Part 2AA.

Although not used to date, Part 2AA enables a Police Officer to arrest a terrorism suspect who is 14 years of age or over without a warrant for the purposes of investigative detention if: a terrorist act that has occurred within the past 28 days; or the Officer has reasonable grounds to suspect that a terrorist act could occur within 14 days, and the Officer is satisfied that detaining the suspect will substantially assist in responding to or preventing the terrorist act.

- Part 2AA provides for an initial detention period of up to four days without a warrant, with a senior Officer to review whether the detention should be continued every 12 hours.
- An eligible judge may extend the detention period beyond the initial four days in increments of up to seven days up to a maximum total period of detention of 14 days.

The **Schedule 1[11]** amendments will enhance existing safeguards for Part 2AA detentions:

- Require a Police Officer to inform a detainee of his or her right to complain to the LECC in accordance with the Law Enforcement Conduct Commission Act 2016;
- Clarify that a detainee is entitled to, and must be told of his or her entitlement to, contact a lawyer;
- Enable the Supreme Court to order the provision of legal aid to a detainee subject to a detention warrant, or in relation to whom a detention warrant is sought;
- Require detaining Police Officers to provide detainees reasonable assistance to contact the Legal Aid Commission to obtain that aid;
- Explicitly require that any person exercising authority, implementing, or enforcing investigative detention treat detainees with humanity and respect for human dignity, and ensure that they are not subjected to cruel, inhuman or degrading treatment, with failure to do so punishable by up to two years' imprisonment.

These new provisions will enhance the safeguards already in place to ensure procedural fairness to and the humane treatment of detainees. They will also ensure that there is internal consistency in the Act's safeguards for preventative detention detainees and investigative detention detainees.

Schedule 1[17] and [18] of the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 will implement amendments to section 26ZH of the Terrorism (Police Powers) Act 2002 to reinforce the Act's existing protections for detainees who are under the age of 18 or have impaired intellectual functioning.

- I am acutely aware of the importance of ensuring that there are appropriate protections and safeguards in place for the detention of vulnerable people, and that terrorism measures are balanced, proportionate, and crafted with regard to particular cohorts' vulnerabilities.

The amendments to section 26ZH will:

- Increase the time that minors and people with impaired intellectual functioning are allowed contact with a parent, guardian or other acceptable person from two hours to four hours per day;
- Clarify that the custody manager is required to assist these detainees to exercise their right to have contact with a person they know, trust and accept;
- Require that, as applicable, a detainee be given reasons as to why their preferred contact person is not acceptable; and
- In the event that no acceptable preferred contact person can be agreed, require that any contact person nominated by the Officer have specialist expertise in working with children and young people, and, if appropriate, with culturally and linguistically diverse communities.

Schedules 1[10], [11] and [19] of the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 clarify that a detaining Police Officer is required to advise a detainee and any contact person, including a legal representative, that the contact will be monitored.

Schedule 1[22] and [25] of the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 amend sections 26Z0 and 27ZC of the Terrorism (Police Powers) Act 2002 to clarify that the Commissioner of Police must provide information required by the LECC, subject to certain conditions to protect highly classified sensitive material relating to terrorist investigations and operations, namely that:

- The LECC officers reviewing the material are appropriately security cleared;
- The Commissioner of Police can identify matters of particular sensitivity that will be seen only by the LECC Commissioners; and
- The Commissioner of Police will be provided with a copy of any material the LECC proposed to be included in a public report to ensure it does not unnecessarily reveal police methodology, ongoing operations or jeopardise information sharing relationships.

The amended sections 26Z0 and 27ZC will provide that Police are not required to provide material where the provision of information would contravene a law of the Commonwealth (for example, a statutory secrecy provision that restricts provision of that information); or which may identify informants or officers operating covertly. Any redactions made for these purposes must be clearly specified to facilitate the oversight function.

This will facilitate better oversight of powers under the Act.

Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018

I now turn to the **Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018**.

In October 2017, at the Special Council of Australian Governments (COAG) on Counter-Terrorism, First Ministers entered into an Inter-Government Agreement ("IGA") committing to establish and participate in the National Facial Biometric Matching Capability ("the Capability") ("the National Agreement").

The Capability will help deter crime; prevent identity theft; and provide law enforcement agencies with a powerful investigative tool to identify people who may be associated with criminal activities.

Under the IGA, Governments agreed that authorised Commonwealth, state and territory government agencies that hold facial images and associated personal information for use in or on official records ("Data Holding Agencies") will contribute those images and associated personal information to be accessible by other authorised government agencies ("Requesting Agencies") via the Capability:

- Requesting Agencies will be able to use the Capability's Facial Verification Service to verify a known person's identity, with his or her consent or as authorised by law, by comparing his or her image and personal information with images and personal information accessible via the capability.
- Requesting Agencies that are authorised law enforcement agencies will be able to use the Capability's Facial Identification Service to gain investigative leads to help identify unknown persons without their consent in limited circumstances relating to law enforcement, national security and community safety (searching the suite of images for potential matches, to help identify an unknown person).

The Capability will use sophisticated, secure facial recognition technology to streamline existing, resource-intensive manual processes for verifying known persons' identities and identifying unknown persons, speeding up provision of customer service and law enforcement investigations. More specifically, it will:

- Allow members of the community to quickly and easily have their identities verified when engaging with Government, for example, when applying for new or renewed driver licences, by matching images of their faces with images on official records accessible via the Capability;
- Help prevent and detect the use of fake or stolen identities, which can be key enablers of fraud, organised crime and terrorist activity; and

- Protect Australians by making it easier for law enforcement agencies to identify people who may be of interest in relation to criminal activities.

The Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018 will amend the Road Transport Act 2013 to allow Roads and Maritime Services to contribute NSW driver licence facial images and associated personal information for searching within the Capability.

The Road Transport Act 2013 provides strict conditions around how facial images and associated personal information are collected, stored, used and disclosed, to ensure the privacy of NSW drivers is protected.

The Road Transport Act 2013's provisions were, however, introduced before work had been undertaken to establish the Capability, which will itself be instrumental to the prompt and accurate verification of individuals' identities, and to protecting their privacy and their identities from being compromised.

I will now turn to the details of the bill.

Details of Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018

Schedule 1[1] and [2] of the **Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018** will amend sections 56 and 57 of the Road Transport Act 2013 to permit Roads and Maritime Services to keep, use and release stored photographs (which include driver licence images) in accordance with the strict conditions of the new section 271A of the Act.

Schedule 1[3] will insert a new section 271A into the Road Transport Act 2013, titled, "National Facial Biometric Matching Capability", comprising five subsections.

The new section 271A(1) will introduce six new definitions for the purposes of the new section 271A:

- **"National Agreement"** is defined to mean the Intergovernmental Agreement on Identity Matching Services as entered into by First Ministers;
- **"National Facial Biometric Matching Capability"**, defined in accordance with the terminology of the National Agreement;
- **"associated personal information"**, which, in relation to a photograph, is defined to include the name, date of birth, gender and address of the individual featured in the photograph;
- **"authorised government agency"** is defined to mean the Roads and Maritime Services (RMS), or an agent of RMS, or any other NSW Government or Public Service agency that is authorised to participate in the Capability in accordance with the National Agreement. To be "authorised", an agency must have a legislative basis upon which it can have access to the Capability, and must execute a Participation Agreement with the Capability's host (currently the Commonwealth Department of Home Affairs).
- The Participation Agreement is a contract between the Capability host and each other agency with access to the Capability.
- The Participation Agreement sets out all agencies' roles, rights, responsibilities and obligations and provides strict conditions for use, including that each and every use of the Capability must have a lawful basis (such as, in the case of RMS, verifying that a person seeking a driver licence is who he or she claims to be, or for law enforcement purposes), as well as what training, compliance, security and audit standards each agency must meet.
- The Participation Agreement also provides the framework within which agencies must negotiate their data sharing and access arrangements, and the conditions of access in accordance with required privacy and security safeguards.
- After executing a Participation Agreement, an agency must then execute Participation Access Arrangements with each other government agency whose data the first agency wishes to access via the Capability.
- For example, RMS would need to execute Participation Access Arrangements with each other jurisdiction's road agencies.
- **"collect"** from the Capability is defined to include download from the Capability; and
- **"release"** to the Capability is defined to include upload to the Capability.

The new section 271(2) will authorise Roads and Maritime Services and any other authorised government agencies to collect photographs and associated personal information from the Capability.

The new section 271(3) and (4) will authorise Roads and Maritime Services and any other authorised governmental agency to keep and use photographs and associated personal information obtained from, or disclosed to it via, the Capability for any lawful purposes in connection with the exercise of its functions; and specify that sections 9 and 10 of the Privacy and Personal Information Protection Act 1998 do not apply to such collection from the Capability.

Finally, the new section 271(5) will authorise Roads and Maritime Services and any other authorised government agency to release photographs and associated personal information it holds to the Capability.

I reiterate previous statements from the NSW and Commonwealth Governments that the Capability:

- Has been designed and built with robust privacy safeguards in mind;
- Has been subject to detailed Privacy Impact Assessments and data security assessments;
- Will only be accessible by authorised agencies, and by individuals within those agencies who are also appropriately authorised and have undertaken required training; and
- Will be subject to a robust compliance framework and independent oversight at both the NSW and national level.

I commend these bills to the House.

Second Reading Debate

The Hon. ADAM SEARLE (16:49): I lead for the Labor Opposition in debate on the Surveillance Devices Amendment (Statutory Review) Bill 2018, which is cognate with the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 and the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018. The Opposition does not oppose these bills but has concerns about the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018. I note that each bill could have stood on its own. Having spent the past years under-utilising and mismanaging the work flow in this Chamber, the Government is now in a flurry of activity lumping together as cognate a range of bills that do not warrant that treatment.

The objects of the Surveillance Devices Amendment (Statutory Review) Bill 2018 include appointing a Surveillance Devices Commissioner and inserting an objects provision in the Surveillance Devices Act. In addition, the bill aims to make consistent the information that is required to be in a warrant, the information that is required to be in the application for the warrant and the information that is required to be provided to the Attorney General about the application for the warrant. The bill also aims to require an applicant to include in the application known information adverse to the application and to require an applicant to identify persons who may be incidentally recorded by the surveillance device. I will shortly come to reasons why that is so important.

The bill is presented as responding to the statutory review of the Surveillance Devices Act and the report of the Ombudsman on Operation Prospect. The review of the Surveillance Devices Act is dated October 2018 and was tabled on the day that notice was given of the bill. In July 2015, the shadow Attorney issued a media release saying that the statutory review was then three years overdue. Its tabling in 2018 makes it six years overdue. This rivals the delay in the review of the Defamation Act. The Opposition has often said that this Government's legislative agenda reminds us of watching grass grow. Its process for statutory review is perhaps even slower than that. Some of the recommendations from the statutory review have forced their way into this bill. Recommendation 3 about optical devices, for example, is in schedule 1 [3]. Recommendation 2 seems to be dealt with in schedule 2 to the bill. I note that not all the recommendations of the delayed review have been implemented in the bill.

The other report relating to this bill and surveillance devices is the report of the Ombudsman on Operation Prospect. The matters that provoked that inquiry and report have been notorious for many years and have attracted considerable attention, including two inquiries of the upper House, both of which I sat upon, as well as the enormous Ombudsman's inquiry. All of that activity dwarfed the original police operation that was the subject of those inquiries. As a member of the parliamentary oversight committee on the Office of the Ombudsman, the Police Integrity Commission and, subsequently, the Law Enforcement Conduct Commission [LECC], these are matters that have been of considerable interest to myself as well as the shadow Attorney. We remain outraged that a former police commissioner indicated that a 100-name warrant was necessary because of a police function that apparently did not occur. The circumstances of that to me remain shrouded in mystery.

The Ombudsman's report recommended the establishment of a public interest monitor similar to the Queensland and Victorian models for applications for surveillance devices and telephone intercept warrants. The Operation Prospect process revealed long-term systemic problems with the issuing of warrants for listening devices. The Ombudsman's recommendation was to establish a public interest monitor in New South Wales. The parliamentary inquiry made a similar recommendation for an Office of Independent Council, I think, to act as contradictor on warrant applications. Of course, this proposal does not approach the contours of that recommendation by the parliamentary inquiry but, nevertheless, this is an improvement on the status quo.

Given that many more warrants are granted in New South Wales than in any other State, it is, in the Ombudsman's word, "imperative" that New South Wales has an effective regime in place for checking that adequate safeguards are in place. The safeguard of the Attorney General's role has been in place for some time and, in the Ombudsman's assessment, it has been ineffective. Merely improving that in a minor way was not adequate. As the Ombudsman said, "Without systemic reforms, the weaknesses evident in NSW's current safeguards are likely to persist ..." The focus of the Ombudsman is on fixing up the front end of the warrant process.

The Government's response to recommendations 25 to 30 in volume 5 of the Ombudsman's report is to create a position known as the Surveillance Devices Commissioner. This is a public service position that requires a legal qualification. New section 51B permits the Attorney General to delegate functions under parts 3 and 5 of the principal Act to a number of positions including the Surveillance Devices Commissioner. This delegation power seems to be the origin of the commissioner's powers. In his second reading speech the Attorney General specified what the commissioner will do. The commissioner will receive advanced notice of applications for

warrants with all the information that will be given to the judicial officer, assess whether the application is procedurally compliant, work with agencies to remedy inefficiencies before they are lodged, have the right to be heard by the judicial officer in relation to issuing a warrant, and receive reports about the use of the device.

The commissioner will prepare an annual report to be contained in the department's annual report setting out the number of applications made, withdrawn and refused, and the number of applications in which the commissioner was heard. I pause to indicate that these are heavy burdens to place on any person—but particularly a public servant—who is not an independent statutory officer or independent of Executive Government. I hope in any recruitment to the role that the Government is realistic in the levels of skills and qualifications that will truly be required for the proper and effective discharge of the role.

Much of what the Surveillance Devices Commissioner will do is similar to the recommendations of the Ombudsman and has an echo of the recommendations made by one of the parliamentary inquiries upon which I sat. There are, however, some significant variations. I ask the Government to explain in reply why the recommendations have been departed from. The bill does not extend the role of the commissioner to deal with telephone intercept warrants, for example, as was recommended by the Ombudsman and, I think, the parliamentary inquiry. There does not seem to be an explicit acknowledgement of the entitlement of the commissioner to ask questions before the judicial officer of any person giving information in relation to the operation. The reporting provisions in the bill are not as wide as those recommended by the Ombudsman. In particular, the commissioner's reports would seem to be merely numerical, with recommendation 30 of the Ombudsman also extended to reporting information about the hearings where there was intervention to raise issues and question applicant witnesses.

The other issue that should be explained to the Parliament deals with the role of the Attorney General. The Ombudsman's proposals seem to envisage the Attorney General retaining a role, with the public interest monitor having a separate role. The bill before the House seems to replace the role of the Attorney General with that of the commissioner, which sidesteps recommendation 28. It would seem to the Opposition to be appropriate to have some explanation of that placed upon the record. The issue of the commissioner is the most important in the bill, although other provisions should be noted, many of which reflect the Ombudsman's recommendations.

A new objects clause is provided with a reference to a privacy focus, consistent with recommendation 34. Recommendation 17 is amended, specifying the information to be included in the warrant. An affidavit must support the application and it should identify those who may be incidentally recorded by the device. Of course, that was one of the notorious aspects of Operation Prospect and was subject to a recommendation by the Ombudsman and, I think, the parliamentary inquiry. The affidavit will have to include any information known to the applicant that is adverse to the application.

I now deal with the second of the cognate bills: the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018. The object of the bill is to give effect to the recommendations of a statutory review by amending the Terrorism (Police Powers) Act. The review was tabled on 7 June this year following a report of a review by the Ombudsman tabled in June 2017. The statutory review followed, pursuant to section 36 of the principal Act. This was the sixth statutory review of the Act. The review covers the period from 2015 to 2018, during which time a number of amendments were made to the principal legislation. The review confirmed that part 2AAA powers and part 2AA powers have never been used and part 2A powers have not been used since 2014. The review states:

These powers, while rarely, if ever, invoked, provide the NSWPF appropriate tools to remain agile in meeting the terrorism threat. The Act provides the NSWPF necessary powers to intervene when the risk of terrorism begins to crystallise or where a terrorist act has occurred.

For a range of different reasons, the rare use of these powers is a positive thing. Schedule 1 [23] to the bill continues the part 2A scheme for three years; that is, the "sunsetting" will be deferred for three more years. The Ombudsman's report to which I referred earlier recommended that part 2A be allowed to lapse on 16 December 2018. That part deals especially with preventative detention orders and prohibited contact orders. In the foreword to his report, the then acting Ombudsman Professor McMillan argued that part 2AA powers introduced in 2016 effectively made the part 2A powers redundant. Accordingly, part 2A should be allowed to lapse. That being the case, whether they lapse is perhaps not of great importance. The fact that they are not utilised in one sense may be a case for their continuation. One is hardly able to argue that they are being overused or used inappropriately if they are not being used at all. The Opposition supports the bill as it is drafted.

Schedule 1 [1] notes that the safeguards of part 15 of the Law Enforcement (Powers and Responsibilities) Act apply to part 2, division 3 of the principal Act, in accordance with recommendation 2 of the statutory review. Section 23 is amended so that the current two-stage warning required to be given by police to a person concerning part 2 powers is reduced to a single warning. Annual reporting is improved in accordance with recommendations 3 and 4 to improve the gathering of statistics. Schedule 1 [11] enables the Supreme Court to order that legal aid

be provided to a terrorism suspect concerning proceedings related to the person's investigative detention. Proposed new section 25MC requires suspects under investigative detention to be treated with humanity and respect for human dignity and not be subjected to cruel, inhumane and degrading treatment. Proposed new section 25MA requires police to inform a terrorism suspect in investigative detention of the right to contact a lawyer and the Law Enforcement Conduct Commission.

The Act is amended to allow police to take photographs or video recordings of a detainee to document an illness or injury. This seems to be necessary because the police believe the current ban on obtaining identification material from a detainee extends to cover that situation. This proposal was made to the review by the police. The Act is also amended to require the police to advise a detainee that contact with the detainee and others will be monitored. The provisions relating to personal searches under the Law Enforcement (Powers and Responsibilities) Act are applied to searches under the principal Act; that was also a recommendation of the statutory review. The bill increases the maximum limit from two hours to four hours for contact between a person under 18 or with impaired intellectual functioning and a parent and other person. Schedule 1 [18] requires police to offer further assistance and information to such detainees.

There are also changes to the provision relating to the supply of information from police to the LECC, which has, of course, replaced the Ombudsman in overseeing this regime. In a previous review, the Ombudsman had reported that his oversight functions were hampered by his ability to access police information. This was caused by Commonwealth secrecy provisions and claims of public interest immunity by the police. The Ombudsman had called for the principal Act to be amended to make it consistent with the Ombudsman Act and the Law Enforcement Conduct Commission Act, which prevented public interest immunity claims in response to a requirement to provide information. The statutory review noted it was "concerning" that the Ombudsman could not form a comprehensive and informed view of the operation of the Act without access to key documents. On pages 57 to 58 the review stated:

Part 2A powers are extraordinary and depart from long-established principles on detention. NSW Parliament recognised this when the legislation was enacted by establishing a robust scrutiny function. The NSWPF and the LECC should work to address the issues identified by the Ombudsman.

The end result is schedule 1 [22] and 1 [25], which require the police to provide the information to the LECC subject to conditions to prevent sensitive information being accessed or made public. There is also a limited capacity for redaction or withholding information. This is not quite what the Ombudsman requested in previous reports. The Opposition's view is not to seek to amend the provisions at this stage but to see how they work and address any changes subsequently needed. If at a later point the LECC advises that they do not work adequately, the Opposition will reconsider its position. At the moment it does not oppose the bill and what is proposed in the bill is definitely an improvement on the current situation.

The third and final cognate bill is the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018. The bill's object is to amend the Road Transport Act. The amendments aim to authorise Roads and Maritime Services and certain other New South Wales government agencies to release photographs and associated information to the National Facial Biometric Matching Capability, to collect such material from that capability, and to keep and use those photographs or information for any lawful purpose in connection with the exercise of the agency's functions. This capability is administered by the Commonwealth and stems from an Intergovernmental Agreement on Identity Matching Services entered into by the Commonwealth and the States and Territories in October 2017.

The challenge in the era of big data is to get the balance right between the availability of information for useful purposes and the protection of privacy. The Opposition does not think that this Government has got the balance right over the past eight years. As a consequence, the Opposition has introduced several private member's bills during that period to try to do so. All of those proposed measures have been rejected by the Government. Most obviously, this bill should be accompanied by a regime of mandatory reporting of serious breaches of privacy by State agencies. Such a regime is good enough for the Federal Government but apparently not for the current State Government. We will have to await the election of a Labor Government in March 2019 for that to be remedied. As I said, Labor does not oppose the bills but it is cautious about the provisions in this bill particularly and proposes to look closely at how they are implemented and what, in fact, happens as a result of their adoption.

It is worth mentioning that in one of the innovations that we are trialling this year in this place, this bill was referred to the Standing Committee on Law and Justice. On 12 November that committee of this House reported on the bill; members should look at the report to be sensible of the concerns of stakeholders reflected in the report. During the short inquiry, the committee considered a number of concerns raised by stakeholders regarding the bill and the Commonwealth's Identity-matching Services Bill. That is because the Commonwealth legislation provides the overarching framework for the new biometric face-matching services.

The committee noted concerns by stakeholders, including whether there are appropriate privacy safeguards in both bills; as I indicated, at a State level I do not think there is. There was also concern that the New South Wales Parliament is enacting its regime before the Federal regime is put in place. That does rather seem to be putting the cart before the horse. The NSW Council for Civil Liberties, Australian Lawyers for Human Rights and the Law Society of NSW have raised concerns with the present legislation, including that it facilitates the ability to provide information to local government and on government bodies and is inconsistent with the Intergovernmental Agreement on Identity Matching Services, which is the stated basis for the legislation. There is also concern that the legislation contains ineffective privacy safeguards and is seen by some as creating a virtual identity card. There is concern that it may facilitate profiling, which of course would be most unfortunate. Further, the Australian Lawyers for Human Rights have argued that the bill before the House should not be passed because it opens up citizens to additional and unwarranted government surveillance. Their submission to the committee stated:

The Federal bills exempt the Federal Government from normal operation of Australian privacy principles and allow individuals' personal and sensitive information, including biometric data to be used for any purpose the Commonwealth may wish. The Federal bills do not respect privacy but enable surveillance and exploitation. NSW residents should not be made part of these arrangements.

