New South Wales

Legislative Council

PARLIAMENTARY DEBATES
(HANSARD)

Fifty-Seventh Parliament
First Session

Thursday, 4 June 2020

Authorised by the Parliament of New South Wales

TABLE OF CONTENTS

TABLE OF CONTENTS—*continuing*

LEGISLATIVE COUNCIL

Thursday, 4 June 2020

The PRESIDENT (The Hon. John George Ajaka) took the chair at 10:00.

The PRESIDENT read the prayers.

Committees

SELECT COMMITTEE ON ANIMAL CRUELTY LAWS IN NEW SOUTH WALES

Reports

The Hon. MARK PEARSON: I table report No. 1 of the Select Committee on Animal Cruelty Laws in New South Wales entitled *Animal Cruelty Laws in New South Wales*, dated June 2020, together with transcripts of evidence, tabled documents, submissions, correspondence, answers to questions taken on notice and supplementary questions, responses to the online questionnaire and summary report of those questions. I move:

That the report be printed.

Motion agreed to.

The Hon. MARK PEARSON (10:03:08**):** I move:

That the House take note of the report.

Debate adjourned.

Documents

AUDITOR-GENERAL

Reports

The CLERK: According to the Public Finance and Audit Act 1983, I announce receipt of the Auditor-General's Financial Audit Report entitled *Universities 2019 Audits*, dated 4 June 2020, received out of session and authorised to be printed this day.

Announcements

HANSARD SERVICES

The PRESIDENT (10:03:50**):** To maintain social distancing in the office and to minimise travel on public transport during peak times, only half of the Hansard staff can be present in Parliament House at any given time, which limits the amount of transcription that can be completed on each sitting day. The Hansard team is working to complete all transcripts as quickly as possible with these reduced numbers, but there may be delays of one to two business days. Arrangements are being made to equip Hansard staff with new tools that will allow them to produce House transcripts from home, but it is unlikely that these will be in effect before the end of June. Members can expect the resumption of normal Hansard service levels when the Parliament returns from the winter break. I am sorry for these delays, but I think all members would agree that the safety of the dedicated women and men of the Hansard team must take priority.

Business of the House

POSTPONEMENT OF BUSINESS

Mr JUSTIN FIELD: I move:

That business of the House notice of motion No. 1 be postponed until the next sitting day.

Motion agreed to.

The Hon. DAMIEN TUDEHOPE: I move:

That Government business orders of the day Nos 1 to 7 be postponed until a later hour.

Motion agreed to.

SUSPENSION OF STANDING AND SESSIONAL ORDERS: CONDUCT OF BUSINESS

The Hon. COURTNEY HOUSSOS: I move:

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

Motion agreed to.

CONDUCT OF BUSINESS

The Hon. COURTNEY HOUSSOS: I move:

That debate on the matter of public importance, on the *Notice Paper* for today, shall not exceed 30 minutes.

Motion agreed to.

Matter of Public Importance

PUBLIC SECTOR WAGES

The Hon. COURTNEY HOUSSOS (10:12:17**):** I move:

That the following matter of public importance should be discussed forthwith:

The Government's policy to not award public sector employees increases in remuneration or other conditions of employment.

I am moving this motion on the day after New South Wales officially moved into recession. The figures are in. In the last quarter our economy shrank by 1.5 per cent. There can be no more important issue for us to discuss today than the fact that our State is now, for the first time in 29 years, officially in a recession. I may have been a child during the last recession, as I note the Treasurer was, but that does not mean that I am unaware of the devastating effects that a recession will wreak on working people, families, young people and the elderly. Far from heeding the vote of this House on Tuesday, on the day we officially went into recession, the Government was at the Industrial Relations Commission filing paperwork to cut the wages of 410,000 public sector workers.

I acknowledge that there is a principle of fairness for individual workers concerns—a principle that the parliamentary wing of the Labor movement will always stand up for—but there are many workers who have unfairly lost their jobs during this crisis. The Labor Party is standing up for the workers in cafes, retail and tourism who lost their jobs by insisting that the Government should adhere to its own laws. This is not an either/or proposition as the New South Wales Liberal-Nationals Coalition likes to frame it. This is not a decision, as other households and other businesses will be forced to make, and are always forced to make, about whether they want to spend their money in one way or the other. The responsibility of a government is to weigh up the macroeconomic effects of its spending decisions. In an economic crisis—in a recession—we need both.

It may sound counterintuitive but we are going to have to spend our way out of this. The way we averted our last recession just over a decade ago was through the concerted economic stimulus that was undertaken by the Labor Government at the time. There was a short-term injection of cash handouts, a medium-term infrastructure spend on school upgrades and a long-term investment in major infrastructure projects. The Liberal and National parties are undermining the efforts announced by the Liberal-Nationals Coalition today of a stimulus into the housing sector by insisting on cutting the wages of men and women across the State.

I refer to The Australia Institute research because we have no other publicly available economic modelling. The entire Treasury department in New South Wales could not offer us any greater detail than a government media release. The Australia Institute research tells us that there are 1,100 fewer jobs through the proposed policy. This is not about an either/or proposition. This will actually cut jobs across New South Wales at a time when we cannot afford it. The idea that a retail or hospitality worker who has lost their job will simply be able to get a construction job in western Sydney, diverting labour, is far too simplistic. As JobKeeper and other initiatives run out we need this money in our economy. We need it even more.

Regional people understand the importance of public sector wages to stimulating the local economy. I stood with the town of Grafton to protest the closure of Grafton jail in 2012. The small business community are not usually a particularly militaristic bunch but the town shut down on that day because they understood the value of those 108 public sector jobs. They knew that money was coming back into their cafes, restaurants and tourism operators. Regional New South Wales will not forget this. Let us put the $3 billion saving that has been thrown around into context. Many people, including myself, have spoken at length about the light rail project in this House.

The last blowout on the metro project, announced only months ago, was $4.3 billion. That totally swamps the amount that this Government intends to rip out of the economy. The Government might like to dress this up as a fiscally prudent measure but it is the exact opposite. The value of this money is not just in the pockets of our nurses, police, teachers, hospital cleaners, frontline essential workers and so many public sector workers. It ends up in the pockets of retail and hospitality workers and small business owners. I urge the Government to do the

economically responsible thing, adhere to its own law and inject this much-needed money into the New South Wales economy.

The Hon. SHAOQUETT MOSELMANE (10:18:17**):** I thank the Hon. Courtney Houssos for putting forward this matter of public importance and giving us this opportunity. I thank the Government for agreeing to this opportunity for us to speak on the Government's policy to not award public sector employees an increase in remuneration or other conditions of employment. What an atrocious way to say thank you to the frontline workers of this State! Australia and New South Wales are on the cusp of a historic win against the coronavirus. Gratitude must go to the Australian people for complying with physical distancing and hygiene. Just as importantly, we must thank our frontline public sector workers, who put their lives on the line to keep us all safe.

What does the Government do in response? The Government decides to slug 410,000 public sector workers with a wage freeze. The Government argues that it is not a wage cut. It is a wage cut; a 2.5 per cent increase to salaries will be cut. That is a wage cut. For the life of me I cannot see what has come over this Government. Who is responsible for this decision? Rather than stimulate the economy by putting money into people's pockets to go into the shopping centres, restaurants, cafes and local tourist destinations and spend, the Government decides to cut their wages, make them poor and make the economy poorer.

If one wished to cut wages—and I do not encourage any wage cuts, but if that were the ultimate decision—then one would cut the salaries of the senior executives who are on high salaries already and who are more likely to save that money or cover their debts. This is either an ideologically driven decision or the Government wants to plug the big fat hole it created in the billions of dollars which it wasted on the light rail and other projects. Rather than cut $3 billion in wages, why not scrap the shonky sale of the Powerhouse Museum and use that money to help further invest in workers and small business operators to encourage them to hire more of those people who are now on the unemployment list? Rather than cut public sector salaries, why not end the mismanagement, incompetence and the waste that has been the hallmark of this Government through its major infrastructure projects such as the WestConnex, in which billions of dollars were blown out, along with the light rail? I concur with the Hon. Courtney Houssos about the $4.3 billion blowout in the Metro.

This is incompetence from the Government. Rather than make the people of New South Wales, the public sector workers, pay for its incompetence, the Government should be more careful and not waste public money. You cannot cut your way to growth. If the New South Wales Government slashes wages it will make it harder for the economy to escape the current downturn. Just listen to Josh Frydenberg. He says that Australia is in recession today for the first time since 1991. If you look globally, the circumstances are not too bright either. The most powerful stimulus from the New South Wales Government is its own workers. The New South Wales workforce puts its wages back into the economy and boosts local trade. It makes no economic sense to take money from their pockets—it certainly does not. Economics 101 will teach you that the more money you put into people's pockets, the more they get out and spend. That is what stimulates the economy, not taking $3 billion out of their pockets.

We need an immediate injection of funds into the economy. You need to give the money to the workers who have earned it and encourage them to spend it. That is one way to help stimulate the economy. Most people will not know this, but a significant part of public work is outside of Sydney. One in five jobs in the Far West is funded by the New South Wales Government. In the Central West and mid North Coast 40 per cent of jobs are in the New South Wales public service. Cut pay and you punish those regional economies. I thought The Nationals were about regional New South Wales. What has happened here? Where are they? Why did they not stand up and speak for their constituents in regional New South Wales?

Cutting public sector wages sends a powerful and dangerous signal that if it is good for the Government to cut wages, it is good for the private sector to follow suit. Taking $3 billion out of circulation will shrink the New South Wales economy at a time it can least afford it. Business is not going to snap back to how it was pre-pandemic, nor will it look the same post-crisis. The Government must listen and do the right thing by the people of New South Wales.

The Hon. MARK BUTTIGIEG (10:23:43**):** I thank my colleague the Hon. Courtney Houssos for calling on this matter of public importance. A lot of Labor members wanted to speak to the disallowance motion on Tuesday, but did not have time. I am grateful to have this opportunity to contribute today. The last few days have been illustrative and informative of the Government's position on this. It is a timely debate because we can look in hindsight now at the various positions the Government has taken and bell the cat on what this is all about. Government members find it impossible to escape their ideological straitjacket. During the COVID-19 crisis it took the lead from the Victorian Premier, it did what had to be done, it shut down the economy and it got on top of the virus. But when it comes to the recovery, it goes back to the same tired old economics of austerity. The idea that in the deepest recession we have had since the Great Depression you would cut the wages of 410,000 public servants beggars belief on more than one level.

These are the people who are going out to look after our sick, putting their lives on the line, putting out fires, engaging in an interface with the public so that they can be kept safe, and what do we do? We tell them they will not get their 2.5 per cent pay rise because we want to set up this envy system whereby we do not think lazy public servants should get a pay rise and we will pump it into infrastructure. As if you cannot do both during the worst recession we have had since the Great Depression. It is economics 101, as my colleague the Hon. Shaoquett Moselmane pointed out. Economics 101 says that you do not cut wages during a recession. This is lesson number one. There was a bloke called John Maynard Keynes, whose work a few of you should read to understand what liquidity means.

The PRESIDENT: Order! I remind the Minister that he sets the example.

The Hon. MARK BUTTIGIEG: The Minister purports to be in charge of a finance ministry, but has he learned about the multiplier effect? When you inject cash direct into the banks of the economy it has a higher multiplier effect than infrastructure projects. Does the Minister get that? As I think this is very illustrative, I will quote Ross Gittins—

The PRESIDENT: If one more Government member interjects they will be called to order.

The Hon. MARK BUTTIGIEG: I will quote Mr Gittins because it goes directly to my argument. In yesterday's *The Sydney Morning Herald* the respected economist said:

> How on earth can someone get to be treasurer of our oldest State and yet say something as uncomprehending as that he has to freeze New South Wales public servants' wages so he can use the money to create jobs? Fortunately, Victoria's Treasurer is better educated.
>
> So, for the benefit of Dominic Perrottet, Economics 101, lesson 1: every dollar that's spent by governments, businesses, consumers or the most despised welfare recipient helps to create jobs. And don't tell me that, as well as creating jobs directly, your pet project will also create jobs indirectly. That's also very true of every dollar spent.
>
> In high school economics it's called "the circular flow of income". They ought to write a song about it: the money goes round and round. That's because what's a cost to an employer is income to the employee. And when that employee spends part of their wage in another employer's business, that cost to the employee becomes income to the other business. (I know it's complicated, but stick with it.)
>
> You have to be a duly elected politician to believe that only dollars that are spent by governments, bearing the label "job creation", do the trick—preferably with a ribbon to cut while the cameras role.

Ross Gittins is saying that this is all about optics; the idea that you would take money off other people and create an envious situation where we are going to pump it into infrastructure so that the lazy public servants do not get a rise but you will get jobs. That is what this is all about. The Minister belled the cat yesterday in question time when he was asked whether there would be forced redundancies and he refused to answer the question. Not only is the Government trying to trade off jobs from one sector to the other with the lower multiplier, instead of doing both, it is also implicitly saying that it is going to cut public sector jobs during a recession. This is the worst policy response I have ever seen from a government in history. It is shameful, it should not be allowed and thank God we disallowed it. I just hope the Government does not pursue it in the Industrial Relations Commission because it is mean, it is cruel and it is recession inducing.

The Hon. ANTHONY D'ADAM (10:29:16**):** I also thank the Hon. Courtney Houssos for bringing to the House this matter of public importance and thank the Government for allowing the debate to proceed. During the height of the crisis the Government was proud to proclaim that we are all in this together. In fact, this was a sentiment that was reiterated by the Leader of the Government on Tuesday. But now the Government has opted for the politics of division. It has chosen to pit the interests of public sector workers against the unemployed, to try and turn the goodwill of the community against frontline public sector workers and to stoke the politics of envy by asserting that job creation is contingent on public sector wage cuts.

On Tuesday Minister Mitchell went so far as to imply that public servants were privileged, lucky to have a job at all. I do not accept that it is fair to tell nurses, firefighters and teachers that they are "lucky" to serve in dangerous frontline occupations. Minister Mitchell's comments speak volumes about the political perspective of the Coalition Government. It is the world view of the boss, where workers should be thankful that they have a job and grateful that they have not been laid off. In the eyes of the Government, economic policies which secure good jobs and decent wages for all workers are simply impossible.

There are two principal issues in this debate. Firstly, there is the clear moral issue that at the very moment we should be acknowledging the lifesaving efforts of frontline workers this Government is choosing to cut their pay. I echo the sentiments of my colleagues who have highlighted the Government's callous indifference to the hard work of our public servants and health staff. NSW Labor wholeheartedly endorses fair wages for these essential workers who kept our society together during this testing period. If we believe in fairness and wages that reflect the value you create for society, then surely we have to support wage increases for the people whose efforts

have seen New South Wales avoid the catastrophes we are seeing play out in the United States, Russia, the United Kingdom and dozens of other countries across the world.