Australian Lawyers for Human Rights were also concerned that under both the State and the Commonwealth bills data is able to be obtained for one purpose but used for other purposes. The Law Society, not a noted left-wing outfit, was also concerned about the scope and reach of the capability and the associated risks of unnecessary encroachment upon the privacy of citizens. The absence from the legislation of a comprehensive data management or privacy code, as it were, is a concern. A number of inquiry participants noted their unease that the incidental collection of certain biometric data could lead to the capability being used for racial profiling, which I think is a legitimate concern and should be addressed by the Government.

Stakeholders were, of course, united in the view that the facial matching capability for the purposes of law enforcement such as in the event of a terrorist attack or a siege situation is a sensible and important measure. Ultimately it is for those reasons and those considerations that the Opposition will not be opposing the legislation. But, as I said, we on this side are concerned about some of the matters that have been raised. The committee recommended that the Government should use the opportunity of the parliamentary debate on this bill to address the concerns raised by stakeholders. That has not yet happened. We earnestly hope that the Government will do so in reply before the bill passes this place.

In particular on page 16 of its report the committee recommends that the Government during the debate on the bill should address why the road transport bill is being considered before the Commonwealth legislation passes, why specific privacy safeguards are not included in the road transport bill and explain whether New South Wales will allow its agencies to enter into participation agreements with local government and also with non-government bodies. It is of course that possibility that raises serious concerns about how the data being collected will ultimately be applied. I think reasonable people will concede that the collection and use of this data for law enforcement and antiterrorism measures is fine but the danger of it being misused, leaked or used for other purposes is not. The Government should only be collecting the data on its citizens for the stated purposes—purposes directed to public safety and the like. With those comments, we on this side do not oppose the bills but we are concerned about the third of the cognate bills and hope the Government addresses those matters before we vote.

Mr DAVID SHOEBRIDGE (17:12): On behalf of The Greens I speak in debate on the Surveillance Devices Amendment (Statutory Review) Bill 2018, the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 and the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018. I say at the outset that there is nothing that joins these three bills other than that they come from the same Minister. They should not be being forced upon the Parliament to be dealt with as compendium bills and in this way get little if any proper scrutiny from either this House or the other place.

Having said that, I will start by addressing the Surveillance Devices Amendment (Statutory Review) Bill 2018. This bill largely came out of the hard work of the portfolio committee that I was on, chaired by the Hon. Robert Borsak, in the legal affairs inquiry into Operation Prospect. I distinctly recall having a fourth birthday cake for that inquiry—a lovely blue-and-white chequerboard cake—when we realised how long the inquiry had been going and how little action we had seen from the Ombudsman, who had been years and years in drafting his report, or the Government in addressing what was an ongoing scandal about surveillance devices, especially as they were used amongst and as a weapon by the NSW Police Force.

The committee saw some of the most distressing examples of surveillance devices being used within the NSW Police Force to further internal vendettas within the NSW Police Force. There were examples of surveillance devices being literally rolled over in application after application in the Supreme Court, dealt with in chambers by Supreme Court justices who could not have had the capacity to properly review and test the information before

them. They were being rubber stamped by Supreme Court justices. In at least one case there were some 116 names on a single warrant that was allegedly justified by this extraordinarily complicated, almost impossible-to-follow affidavit in support.

These surveillance warrants were being issued like confetti by the Supreme Court and nobody was checking. I want to stress that no judge could properly check whether what was in those surveillance device applications was valid or appropriate. It would have been a Herculean task to link the tortuous recital of alleged facts and rumours in the affidavit to the various names that were attached to the surveillance devices, yet Supreme Court judges were literally knocking out these applications in a routine summary fashion in chambers without any assistance at all from either a counsel supporting them or a counsel testing them.

I note on the record the brave work of Deputy Commissioner Kaldas, who I think stood on principle. It damaged his career and I think we all know it damaged his career, but he stood on principle because what he saw was so deeply wrong, and he called it out. He saw that it was damaging not just him but other police officers in their careers. He called it out, he would not let it go and he demanded something be done about it. We eventually had the long running, seemingly never-ending Ombudsman's review and eventually it came out with a series of highly contested findings in relation to the conduct of some of those police, especially Deputy Commissioner Kaldas. I personally find the findings against Deputy Commissioner Kaldas deeply offensive and wrong in principle. Nevertheless they were made.

Three years after the Ombudsman's report was delivered and more than six years after the inquiry into Operation Prospect commenced we finally get some kind of legislative reform. It is a long time coming and it is desperately needed. What does it do? It provides for the appointment of a Surveillance Devices Commissioner who must be a legal practitioner with at least seven years practice, so a reasonably senior legal practitioner. That Surveillance Devices Commissioner provides an oversight role. It is nowhere near what should be in the legislation. A not dissimilar problem in Queensland has been addressed by having a genuinely independent statutory officer who vets and checks these applications. But the Surveillance Devices Commissioner created in this bill is not an independent statutory officer. They are simply a public servant and they are reportable and able to be overseen through the usual channels in the public service. We must all closely observe that lack of statutory independence as the matter goes on.

The Greens would have greatly preferred an independent statutory officer modelled on the Queensland example who has independent resources to adequately test applications as they are being presented. We definitely need checks and balances. This proposed Surveillance Devices Commissioner is a modest check and balance. To the extent it improves the matter we do not oppose it. There are a number of other improvements that are made with this bill which I will not detail because of the limited time available today. They require annual reporting to the Department of Justice, which I hope will be tabled in Parliament. They require an applicant for a surveillance device warrant to identify persons who may be incidentally recorded by the surveillance device, so you do not just sweep up everybody's privacy with the one warrant.

They require an applicant for a warrant to include in the application any information that is known to the applicant and may be adverse to the warrant application. I find it remarkable that this law has been considered necessary because these are ex parte applications. They are applications that are brought to the court in the absence of another party. One of the fundamental requirements of any legal practitioner who is putting forward an ex parte application is that it must include information that is adverse to the application. If an application is to be considered by the court, when there is no contradictor present and the Court is to be persuaded to grant the application, then it must receive the adverse information that is to hand. That is a practitioner's ethical and professional obligation. That has not occurred in past and applications have been one-sided and inappropriate. Consideration should have been given in the Ombudsman's report for a penalty or review of the circumstances where that situation was occurring but there is not. It is one of the failings of the Ombudsman's report even though I note there is a clear statutory requirement.

The Surveillance Devices Amendment (Statutory Review) Bill 2018 makes some marginal improvements which we hope will be significant. However, in the absence of an independent statutory officer, the Surveillance Devices Commissioner may be yet another public servant whose views are ignored. I hope that is not the case. The Greens support the bill as a step forward.

The Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 came about as a result of a statutory review of the Act that was tabled in the Parliament in June of this year. The Greens are always wary to support any further expansion of the terrorism laws that have already been considerably expanded in one and a half decades. The great bulk of these changes from the statutory review are positive changes. It will require annual reporting on the exercise of special powers by police—terrorism powers. It will require annual reporting on declarations authorising the police use of force—terrorism laws. For the first time it will provide legal aid for terrorism suspects under investigative detention. It will require the humane treatment of terrorism suspects—at

least slightly more humane treatment—who are under investigative detention. It will require terrorism suspects to be informed of their rights, few as they are, in the legislative framework. It will require police to record any injury or illness of detainees and it will require the police to tell any detainees that their conduct will be monitored.

It will also provide additional contact rights for underage and intellectually-impaired detainees, which is one of the issues that The Greens had difficulty with. It was one of the issues we raised continually when the first set of terror laws came through this Parliament. It will align the search requirements under these terrorism Acts with those that exist under the Law Enforcement (Powers and Responsibilities) Act. Unfortunately, once again, it will postpone the sunset of the preventative detention order scheme. It would seem that that is a sun that never sets. No evidence has been presented that the preventative detention order scheme has in any way improved the safety of the people of New South Wales. We know it is an ongoing and direct infringement of our basic civil liberties. The Greens do not support postponing the sunset provisions of those terrorism laws.

Turning to the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018, we note that at least there is some honesty in government. This is the regime that will see the New South Wales Government hand over all of the private information that the Roads and Maritime Services have of individuals under their extensive driver licence database. That information includes photographs, personal information and addresses. This bill will enable the Government to hand over all that private information to the Federal Government under this Orwellian data matching database that is called the "capability". At least it has an Orwellian and evil name: "The capability is coming and is watching you".

The capability is basically the Australia Card on digital steroids. It is a series of databases of State and Federal data which will be kept in separate identifiable databases but will be instantly interrogated by a single interoperability hub. That is a mega search engine which will instantaneously search. I note the Chair of the Law and Justice Committee is laughing because this issue was explained to us in detail during the committee inquiry. The capability is similar to a super Google search engine of an array of different State and Federal databases which will combine information on people and then produce a result. It has two key functions. It has a facial matching service where a law enforcement agency may use a photograph or an image to identify a person through the database, which will check other databases for information such as name, address or other personal details. We were told by the Federal bureaucrats who visited the committee, and who were promoting it in the inquiry—the Federal Parliament has been told by the same Federal bureaucrats—that this will be an extraordinary new crime prevention and anti-terror facility.

The international experience would suggest otherwise. The same facial matching service that has existed for some years in England and Wales has an extraordinary error rate of 91 per cent. The facial matching is wrong in 91 per cent of cases. It is only correct fewer than one in 10 times. The experience in England and Wales has been that those raft of false positives have seen people woken up in the small hours of the night, tumbled out of their beds, taken to a police station, interrogated under their terrorism laws all on the basis of a woefully error-ridden biometric matching database that they have. Yet this Government is willing to hand over all the data of the people of New South Wales to create a similar Federal database here with no guarantee that it will not have the same gross error rate that is seen in England and Wales. If the error rate is not enough, the other jurisdiction that has a national biometric matching capability that covers its entire population is India. In India the results from that national database can be purchased on the black market for as little as \$10—there are almost no privacy controls.

What does the New South Wales Government propose with its bill? It proposes not only to hand over the data but also to strip away two of the key privacy protections that currently exist. Those protections are sections 9 and 10 of the Government Information (Public Access) Act which is the right to be advised about an access to a person's private information and the requirement for consent before information is provided. Under this bill consent is irrelevant, advice is irrelevant. Those concerns were raised in detail by stakeholders who came before the Standing Committee on Law and Justice in the inquiry that was completed on 12 November 2018. I note some of the concerns from those stakeholders. I am grateful to the secretariat and the committee who prepared a quality report in a short time frame and I note the work of the Chair in that regard. The report notes:

While the NSW Council for Civil Liberties agreed that the power to rapidly check the identity of an unidentified person of interest in a terrorist or public safety context is justified and proportionate, it argued that the current proposal goes well beyond these circumstances, with access 'provided to a broad range of government, local government and non-government entities for a wide range of non-urgent purposes'.

It indicated that the Commonwealth bill is open-ended regarding local government and nongovernment use of the service. The bill states that these bodies can use all identity matching services, if 'verification of the individual's identity is reasonably necessary for one or more of the functions or activities of the local government authority or non-government entity'.

In responding to those concerns Mr Andrew Rice, who is the First Assistant Secretary of Identity and Biometrics Division in the Department of Home Affairs, explained that a non-government organisation—and he expressly

included in that banks—would not be able to access the facial identification services but would be able to access the facial verification service. That provides a binary yes or no. What is clear from the answers of Mr Rice is that once this capability is set up we will have private entities going to a private agency that has access rights to the capability database.

Private entity A will go to private entity B to access this extraordinarily large national database, with no government intervention at all or no government involvement in the transfer of data. The information about the facial verification service will be extracted from the public database, sent to the private agency and then be provided to the private entity—the bank. It means the privatisation of our core national databases.

The Australian Lawyers for Human Rights has raised very real concerns about the lack of adequate safeguards. In fact, all the stakeholders who came before the committee asked, "Why are you passing these laws at a State level before the Federal laws are even fully instituted? Why are you doing it in those circumstances because we do not know what the final shape of the Federal laws will be?" Further, the Australian Lawyers for Human Rights argued that the New South Wales road transport bill should not be passed as it opens up New South Wales citizens to government surveillance. The group says:

The Federal bills exempt the Federal Government from the normal operation of the Australian privacy principles and allow individuals' personal and sensitive information, including biometric data, to be used for any purpose the Federal Government may wish. The Federal bills do not respect privacy but enable surveillance and exploitation. New South Wales residents should not be made part of those arrangements.

The Greens strongly concur with those observations. The Australian Lawyers for Human Rights further said:

It is a fundamental aspect of the Australian privacy principle that individuals should know the reasons for the collection of their personal information and information should only be used for that particular purpose or purposes.

It pointed out this law breaches that principle. Dr Lesley Lynch, Vice President of the NSW Council for Civil Liberties, spoke about:

... the transformational element in the overall surveillance agenda is then enhanced capacity for close to real-time matching of unidentified facial images against a growing and eventually pretty large national database. The sources for these images, as we know, are many. CCTV is almost everywhere we go now; almost everybody has their own phone in their hands most of the time, their iPhone and so on and so on. This delivers a technical capacity for real-time mass surveillance of public gatherings as well as the terrorist and other public safety incidents.

I note that the purposes for which this data can be used go well beyond terror and law enforcement. They go to amorphous things such as community safety. These three bills should not be joined together. I note for the record that The Greens support the Surveillance Devices Amendment (Statutory Review) Bill 2018, we have reservations about the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018, and we strongly oppose, on principle, the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018.

The PRESIDENT: Order! According to resolution of the House of Wednesday 14 November 2018, proceedings are now interrupted to enable Mr Jeremy Buckingham and the Hon. Scot MacDonald to make their valedictory speeches.

Business of the House

ORDER OF BUSINESS

The Hon. SARAH MITCHELL: By leave: I move:

That the resolution of the House of Wednesday 14 November 2018 relating to valedictory speeches be amended by omitting the words "Mr Jeremy Buckingham" and inserting instead "Ms Dawn Walker".

Motion agreed to.

Members

VALEDICTORY SPEECHES

Ms DAWN WALKER (17:33): As I stand in this Chamber to give my final speech as an elected member of Parliament, I first acknowledge that this place is built on Aboriginal land. It always was and always will be Aboriginal land. I pay deep respect to Aboriginal people across this State, especially my Aboriginal friends on the North Coast who have supported me professionally and personally during my time in Parliament. I cannot think of a greater privilege than to have been sworn in as the fifty-fourth woman elected to the oldest parliamentary Chamber in Australia on International Women's Day. It was 2017 and I remember the Parliament being resplendent with an exhibition celebrating the past 100 years of women's contributions to State politics, as campaigners, protestors, voters, parliamentary officers, members, Ministers and leaders of government. It was a great honour to be part of that. I thank the parliamentary staff for going to considerable trouble to include me at such late notice in the exhibition and the commemorative book.

Since then, I have taken great pride in working with other women to encourage greater representation of women in Parliament, including visiting the Solomon Islands to talk with women there about running as candidates in their upcoming election. During our discussions many spoke about their fear for their villages and for island life because of rising seas and extreme weather events. Some described returning to their outlying island homes after a time away studying or working to find local landmarks and familiar spots permanently underwater. They feared for their children's future and they, like women across the world, were overcoming the multitude of barriers to enter public life and speak out for change. They are brave women who face challenges we could only contemplate, but they did not let that stop them. It was humbling being in their presence, seeing their passion and knowing the risks they took to pursue this course. That confirmed my strong belief that it is women who will step up in greater numbers as climate change continues unchecked and the planet continues to heat up. It gives me much hope for the future, and I send them great strength and solidarity.

I believe in democracy. I have seen democracy in action done well in this place but I have also seen areas that could do with some improvement. I worry that the public sees too much of the bad and not enough of the good. When I host community members in Parliament, it is not the grand foyer or the plush Chamber that I am keen for them to see. Rather, it is the back end. I love taking them up in the lift to my office, to stand cheek to jowl with members of Parliament of every political persuasion, and to stop at level 8 to let the Government members out before we get to where the real action is on level 11! I recently had the pleasure of giving that tour to Hayley and James Paddon. They are sweet potato farmers from the fertile red soils of Cudgen who are working tirelessly to protect State significant farmland from a hospital development. Hayley and James had flown to Parliament to deliver a petition calling on the Government to find a more suitable site for the new Tweed hospital than their red soils.

Hayley represents everything that inspires me to be an elected representative. She describes herself as "a farmer's wife". She has been thrust into public life and activism because she cannot stand by and see the Government concrete over the rich, red food-producing soils of her home. Through passion, courage, determination and just plain hard work, Hayley has stepped up to lead a very effective community campaign to protect Cudgen from this and future developments. Hayley believes in democracy. She has written to Ministers, local members and councillors. She has collected more than 8,000 signatures opposing the development site. She has faced the media, done television interviews, organised and spoken at large rallies, written to the local papers, and withstood trolls and threats. She is not afraid to use her democratic right to peaceful direct action to hold governments to account.

When I met Hayley at the stairs of Parliament to receive her petition, she had a small bag containing a handful of her red soil that she had flown down with. She told me of a dream she had had the night before coming. She dreamt that when she came down to this place no-one would agree to see her. She could not get a meeting with any elected representative to plead her case. So she left with her petition under her arm but as she did she sprinkled the red soil on the grand entry stairs of Parliament. All day unsuspecting members of Parliament walked her red soil throughout the building. Members can rest assured that that did not happen, nor do not I want parliamentary services to be worried—it was a dream. But it sent a powerful message to me about whose place this really is, why we are here and whom we are accountable to. I have tried to have this at the forefront of my mind in everything I have done in this place.

I have been fortunate to serve on two parliamentary inquiries during my term. One was the music and arts economy in New South Wales—I could not believe my luck that I got on that one. The report was released last week. It looked into the State's night-time economy and made recommendations aimed at revitalising the New South Wales music and arts scene, recognising that it is an important industry both economically and culturally for this State. I thank Anthea Compton for her help on the inquiry and her insights into the music industry as a practising musician.

I am also currently on the National Disability Insurance Scheme inquiry that is looking at the implementation of the NDIS and the provision of disability services in New South Wales and identifying the gaps that people are falling through in the new disability funding system. Both committees have worked hard and collaboratively, respectfully hearing evidence from witnesses and reading hundreds of submissions to gain an understanding of how the sectors are impacted by the laws we make and how we could do better. The parliamentary staff provide great support and guidance to members in that work. I am really in awe of their skills and professionalism. I am going to miss committee work very much.

There is, of course, another way of contributing to making the State function better for the people of New South Wales. That is by passing better bills. That is why I am really proud of the legislation that I have introduced into this House. Building on the work of my colleague and friend Jan Barham, I introduced the Forestry Amendment (Public Enforcement Rights) Bill 2017 to restore the judicial rights of the community to bring legal proceedings against Forestry Corporation for breaches of environmental protection law. Until 1998 members of

the public had the ability to take legal action to "restrain and remedy" breaches of environmental protection laws in publicly owned native forests. Those rights were taken away on the promise that the Environment Protection Authority would regulate and police the Forestry Corporation on behalf of the people of New South Wales. It just clearly does not have the resources to do so.

I thank Ian Cohen—the first Greens member elected to State Parliament—who stood in this place nearly 20 years ago and fought hard against the public having those rights stripped from them. Jan Barham continued that good work, advocating strongly for those rights to be reinstated after they were stripped away. I introduced the bill to continue the legacy of genuine community representation. I have been out in the forests. I have seen the destruction for myself. I have clearly seen marked habitat trees knocked down and thrown into log dumps. I have seen logging tracks through endangered forests. I have seen ancient trees knocked by Forestry Corporation's logging equipment and damaged in a way that will take hundreds of years off their lives. I have walked through koala habitat. I have picked up koala scats around trees marked for logging. I have seen waterways clogged with debris and fallen logs as a result of noncompliance with stream buffers. I have sat with concerned locals who feel completely powerless as they watch illegal logging and are unable to do anything about it.

Restoring the rights of third parties to bring legal proceedings will not fix past failures, but it will ensure that we live in a State where the community can again protect public resources through access to the judicial system. I have also brought to the House a matter of public importance regarding private native forestry and its effect on the environment with the regulation of private native forestry suddenly and quietly taken away from the Environment Protection Authority and put in the hands of Local Land Services. I have moved 17 amendments to the Forestry Legislation Amendment Bill 2018. I know it took until 2.00 a.m. but I felt it was worth it to get it on the record that the legislation is a disaster for our native forests, for our biodiversity and for the bushland that makes our State unique.

My other great passion in this place is TAFE. I was proud to introduce the Defend TAFE Bill 2018 in an attempt to ensure that TAFE—our once world-class educational institution—is still standing at the end of this Government's term. I have seen how TAFE transforms lives. As a former Federal and State policy adviser in trade training and an advocate for TAFE in this place, I have been determined to defend that once world-renowned training institution. I continue to be opposed to replacing hands-on, face-to-face training with isolated and cheap computer-driven alternatives through the Government's Connected Learning Centres strategy.

I came to this place almost two years ago with such passion to represent my community and the environment. Parliament has not dampened that enthusiasm one bit. But the New South Wales branch of the party I have represented has at times been a terrible disappointment and an impediment to this work.

[Interruption from the gallery]

I am getting to you. Left Renewal, an anarchist faction in The Greens New South Wales, became public in late 2016.

[Interruption from the gallery]

The PRESIDENT: Order! The member will resume her seat. Before we continue I will say a few words to the visitors in the President's gallery and public gallery who have come to watch the proceedings. On behalf of all members, I welcome you to the Legislative Council. For those of you who have not visited before I need to explain that we have rules that apply to visitors who watch the debate just as we have rules that apply to members in the House.

No matter what visitors may think about what is being said, they must watch the debate in silence. Applause, jeering and other gestures are not permitted. Visitors are not to attempt to talk to members. If they have something to say to the person next to them, I ask them to say it quietly. No audible conversations are to take place. No filming or photography is permitted by anyone apart from media photographers who have been authorised by the Chair. I ask visitors to please follow all instructions by officers of the Parliament. Ms Jan Barham has the call.

Ms DAWN WALKER: That's an oldie but a goodie.

The PRESIDENT: It's an oldie for which I continually apologise. I know how close you are to Jan. She is a good friend of mine too. Ms Dawn Walker has the call.

Ms DAWN WALKER: Nothing makes me prouder than to complete the term of my friend and colleague and great champion of the environment Jan Barham. I take it as a compliment. Left Renewal, an anarchist faction in The Greens New South Wales, became public in late 2016 when it formed to overthrow capitalism—and undermine my preselection for good measure. They harassed me, bullied me, slandered me and threatened me. I sought legal advice regarding defamation. While my legal counsel advised me that I had a strong

case, they also suggested that rather than getting caught up in the courts I should spend my energy being the best member of Parliament I could be. That is what I have done.

During my term I have worked with so many good people in The Greens; hardworking volunteers and protectors of our planet. They are the heart and soul of the party. They want to make a difference. They know the urgency of climate change. They are prepared to act to ensure a future for their grandchildren. But the organisation itself clearly needs to do some serious soul searching. I joined The Greens because I was inspired by the work of Bob Brown. I first met The Greens member Jeremy Buckingham while he was travelling New South Wales on his "fracking tour" to share his experiences from his recent trip to the United States, where he had seen firsthand the devastating impact of coal seam gas on the people, their land and their water.

The Mullumbimby Civic Memorial Hall was packed and he moved every single person there with his stories, his passion and his drive to activate us. It was electric. In the ensuing years, he never dropped the ball once for our community in the fight against this toxic industry. I believe his work in Parliament and that of his staff—Max Phillips, Jack Gough, Adam Guise and now MLC Justin Field—was instrumental in making the Northern Rivers gas field free. And he not only sent the frackers packing, but also he and Graeme Williams delivered The Nationals a blow by taking the seat of Ballina at the 2015 State election—the first time in New South Wales history that a Nationals seat fell to The Greens.

He is a powerful activist and I have stood proudly with him on the fields of Bentley, on the front line of forest blockades and at the gates of Adani. Yet a small but effective cabal has relentlessly attacked and bullied him. They have used social media and smears against him over a number of years. He has withstood them but there has been a cost—a personal cost for him and a cost for The Greens movement. Unfortunately, this is not an isolated incident. On *Four Corners* earlier this year, Ian Cohen, our first MLC, describes these forces as pushing him to the brink. He said:

It is difficult. I was constantly at war. I went through times of acute depression because they were really pushing all the way along the line and often actively working against me.

Jan Barham in her valedictory speech right here last year—and many of you were in the Chamber—said:

As a long-term member of The Greens, I had never imagined the pressures I would feel from my party colleagues, and that the greatest source of conflict in this role would come from internal politics...

She went to say:

To this day, many members of our party would be unaware of the tensions and machinations that were operating to create pressure and turmoil for some of their elected members.

Unlike the Australian Greens, the New South Wales Greens regard their elected members as delegates. It is the central committee that approves policy and voting positions. To be a public representative in this situation requires trust—trust in both the party and your MP team. Recent events, culminating in the member for Newtown's use of parliamentary privilege to call for her fellow MP Jeremy Buckingham's resignation, has damaged that trust—perhaps irrevocably.

[Interruption from the gallery]

The PRESIDENT: Order! I have given numerous warnings to people in the public gallery. The attendants will arrange for the public gallery to be cleared. I will leave the chair until the ringing of the long bell.

[The President left the chair at 17:52. The House resumed at 17:54.]

The PRESIDENT: Before I recall the member, I indicate to the Usher of the Black Rod and the attendants that under no circumstances are those people who were in the public gallery to return to this Chamber either today or tomorrow. They are excluded from the Chamber. I indicate to others in the public gallery and the President's gallery that I will not tolerate any such interjections or behaviour. If I receive one response from a person in the public gallery, they will also be removed immediately. Ms Walker has the call.

Ms DAWN WALKER: Before I close—and it is nearly over, everyone, so thank you for staying with me—I would like to thank the people who have worked alongside me. Clara Williams Roldan has been an absolute rock. Her policy skills are only outweighed by her poise, her emotional maturity and her professionalism. She has just published a book on quitting plastic, so have a look out for that. Graeme Williams, who got me into this mad game in the first place, has been with me throughout my entire time in politics. I could not have done any of this without his skills, judgement and patience. Thank you. You have supported me selflessly and I thank you from the bottom of my heart. I also thank all the amazing staff in Parliament, with special thanks to Kate Cadell and the Clerk, David Blunt. I thank the Chamber, committee staff, the attendants and everyone who supports us and works with us to keep this Parliament operating.

I thank you, Mr President. You see me stand for a question before I actually do. I was determined to get the order sequence right before I left. I thank you for that. To all members, I thank you. You have exhibited the essence of good democracy and decency towards those with opposing views—never once have I seen you take a political stoush in the House any further than the lifts. And when we, on occasion, stand for a minute's silence for a deceased former MP, the Hon. Mick Veitch always turns to me and says, "We'll do that for you one day, you know." I think to myself, "I hope that day is not soon." But if it is, I could not think of a better group of people to have it done by. To the organisations and individuals who have assisted my office so generously with your time, advice and insight into issues, I thank you. I am so very grateful for the opportunity to serve the community and its precious environment in this place. I thank you all very much.

Members stood in their places and applauded.

The PRESIDENT: According to resolution of the House of Wednesday 14 November 2018, the Hon. Scot MacDonald is now to make his valedictory speech without any question before the chair.

On behalf of all honourable members, I welcome to the gallery this evening the Hon. Scot MacDonald's wife, Aileen, and his brother Andrew. I welcome also friends and colleagues of the honourable member who are in the public gallery and all here in the House this evening for the member's valedictory speech.

The Hon. SCOT MacDONALD (18:01): Tonight I make my final speech in this place. I was one of the class of 2011. It was an exciting time and a unique privilege to be part of a new government. It does not happen often in this State. We were full of spirit, excitement and a determination to turn the State around. Like my fellow country-based members of Parliament, I was highly motivated to put regional communities back in the heart of government. I feel proud to have been part of a reform government under Premiers O'Farrell, Baird and now Berejiklian. Why else did we go into politics, if not to make a difference. The road has not been easy and we faced enormous headwinds at times. To think that the great State of New South Wales was then borrowing to pay the wages of our teachers, nurses and police officers was truly shocking. I recall the fire engines going up Macquarie Street spraying Parliament.

There is no doubt the New South Wales Coalition Government has rewritten the playbook on financial management. Imagine saying to the public about to vote: we have a plan for asset recycling. We took the plunge in 2015 and prevailed. One of the great wonders of life is being abused by members of the Electrical Trades Union at Hunter polling booths. I take my hat off to Hunter Liberals and Nationals—many of whom are in the Chamber—who routinely put up with that sort of behaviour. The dividends of those hard-fought elections are now manifesting themselves.

For me, there are many, many pieces of infrastructure we are seeing rolling out. But for me, it is the surge in health infrastructure that was most needed and most impressive. The last head of Health Infrastructure NSW, Sam Sangster, who has just left, used to remind me that when he started his job in 2012 his annual budget was \$300 million. It is now over \$2 billion each year. But these are like telephone numbers. What do they really mean? I would contend \$300 million hospital capex was really just holding the line in our growing population. In effect, the health infrastructure backlog was growing. What the boost in funding meant to us living in the Northern Tablelands was a new hospital. Bob Carr first promised a new hospital for Armidale in 1995. It took my local member Adam Marshall and Minister Jillian Skinner to deliver this promise. It will be opening soon. It means a new hospital for Maitland after decades of delay and over-promising and under-delivery. The new hospital at Metford is underway. At \$470 million, it is a remarkable improvement in services and facilities on the old hospital and will be a great asset for the rapidly growing community of the lower Hunter. This Government has begun the planning for a large-scale upgrade of the John Hunter Hospital. It has been my privilege to work with Chief Executive Officer Michael de Renzio and his team to do my small bit to get this on the radar of Premier Berejiklian.

John Hunter Hospital and the precinct is at capacity. It services the wider Hunter, New England and north west. It is the premier referral hospital outside of Sydney and we need to ensure it is fit for the future. I hope the Premier will keep this investment in the years ahead and we deliver on that significant undertaking. Every significant hospital upgrade faces its challenges. We saw it with the \$340 million Gosford Hospital renewal. We are seeing it with the Northern Beaches. But these are surmountable, short-term glitches well worth the pain. Manly Hospital was like many hospitals built decades ago. They are simply not up to current clinical functions and standards. Besides, my wife, Aileen, was born in Manly Hospital and they broke the mould after that.

I did wonder what I had wandered into when I got into Parliament. Some of the first Council colleagues to welcome me were David Shoebridge and John Kaye. We ran into each other in the men's toilets on level 11. They made me feel welcome—not too welcome, but enough to know that this place works when we talk to each other. Many of us still miss John. Shortly after, I saw the other side of David and John. In protest at the introduction of speech time limitations, they each spoke for about six hours. Had I made a rational decision, I calculated?

Those first few years were challenging with night after of late night/early morning sittings—not as long as the "good old days", as David Clarke and Rick Colless frequently remind us, but still a stretch. On David Clarke, I very much enjoyed his valedictory speech but I have to say he was economical about his impact. He mentioned one of the committees he chaired. I will never forget his gravitas on one of the regional trips we did on the north coast. David arrived separately, a little late. We waited for David at the country town meeting hall where we were to hold public hearings. David turned up in a bus. He ran out of the bus and promptly threw up in the bushes in front of everyone. David Clarke makes an indelible impression wherever he goes.

As mentioned by everyone who serves here, committee work is the bedrock of this Chamber. I served on 11 committees in my first four years. The committee work that stands out in my mind was the inquiry into the law of provocation, chaired by Reverend the Hon, Fred Nile and was composed of members who seemed to be diametrically opposed in their views. We worked our way through substantive hearings, heard from powerful voices who had suffered or witnessed family violence, and we produced a unanimous report that was adopted by the Government. So keep your faith in this place.

Probably at the other end of the spectrum were the two inquiries I served on into coal seam gas. Emotion and political opportunism triumphed over evidence and rational thought. Our State is literally poorer because those voices prevailed. I too would like to add my appreciation and admiration to the committee staff who manage these inquiries and subsequent reports. They must get bewildered and frustrated, but inevitably they make a silk purse out of a sow's ear. The State of New South Wales is finer for their work. I record my thanks to Clerk David Blunt and your team and all of the parliamentary staff. They have been ever supportive, ethical and kind.

I would like to put a marker down on a few of the issues that I have been involved in. After the 2015 election, Premier Baird appointed me Parliamentary Secretary for the Hunter and Central Coast. These were new roles and no-one—including, I suspect, the Premier—Imre, you can enlighten us—quite knew how it would work. But there was not much time to over-analyse when the April 2015 super storms hit the Hunter and Central Coast. Four died including three in Dungog. I spent the next few months being one of the interfaces between those communities and Government as they recovered from the floods and storm damage. One of my more noteworthy roles on the first day of the floods was to meet the first helicopter to land at stranded Gillieston Heights. For reasons unknown, somebody back at Emergency HQ decided the first load to reach the residents would mainly consist of toilet paper. I was unceremoniously put to work helping unload about a tonne of toilet paper for the good people of Gillieston Heights. I hope they remember me, even temporarily.

I would like to pay tribute to Recovery Co-ordinator Retired Brigadier Darren Naumann for his brilliant work. I am proud of our agencies, particularly Family and Community Services, Justice, Public Works, Department of Premier and Cabinet [DPC] and many others, that went out and did exactly what a first-class public service should do. Resilience and recovery were materially enhanced by these hardworking public servants, some of whom are in the gallery. We are fortunate in New South Wales.

I would like to pay tribute to exceptional regional Department of Premier and Cabinet leaders I worked with in the Hunter and Central Coast—Bill Tatnell, Tony Sansom who is a lifetime member of the Australian Labor Party and a great bloke, Karen Minto, Aaron Spadaro, Colin Perry, Kristen McPherson, Stephen Wills, Ashleigh Toscano, Astrid Stephens, Kellie Pati, Alan Blackman, Anne Egan, Mel Gore, Tina Davies, Tracey Wearne, Mark McClean, Michael St Hill, Monica Gibson, Jodie Calvert and many others who are simply committed to just doing the best job possible for the people of New South Wales. I will come back to Jodie.

The year 2015 was memorable. At the end of the year, the Department of Defence called a public meeting to advise the Williamstown community that firefighting chemicals used on the RAAF base had left a legacy of per- and poly-fluoroalkyl substances [PFAS] presence in the groundwater, environment and inhabitants. While clearly a Federal responsibility, the State found itself in a lead role coordinating response and support. My involvement began at the meeting, exchanging texts with Premier Baird. Mike got it and met with impacted community members here in Sydney and in Newcastle. It became clear one of the most direct ways our Government could mitigate risk was to connect impacted homes to reticulated town water. I will be forever proud Premier Baird, then Treasurer Berejiklian and then water Minister Niall Blair rapidly committed \$4 million to get this project underway. It should be finished by the end of this year and I am truly grateful Hunter Water leaders, including Jim Bentley and Darren Cleary, made this happen as quickly as possible.

PFAS contamination has hurt Williamstown. Its toxicity is contested, but hundreds of people have been financially, mentally and physically damaged. Through DPC, Health and Environment, we are doing our best to coordinate information and response and take up the case to Defence. Environment Ministers Stokes, Speakman and Upton have never shied from this wicked problem and from resourcing our response wherever we needed to. I will mention again DPC Regional Manager in the Hunter, Jodie Calvert, who took the lead in dealing with the community on PFAS. I am sorry to say I think I saw her physically age over the next few years dealing with PFAS at Williamstown. I wish her well in her deserved retirement. With the Williamstown PFAS issue, my approach from

that first public meeting in 2015 was to park the politics. Advocacy and representation is important and valuable, but I saw no profit in making political mileage out of PFAS. The losers are inevitably the residents, and there are no winners. I urge anyone with responsibilities in this space to be very mindful of the sensitivities, complexities and risk of causing greater material, physical or financial harm to this community.

I heard most of Troy Grant's great valedictory speech, including his valiant efforts in his parliamentary and police careers to combat and bring to account child abuse. The Hunter, where Troy served much of his career, unfortunately was an epicentre of systemic institutional abuse. I thank former Premiers O'Farrell and Baird and Premier Berejiklian for giving this awful issue the attention it deserves—and, as David Shoebridge pointed out to me, many others. Mike Baird never hesitated when I asked him for \$60,000 for extra counselling services for Hunter New England Lifeline, who were dealing with a surge in demand for mental support for abuse survivors as the royal commission into child sexual abuse worked through its torturous hearings in Newcastle. I thank the then Chief Executive Officer of Hunter Lifeline, Gillian Summers, who did so much to help those people. I am absolutely certain Lifeline saved lives as the revelations intensified.

I would like to acknowledge Hunter abuse victims Peter Gogarty, Paul Gray and many others and advocate Pastor Bob Cotton. They have been brave, reasoned, determined and respectful and they made a significant contribution to reform that brings our laws in greater alignment with community expectations to protect the young and vulnerable. Bob, Peter and Paul were in the gallery earlier to witness the passage of the bill they fought so hard for. Failure to report will now have heavier penalties with longer jail sentences. They fought for greater deterrence as institutional failure to report clearly allowed abusers to continue their reign of terror and across the State, country and even overseas. I asked to lead on this bill today, and I am glad it will be one of my last pieces of business in this place.

I will not forget the Newcastle revitalisation and light rail project. Its gestation probably began in the 1980s. Everyone knew it had to be done. In 2008, 2009 and 2010 the business community along Hunter Street were demanding the State government fix the city. Newcastle member of Parliament Jodi McKay wanted to cut the poorly utilised heavy rail. Premier Kristina Keneally and a few of her colleagues pulled the rug out from underneath Jodi. The private sector stopped investing in the central business district. It took the Coalition Government to make the tough decision and truncate the heavy rail link at Hamilton. Former Premiers O'Farrell and Baird weathered the storm and committed to light rail.

I have had the experience of being with a range of Ministers as we walked up and down Hunter Street over the past few years keeping an eye on the project—with Pru Goward as she was physically accosted by a protestor, and then transport Minister Berejiklian who received death threats. But for some reason Andrew Constance seemed to attract the most colourful characters and every visit seemed to spur some sort of protest. I think it was earlier this year Andrew and a number of us were looking at the construction site around Civic when a local unloaded on Andrew at full volume using every four-letter word. There is something about Andrew. Newcastle is anything but dull.

But now the old heavy rail corridor, much of Hunter Street and Newcastle Railway Station have undergone a transformation. The urban renewal is remarkable and some of the crankiest old cynics grudgingly admit the central business district is now inviting and accessible. The city has opened up. More than \$2 billion of private investment is underway. There are at least 14 cranes in the Newcastle skyline, with more on their way. Eight years ago the discussion in Newcastle was about survival. Now it is about growth; new events; the University of Newcastle moving into the city; people living, studying and working in the city; renewal; new businesses; and pride, hope and confidence.

I have been fortunate to be a small cog in this project. Ministers Roberts and Constance have done the heavy lifting over the past couple of years. On the ground it has been Mick Cassel leading the Hunter Development Corporation—now the Hunter Central Coast Development Corporation—team, who have been instrumental in seeing this \$650 million project delivered on time and on budget. I have learnt a lot from all of them on planning and infrastructure delivery. The roadblocks were formidable at times and from Mick I heard language you usually do not hear outside of the shearing sheds. Ultimately what matters is Newcastle can take its place as one of the premier cities in Australia—beautiful, functional, forward looking and a destination in its own right. In the latter years, Newcastle City Council has come on board. Mayor Nuatali Nelmes showed the necessary leadership and the city has an exciting future.

Speaking of challenges, I have to mention Gosford, forever the ugly duckling, in the too-hard basket, held back by chronic private and public underinvestment, poor transport connectivity and less than effective planning by local and State governments. That stopped two years ago. Minister Roberts appointed Lee Shearer as Coordinator General. Lee and her planning team, including Greg Sullivan, worked with the Government architect to put together a vision for the Gosford central business district. This has been backed up with decisive planning powers, oversight by a repurposed development corporation and \$50 million to get work underway in the

necessary utility upgrades. Already we are seeing a reinvigoration of confidence and investment. I have great hopes for Gosford. North of Sydney and proximate to the capital city, it is in a unique position to capitalise as a significant regional city. An unmatched environment, accessible for people working in Sydney, and attractive to businesses needing quick linkages to the Hunter or Sydney. Watch that space.

I could not have done anything in my role without the help of my staff. Chris Rath and I fell into the role in 2011 and bedded down the office. Chris got a rapid lesson in agricultural issues and discovered a whole world west of the Dividing Range. Nat Openshaw, who is here today, took over when Chris went to the Minerals Council of Australia. Nat stepped up and took on a rapidly increasing workload. Probably my best dressed staffer, I think he is still getting over his period in my office.

Mitchell Cutting came down from the University of New England, Armidale and threw himself into the job as I took on the role of Parliamentary Secretary for the Hunter and Central Coast. Basically, Mitch built the role as we responded to floods, fires, PFAS and a myriad of issues in the region. It did not let up for years and I got the hint when he emailed me saying could I please stop texting him at 10 o'clock on a Sunday night. Sorry, Mitch. You did a great job and were the template for those who followed. After Mitch, Hannah Eves and Chris Sullivan did a wonderful job and I am in their debt.

Kit has been with me for nearly two years. He has eased off a bit lately, only working 60 hours per week rather than 70 or 80 hours. Kit has a matchless high regard from all our stakeholders in the Hunter and Central Coast. I regret to say I was probably given credit for a lot of the work he did. Kit is known as someone who follows through, particularly for a lot of the constituents and organisations that struggled to interact with government. Kit, you have a lot of respect around here. You are going to have a big career in politics and government but, like me, you probably need to find the off button.

Then there is Vince deLuca. To this day, I am not sure if Vince worked for me or if I worked for Vince. I have learnt more about netball than I ever thought I needed to. Sometimes my office looked like campaign headquarters for White Ribbon or whatever event he was about to launch. Thank you, Vince, you do a lot of good in the community.

I want to acknowledge my Liberal Party family. They gave me an opportunity that comes rarely. I hope I have done a service commensurate with that privilege. I particularly thank everyone in the Country North province. It is a special part of the State and most times is a labour of love for Country Liberals. But you persevere for the Liberal Party, your community and the greater State of New South Wales. I give special note to the Armidale branch. To be frank, I was not that committed a Liberal when I joined in the early 1990s. Aileen and I were busy with a new family of three and a business to run that was pretty demanding, particularly in the drought periods. But secretary Bea Bradley would somehow convince me to drive down to Armidale on a cold winter's night after a day's work. The business of politics grew on me and I am forever grateful to the Armidale branch, including stalwarts like Bea Bradley, now deceased, Gordon and Angela White and Matthew and Marion Tierney for keeping the flame alive in the early days and encouraging my involvement.

I suspect the Armidale branch flies under the radar for city Liberals, except around internal election and preselection times—ever thus. They deserve a lot more recognition. I have very much enjoyed working with our candidates at all levels: Hannah Eves, Jilly Pilon, Julia Ham, Margaret O'Connor, Kerrod Gream, Jenny Barrie, Karen Howard, Troy Fowler, Rod Doherty, Paul Dunn, John Fagg, Bob Geoghagan, Ken Jordan, Steve Tucker, Jason Pauling, Nick Jones, Kevin Baker, Rebecca Gale Collins, Troy Marquart, Chris Burke, Brad Luke, Mitchell Griffin, Sally Halliday, Kanchan Ranadive, Ben Mitchell, Mitchell Hanlon, Peter Monolly, Wendy Berkley, Phillip Neuss, John Van Leishout, Eleni Petinos, Sussan Ley—that was a great election; sorry, guys, I thought I would get a bite—Greg Aplin, Les Wells, Andrew Cornwall, Garry Edwards, and many, many others.

I am also indebted to Guyra, a small town of 2,000 and a wider region of 6,000. I think there may be more people in a few Meriton hotels here in Sydney. Guyra supported Aileen and I when we arrived there in 1989 as newlyweds and new business owners. It has been buffeted by changing demographics and technology. But it is resilient and is now reinventing itself, as most inland country towns have to. It has been incredibly important to have Costa Group establish world-leading glasshouses around Guyra. Its 40 hectares now employ over 600 men and women. I implore our Government and future administrations to support those hard at work helping themselves—not with welfare but by assisting with initiatives such as the Black Mountain to Ben Lomond rail trail. Along with many others, David Mills has led the charge on that for nearly a decade. It is time to get on with it.

I believe that we got the council merger policy right. Guyra Shire Council was not sustainable. It needed to amalgamate with at least Armidale Dumaresq council. I was incredibly disappointed that the future and prospects of Guyra became the plaything of political blow-ins. Our best prospect for maintaining infrastructure and being an attractive destination for investment is to be part of a local government area with scale and capacity.

As hard as these reforms are, we owe it to regional communities to get them to the point of being able to compete with financially strong, investment hungry councils.