But I wish to focus on the second major issue in this debate: the economic consequences of a public sector wage cut. In typical fashion, the Government is disguising outdated and discredited economic ideas as commonsense public policy. Treasurer Perrottet has gone so far as to claim that cutting wages is an economic necessity in light of the COVID-19 recession. We are told that wage cuts are the shock therapy our economy needs to restart the engines of economic growth. Those arguments are plainly out of step with the international consensus on contemporary economic policy. The International Monetary Fund, the World Bank and our own Reserve Bank have all acknowledged that low wages are a handbrake on economic growth, not a precursor to prosperity. This is not the product of an ideological commitment to public spending but, rather, meticulous empirical observations that clearly indicate that wage cuts hamper economic growth.

While the Government is dusting off its copy of a first-year economics textbook from the 1980s the peak bodies of macroeconomic research and policy have moved on. This is because wages serve a dual function in our economy. Of course they remunerate employees for their labour but they also provide the consumption income that keeps businesses trading. Cutting wages suppresses consumption expenditure, leads to decreased tax receipts and increases expenditure on welfare and other government support programs. Keynes called it the paradox of thrift; we might call it economic common sense. If ordinary people do not have the money to buy goods and services, there is less demand for the labour that produces those goods and services. This often leads to a vicious cycle of declining confidence, declining spending and plummeting economic growth.

Conservatives are prone to invoking the moribund rhetoric of the thrifty shopkeeper in times of economic distress—I think the Hon. Scott Farlow made that case on Tuesday. We are told that running the New South Wales economy is much the same as running a small business, but this is a misleading comparison. The shopkeeper does not have to consider the systemic implications of their employees' wages. The impact of suppressing wages at the level of a small business on the revenue of that business is diffused in the complexities of the broader economy. However, the New South Wales Government has an obligation to maintain the integrity of our economic system as a whole. It must attend to both the budgetary implications of economic policy and the impacts on consumer confidence, aggregate spending and economic growth. This additional determinant of economic policy means that the Government must support fair wages, which generate consumption spending, and infrastructure investments, which generate investment spending.

These two elements of aggregate economic activity are the bedrock of growth. They are not mutually exclusive; they are two sides of the same coin. Infrastructure without economic activity is a pointless exercise and the Government should take advantage of low interest rates to invest in the long-term prosperity of the State. It is also worth noting that no other employer in New South Wales is able to leverage legislative power to cut their employees' wages. There is a clear conflict between the legislative role of the Government and its role as an employer. This is why public sector wages should be determined by an independent umpire at arm's length—that is a long-term position I have advocated in this place and before I came to this place. The Government is sending a clear message to employers in this State that wages should be curtailed and suppressed. This is clearly the wrong message to be sending given the macroeconomic implication of across-the-board wage reductions.

The New South Wales Government is Australia's largest employer. Suppressing the wages of hundreds of thousands of workers is not just morally bankrupt; it is economically negligent. This is precisely the time we should be incentivising spending by ordinary people to kickstart the economy and help our society move past this crisis. By cutting the wages of a large portion of our population we are extracting billions of dollars of much-needed income from the New South Wales economy. The Coalition is demonstrating just how deeply embedded austerity is in its political DNA. During the worst of the health crisis we were all in this together, but now as we are beginning to grapple with the economic consequences of the pandemic working people are again being asked to foot the bill.

Ms CATE FAEHRMANN (10:35:48**):** I make a brief contribution to debate on this matter of public importance. Many members of the Opposition and The Greens have pointed out how stupid, in the economic sense, the decision by the Government to freeze public sector wages was at this particular point in time. However, as Health spokesperson for The Greens I now want to focus on what it would have meant in particular for nurses and other healthcare workers who have worked so hard during this pandemic. I share a statistic with members of this House in relation to the impact on healthcare workers across the world: more than 600 nurses worldwide have died from COVID-19, which has infected an estimated 450,000 healthcare workers.

We also know that probably never in the history of this State have public sector workers been so appreciated as they have been at this particular time. We have had fireys who have been literally risking their lives saving lives and property. Of course, we have had fireys who tragically died trying to save the lives of others. We have had park rangers having to do exactly the same thing. Now we have this pandemic and our public sector

workers, including train drivers, bus drivers and nurses have had to continue going to work every day, increasing the risk to them and their families. Instead of them getting the 2.5 per cent pay rise that they had been expecting and budgeting for, this Government, while thanking them, said, "No, you are not worthy of this and we are going to do this". That is not just cruel; it is stupid economically, as pointed out by many contributors to the debate today.

I will quickly read out some emails we have received. I put on record that we have been inundated by thousands of public sector workers, particularly nurses, contacting us to tell us about their individual circumstances and urging members of this place to vote against the 2.5 per cent wage freeze—thank goodness we did. Sarah wrote: I wish the government could walk a day in our shoes in these COVID times, not knowing when we will be faced with someone who could pass it on to us, changing our policies just in case there's an outbreak, having to undress before we enter our homes. Even though our numbers have been small we had to plan for big. We still are. Whilst everyone starts going about their normal life again all we think about is when will a second wave come? We turn down offers of dinner at a friend's house in case we take it with us.

Another quote states:

> Having nursed for over 30 years and have been in my current position with [the health district] for the last 12 years I can confirm that I have never worked so hard. I can retire next year and feel saddened that the nursing profession seems to have been dumbed down and I hear comments from clients.

The following quote I particularly want to mention:

> As a registered nurse and midwife of 23 years … the wife of a Small Business Owner … who is working hard to keep his employees in jobs and ensuring there are no redundancies in his business I cannot underestimate the effect freezing my wage would have on our personal circumstances, the stress of losing that small 2.5 % adjustment to my wages which barely covers the increases in the cost of living particularly during these stressful and challenging times.

I thank all members in the House who supported the disallowance motion.

Mr JUSTIN FIELD (10:40:09**):** I support this matter of public importance and I thank the mover for the opportunity to speak. Not all of us had an opportunity to speak against the bill when it came to the House on Tuesday. This is the wrong policy for the times. Freezing public sector wages is a blunt instrument. It will have direct consequences on hundreds of thousands of public sector workers and their families—nurses, teachers, those who have been on the front line responding to the pandemic—but it has far broader implications. Removing this stimulatory measure, pulling it out from under the New South Wales economy will have devastating, broad implications for the economy.

If this crisis and the bushfire crisis before it has shown us anything, it has shown us how important a well-resourced and trained public sector is. These are the jobs that ultimately keep our society functioning. How do we get the economy back on track? We do that by making sure the health crisis is managed, and the heroes of that response have been the public sector. Far from being a cost burden, the public sector is the economic support vehicle for the New South Wales economy and the health of the community, and those two things are fundamentally intertwined. These crises have offered us in political office—not just the Government, but all of us here—an opportunity to rethink many areas of public policy, including the revenue and spending of the New South Wales Government. But this proposal to freeze public sector wages is not a rethink; it is the same tired old politics and policies of this Government.

If the budget shortfall is $20 billion over the next few years, as suggested by the Treasurer, then this policy represents a fraction of that task anyway. Why lead off by going after frontline workers, which will not even solve the problem? Doing this makes it look like a personal attack rather than a meaningful effort to explain the challenges to the New South Wales community about the budget. We need a holistic plan for the budget and the economy and it should not be reactionary, it should be forward thinking. The Government should have an infrastructure plan and should take advantage of record low interest rates to borrow to invest. The Government needs a tax reform plan in the short term to take the pressure off small business and to prepare to adapt to a changing revenue mix. New South Wales is too reliant on property transaction taxes. Let us bring in real tax reform first—the big things that are going to change life for the New South Wales community.