Finally, my family: my father, Jim McDonald, from Brisbane, who is unable to be here tonight; my brother Andrew, who is in the gallery; my sister Gillian; and my three children Nicola, James and Alex. They have at times been dragged into my political world. Who takes their children letterbox dropping in Dundee, population 250, in my tilt at New England in 2004? They have been part of the journey. They have been on the receiving end of absences and less than stellar parenting from me as the politics intensified. For that, Alex, James and Nicola, I thank you for your forbearance and hope the negatives did not outweigh the positives. But you are all on the way to rewarding, challenging lives.

That brings me to Aileen. We are now grandparents to Chloe, born on Aileen's birthday to Shanice and James only three weeks ago. Doesn't that bring you back to earth. She is a beautiful baby girl and we are looking forward to seeing her grow up. Of course, I owe everything to my wife. She had patience when I lacked it and courage when I hesitated. Aileen got the emotional intelligence gene while I am still searching and showed kindness when it was not earned by the recipient. She had all the breakthrough ideas in our business, but not stopping me claiming the credit. Do you see a pattern emerging? Aileen has been shoulder to shoulder with me every step of the way, highs and lows. That is politics. I thank you, I love you. Next part of the journey. Thank you, everyone.

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

Bills

SURVEILLANCE DEVICES AMENDMENT (STATUTORY REVIEW) BILL 2018 TERRORISM (POLICE POWERS) AMENDMENT (STATUTORY REVIEW) BILL 2018 ROAD TRANSPORT AMENDMENT (NATIONAL FACIAL BIOMETRIC MATCHING CAPABILITY) BILL 2018

Second Reading Debate

Debate resumed from an earlier hour.

The Hon. CATHERINE CUSACK (20:01): On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Adam Searle and Mr David Shoebridge for their contributions to the debate. Before concluding I will address some particular matters that have been raised. I will deal first with the Surveillance Devices Amendment (Statutory Review) Bill 2018. I note comments by the Hon Adam Searle and Mr David Shoebridge about the time frame in which the New South Wales Government has responded to the Ombudsman's recommendations from Operation Prospect. As Mr David Shoebridge noted, Operation Prospect took more than four years to complete. The final report on Operation Prospect, which was delivered in December 2016, totals nearly 1,000 pages across six volumes. The Government consulted extensively with law enforcement agencies to address the issues identified by the Ombudsman. The Government has taken a considered approach to further reform in the area, which has necessarily taken some time.

The Hon. Adam Searle and Mr David Shoebridge also raised concerns about the Surveillance Devices Commissioner role, the independence of the role and certain departures from the recommendations in the Ombudsman's report on Operation Prospect. The role of Surveillance Devices Commissioner will be filled by a senior executive who is an Australian legal practitioner of at least seven years standing. Although the commissioner will sit administratively within the Department of Justice, the commissioner will exercise the scrutiny role independent of government—as the Solicitor General does now. The Surveillance Devices Commissioner will exercise the scrutiny function under delegation from the Attorney General. The bill will also allow the Attorney General to delegate the scrutiny function to the Solicitor General or Crown Advocate if the commissioner has or may be seen to have a conflict of interest, or during periods of absence or vacancy in the role.

The focus for the Surveillance Devices Commissioner will be on working with agencies during development of warrant applications to ensure that they are procedurally compliant and sufficiently evidence based before being considered by the court. That approach contrasts with public interest monitors in Queensland and Victoria, who generally seek to be heard on warrant applications after lodgement. The Government considers that the approach proposed strikes the most appropriate balance between efficiency in the application process and effective independent scrutiny. I note the Hon. Adam Searle's concerns about the new warrant scrutiny scheme not applying to telecommunications interception warrants. Although the Operation Prospect report identified some issues with warrants for the use of telecommunication interceptions during 1998 to 2002, the vast majority of issues identified related to warrants for the use of listening devices. Telecommunications interceptions are

governed by the Commonwealth Government. The New South Wales Government will monitor the new surveillance device warrant scrutiny scheme and determine whether extending it to telecommunications interception is necessary.

I will now respond to members' concerns about the Road Transport Amendment (National Facial Biometric Capacity) Bill 2018. I note the concerns of the Hon. Adam Searle and Mr David Shoebridge that the New South Wales Parliament is being invited to pass the bill before the Commonwealth bill is passed. I note that other jurisdictions intend for the capability to be fully operational by the end of 2020. As members can imagine, building and implementing the technology is a complex job that will necessarily take some time and coordination. The Commonwealth has devised a timetable for the staggered upload of State and Territory data, with New South Wales scheduled for mid-2019. To meet that deadline—and noting that Parliament may not sit again until April or May 2019—it is important for the bill to pass this year to avoid delaying the subsequent uploads by other States and Territories.

I note the comments of the Hon. Adam Searle and Mr David Shoebridge about which bodies will have access to the capability. It is important first to reiterate that the capability will offer two key search functions: the facial verification service [FVS] for one-to-one matching of a facial image and its associated data to verify that a person is who he or she says; and the facial identification service [FIS], which allows for one to many searches to help provide leads to identify persons for limited legislative purposes. In accordance with clause 4.19 of the Intergovernmental Agreement of Identity Matching Services and clause 8 (2) of the Commonwealth's Identity-matching Services Bill 2018, only government agencies with law enforcement and/or national security functions can access the FIS. In New South Wales that will be limited to the NSW Police Force, the Crime Commission, the Independent Commission Against Corruption and the Law Enforcement Conduct Commission. Those agencies, and Roads and Maritime Services [RMS], will also have access to the FVS.

Any agency seeking access to the capability must have legislative authority and must execute a participation agreement with the Commonwealth host and with any other authorised government agency whose data it seeks to access. RMS will retain complete discretion not to execute an agreement with any agency it is not confident has the appropriate legislative authority or safeguards in place. I reiterate that the Government has no current intention to enter into agreements with local government or private sector or non-government bodies such as banks, nor is there any such proposal currently before the Government. As the Department of Home Affairs has advised, references to local government and non-government bodies have been included in the intergovernmental agreement and the Commonwealth bill as a futureproofing exercise only. There is no current plan to allow for such access to New South Wales data.

Noting that, if that possibility were to be explored in future, any such body would have to be required or authorised by a law to verify an individual's identity, or have a reasonable need to use the FVS to do so. It would have executed a participation agreement with every government agency whose data it seeks to access and it would have access to the FVS one-to-one matching service only. New South Wales agencies will retain complete discretion not to allow those bodies to have access to New South Wales data even if other jurisdictions may elect to permit that.

In response to the discussion by the Hon. Adam Searle and Mr David Shoebridge about the privacy and security safeguards in place, I advise them that the system will not allow for real-time surveillance. Further, the capability as a whole has been subject to a robust, independent privacy impact assessment and has been issued a security accreditation certificate in accordance with the Commonwealth Protective Security Policy Framework and the information security manual. The Commonwealth bill includes a number of oversight mechanisms such as an extensive statutory review, consultation with the Commonwealth information and human rights commissioners regarding any rules made under the legislation, and public annual reporting on the use of the services. New South Wales agencies will be subject to strict audit regimes that will contribute to the annual report. Further, the New South Wales privacy framework—the cornerstone of which is the Privacy and Personal Information Protection Act 1998 (NSW)—will be unaffected by the bill, with the exception of limited exclusion of sections 9 and 10.

Section 9 provides that a public sector agency, other than a law enforcement agency, must collect personal information directly from a person unless he or she authorises collection from someone else. Collection of an image from the capability would not necessarily be directly from the individual as the only non-law enforcement agency to access the capability—in the vast majority of cases, RMS—would have the consent of a person to collect their image from the capability to verify their identity. However, in some limited cases, seeking consent may not be possible or appropriate—for example, when determining whether a person is trying to obtain a licence fraudulently.

Section 10 of the Privacy and Personal Information Protection Act provides that if a public sector agency collects information from an individual, it must take reasonable steps to advise him or her of the reasons for

collection, the recipient, and their rights and method of access. RMS will be making amendments to its privacy statements to advise people seeking new or renewed licences that their images and information will be uploaded to the capability. However, it may not be possible or practicable to provide that information to all the persons for whom that information is already held. With respect to Mr David Shoebridge's concern that the use of the FIS for community safety purposes is ill defined, I reiterate that only government agencies with law enforcement and/or national security functions have access to the FIS. Community safety purposes are defined in the intergovernmental agreement to include activities to identify individuals who are at risk of, or who have experienced, physical harm, such as missing persons, deceased persons or persons who pose a significant risk to public health or safety. This is also reflected in section 6 of the Commonwealth bill. I commend the bills to the House.

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

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will deal with the Surveillance Devices Amendment (Statutory Review) Bill 2018 as a whole. There being no amendments, the question is that the bill as read be agreed to.

Motion agreed to.

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will deal with the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 as a whole. There being no amendments, the question is that the bill as read be agreed to.

Motion agreed to.

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will now deal with the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018 as a whole.

Mr DAVID SHOEBRIDGE (20:14): I move The Greens amendment No. 1 on sheet C2018-162:

No. 1 **Protection of personal information**

Page 3, Schedule 1 [3], proposed section 271A (3), lines 33 to 35. Omit all words on those lines.

The effect of this amendment is to delete the proposed new section 271A (3), which provides that section 9 and section 10 of the Privacy and Personal Information Protection Act do not apply to photographs and personal information collected by an authorised government agency within the capability. We are told by the Government that the rationale for including subsection (3), which the amendment seeks to delete, is that it would be too tricky to obtain everyone's consent and to tell people when the capability started accessing and sharing their private and personal information. The effect of getting rid of those two sections would be to remove any need for consent and to remove the need to advise people when their private information had been accessed. The Greens believe that if someone is setting up a leading-edge interoperability hub with a variety of other checks and balances, it would be well within the capacity of that scheme to require a consent provision—so no consent and your data is not provided to the hub—and also to provide notification to individuals when their private information had been accessed.

Notification is our primary concern. If someone is having their private information accessed repeatedly by private entities, of course people have a right to know. If a bank, a credit-rating agency, an advertising company or some other commercial entity is accessing someone's information, they have a right to know. The Government has said not to worry about those kinds of things, that it will change its notification requirements with the Roads and Maritime Services [RMS] and it will tell people that when they apply for their driver licence it will remove their privacy rights. The Government is saying it will share people's information without their consent and that when they apply for their driver licence, not only will it share people's information without their consent but also it will not tell anyone about it. Apparently the RMS privacy statement will be changed to make it clear that anyone applying for a driver licence will lose their privacy rights.

The term for that in the industry is "bundled consent". The Government says that people can choose whether they have a driver licence—a driver licence is essential for most people—but when they apply for a driver licence they will lose their privacy rights, their data will be put into a Federal pot and they will not be told when people are accessing their data. That is not a choice; it is called bundled consent. In effect, people will lose their privacy rights in return for receiving an essential service. That is poor privacy practice. In fact, it is a charade. The answer is that the RMS will amend its notification policy. Telling everybody that they will be stripped of their

privacy rights when they apply for a driver licence is a poor response from the Government. It shows how little regard there is for people's privacy.

As more people in the community become aware of how Orwellian this new capability is and how their rights are being stripped away by this Parliament and the Federal Parliament—if the relevant Federal legislation is amended—there will be a rising sense of disquiet about what is happening. People will look to this Parliament and this Government and ask, "Why did you take away our privacy rights? It was totally unnecessary." The Greens believe it is unnecessary. Our amendments will keep the privacy rights. I commend the amendments to the Committee.

The Hon. CATHERINE CUSACK (20:18): The Government opposes The Greens amendment No. 1 to the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018 to remove new section 271A (3) in schedule 1 [3]. New section 271 (3) will specify that sections 9 and 10 of the Privacy and Personal Information Protection Act 1998 (NSW) do not apply to collection of photographs or facial images and associated personal information collected by authorised government agencies from the capability. Section 9 of the Privacy and Personal Information Protection Act provides that a public sector agency must collect personal information directly from a person unless the person has authorised the information's collection from someone else.

Section 10 of the Act provides that a public sector agency that collects information from a person must take reasonable steps before, or as soon as possible after, collection to ensure that he or she is aware of various information, including the purposes of the collection, intended recipients, rights of access and ways to contact agencies that will hold the information. The exemptions from sections 9 and 10 are necessary to facilitate Roads and Maritime Services [RMS] participation in the capability, and for New South Wales to fulfil its commitment under the Identity-matching Services Intergovernmental Agreement [IMS IGA].

Regarding section 9, while RMS will have a person's consent to collect their image in the majority of cases, this may not be possible or appropriate to obtain in limited circumstances—for instance, if RMS is determining whether a person is trying to obtain multiple licences in multiple names. Regarding section 10, while RMS will amend its privacy statements to advise people seeking new or renewed licences in future that their images and information will be uploaded to the capability, it would not be possible or practicable to provide that advice to everyone for whom that information is already held.

The Hon. ADAM SEARLE (20:21): The Labor Opposition will support The Green's amendment. It is important to provide a limit on the exposure of people's private and personal information. We agree with the reasons advanced by The Greens.

The CHAIR (The Hon. Trevor Khan): Mr David Shoebridge has moved The Greens amendment No. 1 on sheet C2018-162. The question is that the amendment be agreed to.

Amendment negatived.

Mr DAVID SHOEBRIDGE (20:22): I move The Greens amendment No. 2 on sheet C2018-162:

No. 2 Protection of personal information

Page 4, Schedule 1 [3], proposed section 271A. Insert after line 4:

- (6) Nothing in this section authorises any photograph or associated personal information to be collected, kept or used by, or released to, a private sector entity.

This amendment will insert an additional subsection 271A (6), which states:

Nothing in this section authorises any photograph or associated personal information to be collected, kept or used by, or released to, a private sector entity.

The purpose of this amendment is to ensure that data provided by New South Wales to the Interoperability Hub and the capability—I still cannot get over what an Orwellian term that is for the database—cannot be used and accessed by private entities. The Commonwealth is putting in place machinery that will give a series of private data-trading agencies direct access to the capability so they can then sell that service to private corporations. Which private corporations will be the first cabs off the rank? It is a series of institutions that have been publicly exposed for disgracing themselves—the financial institutions, the banks and credit agencies. They will be lining up to get access to these private data-trading agencies and have direct access to the capability in order to further their commercial interests. They will not be looking after the individuals' interests.

We have seen their abuses to date, and they will almost certainly abuse this service for their own private profit. Under legislation, the Government is handing information over to the banks, credit agencies and whatever corporate bottom feeder wants access to this kind of information through the Commonwealth's chosen private data-harvesting and accessing agencies. The Greens do not believe that should happen. The Greens believe there

should be a clear exception so this information cannot be released to private sector entities. That is why we have moved the amendment.

The Hon. CATHERINE CUSACK (20:24): The Government considers it is unnecessary to add a new section 271A (6), which would state:

Nothing in this section authorises any photograph or associated personal information to be collected, kept or used by, or released to, a private sector entity

As the Government has stated, there is no intention for the private sector to access New South Wales data via the capability. Further, the proposed new section 271A is already necessarily limited to authorised government agencies only. For instance, by their express content, subsections (2), (3), (4) and (5) are all self-evidently related only to the collection, storage, use and release of photographs and personal information from and to the capability by an authorised government agency; none of them imply in any way that any other body, or any private sector entity, has or will have that authority. The Greens' first amendment would stymie New South Wales' participation in the capability, and the second amendment is unnecessary. The Government opposes the amendment.

The Hon. ADAM SEARLE (20:25): If the best argument the Government can advance is that the amendment is unnecessary, that is a very weak argument. If there is no intention of allowing any of the data collected or authorised to be collected under this legislation to be kept, used by or released to any private sector entity, then it should be in the legislation. So often governments say they have no plans to do X—

Mr David Shoebridge: No current plans.

The Hon. ADAM SEARLE: I acknowledge the interjection. They say they have "no current plans" but they cavil with having that dealt with definitively in the legislation. Public servants and bureaucratic machines that devise legislation to fulfil government policy always like to keep a few escape hatches in case circumstances change. There is a lot of concern about the collection and use of people's private and personal data. People are rightly concerned when there are data breaches, when there are misuses and when information is said to be collected for one purpose but is applied for another, different purpose. This is not acceptable. This amendment provides a small protection in the bill. The law and justice committee suggested the Government outline why it does not have a comprehensive data protection regime accompanying this legislation. We have heard nothing from the Government in that space other than, "The bill is fine the way it is and we have no plans to abuse your private information." Let us be more definitive and provide some definite protection in the legislation. Let us support the amendment.

Mr DAVID SHOEBRIDGE (20:27): I note the Government says there is no intent, but one of the reasons we held the inquiry was to interrogate whether that was true. I will read briefly from the inquiry report, from paragraphs 2.8 onwards, which make it clear why The Greens amendment is necessary. Paragraph 2.8 states:

2.8 Mr Andrew Rice, Acting First Assistant Secretary, Identity and Biometrics Division, Department of Home Affairs explained that a non-government organisation, such as a bank, could never access the Facial Identification Service as this is for law enforcement purposes as prescribed by law.

So far we agree with the Government. He goes on to say:

However a non-government organisation could gain access to the Facial Verification Service.

2.9 Access would however be limited to a query and response. An organisation would be able to query whether the information it had in relation to a person is the same as the information in the system. The organisation would only receive a yes/no response and would not be privy to further data on the individual. Mr Rice elaborated:

"... they have the ability to pose a query. They have already captured the sensitive personal information and they have the ability to query the system and receive a yes or no answer. They do not receive that my mum's maiden name was X, they just get a yes or no answer."

2.10 Mr Rice confirmed that there were arrangements in place that allowed in some instances for private agents to be granted direct access to the interoperability hub as brokers. These private agents would then field queries from other private entities such as banks and provide an answer to them whether or not the Capability identified the person as the person asserted.

I accept the clear and cogent evidence from Mr Andrew Rice, the Acting First Assistant Secretary, Identity and Biometrics Division. He has made it clear why I believe the amendment is required and that there will be private-to-private exchange of information and private agencies having direct access to the interoperability hub and the data.

The Hon. Catherine Cusack: Brokers.

Mr DAVID SHOEBRIDGE: The Parliamentary Secretary said "brokers". They will be private brokers, private data agencies, private data brokers. They will not have a public interest. It will be purely for profit and

they will have direct access to the hub and then they will provide that information directly to banks and the like. The amendment is essential.

The CHAIR (The Hon. Trevor Khan): Mr David Shoebridge has moved The Greens amendment No. 2 on sheet C2018-162. The question is that the amendment be agreed to.

Amendment negatived.

The CHAIR (The Hon. Trevor Khan): The question is that the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018 as read be agreed to.

Motion agreed to.

The Hon. CATHERINE CUSACK: I move:

That the Chair do now leave the chair and report to the House the Surveillance Devices Amendment (Statutory Review) Bill 2018, the Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018 and the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018 without amendment.

Motion agreed to.

Adoption of Report

The Hon. CATHERINE CUSACK: On behalf of the Hon. Don Harwin: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. CATHERINE CUSACK: On behalf of the Hon. Don Harwin: I move:

That these bills be now read a third time.

Motion agreed to.

CRIMES LEGISLATION AMENDMENT BILL 2018

CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT BILL 2018

MENTAL HEALTH (FORENSIC PROVISIONS) AMENDMENT (VICTIMS) BILL 2018

VICTIMS RIGHTS AND SUPPORT AMENDMENT (MOTOR VEHICLES) BILL 2018

Second Reading Speech

The Hon. SCOTT FARLOW (20:32): On behalf of the Hon. Don Harwin: I move:

That these bills be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Crimes Legislation Amendment Bill 2018; the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018; the Crimes (Domestic and Personal Violence) Amendment Bill 2018; and the Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018.

The **Crimes Legislation Amendment Bill 2018** introduces a suite of reforms to improve protections for victims of crime, by:

- Creating a new, simpler offence of strangulation to capture domestic violence incidents;
- Ensuring apprehended domestic violence orders [ADVOs] are made for an appropriate duration to protect victims;
- Enabling police to provisionally vary ADVOs in urgent circumstances;
- Extending access to the Victims Support Scheme to family members of victims of terrorist acts involving a motor vehicle; and
- Clarifying that the Victims Support Scheme may accept documentary evidence provided by a non-government agency funded by the Commonwealth.

The **Victims Rights and Support Amendment (Motor Vehicles) Bill 2018** will extend access to the Victims Support Scheme to family members of victims of vehicular homicide.

- This bill will be known colloquially as "Nick's Law", in tribute to Nicholas McEvoy, who was tragically murdered by a motor vehicle in February 2014.
- Several members of Nick's family have joined us in the chamber today to mark this important occasion for families that face the unspeakable tragedy of losing a child as a result of vehicular homicide. Terry, Marie, Rachel, Karen — thank

you for being here with us today. Thank you for your continued support to help ensure that families like yours have access to the financial support they need following the tragic loss of a family member. Thank you also to Denise Day from the Homicide Victims Support Group, who also joins us today.

The **Crimes (Domestic and Personal Violence) Amendment Bill 2018** will clarify beyond doubt that the offences of stalking and intimidation can be committed by using the internet or any other technologically assisted means ("cyberbullying").

- This bill will be known colloquially as "Dolly's Law", in tribute to 14-year-old Amy "Dolly" Everett, who tragically took her own life in January this year following persistent bullying and abuse, including cyberbullying.
- We will be later joined in Parliament today by Dolly's parents, Tick and Kate. Since losing their beloved daughter, Tick and Kate have worked tirelessly campaigning and raising awareness about the potentially devastating effects of bullying and cyberbullying. Tick and Kate—I want to thank you for your support for this reform, which will mark an important step in the fight against cyberbullying and online abuse in this State.

The **Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018** will make a suite of reforms to give victims a stronger voice in forensic mental health proceedings.

I will now turn to the details of the four bills.

A. CRIMES LEGISLATION AMENDMENT BILL 2018

(i) New, simpler offence of strangulation

Schedule 3 [1] of the Crimes Legislation Amendment Bill 2018 amends section 37 of the Crimes Act 1900 to introduce a new, simpler strangulation offence, namely intentionally choking, suffocating or strangling a person without consent.

The maximum penalty for the offence will be five years' imprisonment.

Currently, section 37 of the Crimes Act criminalises intentionally choking, suffocating and/or strangling a person so as to render the person unconscious, insensible or incapable of resistance, if the perpetrator either:

- Is reckless as to rendering the person unconscious, insensible or incapable of resistance (section 37 (1) (b)); or
- Does so with the intention of committing or assisting another person to commit another indictable offence (section 37 (2) (b)).

However, a 2017 statutory report of the NSW Domestic Violence Death Review Team [DVRT] suggested that, in the context of domestic violence, choking, suffocation and strangulation often occur without an intention to render the victim unconscious, insensible or incapable of resistance, or to commit another indictable offence.