We need a plan to adapt to what is inevitably going to be a decline in coal royalties as production falls. We need to make some changes. I am prepared to work with the Government, but the Government should not start this recovery by going after public sector workers; the Government should be working with the public sector unions to make sure that it can be stronger in the future to protect us all. I support this matter of public importance.

Discussion concluded.

Bills

LAW ENFORCEMENT CONDUCT COMMISSION AMENDMENT BILL 2020

First Reading

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Natalie Ward, on behalf of the Hon. Damien Tudehope.

Second Reading Speech

The Hon. NATALIE WARD (10:44:39**):** On behalf of the Hon. Damien Tudehope: I move:

That this bill be now read a second time.

On 3 December 2019 the Assistant Inspector of the Law Enforcement Conduct Commission [LECC], Mr Bruce McClintock, SC, provided a special report to each of the Presiding Officers of Parliament. This report was tabled in the other place on 6 February 2020 and in this House on 25 February 2020. In that report the assistant inspector recommends that consideration be given to widening the definition of persons eligible for appointment as Chief Commissioner of the LECC.

The bill will amend the Law Enforcement Conduct Commission Act 2016 consistent with that recommendation. Section 18 (3) of the Law Enforcement Conduct Commission Act 2016 currently provides that a person is not eligible to be appointed as Chief Commissioner or to act in that office unless the person is a current or former judge or other judicial officer of a superior court of record of New South Wales or of any other State or Territory of Australia. In his report, the assistant inspector expressed the view that "there are very few people who fall within this category and that many would, for various reasons, be unsuitable or unwilling to accept" an appointment as Chief Commissioner of the LECC, and that this provision undesirably narrows the pool of persons available for appointment.

The bill responds to these concerns and widens the definition of persons eligible for appointment as Chief Commissioner of the LECC in a measured and reasonable fashion. In particular, the proposed amendments provide that a person will not be eligible to be appointed as Chief Commissioner of the LECC, or to act in that office, unless the person has "special legal qualifications". A person who has "special legal qualifications" is a person who is, or is qualified to be appointed as, a judge or other judicial officer of a superior court of record of New South Wales or of any other State or Territory in Australia, or is a former judge or judicial officer of such a court. This means that a person would currently need at least five years' standing as an Australian lawyer to meet the "special legal qualifications" threshold. This is currently the minimum qualification required to be eligible to be appointed as a justice of the High Court of Australia.

This amendment will bring the eligibility criteria for chief commissioners of the LECC into line with the corresponding eligibility criteria for commissioners of the Independent Commission Against Corruption, the ICAC. The ICAC may exercise royal commission-type powers similar to those that may be exercised by the LECC, including the power to hold public inquiries, summon witnesses and compel the production of evidence. The proposed amendments to the LECC Act would be consistent with the eligibility requirements that currently apply to ICAC commissioners. The bill also corrects a drafting oversight regarding when a vacancy in office occurs. Clause 7 of schedule 1 to the LECC Act sets out when the office of a member of the commission, assistant commissioner or alternate commissioner becomes vacant, including circumstances like the death or resignation of a person. Clause 7 (2) also provides that the Governor may remove a person from office for incapacity, incompetence or misbehaviour.

Clause 7 (1) (k) of schedule 1 to the LECC Act currently provides that the office of a member of the commission, assistant commissioner or alternate commissioner becomes vacant if the holder is removed from office under clause 7 of schedule 1 to the LECC Act. This does not recognise that a person may also be removed from office under part 6 of the Government Sector Employment Act 2013, which relates to the removal of statutory officers by the Governor. On 15 January 2020 the Governor, on the advice of the Executive Council, removed Mr Patrick Saidi from the office of Commissioner for Oversight of the LECC, pursuant to section 77 of the Government Sector Employment Act. Mr Saidi's removal from office followed the assistant inspector's special report to Parliament, which considered if Mr Saidi was guilty of officer maladministration or misconduct, with the assistant inspector ultimately deciding against such a finding. I am advised that Mr Saidi was given the opportunity to make submissions, but that he did not raise any objection to the proposal that he be removed from office.

It is proposed to amend clause 7 of schedule 1 to the LECC Act to ensure that, if a person has been removed from office under part 6 of the Government Sector Employment Act, then the office becomes vacant. The bill also includes an associated savings and transitional provision to apply the amendment to the removal from office of a

person before the commencement of the section. This will clarify that the office of the Commissioner for Oversight is vacant for the purposes of clause 7 of schedule 1 following Mr Saidi's removal from office. The bill does not expand the circumstances in which a member of the LECC can be removed from office; it merely corrects a drafting oversight to clarify that if a person is removed from office by the Governor under part 6 of the Government Sector Employment Act, the office also becomes vacant. These amendments to the Law Enforcement Conduct Commission Act 2016 will help to ensure that there is an appropriate pool of persons eligible to be appointed as Chief Commissioner to lead the LECC as it continues its important work. I commend the bill to the House.

Debate adjourned.

RESIDENTIAL APARTMENT BUILDINGS (COMPLIANCE AND ENFORCEMENT POWERS) BILL 2020

Second Reading Speech

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (10:50:46**):** I move:

That this bill be now read a second time.

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

Leave granted.

I am proud to introduce the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. This bill delivers on the New South Wales Government's commitment to arm the Building Commissioner with a suite of comprehensive powers against noncompliant developers and serious defects identified in residential buildings. The bill provides complementary enforcement and investigation powers to the department to order the rectification of work or prohibit building work from being completed. Specifically, it will empower the regulator to operate proactively while buildings are under construction to prevent defects from being inherited by future owners. The bill also extends to existing buildings which have been completed within six years of the issue of the occupation certificate, providing protections to owners of existing defective buildings.

Property developers are a critical part of the building and construction industry, which is a vital contributor to the growth of the State's economy. The industry employs more than 300,000 people, representing more than 8 per cent of its workforce and accounts for nearly 10 per cent of the State's industry output. While supporting growth, this Government is strongly committed to ensuring the quality and safety of buildings through effective regulation and enforcement. Importantly, the bill provides the secretary and, through delegation, the Building Commissioner and his staff with the compliance and enforcement powers necessary to detect, investigate and require the rectification of serious building defects for the benefit of consumers in New South Wales.

The bill is one of the many reforms that this Government is progressing to improve the quality of construction and to provide enhanced protections for consumers by targeting noncompliance in the residential building sector. Together with the Design and Building Practitioners Bill 2019, this bill presents a comprehensive reform package to transform the building sector into a consumer-centred industry that is focused on the quality of construction. People purchasing and occupying units in buildings deserve to know that they are buying a quality design and expert construction that is protected by strong and modernised building laws. They also deserve to have recourse available in the event of a defect while the building is under construction and during the building's life.

The reform package, made up of this bill and the Design and Building Practitioners Bill 2019, is a priority for this Government and will provide consumers with the protections that they deserve. This bill is critical to support the building and construction sector and will provide New South Wales with a built environment where safety and quality is prioritised and where there is strong consumer confidence. In fact, this Government has specifically designed the bill so that it can function as standalone legislation without the need for supporting regulations, providing immediate consumer protection upon its proclamation. However, the Government has futureproofed the bill by including broad regulation-making powers for regulations to be developed if necessary. For example, it will be possible to create penalty notice offences through regulation.

It is important to note that the bill is only part of the reform agenda. This Government recognises that industry is vital to the success of those reforms. We will continue to partner with key industry stakeholders representing developers, practitioners and trades from across the sector as we roll out those reforms. Members will be aware of the appointment on 1 August 2019 of Mr David Chandler, OAM, as the NSW Building Commissioner. Mr Chandler has now taken on the responsibility of driving crucial reforms to transform the building and construction industry to create a culture of accountability and pride. Mr Chandler has publicly stated that his aim is for New South Wales to become Australia's State of quality construction.

The bill will support the Government's six-pillar work plan that will be led by the Building Commissioner to regain public confidence in a new, customer-facing industry by 2025. The work plan outlines a new regulatory playing field, financiers taking an active and constructive role, private insurers returning to the market and public confidence returning through a chain of stewardship that enables the observation and enforcement of the design and construction of buildings. The passage of the bill and the Design and Building Practitioners Bill 2019 are crucial first steps to achieving the overall objectives of this plan.

To further enshrine the Government's commitment to partner with industry, the Minister for Better Regulation and Innovation has established Construct NSW, comprised of industry experts, to provide input to the delivery of the work plan's reforms. The bill, together with the Design and Building Practitioners Bill 2019, are the first tranches of reform that provide the Building Commissioner with the compliance and enforcement powers necessary to transform the industry. Importantly, all critical powers contained within the bill that are afforded to the secretary will be delegated to the Building Commissioner to ensure he can get on with doing his job.

I now turn to the substance of the bill. The bill establishes a scheme for developers to notify of the intended completion of building work. In doing so it is the first of its kind in Australia. Specifically, the scheme requires developers to notify the secretary at least six months, but no more than 12 months, before an application for an occupation certificate is made. The bill also makes provision for subsequent notices to be provided where circumstances change and the date for an application for an occupation certificate is brought

forward or pushed back. This notification requirement will enable the secretary to have early awareness and oversight of the developer and the building work.

This will allow the secretary to be able to actively monitor and regulate the performance of building work at any residential building site. It will positively assist in the early detection and rectification of serious building defects. Failure to notify, or to notify within the required timeframes, will have serious consequences for the developer. In those circumstances, the bill empowers the secretary to make an order prohibiting the issue of an occupation certificate and, if relevant, the registration of a strata plan for a strata scheme. This prohibition order power can also be exercised by the secretary if any building bond required under the Strata Schemes Management legislation has not been given to the secretary, or if the secretary is satisfied that a serious defect in the building exists.

The bill also introduces comprehensive and wideranging investigation powers for authorised officers. This will enable the secretary and, by delegation, the Building Commissioner, to be able to proactively conduct an in-depth inspection process to detect serious building defects. The secretary will also be able to use the powers of entry to premises, the extensive information-gathering powers that will be enshrined in the legislation and a suite of powers that can be used on premises to detect and investigate building defects. Most importantly, if a serious building defect is found, the secretary will have a range of powers available to immediately address it. The bill enables the secretary to issue building work rectification orders to the developer if the secretary is of the reasonable belief that the building work was or is being carried out in a manner that could result in a serious defect in a building.

A key component of the bill is the building work rectification order, which requires the developer to carry out, or refrain from carrying out, building work to eliminate, minimise or remediate the serious defect or potential serious defect in a building or part of a building. Clause 4 of the bill defines the meaning of "developer" for the purposes of the legislation. It includes the person who contracted or arranged for, or facilitated or otherwise caused, the building work to be carried out. If the building work is the erection or construction of a building or part of a building, the owner of the land on which the building work is carried out at the time the building work is carried out is also taken to be a developer for the purposes of the bill.

A developer also means the principal contractor for the building work within the meaning of the Environmental Planning and Assessment Act 1979 and, most importantly, the developer of the strata scheme within the meaning of the Strata Schemes Management Act 2015 in relation to building work for a strata scheme. The regulations will be able to prescribe other persons as developers or exclude persons from the definition. Recent building incidents have emphasised that residential home owners are particularly vulnerable to building defects. To respond to growing community concerns and provide the greatest benefit to home owners, the new obligations under the bill will apply to a residential apartment building. This means a class 2 building within the meaning of the Building Code of Australia, which are those buildings that are multistorey and multi-unit residential buildings.

Recognising that many modern apartment buildings have a combination of apartments, shops and offices in the one building, the bill extends the definition of a residential apartment building to include any building containing a part that is classified as a class 2 component, so that these mixed-use buildings are regulated by these reforms. To be clear, this means that the entire building is subject to the provisions of the legislation, not just the class 2 component. The bill has enough scope to exclude any building or part of a building from the definition of residential apartment building through the regulations. This power will enable smaller class 2 projects to be excluded if it is determined that they are low risk and should not be regulated by this legislation.

Clause 6 provides that the bill only applies to building work in respect of a residential apartment building that is or was authorised to commence in accordance with a construction certificate or complying development certificate issued under the Environmental Planning and Assessment Act 1979. This means that other forms of development, such as exempt development, which do not require consent authority approval are not captured by this bill. This approach ensures that the requirements set out under this bill are harmonious with those required by key planning legislation.

I want to be clear that the Government has listened to the concerns of home owners and noted recent incidents of building work with serious defects in residential apartment buildings. The bill therefore applies to existing residential apartment building work that has not been completed or has been completed within the previous six years. Completed in this context means the date that the occupation certificate for the building or any of its parts was issued. Specifically, the bill will work alongside the statutory warranty periods in the Home Building Act 1989 to allow consumers to access and, where appropriate, commence action for defective building work.

Part 1 of the bill defines a series of key terms that are used throughout the legislation. These terms underpin the new requirements and responsibilities of developers in this bill. Clause 3 defines a serious defect as "a defect in a building element that is attributable to a failure to comply with the performance requirements of the Building Code of Australia, the relevant Australian Standards or the relevant approved plans". To align this limb of serious defect with the existing planning legislation, approved plans mean those plans and specifications issued for a construction certificate or a complying development certificate for building work, together with any approved variations under the Environmental Planning and Assessment Act 1979. It also means any regulated designs under the design and building practitioners legislation. This approach will ensure that key terminology that has existed and will exist in the future is picked up by this bill. Importantly, it will ensure that there is cohesiveness across the three schemes.

To ensure that this bill operates effectively with other legislation, a building element has the same meaning as in the design and building practitioners legislation, capturing the critical elements of a building such as the fire safety system, waterproofing and load-bearing components that are essential to the stability of a building or any of its parts. Reference to these building elements recognises that these types of elements may have a significant safety impact if they are poorly designed or defective. To futureproof the new legislative scheme, the bill enables the regulations to broaden the types of building elements in the future.

The bill also defines a serious defect as a defect in a building product or a building element that is attributable to defective design, defective or faulty workmanship or defective materials, which causes or is likely to cause the inability to inhabit or use the building or part of the building for its intended purpose, or the destruction of the building or any part of the building, or a threat of collapse of the building or any part of the building. The definition of serious defect also includes the use of a building product in contravention of the requirements of the Building Products (Safety) Act 2017, as well as any other kind of defect prescribed by the regulations.

The act of building work is critical to the operation of this legislation. Clause 5 defines building work as the physical activity involved in the erection of a building, and includes work involved in, or involved in coordinating or supervising work involved in, the construction of a building or part of a building, making of alterations or additions to a building or part of a building, or any repair, renovation or protective treatment of a building or part of a building. As I have previously highlighted, this bill will require developers to notify the Secretary of the Department of Customer Service when they propose to make an application for an occupation certificate.