As a result, section 37 does not always capture domestic violence strangulation. This is problematic because research shows domestic violence strangulation is a "red flag" for future abuse and fatality. Research has found that women are almost eight times more likely to be killed by an intimate partner if that person has previously strangled them. Research has found that in over a quarter of intimate partner homicides, the domestic violence abuser had strangled the domestic violence victim prior to the fatal assault.

Where the intention required by the existing section 37 offences is absent in the domestic violence context, offenders may instead be charged with lesser offences such as common assault, the maximum penalty for which is two years. This indicates that the existing offences are ill-suited to providing an appropriate criminal justice response to domestic violence strangulation.

The new offence introduced by the Crimes Legislation Amendment Bill 2018 addresses this gap.

It is specifically formulated to address choking, suffocation and strangulation without consent, including where committed by perpetrators of domestic violence in order to scare, coerce or control the victim.

The existing offences of choking, suffocating or strangulation in section 37 of the Crimes Act will continue to apply.

The new offence will adopt the terms "chokes, suffocates or strangles", as used in the existing offences.

These terms are not defined in the Crimes Act. However applying their ordinary meaning, they are understood to capture a broad range of conduct, including:

- Restricting breathing and or blood flow into or out of the head, for example, by placing manual pressure on or around a person's neck or throat;
- Tying an object on or around a person's neck; and
- Pressing a person against another object that inhibits air or blood flow.

The Government expects that the amendment will facilitate the prosecution of more offences of choking, suffocation and strangulation, especially where it occurs in the context of domestic violence.

The Government is committed to strengthening criminal justice responses to domestic violence. Domestic violence is a scourge of our society and we must adopt a zero tolerance approach if we are to make meaningful change. This important amendment will help hold perpetrators to account and keep victims safe.

(ii) Amendments to New South Wales's ADVO regime

The Crimes Legislation Amendment Bill 2018 also amends the Crimes (Domestic and Personal Violence) Act 2007 to reform the State's ADVO regime in six important ways. The reforms respond to recommendations made by the Domestic Violence Death Review Team [DVRT] in its 2017 Report.

These amendments aim to increase protections for victims by ensuring ADVOs are made for an appropriate duration. Where ADVO duration is contested, the amendments aim to ensure that the court tailors ADVO duration to the circumstances of the parties.

Research undertaken by the Bureau of Crime Statistics and Research and Australian Institute of Criminology [BOCSAR] indicates ADVOs are linked to improved protection of victims of domestic violence, as well as a reduction in domestic violence.

Default ADVO duration increased

Schedule 1 [5] of the bill inserts a new section 79A into the Crimes (Domestic and Personal Violence) Act to increase the default duration of final ADVOs to two years for adult defendants, up from 12 months at present, unless a different period is specified by the court. The default duration will be 12 months for defendants under 18 years of age.

Factors to consider when determining ADVO duration

A court may still specify that a final ADVO remains in force for a different period if it determines this would be appropriate to ensure the safety and protection of the protected person. The proposed section 79A outlines the range of factors that the court may consider in making that determination. These will include the nature and history of domestic violence, the seriousness and frequency of the violence, how likely it is that the timeframe sought will have a positive impact on the victim's safety, and the age of the defendant. These factors will further encourage ADVO duration to be tailored to a victim's specific circumstances.

Legislative guidance on ADVO duration that should be sought

Schedule 1 [2] of the bill inserts a new section 49AA into the Crimes (Domestic and Personal Violence) Act to provide clear legislative guidance on the duration of an ADVO that should be sought by an applicant. The section requires applicants to specify reasons if seeking a longer duration than the default period.

This new provision will provide that an application for an ADVO is taken to be for the default period. However, an applicant may seek a different period in certain circumstances, including where there has been a conviction for a breach of an ADVO, a conviction for a domestic violence offence, allegations of a domestic violence offence, other conduct that in the opinion of the applicant warrants a longer duration or the defendant will be or is serving a term of imprisonment for a domestic violence offence against the applicant.

Indefinite ADVOs

Schedule 1 [5] inserts a new section 79B into the Crimes (Domestic and Personal Violence) Act to make it clear that a court may specify that a final order for adult defendants can be made for an indefinite period. To do so, the court must be satisfied that there is a significant and ongoing risk of serious harm including potential death to the victim or their children and that this risk cannot be mitigated by an order with a limited duration.

Extend the period of an ADVO following release from prison

Schedule 1 [5] inserts a new section 790 into the Crimes (Domestic and Personal Violence) Act 2007 to enable orders made against defendants who are serving a term of imprisonment for a domestic violence offence against the protected person to operate for the duration of their sentence plus an additional two years. This will provide protections to victims as offenders transition back into the community and offer greater certainty for those victims who do not know when offenders are due to be released.

This section does not apply to a defendant under the age of 18 years or, in the case of adult defendants where the order has been made for an indefinite period.

Police to provisionally vary ADVOs in urgent circumstances

Schedule 1 [3] inserts a new section 73A into the Crimes (Domestic and Personal Violence) Act 2007 to allow police to provisionally vary the conditions of an ADVO in circumstances:

- Requiring an urgent response;
- In which the increased risk cannot be addressed under the existing ADVO provision; and
- In which waiting for consideration by a court would not be appropriate.

This amendment applies to provisional, interim and final ADVOs.

Currently, ADVOs (whether provisional, interim or final) cannot be varied except by a court on the next court date.

If the circumstances of a victim rapidly change, police may address the risk by varying bail conditions (if existing) or making an application to vary an existing order (which is not immediate).

Enabling police to provisionally vary the conditions of an ADVO will help immediately address increased risks to victims of domestic violence. This will better protect victims and further tailor ADVOs to meet specific needs and circumstances.

Variation orders will need to be approved by a police officer with the ranking of sergeant or above and come before the court as soon as practicable.

This amendment does not apply to persons under the age of 16.

The ADVO reforms will be monitored by the Department of Justice to ensure they are meeting their intended policy objectives, and to ensure there are no adverse impacts on vulnerable groups.

These amendments will commence on proclamation to ensure that all necessary system changes for courts and police have occurred and any necessary training has taken place.

(iii) Extending access to the victims support scheme to family members of victims of terrorist acts involving a motor vehicle

Schedule 2 [1] of the Crimes Legislation Amendment Bill 2018 will amend section 25 (2) of the Victims Rights and Support Act 2013 to allow financial support under the Victims Support Scheme to be provided to victims of terrorist acts involving a motor vehicle.

As all victims of accidents and crime involving motor vehicles were presumed to be eligible for support under the Motor Accidents Scheme, these victims are currently unable to seek support under the Victims Support Scheme.

However, victims of terrorist acts are in fact ineligible for support under the Motor Accidents Scheme, leaving a gap where victims of a terrorist act involving a motor vehicle cannot seek support under either scheme.

This amendment extends eligibility for victims support to terrorist acts involving a motor vehicle. This means that all victims of a terrorist act will be eligible for victims support, regardless of whether the weapon was a motor vehicle, a gun or a knife.

This amendment will close the identified gap that currently precludes victims of terrorist acts committed using motor vehicles from seeking support under existing schemes.

Schedule 2 [2] of the Crimes Legislation Amendment Bill 2018 amends a provision of the Victims Rights and Support Act 2013 which has not yet commenced, but is to be introduced by the Victims Rights and Support Amendment (Statutory Review) Act 2018.

Section 39 of the Victims Rights and Support Act 2013 requires an application for financial support under the Victims Support Scheme to be accompanied by documentary evidence such as a police or a Government agency report.

The uncommenced amendment made by the Victims Rights and Support Amendment (Statutory Review) Act 2018 extends section 39 to allow the documentary evidence to include a report provided by a non-government agency that provides support services to victims of crime.

Schedule 2 [2] of the Crimes Legislation Amendment Bill 2018 introduces a further amendment to ensure that when the amending Act commences, the agencies that can provide the relevant documentary evidence will include non-government agencies funded by the Commonwealth.

B. VICTIMS RIGHTS AND SUPPORT AMENDMENT (MOTOR VEHICLES) BILL 2018

Extending access to the victims support scheme to non-dependent family members of victims of vehicular homicide

"Nick's Law" [the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018] also amends section 25(2) of the Victims Rights and Support Act 2013, in this case to extend eligibility for the Victims Support Scheme to family members of homicide victims who are deliberately killed by a motor vehicle ("vehicular homicide").

At present, victims of acts of violence involving motor vehicles can seek support under the Motor Accidents Scheme.

Damages can also be awarded to close family members of a person killed in a motor vehicle accident, following a "compensation to relatives" claim, but only if the claimant family member was financially dependent on the deceased.

Non-financially dependent family victims are currently ineligible for support from either the Victims Support Scheme or the Motor Accidents Scheme.

Nick's law will extend eligibility for victims support to family members of victims of vehicular homicide, where the offender is charged with murder.

Non-financially dependent family victims will be able to access support once a charge of murder is laid.

Financially dependent family members will also be eligible to apply for victims support but their applications will not be assessed until after their compensation to relatives claim has been determined. Any damages awarded will then be deducted from the victims support available.

I would like to take this opportunity to thank the McEvoy family. Terry and Marie—it is thanks to your support and your advocacy that these reforms have been made possible today. In cases where families face the terrible tragedy of having a family member murdered—whether it is by a firearm, a knife, a motor vehicle or by any other means—these reforms will ensure that these family members have access to financial support through the Victims Support Service.

C. CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT BILL 2018

Amendment to the definitions of "stalking" and "intimidation" to protect against cyberbullying

Dolly's Law [the Crimes (Domestic and Personal Violence) Amendment Bill 2018] amends the Crimes (Domestic and Personal Violence) Act 2007 to protect against and to deter cyberbullying conduct by modernising the existing definitions of "stalking" and "intimidation".

Schedule 1 [1] and [2] of "Dolly's Law" amends the definition of "intimidation" in section 7 of the Crimes (Domestic and Personal Violence) Act to clarify beyond doubt that the offence captures cyberbullying conduct.

A note in the legislation explains that this expanded definition is designed to cover, for example, the bullying of a person by publication or transmission of offensive material on social media platforms such as Facebook and Instagram, and communications by way of mobile "apps".

The current definition of "stalking" under section 8 of the Crimes (Domestic and Personal Violence) Act 2007 is inclusive but what is specifically mentioned is directed at physical approaches to a person.

Schedule 1 [3] of "Dolly's Law" amends the section 8 definition of "stalking" to specifically include reference to approaching a person by online means. This will cover, for example, approaches via online and telephone messaging applications or social media platforms.

Overall, these changes will widen the definitions of "stalking" and "intimidation" to remove doubt that conduct of this nature can take place online, or through the use of other technology.

This will therefore ensure that a person who "stalks" or "intimidates" another person by use of modern technology can be prosecuted for stalking or intimidation with the intention to cause fear of physical or mental harm under section 13 of the Crimes (Domestic and Personal Violence) Act 2007, an offence which is punishable by up to five years' imprisonment.

In this way, these reforms build on existing legislation in New South Wales, and complement the Commonwealth offence of using a carriage service to harass, menace or otherwise offend a person that targets cyberbullying. The amendments also align with the approach in a number of States, including Victoria, South Australia and Tasmania.

These amendments seek to ensure that apprehended domestic violence orders or apprehended personal violence orders can be put in place for the protection of cyberbullying victims, and people who are being stalked or intimidated by another person by any means, including any technological means.

We know that apprehended violence orders are important to protect cyberbullying victims as online stalking and intimidation is a commonly used method by domestic violence perpetrators. It is estimated that more than 90 per cent of domestic violence perpetrators have used some form of online technique to intimidate their partners. This reform will provide greater protection against these modern, insidious forms of stalking and intimidation, which are enabled by modern technology.

D. MENTAL HEALTH (FORENSIC PROVISIONS) AMENDMENT (VICTIMS) BILL 2018

The Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018 brings a suite of reforms to give victims a stronger voice in forensic mental health proceedings.

Earlier this year, the Government accepted all recommendations made by former Court of Appeal judge the Hon. Anthony Whealy, QC, in his review of the Mental Health Review Tribunal [MHRT]. The Whealy Review responded to community concerns about the transparency of the MHRT's decisions and consideration of victims and public safety. I am pleased to be able to introduce legislation today that gives effect to his findings.

In the course of his Review, Mr Whealy met with forensic patients, their treating teams, victims and their families, as well as legal, academic and health staff.

Mr Whealy found that the legislative test for forensic patient leave and release was appropriate. However, Mr Whealy also found that the test was weighted too heavily towards the interests of patients without due consideration for the safety and interests of victims.

The Review also highlighted the need for greater support and education for victims of forensic patients, and recommended establishing a specialist service for victims of forensic patients within the existing Victims Services.

The Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018 is an important step for victims of forensic patients, because it acknowledges harm done and makes meaningful changes to the way the forensic mental health system interacts with them. The bill:

- Will introduce a new object in the Mental Health (Forensic Provisions) Act to protect the safety of victims of offences committed by forensic patients, and acknowledge the harm done to such victims;
- Ensure the Charter of Victims Rights applies to victims of forensic patients;
- Provide for the MHRT to order monitoring as a condition of leave or release for a forensic patient; and
- Allow victims to make submissions to the MHRT when it is considering leave or release decisions for forensic patients.

In addition, the bill will:

- Allow victims to make victim impact statements to the court when an accused person is found unfit at a special hearing or not guilty by reason of mental illness;
- Establish a Victims Register to be kept by the Commissioner of Victims Rights, and provide for information sharing arrangements to facilitate the operation of the Victims Register;
- Implement some recommendations from the NSW Law Reform Commission's report on criminal responsibilities and consequences relating to people with cognitive and mental health impairment in the criminal justice system (Report 138). These amendments will clarify that a forensic patient's limiting term must be paused if they are unlawfully absent from custody; and provide for forensic materials to be retained if taken from a person found unfit at a special hearing or not guilty by reason of mental illness.

Amendments enacting recommendations of the Whealy Review

Schedule 1 to the bill makes various amendments to the Mental Health (Forensic Provisions) Act 1990.

Schedule 1 [4] inserts a new object relating to the protection of the safety of victims and acknowledgment of harm done.

Schedule 1 [14] amends the Act to establish a victims' register to be maintained by the Commissioner of Victims Rights that will replace the existing register managed by the MHRT.

This new register will contain the details of victims of forensic patients, who will be notified about hearings and decisions that impact them and their loved ones.

Schedule 3 to the bill amends Part 28A of the Crimes (Sentencing Procedure) Act 1999 to give victims the right to make Victim Impact Statements to the court when the person charged is found "not guilty by reason of mental illness".

Currently, if a defendant is convicted in normal criminal proceedings, the victim is entitled to make a Victim Impact Statement to the court before sentencing. These are a powerful therapeutic tool which allow victims to participate in the criminal justice process.

However, if the defendant has been found not guilty by reason of mental illness or unfit but not acquitted, there is presently no scope for the victim to express the harm they have experienced to the court.

By allowing victims of forensic patients to make such statements, all victims of serious personal violence offences will have the opportunity to be heard regardless of the personal circumstances of the offender, providing consistency across the justice system.

The bill will require the court to provide a copy of the Victim Impact Statement to the MHRT, and provides a regulation-making power with respect to how the statement will be used in MHRT proceedings.

In addition, Schedule 1 [8] of the bill amends the Mental Health (Forensic Provisions) Act 1990 to entitle victims to make submissions when the MHRT is considering leave or release for a forensic patient.

The court and MHRT must agree to requests from a victim not to disclose the contents of a statement or submission to the forensic patient unless non-disclosure would not be in the interests of justice. This reflects concerns shared by victims who felt confidentiality would help free and frank submissions without risks to their safety.

The amendments made by schedule 1 [8] will also require the MHRT to have regard to the Charter of Victims Rights when conducting a review of a forensic patient.

Amendments enacting recommendations of LRC Report 138

Schedules 1 [2] and 1 [3] of the bill amends the Mental Health (Forensic Provisions) Act 1990 to enable the court to request and consider expert reports from forensic psychiatrists about a person's condition, as well as the likelihood of their seriously endangering the safety of themselves or a member of the public, when deciding what order to make in relation to the person.

Schedule 1 [5] amends the Act to provide that any limiting term given to a forensic patient must be paused if the forensic patient is unlawfully absent from custody.

- This is a significant change, supported by victims' advocates concerned that the current situation could result in a limiting term expiring while a forensic patient is unlawfully at large.

Schedule 1 [9] amends the Act to enable the MHRT to impose monitoring requirements, including electronic monitoring, as a condition of leave or release for a forensic patient.

Schedule 1 [11] amends the Act to extend existing authorisation for the Commissioner of Corrective Services, the Secretary of the Department of Justice, and the Secretary of the Ministry of Health to enter into arrangements to exchange information about forensic patients and corrective patients to the Secretary of the Department of Family and Community Services. Access to relevant information held by the Department of Family and Community Services about patients with cognitive impairment will allow agencies to adopt better approaches to patient management, while information about patient conduct will enable better risk assessments to be carried out. Information sharing arrangements involving Family and Community Services developed under this provision will be settled in consultation with relevant stakeholders, including the Privacy Commissioner, to ensure that they are appropriate.

Finally, Schedule 2 amends the Crimes (Forensic Procedures) Act 2000 to allow for forensic materials (such as DNA) taken from people found unfit at a special hearing or not guilty by reason of mental illness to be retained in the same circumstances as if the person had been convicted of a crime.

This recognises that, although the person is not criminally responsible for the offending, they did in fact commit an unlawful act.

Conclusion

The Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018 is the result of significant stakeholder consultation and contributions from numerous parties.

I would like to give particular thanks to Mr Whealy for his work on the MHRT Review, which recommended a substantial number of these reforms.

I also appreciate the contributions made by victims groups, who have helped shape the direction of the reforms.

The legal profession has provided guidance and insight throughout the consultation and drafting stage and I am grateful to all these contributions in a bill which achieves the balance between procedural fairness and access to justice versus giving victims a voice.

I commend the bills to the House.

Second Reading Debate

The Hon. LYNDIA VOLTZ (20:33): I lead for the Labor Opposition in the debate on the Crimes Legislation Amendment Bill 2018, the Crimes (Domestic and Personal Violence) Amendment Bill 2018, the Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018 and the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018. The Opposition does not oppose these bills. As a preliminary point, I note that it looks as though each of the bills could have been a standalone bill. However, they have been made cognate so they can be dealt with before this Parliament rises. The process reflects the by now typical mismanagement of what passes for this Government's legislative agenda. I turn to the Crimes Legislation Amendment Bill. The objects of the bill are:

- to amend the Crimes (Domestic and Personal Violence) Act 2007 to make further provision for the period for which apprehended domestic violence orders remain in force,
- to authorise senior police officers to provisionally vary the conditions of apprehended domestic violence orders made under the Crimes (Domestic and Personal Violence) Act 2007 to address an increased risk of domestic violence against a protected person,
- to provide that a person is not ineligible to receive victims support under the *Victims Rights and Support Act* 2013 in respect of a terrorist act involving the use of a motor vehicle,

- (d) to extend the types of agencies that may provide documentary evidence to support applications for victims support under the *Victims Rights and Support Act* 2013 to include non-government agencies funded by the Commonwealth,
- (e) to include in the *Crimes Act* 1900 an indictable offence of intentionally choking, suffocating or strangling another person without the other person's consent and provide for the offence to be dealt with summarily in accordance with Criminal Procedure Act 1986 unless the prosecutor or person charged elects otherwise.

Some of the proposals in the bill stem from the "NSW Domestic Violence Death Review Team Report 2015-2017", especially those provisions dealing with apprehended domestic violence orders [ADVOs]. At page 77, the Domestic Violence Death Review Team [DVDRT] report states:

ADVO expiry can highlight that the orders are often of insufficient length to protect the victim's safety. In other cases, ADVOs expire while the abuser is in custody, meaning that when the abuser is released to the community the victim is unprotected.

The report also states:

In a number of cases during this review period the Team expressed concerns over the length of ADVOs and queried the sufficiency of short ADVOs (of 6 or 12 months in length) in cases involving significant histories of violence.

The team went on to state that lawyers and prosecutors were not requesting orders of sufficient length to protect victims of violence. Those comments gave rise to recommendation 3 in the report. The bill responds in a number of ways. New section 49AA provides that the default period for an ADVO is two years when the defendant is 18 years or older and 12 months if under 18. The applicant may request a longer period, including for an indefinite period. Reasons obviously have to be advanced for this and the criteria are set out in the new section.

New section 79A allows the court to make ADVOs longer than the default period. The considerations that are relevant are set out in new section 79A (4). New section 79A (6) provides an order longer than the default period can only be made if the court is satisfied that the defendant has been given a reasonable opportunity to be heard. Presumably that deals with the issue of possible ex parte applications. New section 79B provides the criteria for apprehended domestic violence orders of indefinite duration. The problem of defendants serving a period of imprisonment for a domestic violence offence and its relation to an ADVO is dealt with by new section 79C. The order stays in force for the duration of the head sentence together with an additional two years. That may be altered by the court if it is appropriate to do so.

Another provision of schedule 1 gives police the power to vary the conditions of an ADVO relating to a defendant aged 16 years or over. It must be made or approved by a senior police officer. The matter must then be referred to a court on "the earliest day on which the matter can be listed at an appropriate court". A police variation can only be made if there has been a change in circumstances with a consequent increase in risk to the protected person, requiring an urgent response. For clarity, this was not a recommendation from the DVDRT.

Allowing police to vary court orders is a fairly serious issue and has some challenges in principle. Having said that, the various restrictions and criteria built into the section mean that in practical terms the proposal can be supported. The real challenge with the length of ADVOs is perhaps not the default period. The team report commented that prosecutors and lawyers were not asking for longer periods. The focus has been on whether an order is made, rather than on how long it should be. Changing the default period will not necessarily change that. Labor does not oppose that proposal but it seems a more long-term solution may be needed.

Schedule 2 amends the Victims Rights and Support Act. Schedule 2 [1] qualifies the existing section 25 of the principal Act by allowing victims who are otherwise eligible to obtain victims support as a result of an act of violence that was a terrorist act, which includes the use of a motor vehicle or a motor accident. Presently section 25 (2) prohibits victims support concerning an act of violence that was a motor accident. Schedule 2 [2] includes non-government agencies funded by the Commonwealth in the category of agencies providing support services to victims of crime whose report can be accepted as part of the documentary evidence supporting applications for victims support. Those provisions of the principal Act were legislated comparatively recently and have not yet commenced. This provision is merely rectifying an oversight and therefore makes sense.