Clause 7 sets out the notification requirements of a developer, also known as an expected completion notice. A developer in relation to building work must not cause or permit an application to be made for an occupation certificate for any part of a residential apartment building unless at least six months but not more than 12 months before that application is made they have given the notice. The expected completion notice must set out the date that the developer expects to make the application for the occupation certificate for the building or part of the building. The expected date is important, as the issue of an occupation certificate permits a number of key things to occur. With an occupation certificate, purchasers can lawfully occupy the premises. Developers can also complete purchases and obtain their remaining funds. This notification requirement is therefore critical, as it provides the secretary with sufficient lead time in which to examine the construction of the residential building and to detect and act on serious building defects that may be discovered before the occupation certificate is issued.

It is recognised that in some instances building work may take less than six months to complete. The bill has been designed to enable building work that is in a new building to be notified to the secretary within 30 days after commencing the work if the expected date of completion is proposed to be in less than six months. This approach will allow the secretary to utilise its investigative powers while the work is still being undertaken so that the work can be inspected for serious defects at the most appropriate time. To reflect the seriousness of these requirements the bill imposes large penalties on a developer where they fail to notify. Maximum penalties can apply of $110,000 in the case of a body corporate and $22,000 in any other case.

This bill does not unfairly penalise developers who have complied with the law. Accordingly, if there is more than one developer in relation to a building, the bill provides a defence to one developer if it is proven that another developer gave the required expectation completion notice to the secretary. It is a practical reality that the expected completion of a building may be delayed or may occur faster than initially thought due to factors that are outside the control of the developer. For example, critical building materials may be out of stock, delaying the project, or they may arrive earlier than expected. Likewise a developer may not always be in a position to know when an application for an occupation certificate is proposed to be issued.

Where circumstances change and the expected completion date is no longer accurate, the bill requires developers to notify the secretary of a new expected date. This notice is known in the bill as the "expected completion amendment notice". This notice must be given within seven days of the developer becoming aware of the change in circumstances. However, developers will not be required to notify the secretary of a new completion date if it is within 60 days of the expected completion date specified in the original expected completion notice. This means that developers will have a 60 day grace period from their expected date, so that if a developer is 60 days early or 60 days late they will not need to notify again. It is important to be clear that developers will not, however, be able to combine the two periods and notify within 120 days.

This grace period will ensure that developers are not forced to unnecessarily and repeatedly notify in the case of any minor change from the expected completion date. Where the developer needs to change the date several times, the legislation allows this to occur and provides that a developer may give more than one expected completion amendment notice, in accordance with clause 8. Any developer that fails to notify of a change in the expected date or a new expected date will face a maximum penalty of $55,000 in the case of a body corporate and $11,000 in any other case. Developers who begin constructing a residential apartment building within six months of this bill commencing will be required to comply with a transitional arrangement. Within this period a developer will not be able to apply for an occupation certificate unless they notify the secretary of the proposed application within 14 days of the commencement of the legislation.

Clause 9 of the bill empowers the secretary to take immediate compliance action by prohibiting the issue of an occupation certificate in relation to a residential apartment building or, if relevant, by prohibiting the registration of a strata plan for a strata scheme. As a safeguard the bill also provides that any occupation certificates that are in contravention of a prohibition order will be invalid. The occupation certificate allows purchasers to occupy their units for the first time and to complete their purchase with the developer. Following this time the developer can complete all sales and take their profits. Meanwhile, the registration of a strata plan brings the owners corporation into existence, which commences the initial period. Strata lots are able to be allocated and the developer can then sell them off the plan.

Prohibiting the issue of an occupation certificate or the registration of a strata plan is the ultimate signal to the developer that they must resolve any noncompliance or face never having the building sold or occupied. The bill empowers the secretary to make a prohibition order under defined circumstances, including where a developer fails to give the required notice or change of expected date or does not provide the notice or change of expected date within the required time frame. The secretary may also issue a prohibition order if any building bond required under the Strata Schemes Management Act 2015 has not been given.

Perhaps most importantly the secretary can issue a prohibition order if the secretary is satisfied that a serious defect in the building exists. Without limiting this provision, the secretary can be satisfied that a serious defect exists if a building work rectification order has been made in relation to a building and has not been revoked or if a development control order has been made under the Environmental Planning and Assessment Act 1979 relating to defects in building work and has not been revoked. These circumstances tie in with the secretary's new power relating to rectification of defects, which I will discuss later, as well as with other comparable powers that can be used under the planning legislation so that there is no duplication between the two schemes.

To further support the efficiency of the planning system the secretary will be required to give notice to the local council or, if the local council is not the certifier, the relevant certifier for the building work. This will ensure that the principal certifier does not issue an occupation certificate in contravention of the prohibition order and that local councils can take all reasonable steps to manage any serious defects identified by the secretary. In fact this legislation makes it an offence to issue an occupation certificate in breach of a prohibition order. This is coupled with a maximum penalty of $110,000 in the case of a body corporate or $22,000 in any other case. To ensure that the developers, the owners of the land and the Registrar General—the government regulator for the registration of strata plans—are aware of the prohibition order, the secretary will be required to notify these parties when an order is issued. It is important to note that clause 10 of this bill includes key procedural fairness provisions so that a developer can appeal a prohibition order at the Land and Environment Court within 30 days of the notice. The bill provides that an appeal may be made after 30 days but only with leave from the court.

Parts 3 and 4 of the bill provide a robust investigation and enforcement framework that will be delegated to the Building Commissioner and his compliance staff. These powers will be sufficiently broad and will empower the secretary to investigate, monitor and enforce compliance with the Act and with any future regulations relating to the carrying out of building work. The powers will also extend to investigation and monitoring of and enforcing compliance with the performance requirements of the Building Code of Australia, the relevant Australian standards and approved plans. It goes without saying that these powers will also

be able to be used to investigate whether buildings have serious defects as well as to obtain informational records and to enforce, administer or execute the requirements of this legislation.

The framework will implement a suite of investigation and enforcement powers provided in other newly developed legislation that is administered by Fair Trading, such as the Building and Development Certifiers Act 2018 and the modern framework to be established by the Design and Building Practitioners Bill 2019. Under part 3 of the bill authorised officers will be granted a range of powers to be able to do their job more effectively. Clauses 17, 18 and 19 empower authorised officers to require information and records, require answers and make records of questions and answers as evidence. To support these investigatory powers clause 20 allows an authorised officer and their assistants to enter any premises at which business is in progress, including building work, without a search warrant.

However, under clause 21 an authorised officer will only be able to enter residential premises with the permission of the occupier or with the authority of a search warrant. To be clear, this means that construction sites will be able to be entered by an authorised officer at any reasonable hour or during business hours. When on the premises authorised officers will be afforded a suite of powers under clause 24, which include, among others, the ability to examine or inspect anything, take or remove samples of anything and make examinations, inquiries, measurements or tests that are considered necessary. Significantly, an authorised officer would have the power to open up, cut open or demolish building work if they have reasonable grounds for believing that it is necessary to do so because it is connected with an offence against the legislation or a serious defect in the building.

Clause 24 also provides additional powers that are more robust than those afforded to the regulator under other building legislation. For example, while on premises, the bill will enable an authorised officer to direct a developer to carry out building work at a specified time, or in a specified manner, to enable the authorised officer to exercise a further compliance and enforcement function under the legislation. For example, an authorised officer may direct a developer to uncover a part of building work so that they may then take samples of the building materials from the newly uncovered site.

Likewise, an authorised officer will be able to direct a developer to carry out specified building work only after giving the authorised officer notice in advance. This power will enable an authorised officer to be notified of certain types of building work before it is undertaken, for example before the pouring of concrete. This would enable the authorised officer to inspect the installation of a critical building system before it is covered up. It is noted that authorised officers will also be able to enter common property under a strata scheme or association property under a scheme without a warrant or an occupier's permission. This power will ensure that authorised officers can respond quickly, and begin their investigations based on observations and findings related to the common property of a building, such as its exterior, the car park or its surrounds.