Schedule 3 to the bill inserts a new additional offence of strangulation into the Crimes Act. The Attorney General's second reading speech in the other House seems to locate the origin of this amendment in the Domestic Violence Death Review Team report. It is fair to say that concern about the strangulation provisions are far wider than just the DVDRT report, however well regarded that is. There have been multiple approaches from advocates and advocacy groups about the issue. Earlier this year, questions on notice were asked about the existing section 37 of the Crimes Act following meetings with advocates. In 2014, when the current Minister for Health was Attorney General, a new offence was introduced that amended section 37 of the Crimes Act. That amendment did not seem to deal with the problem where acts of domestic violence were charged as common assault rather than as an offence under section 37. The second reading speech therefore noted that 70 per cent of domestic violence assaults involving strangulation were charged as common assault. The DVDRT report concluded:

The 2014 amendments have had limited effect on the issues they sought to address.

The report and advocates more generally have pointed to the Queensland model as a desirable one to emulate. Section 315A of the Queensland Criminal Code does not have the qualification of section 37 (2) (b) of requiring to prove the intent of committing another indictable offence. The Government's position is to leave the current section 37 on the statute books and to add new section 37 (1A). The new provision seems very similar to the Queensland provision and is provided as a table offence.

The second of the cognate bills is the Victims Rights and Support Amendment (Motor Vehicle) Bill. The object of the bill is to ensure that if a person is intentionally killed in a crime involving a motor vehicle and another person has been charged with the murder of the person, someone who is a member of the deceased's immediate family will, if otherwise eligible, be able to receive victims support under the Victims Rights and Support Act. Under section 25 (2) of the principal Act, there is a general prohibition on receiving support for motor vehicle accidents. The prohibition is overturned in a narrow sense to meet the object of this bill. New section 44 (6A) allows postponing the determination of an application if there is an entitlement to damages under the Compensation to Relatives Act or payments under the Motor Accident Injuries Act arising from the act of violence.

The third of the cognate bills is the Crimes (Domestic and Personal Violence) Amendment Bill 2018. The objects of the bill are to provide that stalking may include conduct that involves contacting or otherwise approaching another person using the internet or any other technologically assisted means and to make it clear that cyberbullying is a form of intimidation. Schedule 1 [1] amends section 7 of the principal Act. Section 7 (1) of that Act currently provides:

- (1) For the purpose of this Act, "**intimidation**" of a person means:
 - (a) conduct amounting to harassment or molestation of the person, or
 - (b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety...

The bill inserts the words "including cyberbullying" in brackets after the word "conduct" in section 7 (1) (a). A note is also inserted after section 7 (1) (a). Whether that makes a substantive change to the law seems to be a moot point. The bill also replaces the current definition of "stalking" in the Act and replaces it with a new one. The difference is the inclusion in the definition:

- (c) contacting or otherwise approaching a person using the internet or any other technologically assisted means.

That seems to be a substantive change to the law and is to be welcomed. As the Attorney General noted in the other House, these provisions should be seen in conjunction with the relevant Commonwealth offences. The final of the four cognate bills is the Mental Health (Forensic Provisions) Amendment (Victims) Bill. The object of the bill is primarily to amend the Mental Health (Forensic Provisions) Act, although some other legislation is also affected.

The proposed amendments include enabling a court to obtain a psychiatric report about an accused before making orders following a verdict at a special hearing or a verdict of not guilty by reason of mental illness; providing that periods of unlawful absences are not to be included when determining whether a limited term has expired; establishing a victims register for the victims of certain forensic patients; providing for victims' submissions to the Mental Health Review Tribunal when release or a grant of leave is being considered; providing for information to be given to registered victims; extending the maximum period for an interim order; extending a status as a forensic patient; enabling the tribunal to make an order for temporary detention after a breach of a condition of leave or release; providing for victim impact statements and submissions by carers and care providers; preventing the destruction of forensic material after a person is found unfit to plead or not guilty by reason of a mental illness; preventing disclosure under the Government Information (Public Access) Act of some information relating to the Commissioner for Victims' Rights; and setting out matters comprising the charter of rights of victims of forensic patients.

The Government presents this bill as giving victims a stronger voice in forensic mental health proceedings. It is said to respond to recommendations made by Anthony Whealy, QC, after his review of the Mental Health Review Tribunal. The reviewer's foreword squarely sets out what he sees as the two parallel systems that are in many respects irreconcilable with each other. He argues that the review has recommended practical improvements and advances in its recommendations that are beneficial to victims and the system generally. Of course, forensic patients do not have the personal moral guilt of those who commit offences while not being mentally ill. Some of the bill's provisions are sourced from the Law Reform Commission Report No. 138, "People with cognitive and mental health impairments in the criminal system: criminal responsibility and consequences", which dates from 4 ½ years ago.

Schedules 1 [2] and 1 [3] amend the Mental Health (Forensic Provisions) Act to allow courts to obtain reports from experts, being a forensic psychiatrist or another specified by the regulations. This is specifically designed to occur following a special hearing or a verdict of not guilty by reason of mental illness. The report specifically is to the condition of the person and whether the person's release is likely to seriously endanger the safety of the person or any members of the public. The common sense of that proposal seems obvious. Schedule 1 [4] inserts a new object into the principal Act to protect the safety of victims of forensic patients and to acknowledge the harm done to victims.

New section 52A provides that any unlawful absence from a mental health facility is not to be counted as part of a limiting term to determine if it has expired. New section 74A provides that a victim of a forensic patient may make a submission to the tribunal when considering the release or grant of leave of absence to a forensic patient. The victim may request the tribunal not to disclose to the patient the whole or part of a submission made by the victim, with which request the tribunal must agree unless it considers that it is not in the interests of justice to do so. Presumably that qualification allows the principles of procedural fairness to be observed. The charter of victims rights must be adhered to when conducting a review of a forensic patient. Schedule 1 [14] provides a new part 5A establishing a victims register to be kept by the Commissioner for Victims' Rights. The commissioner is to notify registered victims of applications for the grant of leave and other relevant matters.

Schedule 1 [17] means that the register currently maintained by the tribunal is to be transferred to the victims register maintained by the commissioner. Schedule 2 to the bill provides an exception to the provisions of section 88 of the Crimes (Forensic Procedures) Act that forensic material from a person who is a suspect is to be destroyed if no conviction is recorded or a person acquitted. The destruction is no longer required if a person is found not guilty of an offence by reason of mental illness or the person has been found unfit to be tried for an offence and is then found after special hearing to have committed an offence.

Schedule 3 amends the Crimes (Sentencing Procedure) Act. It enables a submission to be made to a court by a victim of an accused person found not guilty of an offence by reason of mental illness or who has been found unfit to be tried but found after a special hearing to have committed the offence. The statement may be considered by the tribunal when it considers what conditions are to be imposed on the release of an accused person. Again this makes perfect sense. It cannot consider it when determining the limiting term, which is consistent with what happens now to people who have committed criminal offences.

New section 28B allows a court to seek submissions from a designated carer or principal care provider as defined by the Mental Health Act. Schedule 6 provides amendments to the Victims Rights and Support Act. It confers on the victims of forensic patients the same rights as apply to the other victims covered by the Charter of Victims Rights. Such victims are to be informed in a timely manner of relevant matters before the tribunal. As indicated, the Opposition does not oppose the bills.

Reverend the Hon. FRED NILE (20:50): On behalf of the Christian Democratic Party I speak in support of the Crimes Legislation Amendment Bill 2018 and cognate bills, the Crimes (Domestic and Personal Violence) Amendment Bill 2018, also known as Dolly's Law, the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018, which is known as Nick's Law, and the Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018. The Crimes Legislation Amendment Bill 2018 is a very important bill. I propose to move three minor amendments to the bill in due course. The Crimes Legislation Amendment Bill 2018 has as its objects:

- (a) to amend the Crimes (Domestic and Personal Violence) Act 2007 to make further provision for the period for which apprehended domestic violence orders remain in force,
- (b) to authorise senior police officers to provisionally vary the conditions of apprehended domestic violence orders made under the Crimes (Domestic and Personal Violence) Act 2007 to address an increased risk of domestic violence against a protected person,
- (c) to provide that a person is not ineligible to receive victims support under the *Victims Rights and Support Act 2013* in respect of a terrorist act involving the use of a motor vehicle,
- (d) to extend the types of agencies that may provide documentary evidence to support applications for victims support under the *Victims Rights and Support Act 2013* to include non-government agencies funded by the Commonwealth,
- (e) to include in the *Crimes Act 1900* an indictable offence of intentionally choking, suffocating or strangling another person without the other person's consent and provide for the offence to be dealt with summarily in accordance with Criminal Procedure Act 1986 unless the prosecutor or person charged elects otherwise.

I will explain the purpose of the three amendments that I propose to move. New section 73A (2) (b) currently provides:

A police officer may make a police variation only if there has been a change in circumstances since the existing order was made, resulting in an increased risk to the safety of the protected person that requires an urgent response, and the officer is of the opinion that:

...

- (b) there are reasonable grounds for the urgent making of the police variation (including, but not limited to, that the increased risk cannot be addressed by an application for variation of the existing order) ...

My amendment simply seeks to clarify that the words in brackets in section 73A (2) (b) provide for an assessment of the urgency of the situation of increased risk and whether the urgency could be adequately addressed through a court process. With the amendment, if agreed to, section 73A (2) (b) would read:

- (b) there are reasonable grounds for the urgent making of the police variation (including, but not limited to, that the increased risk cannot be addressed by an immediate application to an appropriate court for variation of the existing order) ...

The other area of concern is mandatory police considerations. New section 73A (3) currently requires the relevant police officer to have regard to:

- (a) any views expressed by or on behalf of the protected person, and
- (b) the circumstances of the defendant.

My amendment will limit the requirements of this section to the knowledge of the police officer. The proposed section in the bill could be interpreted as requiring the relevant police officer to have regard to any views expressed by or on behalf of the protected person in any forum and thus may provide for an unreasonable standard. Likewise there may be circumstances relevant to the defendant that are not known to the police officer at the time of the variation. Given these are mandatory considerations, it is important that this amendment be progressed so that the variations are not found at a later stage to be invalid because a police officer did not consider factors beyond their knowledge. If my amendments are accepted, new section 73A (3) would read:

- (3) A police officer must not make a police variation in relation to an existing order unless the police officer has had regard to each of the following, to the extent that the police officer has knowledge of those matters:
 - (a) any views expressed by or on behalf of the protected person, and
 - (b) the circumstances of the defendant.

New section 73A (8) currently requires that the notice of the police variation served on the defendant contains a direction for the appearance of the defendant at a hearing of the application on a day specified in the notice, being a day that is not more than 28 days after the day on which the police variation takes effect. New section 73A (9) requires that the day specified in the notice must be the earliest date on which the matter can be listed at the appropriate court. My amendment provides that:

Despite subsection (9), the matter is to be listed on a domestic violence list at the appropriate court if it is possible to do so within 28 days after the police variation takes effect, even if the matter could have been listed on an earlier day on another list.

The amendment gives clear priority to the listing of the matter on a domestic violence list if that is possible within the 28 days. Assigning priority to the domestic violence list is justified, given the availability of relevant support services to protected persons at the time. I thank the House for the opportunity to explain the amendments, which are very simple. I have tabled the amendments and I will speak to them at the Committee stage. The Christian Democratic Party supports the bill.

The Hon. PAUL GREEN (20:58): I make a brief contribution to debate on one of the cognate bills, the Crimes (Domestic and Personal Violence) Amendment Bill 2018. This amending bill redefines stalking and intimidation in the Crimes (Domestic and Personal Violence) Act to ensure that these terms cover stalking and intimidation of persons by any means, including telephone, text messaging, emailing, social media, messaging and other technology and online assisted means. "Cyberbullying" is defined as the use of electronic communication to bully a person, typically by sending messages of an intimidating or threatening nature. It can be social, psychological or physical. Cyberbullying can cause immense distress to all victims, including long-term psychological and mental health damage and, sadly in some cases, suicide.

The problems and effects caused by cyberbullying and bullying in general are well known and well documented throughout social, community and government research reports. The reported rates of depression, mental health stress-related illnesses, self-harm and suicide have increased to their highest level in more than 10 years. Stopping this harmful behaviour has become a matter of high priority for the Government and authorities. As a member of the Committee on Children and Young People and a father of six children, I am all too aware on pressures on our youth. Recently the committee finalised its report entitled "Prevention of Youth Suicide in New South Wales". It found that suicide is a leading cause of death for our children and young people.

Sadly, in 2017, the number and rate of children under 18 who died by suicide in New South Wales was the highest in 20 years. Although the terms of reference did not delve too heavily into cyberbullying, it is something at the forefront of our minds given recent reports of suicide related to such crimes. Beyondblue recommended that the committee do more research in this area, focusing on children and young people, given their high use of social media. More research is needed to understand the extent of social media's positive and negative influences on suicidal behaviour. Research is also needed to understand the extent to which people's

privacy can be respected, while providing avenues to reach out to people at risk. We need to know how we can protect people's freedom of speech while counteracting harmful content that may place people at risk. Research should take a focused approach for young people and adolescents, in particular, as a high user group of social media.

While the role of social media in youth mental health may be complicated, the committee acknowledged that social media may be a powerful tool to drive help seeking and anti-stigma messages to children and young people at risk of suicide. The committee acknowledged the lack of evidence that there is a link between bullying on social media and suicide risk in young people. However, the committee noted that it is one risk factor to consider in a complex, multi-issue area and should be addressed through systematic, evidence-based measures to reduce bullying and its harms. Given that it is still an emerging area, the committee considered that it is important to conduct further research into the impact of social media on youth suicide.

Last year I moved a motion regarding cyberbullying and an organisation called Angel's Hope. Angel's Hope is leading the initiative calling for a legislative change to be made through the Australian Communications and Media Authority to require all social media services in Australia to implement mandatory phone verification for social media accounts. Social media companies already offer phone verification as a security measure, which is optional to all users. The motion focused on the Angel's Hope proposal that all account holders be required to register a phone number for each account, through the social media provider, and to verify their phone number each year.

Users inserting a phone number will receive a unique code—either through automated voice or text, depending on the type of phone number they use to register with—and they will be required to enter that code to enable verification. The ability to link social media accounts to mobile phone numbers can potentially reduce cyberbullying where, currently, individuals can create phoney accounts that cannot be traced back to perpetrators. This proposal provides a great opportunity to achieve maximum benefit to the community through simple, cost-free and immediate action to tackle cyberbullying. I call on the New South Wales Government to consider this proposal.

In this day and age, amending the definition of stalking and intimidation to the Crimes (Domestic and Personal Violence) Amendment Bill 2018 to include stalking and intimidation of persons by any means is essential and long overdue. I have always said, "If you wouldn't say it to someone's face in public, then you shouldn't be able to say it online." We commend the bills to the House.

Mr DAVID SHOEBRIDGE (21:04): I speak to the Crimes Legislation Amendment Bill 2018, the Crimes (Domestic and Personal Violence) Amendment Bill 2018, the Mental Health (Forensic Provisions) Amendment Bill 2018 and the Victims Rights and Support Amendment (Motor Vehicle) Amendment Bill 2018. These cognate bills make a series of changes to justice legislation, primarily concerning the response to domestic violence and for victims and victim support. There is something that links these four bills, unlike some of the other cognate bills. I accept that there is a skerrick of coherence about introducing these four bills together as cognate bills. I will deal with them relatively briefly.

The Crimes Legislation Amendment Bill 2018 amends the Crimes (Domestic and Personal Violence) Act 2007 to provide that the default period for an apprehended violence order for someone over 18 is two years, and for under 18 is one year. Longer or shorter periods can be sought and ordered at the court's discretion. It allows police to vary apprehended domestic violence orders and interim ADVOs. It provides that an ADVO can remain in force indefinitely if the court determines an order of limited duration is not appropriate. It provides that ADVOs can remain in force while a person is in prison for a domestic violence offence and up to two years after the sentence. Tragically, that is often necessary. It also amends the Victims Rights and Support Act to specify that family victims of homicide can receive victim support for an act of violence involving a motor accident where it was a terrorist act. It allows reports from support agencies to act as documentary evidence to support applications for support. It also amends the Crimes Act to create a further indictable offence of choking, suffocating or strangling, which carries a maximum penalty of five years.

The amendments to the Crimes (Domestic and Personal Violence) Act 2007 are all positive and are supported by The Greens. The amendments to the Victims Rights and Support Act are also positive. One amendment, which The Greens believe is appropriate, will be discussed in Committee as it provides retrospective application for those amendments so that people who have suffered but not had the right to compensation can be included and have the right to claim compensation—they may not wish to, but they ought to have the right to claim compensation.

The amendments to the Crimes Act to create a further indictable offence of choking, suffocating or strangling. My colleague Ms Cate Faehrmann will speak on those amendments in more detail. However, I note that a series of extraordinarily large studies identify strangulation, short of causing death, as one of those "red

flag" issues in domestic violence—it is a risk assessment tool used by domestic violence workers and police. A series of studies make this clear. I refer to a 2014 study on strangulation by Heather Douglas and Robin Fitzgerald. At page 232 of the Sydney Law Review, Volume 6, they note:

Strangulation is a significant concern for at least two reasons. First, it frequently affects the long-term health of the victim. Victims who have survived a strangulation incident often report a range of clinical symptoms including neurological and psychiatric symptoms such as loss of consciousness, paralysis, loss of sensation, vision changes, memory loss, anxiety and post-traumatic stress disorder.

There is a reference to table 1, which identifies that finding in detail. The report continues:

Some women have experienced pregnancy miscarriage after strangulation. Swelling of the tissues of the neck can occur up to 36 hours after an incident leading to obstruction of the airway and long-term vocal change or dysfunction. 'Thyroid storm', a life-threatening condition, has also been associated with strangulation, and can occur days after a person has apparently recovered from the initial incident of strangulation. Even where there are no visible injuries, some victims have died as long as several weeks after the attack, as a result of the brain damage caused by lack of oxygen during the strangulation.

The report notes: Second, the risk to the victim of more serious injury or death is increased dramatically once the victim has experienced strangulation at the hands of their intimate partner or former intimate partner. Significant research about the prevalence of, and risks associated with, strangulation has taken place in the United States. In 2000, Block et al published the results of *The Chicago Women's Health Risk Study*.

The *Chicago Study* conducted domestic violence screening for 2616 women who attended a hospital or health service for treatment in the Chicago area in 1995–96. The study found that having been choked in a previous domestic violence incident was a risk factor for later being seriously injured or killed. Strack and Gwinn state that there are a number of findings about non-fatal strangulation incidents that are now common knowledge. These include that there are often no visible injuries as a result of strangulation and yet there are often internal injuries; that the strangulation can have long-term physical and psychological impacts; that strangulation is a gendered crime (perpetrators are almost always men and victims are almost always women); and that victims of strangulation are much more likely eventually to become homicide victims.

For all those reasons The Greens support the amendments to the Crimes Act and the additional provision in relation to the offence of choking, suffocating or strangling. Indeed, we commend the Attorney General for bringing this to the Parliament.

The Crimes (Domestic and Personal Violence) Amendment Bill 2018 does two things. First, it specifies that cyberbullying is a form of intimidation—and it should, because this can have the most significant impact on individuals—and makes it clear that that is supported and, second, it includes "technologically assisted means" in the definition of "stalking". For many people their online persona is a part of their extended self. Online stalking and intimidation is deeply distressing and it can lead, if it is not stopped, to genuine tragedy. The Greens support the amendments to the Crimes (Domestic and Personal Violence) Amendment Bill 2018 for those reasons.

I turn now to the Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018. This bill largely provides additional rights to victims. It allows for victim impact statements to be provided to the court where a person is found unfit at a special hearing or not guilty by reason of mental illness. Victims can request that those victim impact statements not be disclosed to the offender. The bill will establish a Victims Register and victims will be notified about hearings and decisions that impact on them and their loved ones. It will also allow victims to make submissions when the Mental Health Review Tribunal is considering leave or release. It will allow the court to get reports from forensic psychiatrists about a person's condition when deciding about making an order. It will also enable monitoring, including electronic monitoring, as a condition of release for forensic patients. It will increase information sharing between Corrective Services, Justice and Health. It will also allow for DNA retention of people found unfit or not guilty by reason of mental illness. Finally, it will also provide that any time spent unlawfully absent is not considered towards a limiting term.

All of these changes have come very late in the year as part of a package of four bills. The Greens acknowledge where these amendments have come from. Indeed, empowering victims and giving them rights is clearly a worthy goal, but it is worth noting that not guilty is not guilty. At law, people detained as forensic patients have not been found guilty of any offence. I acknowledge that this can be a difficult finding. In fact, anyone who has dealt with victims of crime in this area will acknowledge that not having a finding of guilt, particularly if there has been an appalling offence to one's loved one or oneself, means that many feel what happened to them has not been properly recognised. To be not guilty by reason of mental illness means though a person may have carried out an act, they did so without the motive, intention or capacity to render them culpable for it. The rights of offenders are hard to champion, but they remain important. Maintaining these rights and treating all citizens fairly is a fundamental underpinning of our society.

I note the very real concerns that Justice Action has raised with my office—I do not know about others—about the changes proposed in this bill. In particular, that the changes will allow for victim impact statements to not be disclosed to forensic patients. The concerns of Justice Action are as follows: it will mean that forensic patients have less rights than other offenders; it will reduce the opportunity for the offender to take responsibility

for their acts, even though they may not have intended them consciously; it will allow a victim to write a statement in circumstances where it will not be provided to the offender; and if the statement is disclosed to the forensic patient's lawyer or medical representative it will further disempower them.

This bill came after a number of inquiries into the death of Miriam Merten in the Mental Health Unit of the Lismore Base Hospital. For the record, Justice Health notes it is disappointing that there are no changes to make facilities safer for the people inside them, despite these other changes about mental health. Whilst reading onto the record the concerns of Justice Action, I understand the careful balancing act that has gone about in the drafting of these laws. It is a difficult call to say on which side one falls in the careful balancing act between protecting the rights of those who have not been found guilty and ensuring that victims and families actually feel like they are part of, listened to and heard in the system. The Greens will not be opposing this bill but we do read onto the record those concerns. We also note our concerns that those changes have happened so late, with so little scrutiny, and without engagement with many people from the mental health sector who could have assisted us in perhaps crafting a more perfect bill.