Any person who obstructs, hinders or interferes with an authorised officer in the exercise of their functions, or fails to comply with a direction of an authorised officer, will be subject to large fines of up to $110,000 in the case of a body corporate or $22,000 in any other case. In support of these new investigation powers, the secretary will be afforded further powers that will assist the department in enforcing the obligations set out under this scheme in order to address seriously defective building work. Under clause 28, undertakings provide an opportunity for a developer to refrain from conduct that would lead to a breach of the legislation, or take action to prevent or remedy a contravention, as a means of avoiding a harsh financial penalty. To emphasise the seriousness of breaching an undertaking, maximum penalties of $165,000 apply for body corporates, or $55,000 in any other case.

Importantly, clause 29 introduces the power for the secretary to issue a stop work order for building work. The secretary can do so if of the opinion that the building work is, or is likely to be, carried out in a manner that could result in significant harm or loss to the public or occupiers, or potential occupiers, of the building or significant damage to property. This power is necessary and will enable the secretary or their delegate to manage immediate non-compliances so that buildings are safe for occupation. The breach of a stop work order is a serious offence. A maximum penalty of $110,000 applies, and in addition up to $11,000 for each day the offence continues. For body corporates, these maximum penalties increase to $330,000 and $33,000 respectively.

Of course, protections apply. A person given a stop work order will be able to appeal to the Land and Environment Court within 30 days of the notice of the order being given. However, to reduce delay, the lodging of an appeal does not, except as the court directs, act to stay the order. Under clause 31, the secretary will be able to apply to the Land and Environment Court for an order to remedy or restrain a breach of the legislation. The secretary will be able to make such an application whether or not proceedings have been instituted for an offence, and without the secretary being required to show a likelihood of damage. This power will provide the secretary with the full range of powers to ensure the safety of residential apartment buildings.

Under clause 32, the secretary will be able to conduct proactive investigations of current and former developers, residential apartment buildings, the carrying out of building work including work carried out by any contractor or subcontractor of a developer or any other matters that may constitute a breach of the legislation. An investigation can be conducted regardless of whether the secretary has received a complaint. This power makes it clear that the secretary can fully investigate and target the conduct of developers, as well as any subcontractors involved in the building work, who are doing the wrong thing. There may be circumstances where the regulator needs to intervene directly in situations that may cause public harm.

The bill sets out notification requirements for developers that will alert the secretary of their building being close to completion. As we have seen, it also provides the secretary with wide-ranging investigation and compliance powers once this is known. The secretary, through delegated authority to the Building Commissioner, will be able to target and investigate possible instances of defective building work before an occupation certificate is issued.

If a serious building defect is detected by authorised officers, or they otherwise become aware of its existence, then the secretary must be able to directly intervene to attempt to remedy the situation where the developer fails to act immediately. Accordingly the bill provides the secretary, for the first time, with an encompassing power to be able to order developers to address serious defects before a building's completion, and at any time within six years after the building has been completed.

Clause 33 provides that if the secretary has a reasonable belief that building work was or is being carried out in a manner that could result in a serious defect in a residential apartment building, the secretary can give a building work rectification order to a developer. A building work rectification order is an order that requires the developer to carry out, or refrain from carrying out, building work or cause building work to be carried out or refrained from being carried out, as specified in the order. The purpose of the order is to eliminate, minimise or remediate the serious defect or potential serious defect. Alternatively, so that the secretary can issue an order best suited to the defect at hand, clause 34 provides that instead of specifying a type of building work that the developer must do or

refrain from doing, the secretary may specify the standard that the building work must meet and indicate the nature of the building work that, if carried out, would satisfy the standard.

These orders can also be issued with conditions, such as requiring the developer to notify the secretary when compliance with the order is achieved, and will remain in force until they are either revoked by the secretary, or the term of the order ends. To reaffirm the Government's commitment to consumer protection, the bill makes a consequential amendment to the Conveyancing (Sale of Land) Regulation 2017 so that the vendor must warrant that the land is not subject to an outstanding building work rectification order. Practically, this means that where the land is subject to an order that is still in force, the purchaser of the land will be able to rescind the contract because of a breach in the contract's prescribed warranties. This change will ensure that potential purchasers can make a reasonable and informed decision before proceeding with a residential building contract.

Building work rectification orders are one of the key compliance tools in this bill. Importantly, while an order is in force, the secretary can prohibit the issue of an occupation certificate or the registration of a strata plan for any new building until the serious defect is rectified. This power works hand in hand with other obligations under the bill and the Design and Building Practitioners Bill 2019 so that compliance can be effectively enforced by the regulator across multiple legislative schemes at once. A failure by a developer to comply with an order means that potential serious building defects could exist within a building to the detriment of occupiers and consumers and their safety. To demonstrate the seriousness of these orders, heavy penalties will apply where a developer fails to comply with the order. Developers can expect a penalty of up to $110,000 and, in addition, up to $11,000 for each day the offence continues. For body corporates, these maximum penalties increase to $330,000 and $33,000 respectively.

The legislation provides that a person is not required to obtain consent or approval under the Environmental Planning and Assessment Act 1979 to carry out work in compliance with the requirement of a building work rectification order. This ensures that developers can rectify serious defects as expediently as possible. This approach aligns with the planning legislation that similarly permits persons to carry out work under a development control order so long as it is necessary to achieve compliance with the order. Of course, this legislation provides a range of natural justice and procedural fairness protections for the developer before a building work rectification order can be issued. For example, clause 44 provides that notice of a proposed building work rectification order must be given to the person who will be subject to the order. This notice must include the intention to give the order, the terms of the proposed order and the period within which the order is to be complied with.

The notice must also set out that the person can make a written representation to the secretary about the order, its terms or the period for compliance. Where representations are made, clauses 47 and 48 provide that the secretary must consider the representations and determine to give the order as proposed, to give the order with modifications or not to give the order. However, in instances where the secretary believes there is a serious risk to public safety or it is an emergency, the secretary is not obligated to give notice of a proposed order or seek to consider any representations. This provision ensures that seriously defective building work, which could impact on the safety of the public, is rectified immediately.

Where the secretary determines that an order is necessary, notice must be given to the developer together with the reasons. Additionally, other persons and bodies must be notified of the order, including, among others, the relevant local council, the principal certifier and the relevant owners corporations if the order relates to a strata building. The bill explicitly requires an owners corporation to notify in writing the owners of lots in the strata scheme within 14 days of receiving a notice. This obligation will ensure that owners of existing buildings are kept abreast of any rectification orders issued and are aware of any serious defects located on their property or any common property within the strata scheme. Any identified serious defect that is not rectified could potentially impact on the safety of owners and occupiers of these buildings. If these circumstances arise, clause 42 provides that the secretary in lieu of the developer acting can do anything that is necessary or convenient to give effect to the terms of the rectification order.

The Government recognises the considerable regulatory costs that may be imposed by the requirements of the bill. Ordinary consumers should not, as much as is reasonably possible, be responsible for those costs. Through a compliance cost notice, the Government can recover any costs and expenses incurred by the secretary, including remuneration and other staff expenses in connection with a building work rectification order. Under clause 51 the secretary may be able to issue a compliance cost notice on the developer at the same time as giving a building work rectification order or at any other time after. The compliance cost notice will specify the amount required to be paid and the time within which it must be paid. The secretary will be able to seek recovery of costs as a debt due in a court of competent jurisdiction. As with other orders and notices under this bill, a developer served with a compliance cost notice may appeal against a notice to the Land and Environment Court. An appeal may only be lodged within 30 days after serving of the notice unless the court grants leave for it to be made after that time.