Lastly, I turn to the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018. This bill creates an exception to the rule that a person cannot get victims' support in respect of a motor accident so that if a person is intentionally killed by a motor vehicle and someone has been charged with murder, a member of the immediate family will be eligible for compensation. This has come about following very brave representations from a family where this was exactly the case. However, this change is not retrospective. The Greens fully support the change. I fully understand the family who has been championing this is not asking for the matter to be retrospective. They have not asked for it; they are doing it selflessly so that others can benefit and will not fall through the same holes in the compensation scheme as they fell through. But simply because the family did not ask for it, does not mean we should not do it. The Greens believe that that family, and indeed all families from that date in 2014, should be given the right—they do not have to access it—to seek just compensation in circumstances. We have an amendment to that effect, which I will discuss briefly in Committee.

Ms CATE FAEHRMANN (21:16): I speak to the Crimes Legislation Amendment Bill 2018. Domestic violence is a crisis in Australia, and it is getting worse. In 2017, 53 women were killed by domestic violence; in 2018, that number stands at 62. That number does not include rapes, strangulations and attempted murders, nor does it include the 18 children who have also been killed this year as a result of family violence. This is heartbreaking and it must stop. A couple of weeks ago I read onto *Hansard* a list of some of the women who have died a violent death in New South Wales so far this year, documented by researchers for Destroy the Joint's Counting Dead Women campaign. Tonight I will add to those names:

November 18: Early in the morning, the body of Kym Taylor (37) was found by a member of the public in bushland in the Jarrahdale State Forest, WA. It is not known when she died. A murder investigation has been launched.

November 12 2018: An unnamed woman (63) died of stab wounds after police were called to her home at Tweed Heads at about 6.30pm. Her ex-partner ... was arrested after a short struggle and was charged with murder.

November 05: An unnamed woman (57) was found severely injured at her home in Armadale WA. She was taken by ambulance to hospital, where she died soon after arrival ...

November 03: An unnamed woman (58) was pronounced dead outside a motel in Maryborough after police were called to a disturbance at 5.30am. An unnamed man (22) believed known to the woman, has been charged with her murder.

October 30: The body of Bette Schulz (82) was found dead from a gunshot wound at a home at ... Red Cliffs, in Victoria's north-west, about 12:30pm. Her son ... was later found shot dead at a property at Rufus River (NSW). Her younger son, Mildura president of the Sporting Shooters Association of Australia, was found at a nearby location with self-inflicted injuries. He has been charged with murder.

October 25: Police and ambulance crews were called to a reports of a woman with serious head injuries outside the BankSA branch at the Colonnades Shopping Centre in Noarlunga Centre shortly after midnight. The 36-year-old Ethelton woman died at the scene despite paramedics and police providing first aid. An unnamed 20-year-old man of no fixed address has been charged with murder.

October 21: The body of Toyah Cordingley (24) was found at Wangetti Beach, about 38 kms north of Cairns after she had been reported missing by her family. Police have launched a murder investigation ... I acknowledge that this bill is an important step towards recognising the seriousness of domestic violence in Australian society. The Greens support this bill. I have read those names out because women and children are dying and we cannot pretend that this Government is doing enough. The bill is a small step, but when we discuss domestic violence legislation it is important to remember that every couple of days in this country we lose a woman at the hands of a violent man.

I turn to the Crimes Legislation Amendment Bill 2018. The bill introduces a new strangulation offence of intentionally choking, suffocating or strangling another person without the other person's consent, which is meant to increase the rate of convictions for domestic violence. The maximum penalty will be five years imprisonment. We have worked closely with the Women's Legal Service NSW, Domestic Violence NSW and the Feminist Legal Clinic, who are all supportive of the new offence because it reduces the evidentiary threshold to prove a strangulation offence. In 2010 a national survey in the United States found that 9.7 per cent of all women reported experiencing at least one incident of choking by an intimate partner in their lifetime and as many as

68 per cent of women in domestic violence shelters reported experiences of strangulation. According to a study in Queensland, 90 per cent of strangulation allegations are made by women.

The Crimes Act 1900 already contains two strangulation offences. The latest was added in 2014. Those offences will remain in the Act and carry a greater maximum sentence of 10 to 25 years. The new offence is needed because 739 prosecutions have been pursued for domestic violence-related strangulation under the law since 2014 but only 247 or 29.7 per cent of those prosecutions resulted in a guilty verdict. Eighty-nine per cent of prosecutions and 89 per cent of guilty verdicts for strangulation were related to domestic violence. Currently, the prosecutor has to prove that the victim is rendered unconscious, insensible or incapable of resistance, and recklessness. According to the Coroner's Domestic Violence Death Review Team the difficulty in proving those elements has meant "strangulation offences were not being charged under the NSW offence of strangulation, but rather were being charged as common assault or assault occasioning actual bodily harm offences."

The bill increases the default length of apprehended domestic violence orders from 12 months to two years and gives police the power to vary an ADVO without going to court when there is an imminent risk to a victim. That variation operates provisionally until a court makes a determination on the variation or for 28 days if no court determination is made in that time. The bill provides for ADVOs to remain in place for two years after an adult offender is released from prison, and gives courts the power to grant indefinite orders if the court is "satisfied that there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependents of the protected person and that risk cannot be adequately mitigated by an order of limited duration".

The Crimes (Domestic and Personal Violence) Amendment Bill 2018 amends the definitions of intimidation and stalking in the Act to include cyberbullying and stalking online. The main concern from stakeholders regarding the bill has been about the definition of strangulation and the lack of a specific reference to "applying pressure to the throat or neck or blocking the nose and mouth of the person". That concern arises from the Coroners Court of Queensland findings at the inquest into the death of Tracy Ann Beale. Ms Beale's cause of death was "neck compression, which has led to asphyxia, with a likely vasovagal attack." Professor Heather Douglas gave evidence at the inquest suggesting likely deficiency in the Queensland strangulation offence provision. The Coroner has recommended a review of the Queensland strangulation offence in section 315A of the Criminal Code and consideration of a public awareness campaign "to educate of the dangers of neck compression (of whatsoever type)".

We have been assured by the Minister's office that the definition of strangulation in the bill is intended to apply to a broad range of conduct and that there has not been any case law indicating that the existing offences are unduly limited in the conduct they capture. The Attorney General's office has clarified that the terms will generally cover "applying pressure to the throat or neck or blocking the nose and mouth of the person". I hope that will be made clear in the address in reply. As I said, if that is the case The Greens will support this legislation.

The Hon. SCOTT FARLOW (21:23): On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Lynda Voltz, Reverend the Hon. Fred Nile, the Hon. Paul Green, Mr David Shoebridge and Ms Cate Faehrmann for the contributions to the debate. To address the point raised by Ms Cate Faehrmann, I clarify that the proposed new strangulation offence is intended to generally cover applying pressure to a person's throat or neck, and also to blocking the nose and mouth of a person. The Government is pleased that the Opposition does not oppose these bills that will improve the experiences of victims including but not limited to domestic violence victims and victims of crime committed by forensic patients. As Opposition members said, the amendments introduced by the bills are common sense.

The Government also thanks the Christian Democratic Party for its support of the bills. I will respond to the amendments of Reverend the Hon. Fred Nile during the committee stage. However, I note that the Government does not oppose the amendments proposed on the basis that the Government understands they have arisen from consultation with frontline police, who do an amazing job in supporting victims of domestic violence. The Government is pleased that The Greens support the proposed amendments to the New South Wales apprehended domestic violence orders regime and support the new strangulation offence under new section 37.

The Greens raised a question regarding not disclosing victim impact statements to forensic patients. Withholding a victim impact statement or victim's submission from a forensic patient is often necessary to protect the victim. Victims are typically known to patients and are often family members. Consequently, victim impact statements and submissions often contain important and relevant information that may assist the tribunal to make decisions about the care, treatment and detention of the patient. De-identifying victim impact statements or victim submissions often does not adequately protect victims' identities in those cases. It can be particularly stressful for victims if they feel that they need to provide the tribunal with a statement that is contrary to the information that they provide to the forensic patient, who they may still have contact with through family connections. I am pleased that The Greens are not opposing that measure.

I will deal with Mr David Shoebridge's concerns about the retrospective operation of the Victims Rights and Support Amendment (Motor Vehicles) Bill when we come to The Greens amendments in Committee. The Government is committed to supporting victims of crime. Taken together, these measures strengthen protections for victims, strengthen criminalisation of harmful conduct and expand access to support for family members of victims of certain crimes. On that note, I commend these bills to the House.

The DEPUTY PRESIDENT (The Hon. Paul Green): The question is that these bills be now read a second time.

Motion agreed to.

In Committee

The TEMPORARY CHAIR (The Hon. Shayne Mallard): There are four cognate bills: the Crimes Legislation Amendment Bill, the Crimes (Domestic and Personal Violence) Amendment Bill, the Mental Health (Forensic Provisions) Amendment Bill, and the Victims Rights and Support Amendment (Motor Vehicles) Bill. There being no objection, the Committee will deal with the Crimes Legislation Amendment Bill 2018 as a whole.

Reverend the Hon. FRED NILE (21:28): By leave: I move Christian Democratic Party amendments Nos 1 to 3 on sheet C2018-181 in globo:

No. 1 Police variations to orders

Page 4, Schedule 1 [3] (proposed section 73A (2) (b)), line 15. Omit "application". Insert instead "immediate application to an appropriate court".

No. 2 Police variations to orders

Page 4, Schedule 1 [3] (proposed section 73A (3)), line 18. Insert "each of the following to the extent that the police officer has knowledge of those matters" after "had regard to".

No. 3 Police variations to orders

Page 4, Schedule 1 [3] (proposed section 73A). Insert after line 34:

- (10) Despite subsection (9), the matter is to be listed on a domestic violence list at the appropriate court if it is possible to do so within 28 days after the police variation takes effect, even if the matter could have been listed on an earlier day on another list.

The Hon. SCOTT FARLOW (21:30): The Government thanks Reverend the Hon. Fred Nile and the Christian Democratic Party for moving the amendments. The Government understands the amendments arise from consultation with the Police Association. As the peak body representing frontline workers, its views should be supported. The Government does not share Labor's concerns. The Government understands that Labor is concerned that the amendments mean that some victims' views may not be sought. But we have faith that the Police Association and the Christian Democratic Party have worked to introduce amendments that are in the best interests of victims and that are feasible for police to enact.

The Hon. LYNDA VOLTZ (21:30): I will make a contribution but, according to the Parliamentary Secretary, it seems that I already have.

The Hon. Scott Farlow: I am psychic.

The Hon. LYNDA VOLTZ: Yes, very psychic. The Labor Party supports the Christian Democratic Party amendments Nos 1 and 3, but it does not support amendment No. 2. The legislation as currently drafted states:

A police officer must not make a variation in relation to an existing order unless the police officer has had regard to:

- (a) any views expressed by or on behalf of the protected person, and
- (b) the circumstances of the defendant.

The Christian Democratic Party amendment No. 2 seeks to insert "each of the following to the extent that the police officer has knowledge of those matters" after "has had regard to". That simply means the police need to seek knowledge of those matters. It is inconceivable to suggest that they do not seek the views expressed by or on behalf of a protected person when a variation is being made to an existing order. One has to do that; we believe it is important. The orders concern the victims. The police should have the resources to do that. If not, the Government should explain why they do not. The Opposition does not support Christian Democratic Party amendment No. 2.

Mr DAVID SHOEBRIDGE (21:32): The Greens do not oppose Christian Democratic Party amendments Nos 1 and 3, but we oppose amendment No. 2. We do not have any difficulty with the views of the Police Association being considered, but they should not be determinative. Sadly, when it comes to criminal law or matters such as the Crimes Legislation Amendment Bill 2018, too often this Government considers that

the views of the Police Association are determinative. This is a poor amendment. Currently subsection (3) of the new section 73A provides that a police officer must not make a police variation in relation to an existing order unless the police officer has had regard to:

- (a) any views expressed by or on behalf of the protected person, and
- (b) the circumstances of the defendant.

Clearly, when interpreting that subsection a court will not take into account views that a protected person may have expressed while they were locked in a room where nobody could hear them. The section requires the police officer to seek any views expressed by or on behalf of the protected person and to take them into account. Police also need to consider the circumstances of the defendant. That is what is required under the current drafting. Before the police make a variation to an interim or final apprehended domestic violence order, as this unique power is proposed, it will be essential that they take into account the views expressed by or on behalf of the protected person. The amendment moved by Reverend the Hon. Fred Nile—which will, unfortunately, be accepted by the Government and therefore will become law—would have subsection (3) read:

A police officer must not make a police variation in relation to an existing order unless the police officer has had regard to each of the following to the extent that the police officer has knowledge of those matters:

- (a) any views expressed by or on behalf of the protected person, and
- (b) the circumstances of the defendant.

If the Government accepts the Christian Democratic Party's amendment without criticism, a police officer could then not undertake to discover the views expressed by or on behalf of the protected person, be deliberately ignorant of the circumstances of the defendant and make a variation order. That would satisfy the requirements. That is a ridiculous position to put the law in. The Greens can see the rationale for giving police limited powers to make variations of interim or final apprehended domestic violence orders. If they are given the power to do that, at a bare minimum, the police must be required to have regard to any views expressed by or on behalf of the protected person. That is the purpose of the order.

To allow the police not to have regard to those views, for whatever reason, is a poor amendment. Simply because the amendment came from the Police Association does not mean it should be law. It is a bad amendment. It means that the amendments—which are otherwise supported—allow the police to make variation orders without having any regard to the views of the protected person. Surely that cannot have been the intention of the Attorney General. I do not how the Police Association has managed to pull this off and create such a noxious intervention in what is otherwise a good law. I do not know how it has happened. It tends to happen a bit in New South Wales politics that what they ask for they get. It is a bad amendment.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): I have been asked to put the questions seriatim. Reverend the Hon. Fred Nile has moved Christian Democratic Party amendments Nos 1 to 3 on sheet C2018-181. The question is that Christian Democratic Party amendment No. 1 be agreed to.

Amendment agreed to.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The question is that Christian Democratic Party amendment No. 2 be agreed to.

Amendment agreed to.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The question is that Christian Democratic Party amendment No. 3 be agreed to.

Amendment agreed to.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The question is that the Crimes Legislation Amendment Bill 2018 as amended be agreed to.

Motion agreed to.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): There being no objection, the Committee will now deal with the Crimes (Domestic and Personal Violence) Amendment Bill 2018 as a whole. There being no amendments, the question is that the bill as read be agreed to.

Motion agreed to.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): There being no objection, the Committee will now deal with the Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018. There being no amendments, the question is that the bill as read be agreed to.

Motion agreed to.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): There being no objection, the Committee will now deal with the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018 as a whole.

Mr DAVID SHOEBRIDGE (21:39): I move The Greens amendment No. 1 on sheet C2018-178:

No. 1 **Retrospective application of amendments**

Page 3, Schedule 1 [3], lines 27–31. Omit all words on those lines. Insert instead:

Amendments apply to act of violence occurring on or after 31 January 2014

- (1) The amendments made to this Act by the amending Act extend to an application for victims support relating to an act of violence occurring before the commencement of those amendments (the *commencement day*) if the act of violence occurred on or after 31 January 2014.
- (2) An application for victims support made under subclause (1) in relation to an act of violence occurring before the commencement day may be made within 2 years after the commencement day or within the time permitted by section 40, whichever period ends later. Sometimes we should do something for people who do not ask for it. The amendments to the Victims Rights and Support Act being made through the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018 are supported by every party in the Chamber. When the proposed amendments were announced by the Attorney General, he made it clear why these amendments were needed. The media release states:

Close family members of people murdered in attacks by drivers of motor vehicles in NSW will soon have access to support similar to those made available to family members of murder victims killed by other means, under legislation introduced into the Parliament today.

Attorney General Mark Speakman said the murder of Nicholas McEvoy, who was deliberately run over by the driver of a van, highlighted a gap in appropriate support under the Victims Support Scheme (VSS) for some families of victims killed intentionally by drivers in motor vehicles.

'I thank the McEvoy family for bringing to my attention a loophole in the law that meant some families were worse off just because of a difference in the murder weapon. Their advocacy means that gap in the VSS will be closed. As a result of their actions, they have saved other families from the additional trauma they faced after Nick's tragic death'.

I endorse all those words from the Attorney General. The amendments do not provide a huge amount of additional compensation for the family members of victims of homicide by motor vehicles. They provide up to \$5,000 to cover urgent expenses that were required to secure their safety, health or wellbeing; a further \$5,000 to cover justice-related expenses associated with relating criminal or coronial proceedings; and a recognition payment of \$15,000 for a financially dependent family victim or \$7,500 for a financially non-dependent parent, step-parent or guardian. As I understand matters, the McEvoy family have not asked for these benefits to be made retrospective. They, like many advocates who have suffered a tragedy, are conscious of seeking to change the law so that others will benefit, not them. The Greens amendment will provide that:

- (1) The amendments made to this Act by the amending Act extend to an application for victims support relating to an act of violence occurring before the commencement of those amendments (the *commencement day*) if the act of violence occurred on or after 31 January 2014.
- (2) An application for victims support made under subclause (1) in relation to an act of violence occurring before the commencement day may be made within 2 years after the commencement day or within the time permitted by section 40, whichever period ends later.

The amendment will have one very real effect: If the McEvoy family chose to make an application, the amendment would allow them two years to consider their position. The last thing we want to do is politicise the extremely good and brave work of the McEvoy family. This amendment is not sought for the purpose of putting out a press release and shaming the Government or seeking in any way to divide the Chamber on a partisan point. It is put forward as, I am hoping, the last amendment I will move in this parliamentary year in order to do an unasked for good for a family who deserves a break. That is why The Greens have moved this amendment.

The Hon. SCOTT FARLOW (21:42): I thank Mr David Shoebridge for raising this concern in Committee. I also thank the McEvoy family for their hard work and advocacy in support of the Government's reforms, colloquially known as "Nick's law". After suffering the unthinkable tragedy of having their son murdered, it was the McEvoy family who first brought to the attention of the Attorney General that a gap in the law existed for the non-dependent family members of homicide victims who are killed by a motor vehicle and who seek financial assistance through the Victims Support Scheme. The Government owes a huge debt of gratitude to the McEvoy family for their incredible work on behalf of families who may suffer this terrible tragedy.

These reforms have been drafted in close consultation with the McEvoy family to ensure that when a family member is murdered, whether by firearm, knife, motor vehicle or some other means, close family members have access to financial support through the Victims Support Scheme. The Attorney General's office continues to liaise with the McEvoy family to ensure that these reforms operate as the family intended. The McEvoy family's

actions will save other families from the trauma they suffered after Nick's tragic death. For those reasons, the Government opposes The Green's amendment—which I note is not costed.

The Hon. LYNDA VOLTZ (21:43): I had hoped that the Government would put up a more compelling argument than the one stated. The reality is that the law is colloquially called "Nick's law" and it does not apply to Nick McEvoy's family. It is their right. They came to the Government to fight for the right to compensation. To include them in this legislation would be a mark of respect to the family and the fight they have had. As for the amendment not being costed, it would not be a huge leap for the Government to fund this—considering some of its other significant expenditure. I am happy to show those costings if the Parliament is so tied to costings. It is not a huge amount of money. It will not capture a lot of people but it will capture the family who did not receive compensation and who have fought to have this law introduced.

Mr DAVID SHOEBRIDGE (21:45): I listened carefully to the Parliamentary Secretary's reasons for opposing this amendment and, as best I can tell, it is that the bill as originally drafted reflected what the McEvoy family were asking for. I accept that. They are not asking to have this compensation extended to them. I accept the reason they have done that is they are being selfless in what they are seeking. As I said, sometimes we can deliver a little bit of unlooked for, unasked for good. The Parliamentary Secretary said this is not costed. We are talking about extending the Victims Support Scheme to circumstances where a motor vehicle has been used as a homicide weapon.

I hope that, at best, we are talking about a tiny handful of incidents—perhaps one, maybe two, three, maybe five; hopefully not that many—where this has happened since January 2014. The Government says the proposal is not costed and that is why it is opposing the amendment. Last time I checked, the State budget was in the order of \$65,000 million. I put on record how relatively modest the additional financial contribution would be for a handful of families who have had a loved one killed in a homicide using a motor vehicle. The reasons given is it is not costed and it is not what the McEvoy family asked for. Those reasons are unpersuasive.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): Mr David Shoebridge has moved The Greens amendment No. 1 on sheet C2018-178. The question is that the amendment be agreed to.

Amendment negatived.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The question is that the Victims Rights and Support Amendment (Motor Vehicles) Bill 2018 as read be agreed to.

Motion agreed to.

The Hon. SCOTT FARLOW: I move:

That the Chair do now leave the chair and report to the House the Crimes Legislation Amendment Bill 2018 with amendments, and the Crimes (Domestic and Personal Violence) Amendment Bill 2018, the Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018 and the Victims Rights and Support Amendment (Motor Vehicles) Bill without amendment.

Motion agreed to.

Adoption of Report

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

That the report be adopted.

Motion agreed to.

Third Reading

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

That these bills now be read a third time.

Motion agreed to.

Adjournment Debate

ADJOURNMENT

The Hon. SARAH MITCHELL: I move:

That this House do now adjourn.

WHITE RIBBON CAMPAIGN

The Hon. SHAOQUETT MOSELMANE (21:49): Last night I had the honour yet again of hosting the White Ribbon fundraiser at Parliament House with more than 200 guests and many members of Parliament,

including Premier the Hon Gladys Berejiklian and the Leader of the Opposition in this Chamber, the Hon. Adam Searle, representing the Leader of the Opposition Mr Michael Daley. It was such a successful function that it exceeded our expectations. If all cheques and credit card payments clear, we will have raised \$69,500. The star of the night and the man responsible for organising the event is Vincent De Luca, OAM, White Ribbon Ambassador. He made it happen, and quite deservedly it is his success.

I thank him and all the other members of Parliament who supported this event by attending—namely, the Hon. Victor Dominello, Minister for Finance, Services and Property; the Hon. Mark Speakman, SC, Attorney General; the Hon. Matt Kean, Minister for Innovation and Better Regulation; the Hon. Stuart Ayres, Minister for Sport; John Sidoti, Parliamentary Secretary; the Hon. Scot MacDonald, Parliamentary Secretary for Planning; Jenny Aitchison, acting shadow Minister for Women; Kate Washington, shadow Minister for Early Childhood Education, and the Hunter; Guy Zangari, shadow Minister for Police; Jodie Harrison, member for Charlestown; Jihad Dib, shadow Minister for Education; the Hon. Mick Veitch, shadow Minister for Lands; Reverend the Hon. Fred Nile, the Assistant President of the Legislative Council; the Hon. Courtney Houssos; Hugh McDermott, member for Prospect; Paul Scully, member for Wollongong; Anoulack Chanthivong, member for Macquarie Fields; Tim Crakanthorp, member for Newcastle; Steve Kamper, member for Rockdale; Stephen Bali, member for Blacktown; David Mehan, member for The Entrance; and Nick Lalich, member for Cabramatta.

The three organisations that will receive the funds are: the White Ribbon Foundation, represented by Mr Peterson Opio and Ms Delia Donovan; Brewarrina Safe House, represented by chief executive officer Ms Ann Winterton; and the Women's and Girls' Emergency Centre, Redfern, represented by chief executive officer Ms Helen Silvia. There were many community members and individuals present, including sporting, community, religious and charity leaders; police officers; the Director of Public Prosecutions; army, navy and air force officers; the heads of netball, the National Rugby League and football; Law Society members; the Ethnic Communities Council; victims support services; Legal Aid; Amnesty International; councillors; and our regular ambassadors, Clint Newton, Luke Lewis and Luke Burgess.

White Ribbon Day provides much-needed awareness of the campaign to prevent violence against women. It creates positive role models for men and boys and encourages all Australians to stand up, speak out and act on this important issue. In the 27 years since the White Ribbon Campaign was launched in Australia, men have pledged never to commit, condone or remain silent about violence against women and girls. Unfortunately, the epidemic of violence against women in Australia continues, and is demonstrated by the harrowing present-day statistics. On average, one woman a week is murdered by her current or former partner; one in two women has experienced sexual harassment during her lifetime; one in five women has experienced sexual violence since the age of 15; one in four women has experienced emotional abuse by a current or former partner since the age of 15; one in six women has experienced stalking since the age of 15; and almost 40 per cent of women continued to experience violence from their partner while temporarily separated.

They are appalling figures that shame our nation. We all know the devastating social, financial and emotional impact that domestic violence can have on the victim, their families and children. The White Ribbon Campaign has been remarkably successful in making violence against women part of the national conversation. Just as importantly, it needs the money to achieve what it sets out to do. Last year White Ribbon Australia reached \$5.5 million in annual revenue, which is an outstanding achievement. Those funds were used for its primary prevention initiatives, including public information and awareness-raising campaigns, partnerships and political advocacy, and educational resources programs in schools and workplaces—all of which are aimed at preventing violence against women and promoting gender equality. Let us all commit to continuing our support for the White Ribbon Campaign and stopping violence against women so we can all look forward to an Australian society where all women can live in safety, free from violence and abuse.

DEPUTY PRESIDENT AND CHAIR OF COMMITTEES

The Hon. TREVOR KHAN (21:54): As 2018 and the Fifty-sixth Parliament draw to a close, I thank honourable members for the cooperation, professionalism and deference they have demonstrated in their interactions with me in my role as Deputy President and Chair of Committees. In doing so, I would like to present the House with some interesting statistics regarding the Committee of the Whole in 2018. The figures are current as at the conclusion of sitting on Thursday of last week, and I thank John Young and the Legislative Council Procedure Office for their assistance in compiling the numbers. Seventy-eight bills were passed by the Legislative Council. There were 42 bills considered in Committee of the Whole, one of which was the Hon. Paul Green's Modern Slavery Bill 2018—the only private member's bill to be considered in Committee this year. Of the 42 bills given consideration, 12 were successfully amended. A total of 653 amendments were circulated, of which 438 were moved in the Committee of the Whole. Ultimately, 80 amendments were agreed to by the House, representing 18.3 per cent of amendments moved.

Of the 80 amendments, 32 were Government amendments. The next most prolific party was the Christian Democratic Party, with 16 amendments. There were 15 Greens, 10 Opposition and seven Shooters, Fishers and Farmers Party amendments. At the commencement of this sitting week, the Procedure Office had received 64 amendments to eight bills of the 18 that were, and are expected to be, dealt with by this House before the conclusion of sitting tomorrow. I thank all members for how they have interacted with me as Chair. Members, almost without exception, have proceeded with courtesy—even when the matters before the Committee have been particularly contentious. I note that many of the Committee stages have occurred late in the evening, and indeed sometimes in the early hours of the morning. I particularly note that members moving amendments have fully embraced the new procedures of the Committee, moving similar and consequential amendments in globo.

I have observed that members moving amendments have also embraced the discipline of limiting contributions to the amendments before the Committee, and have rarely strayed into making second reading speeches. All members should be proud of the discipline they have shown. It is demonstrative of how members in this place take pride in their craft. Finally, I say thank you to the Clerks and to the rest of Legislative Council Procedure Office staff. Without their dedication, expertise and willingness to rise to all challenges, this House would cease to function. The Fifty-sixth Parliament has been an historic one, with victories and setbacks all round. However, I am confident that all of us in this place gave it our all. I hope and wish for no less in the Fifty-seventh Parliament. I thank you all.

I want to add, on the run, that clearly a number of members will not be back with us next year. I have to say it is a matter of great regret for each and every one of them. They have made extraordinary contributions to this House and they all have much to be proud of. It is truly a gift to be a member of this place. I believe each and every one of those members who will be leaving us recognises how much of a gift they have received, and they have rewarded this Parliament appropriately. May I also say that my party has been impacted by the potentiality of extremism in recent months, with attempts by the alt-right to command some level of influence in our party. Clearly that has occurred with The Greens. Unlike some members of my party or of other parties in this place who talk about governing or performing for our base, I believe our obligation is to govern for the people of New South Wales. In many ways, that is a matter of governing for the middle. It is not about extremism; it is about decency and tolerance. That is only done through us all being careful and thoughtful.

MAMBO WANDA WETLANDS

PORT STEPHENS ELECTORATE LIBERAL PARTY CANDIDATE JAIMIE ABBOTT

The Hon. CATHERINE CUSACK (21:59): As members are aware, I have made many representations on the issue of the Mambo Wetlands over the past year, directly to Government as well as in this Chamber. Known as Lot 566 DP 27353A, the six-hectare site on the edge of the wetlands but not part of the council reserve was declared surplus by the Department of Education and sold by the New South Wales finance department in June 2016 following an arms-length process designed to avoid corrupt behaviour. Port Stephens councillor Jaimie Abbott has taken up this issue on several occasions with the Premier. Late last year Councillor Abbott moved a motion at council seeking compulsory acquisition of the site, with full costs to be borne by the State Government. The motion was unanimously supported by her fellow councillors, including Labor councillors, and so it became a bipartisan solution proposed by locals.

Councillor Abbott has continually raised the issue with every Government member and Minister she encounters and has secured the Premier's personal assurance that everything that can be done will be done to reacquire this precious parcel of wetlands. I thank Councillor Abbott and the Premier for their efforts on behalf of the community. As members are aware, in February the Premier formally responded to Mayor Ryan Palmer of Port Stephens Council acknowledging the request and instructing the planning Minister to pursue acquisition options. This was the breakthrough moment because, even though the sale of Mambo had been a hot political issue, Councillor Abbott had finally succeeded in getting all the key players in local and State government onto the same page to resolve the issue.

Further to the Premier's directive, the Office of Strategic Lands, located within the Planning portfolio, was tasked to reacquire the site. Members are aware that this is a complex process that respects private property rights. It is a legal process that must be undertaken in the correct sequence with proper time frames, in particular, undertaking good faith efforts for voluntary acquisition. I can confirm to the House that the Office of Strategic Lands has initiated those negotiations with the owner under section 10A of the Land Acquisition (Just Terms Compensation) Act 1991. On 30 August this year the Department of Planning and Environment issued a letter to the landowner regarding good faith negotiations and compulsory acquisition. The New South Wales Government is currently engaged in a six-month period of good faith negotiations before it can compulsorily reacquire the land.

The issue is in the hands of solicitors, who are adamant that politicians like me need to be circumspect in terms of what information can be released. I am sure that because I have been so keen, people in the planning department are having kittens hoping I do not overstep in releasing this information. But the community is so anxious about the land, with much of that anxiety driven by a misinformation campaign, that it is important to restate that constructive efforts by the council championing their community in a way that can get a positive outcome and the commitment of the Premier and Ministers to resolve it means that very significant progress is being made. This is tremendous good news for all those who care about recovering this site and ultimately incorporating it into the wider reserve.

On a personal note and on behalf of the Liberal Party and Government members, I extend our congratulations and best wishes to Councillor Abbott and her partner, Matt Bailey, for the safe arrival of their son, Harvey George Bailey, born at 6.45 p.m. on 1 November. This little boy has brought tremendous joy to his parents but also to all of us who are their friends and who have been privileged to share the journey to that monumental moment. Jaimie is the Liberal Party candidate for the electorate of Port Stephens and the birth of her son in the months before the election is inspiring for women everywhere but especially in that electorate. She is relentlessly optimistic, overflowing with energy and 2,000 per cent positive in her approach to representing her constituents and tackling issues that have been unresolved in the electorate, some of them for decades. I thank Jaimie for keeping all of us in Government focused on the needs of Port Stephens. She has had a huge impact on our awareness of those issues and we appreciate her constructive solutions that we can take forward and make happen.

The progress we are making on the Mambo Wetlands issue, which has been intractable for more than two years, gives me great hope as someone who wants Parliament to work for the people we serve. It gives me hope that people like Jaimie, who want to bring people together to solve problems, can succeed. She has turned this issue around with persistence and resilience. The campaign looming in Port Stephens will be a positive one. It will be focused on drama-free delivery for the needs of the community. It is my hope that when the new Parliament opens in 2019 Councillor Jaimie Abbott will be in it.

DEPARTMENT OF PLANNING AND ENVIRONMENT MINING TITLES UNIT

The Hon. ADAM SEARLE (22:04): I address the maladministration and possible corruption swirling around the mining titles unit in the resources part of the Department of Planning, about which we have been reading in the *Newcastle Herald* for two successive days. It is just the latest in a series of complaints or allegations connected to that part of public administration in this State concerned with mining in New South Wales. It has now been a little more than a year since Ms Rebecca Connor, former manager of the Department of Planning mine titles operations unit, was suspended from service a day after she had allegedly warned a senior manager she was about to make a protected public interest disclosure alleging serious misconduct by a former titles staff member, which she claimed had led to a mining lease approval that she advised senior managers should not have been approved and ought be revoked.

Ms Connor raised other allegations about the Resources and Geosciences division within the department, including that departmental staff were soliciting payments to personal credit cards from mining representatives. A senior governance manager tasked with taking a preliminary look at the matter found that there was a clear lack of understanding of the actual and perceived conflicts that had arisen within the department. Despite this, and despite the fact that there were allegedly up to 10 current and former staff involved in the payments to personal credit cards, incredibly the manager advised a supervisor that there was not "much value in conducting an investigation into this matter". The question of how that person reached such a conclusion warrants an investigation all of its own.

At best this manager's identification of the issues as being "in a similar vein to that which we have previously identified" paints a disturbing picture of maladministration and possible corruption within the Department of Planning. At worst this reference appears to be a nod to warnings given in 2013 by the Independent Commission Against Corruption [ICAC] of a resources policy and regulatory environment "conducive to corruption", which Ms Connor claims is still there—an environment that this Government has failed to address in its eight years in office. Culture is, of course, a hard thing to change. Ms Connor had been manager of her unit for barely a year when she learnt staff invited mining industry representatives to a departmental staff farewell and solicited the payments to personal credit cards. But it is precisely this point that shows just how tough someone has to be to blow the whistle on matters such as this. The ICAC's website carries a handy definition of a whistleblower. It states:

A whistleblower is a person who provides information and exposes corrupt conduct within a public sector organisation in the hope of stopping it.

It further states:

In NSW, if you report public sector corrupt conduct in good faith to the ICAC, you are protected by law from reprisals.

I do not know whether Ms Connor complained to the ICAC, but she certainly complained within her organisation. From what we know, it appears that she has not been afforded such protections. However, we have learnt about these matters only through the great investigative work of journalist Joanne McCarthy at the *Newcastle Herald*. It is only from her work that the public has learnt about the serious culture of reprisal, maladministration and possible corruption that appears to have attended the actions I describe. I fear that in the days and weeks to come we will hear more disturbing revelations. The people of New South Wales are right to be shocked at what they have been seeing and they are right to lay the blame at the feet of the Berejiklian Government. After eight years in office, the problems in mining administration appear to be getting worse rather than better. It does not have to be this way but there seems to be a culture of a lack of openness.

In question time today, the Opposition pursued the issue of the Ridglands variation, the \$5 million community fund that had been varied to only \$500,000 before being discovered and fixed. What Minister Harwin said in question time was right. I have pursued this issue in previous questions and at budget estimates and I pursued it again today. We are yet to get a straight answer about how it actually happened, who was responsible and what has been done to discipline those persons if wrongdoing has occurred. There has not been an acknowledgement that anything wrong has occurred. Yesterday we said that these matters should be referred to the ICAC and today we hear that they have been, which is of course a very good step towards restoring public confidence that a competent authority is looking at these matters.

But it is always a bad look when governments have to be dragged kicking and screaming to shine a light on the dark places of public administration. It appears that some Ministers and some parts of government would prefer to look intransigent or incompetent rather than corrupt. Either way it is the integrity of the planning system—in this case, the system of mining titles—that suffers. What is required is real transparency, not just token attempts to score points in question time. However, it appears that it will have to await a Daley Labor government elected next year to fix the matter. [*Time expired.*]

MR JEREMY BUCKINGHAM, MEMBER OF THE LEGISLATIVE COUNCIL

Mr JUSTIN FIELD (22:09): Tonight I speak in acknowledgement of the work and achievements of my colleague and friend Jeremy Buckingham. In the event that Jeremy is no longer a member of Parliament after the March 2019 State election, I wanted to join with my colleagues Cate Faehrmann, who will speak next, and Dawn Walker, who gave her valedictory speech earlier today, in acknowledging Jeremy's contribution to the New South Wales Parliament, politics in New South Wales, the environment, our climate, our rivers, farming and the wider Greens movement. I worked for Jeremy from his election in 2011 until early 2013. It was about 18 months—it felt like a lot longer than that. I do not think I have ever worked as hard as I did over that period—we all did—and it was the start of something quite special.

Jeremy started his term just as the people of New South Wales began to learn of the extent of coal seam gas exploration plans in this State. The majority of the State—from the Shoalhaven, the entire Sydney Basin, across the Western Division and all the way to the Queensland border—was covered with coal exploration licences. The Lock the Gate movement was just kicking off in Queensland. Jeremy's office became the de facto Lock the Gate campaign office in New South Wales in its early days, working hand in hand with Drew Hutton, Frackman Dayne Pratzky and others to get out the message to farmers and communities.

The coal seam gas inquiry that Jeremy negotiated with the Shooters, Fishers and Farmers Party and the Labor Party was a critical turning point. Jeremy's interrogation of the industry and work to ensure communities across the State had a voice in that inquiry shone a light on the substantial risks to our water, air, communities and climate presented by the industry. Many will have heard of Jeremy's Frack Finding Tour to the United States. The Buckingham team travelled with Lock the Gate President Drew Hutton, as well as landholders and campaigners Kim and Peter Martin, across the US to learn firsthand about the impact fracking.

The experience was a pivotal moment in the campaign for New South Wales—the lessons Jeremy brought back to this State and the stories of farmers like John Fenton in Wyoming, the former Mayor of Dish in Texas and campaigners across Pennsylvania gave Jeremy and the campaign a credibility in this place and in the media that was unmatched by any others in politics. And that was his strength: to go and see, hear and share stories. He is a storyteller and it is a wonderful sight to see him in story mode. It is motivating and he is powerfully effective.

That trip was noticed by many in the community and this place. I remember Duncan Gay carrying around a folder for a long time with the logo Max Phillips created for the trip to the US, with Jeremy in his cowboy hat behind the wheel of what I am reliably informed by the Hon. Dr Peter Phelps is a 1972 Ford Country Squire—I do not know how I ever forgot. In answer to a question in this place Duncan Gay went through a detailed extrapolation of his calculation of the carbon emissions from that trip to the United States had we been driving that vehicle. I seek leave to table an illustration pertaining to Jeremy Buckingham's Frack Finding Tour.

Leave granted.

Document tabled.

Jeremy has done politics hard and fast. His tactics have been raw but brutally honest. No-one can doubt his effectiveness as a campaigner. Few will forget him lighting the Condamine River on fire or his Steve Irwin style "Crikey!" as he almost fell off his kayak. I am convinced that without Jeremy Buckingham in the New South Wales Parliament over the last eight years, New South Wales would likely have seen coal seam gas wells dotted across this State. If Duncan Gay is listening tonight, he can be sure Jeremy has saved many more carbon emissions than he ever spent travelling around this State and the world talking to people about the impacts of this industry.

Jeremy's contribution does not take away from the work of communities across the State, from Bentley in the Northern Rivers, to Gurley, the Pilliga, Gloucester, Fullerton Cove, Camden and Sutton Forest in the south—people who are on the front line, many for years, and we do not forget those still campaigning today, particularly in the Pilliga. But his presence on this issue—his tireless energy to get across the State to meet people, to listen and to inspire—was a critical ingredient in an incredibly successful public campaign.

I take this opportunity to acknowledge on Jeremy's behalf his staff over the past eight years: Jane Garcia, Jack Gough, Adam Guise, Louise Callaway and the rock who has been with Jeremy since he first decided to run for preselection to be a Greens member of Parliament, Max Philips. It has been a pleasure to work with you all. I am sure Jeremy would have liked to have given this speech and acknowledged your efforts and contribution. It is sad for me that Jeremy is not able to give his valedictory speech today. In the event that he is not a member of Parliament after the next election, the Parliament will certainly be less interesting. More to the point, the people of New South Wales will have lost an effective and passionate voice for communities and the environment. Jeremy, mate, I am confident that history will judge your contribution very well indeed. [*Time expired.*]

MR JEREMY BUCKINGHAM, MEMBER OF THE LEGISLATIVE COUNCIL

Ms CATE FAEHRMANN (22:14): Tonight I speak about one of the most incredible environmental and community campaigners in this country's history, someone whose passion, dedication and charisma has allowed him to have a level of influence and respect which far surpasses what most members of Parliament will ever achieve. I am speaking of course of my friend and colleague Jeremy Buckingham. Tonight in the short time available I want to place on record some of his remarkable achievements in the eight years since he was elected to this place in 2011. First and foremost among these was his successful campaign to stop coal seam gas in New South Wales. It is not an exaggeration to say that without the contribution of Jeremy coal seam gas wells would be pockmarking our countryside.

Jeremy worked tirelessly with community groups, farmers and the Lock the Gate movement. He spearheaded the parliamentary inquiry into coal seam gas [CSG] and reversed the royalty holiday on gas extraction. He exposed foaming wells in Western Sydney, was integral to the Northern Rivers movement which culminated in the Bentley blockade, and worked with Penny and Robbie Blatchford to stop CSG in Gurley. He assisted Victoria and Tasmania with their campaigns for fracking bans and worked tirelessly for the people of the Pilliga, Gloucester and the Hunter in their campaigns. He attacked the economic case for gas and was the first to raise the issue of a domestic gas reservation policy, which has since become Commonwealth policy. And, of course, there is the famous video, which my colleague Justin Field has already mentioned, of the Condamine River on fire, which has had tens of millions of views and been shared by everyone from Bernie Sanders to Russell Crowe and Banksy.

On coalmining Jeremy was equally groundbreaking, working with farmers and communities to stop the Shenhua, Bylong, Berrima, Rocky Hill and Wallarah 2 coalmines. We have our stories about Duncan Gay. I recall from my previous time as a member of this place Duncan Gay relentlessly teasing Jeremy every time he spoke. "Shenhua, Shenhua," was what Duncan Gay said, because Jeremy Buckingham asked so many questions on Shenhua. He started the "We need to talk about coal" campaign and now this has become one of the main debates in Australia. He developed and introduced a policy for a 10-year phase out of coal exports policy. He was charged with trespass for jumping a fence and taking a video of the giant Warkworth mine and arrested up at Adani with Dawn Walker.

His work on the Darling River out in Broken Hill is legendary. He was the first politician to really listen to the community and take their concern into the Parliament, making the plight of the Darling a national issue. I remember very well a packed community forum in 2015 in Broken Hill with Richard Di Natali. When we went into the forum Richard was expecting about 10 people. I remember the look on Richard's face when 150 people had come to listen to The Greens and Jeremy speak about water. I know that the recent \$25 million funding for the Wilcannia weir which Jeremy has been banging on about since 2014 is one of his proudest campaign victories.

Jeremy led the successful campaign to stop the Western Sydney waste incinerator. He took up the campaign with gusto and rallied the community to the point where every political party had to oppose the toxic incinerator.

Jeremy and his office pioneered the use of social media and video for political campaigning in New South Wales. He is one of the most successful politicians in Australia on the internet, with multiple videos with millions of views and a huge and dedicated following. Jeremy has communicated with regional and rural voters about the issues they care about more than any other Greens representative. That means here in New South Wales, in every other State and federally. He did this because he broke down barriers. He smashes the stereotypes of what a typical greenie is and so many people love him for it. I love him for it.

As Senate candidate in 2013, I went to AgQuip with Jeremy. As a direct result of his inspirational campaigning on coal and gas over the preceding few years, I was blown away by the number of people who were approaching our stall at The Greens tent to find out about our work on coal and gas and to congratulate Jeremy on his advocacy in this area. The Greens tent was humming because of Jeremy's work and hitting the road and making connections with thousands of people. As a direct result of Jeremy Buckingham's energy, passion and incredibly sharp strategic mind, we saw a lift in the regional vote and we saw more people from the regions join The Greens and take an active involvement in the party. Jeremy was a catalyst in bringing regional communities together and bringing their voices to Parliament, always with boundless energy and wicked humour. Jeremy Buckingham has done more to scare the pants off the National Party in his eight years in Parliament than any other individual has done in a lifetime. Of course, winning Ballina and Lismore was the culmination. The people of the Northern Rivers, our members and supporters in Lismore and Ballina are hugely thankful for that.

Courage is pushing up against the status quo and challenging existing power structures, especially if they are unfair or stale or privileged. Jeremy has done this in spades. He has challenged his own party to reform, including arguing for greater member participation and the direct election of office bearers. He has refused to stay silent when critics within the party have tried to silence him and intimidate him. I thank you for that, Jeremy. Your determination and energy and sometimes sheer bloody stupidity to win for the community and against coal and gas giants is unsurpassed—not by any Greens I know, not by any environmental campaigner I know, not by any member in this place, not by anyone. History will show that you, Jeremy Buckingham, are a true climate warrior and the finest environmental campaigner I have had the pleasure of ever working with.

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

Motion agreed to.

The House adjourned at 22:20 until Thursday 22 November 2018 at 10:00.