As I have noted, serious financial penalties apply for breaches of this legislation. That is only right and proper in order to act as a deterrent and to protect the interest of consumers. The bill makes it clear that any poor behaviour of executives of corporations will not be tolerated by this Government. Specifically, clause 58 provides that if a body corporate contravenes a provision of the legislation, each person who is a director or was concerned in the management of the body corporate, if they knowingly authorised or permitted the contravention, is taken to have contravened the same provision. The Government is taking a robust approach to the safety of buildings in New South Wales. This legislation empowers proactive investigations and the rectification of serious defects to occur well before the building is completed. Coupled with significant compliance powers, the obligations set out under this bill are necessary to drive the message home that poor building practices and non-compliant building work will not be tolerated by this Government.

These additional responsibilities will provide greater transparency over the role of developers and building practitioners in the construction phase and ensure that they are held accountable for the building work. These responsibilities will also mean that developers and design and building practitioners have to work cohesively together throughout the life of a project to ensure that both the design and build components comply with the Building Code of Australia. Developers can no longer turn a blind eye to the work done by practitioners contracted for a project.

Mr Temporary Speaker, I am pleased to introduce this bill. Occupants of buildings deserve to feel safe and secure within their walls; these reforms are a critical part of achieving this. Importantly, as the sole regulator for this bill and the Design and Building Practitioners Bill 2019, the secretary and the building commissioner will have the appropriate oversight across the design, construction and proposed completion of a building. This includes oversight across any plans and specifications used to design a building, the practitioners involved in construction and building work, and the level of compliance achieved by these practitioners for their work and the developer before the completion of the building.

Together with the Government's six-pillar work plan, these reforms will overhaul the building and construction industry and transform it into one that is focused on transparency, accountability and quality workmanship. The Government is taking a no-nonsense approach to regulation in the State. Now is the time for change. The bill reflects a new era in the industry and puts consumers first. Importantly, it sets New South Wales apart as the nation's leader in forward-thinking legislation that will ensure that well-constructed buildings are delivered now and into the future. I commend the bill to the House.

Second Reading Debate

The Hon. ADAM SEARLE (10:51:12**):** On behalf of the Opposition I speak in support of the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. Labor supports the bill because the party has been campaigning for a number of key reforms in the building sector for many years. This is similar to the Design and Building Practitioners Bill 2019, which was the subject of heavy consideration in this place and much preparation ahead of that. I acknowledge the cooperation and assistance of stakeholders from the building sector, who have stood side by side with Labor in pursuing reforms and demanding stronger, more robust legislative changes than the Government was willing to offer.

The Owners Corporation Network, Professionals Australia, Engineers Australia, the Master Builders Association, the Australian Institute of Architects, the Building Designers Association, the Association of Accredited Certifiers and the Housing Industry Association, among many others, have been meeting with the Opposition—principally with Yasmin Catley, MP, the Deputy Leader of the Opposition and shadow Minister for Building Reform and Property. We have worked collaboratively to improve the legislation and to ensure that the building reforms have substance. The Opposition and the industry demanded not just more regulation but also better and more effective regulation, and more than the Government was initially willing to provide. The case was made to Government that profound changes were required to communicate clearly to the community that there was change and that it could have confidence in the sector again.

It is not often that industry wants more regulation, but industry could see the reputational damage and the shattering of consumer confidence being caused by the endemic cultural and practical problems in the building and construction industry that, in a number of key examples, were coming to light. I thank the industry for its assistance, guidance, collaboration and support. Over the past eight years there have been six Ministers and not all have had long durations of service. That has contributed to the lack of a clear and robust policy on the part of Government. As I noted last November, due to the complexity of regulation and legislation successive Ministers had unfortunately not been around long enough to get to the bottom of what needed to be done. Successive reviews highlighted key problems but the reviews were often ignored and allowed to gather dust on the bookshelf. Despite the reviews providing many of the answers, the constant turnaround of Ministers meant that legislative processes stalled—but we are finally here. The silver lining is that on the way through we on this side of the House have been able to get the process right. That is why we are pleased to support the bill.

The bill, known colloquially as the "powers bill", will allow the secretary to make targeted interventions in residential apartment buildings to detect and rectify defective building work proactively, and to prohibit occupation certificates and the registration of strata plans. The legislation arises from the Building Commissioner's six-pillar work plan to improve transparency and accountability in the building sector. Together with the Design and Building Practitioners Bill 2019 and the Building Commissioner's six-pillar work plan, this legislation will underpin the Labor Party's longstanding policy to raise standards and promote public confidence in the building and construction sectors.

The powers bill enables the proactive inspection of serious defects by requiring a developer to notify the secretary at least six months but no more than 12 months before the completion of a residential apartment building. It empowers the secretary to issue a building work rectification order if the secretary has a reasonable belief that the building work was or is being carried out in a manner that could result in a serious defect. The bill also provides the secretary with a suite of powers to ensure compliance and enforcement through robust offences and penalties. It is intended that all powers provided to the secretary under the bill are delegated to the Building Commissioner, who will have a team of around 75 people in his office enforcing the standards that the bill provides. We understand the commissioner is already engaging in the construction of his office.

To this end Labor and The Greens' demand for a building commission to accompany the Building Commissioner has in large part been met. We thank the Minister for taking our constructive suggestions in the public interest and for public policy seriously. However, I note that the bill will be reviewed in March 2022 and Labor will put a particular lens over the effectiveness and operation of the building commission. Labor will be keen to ensure that the commission meets the objectives as the party originally conceived of it—a statutory authority that stands alone and can deliver true reform by raising the standard.

I am putting the Government on notice, in a friendly way, that whilst we have come a long way from the position of not having a Building Commissioner or a building commission, it is still the Opposition's view that a statutory, standalone commission would have been the best and most appropriate way to have proceeded.

That being said we are happy with where we have landed, given we were so far apart not that long ago. This bill completes the suite of different measures that have been discussed. As I noted in relation to the building and design practitioners legislation, we have had the need for reform, for public discussion, for Government legislation, and for collaboration and discussion between parties and with stakeholders. The Public Accountability Committee of this House has thoroughly delved into all of the issues. I note my colleague the Hon. Courtney Houssos and the Hon. John Graham, who ably represented the Opposition in those inquiries. What we see here is not only an unusual development of politics—using collaboration rather than conflict to reach happy landings—but also the processes of this Parliament working effectively to inform the development of public policy. This is a masterclass in public policy development.

The powers bill will apply only to class 2 buildings under the Building Code of Australia—that is, residential buildings with multiple dwellings and mixed-use buildings with a class 2 component that are currently under construction. It will also apply to existing buildings that have been completed within six years of the date of the occupation certificate to provide increased consumer protection for prospective and existing property owners. The bill does not apply to class 1 buildings—that is, single or semi-detached dwellings—despite the significant defect problems in new housing developments. There is a lot more work to be done in this space and the Government has said it is committed to doing that. Again, in a friendly way, the Opposition will hold them to it. Labor has raised this anomaly with the Government. In the fullness of time this robust legislation will cover all consumers with an effective safety net that will ensure the home they purchase is safe, of quality and a safe investment.

On the last occasion that we discussed building reforms we spoke about these matters for a significant amount of time, but we thank the Government for the constructive frame of mind with which ultimately it engaged with us, along with other parties in this place and stakeholders. We believe the Opposition has managed to significantly improve and strengthen the bill. Now there is the prospect of lasting cultural change in the building sector. We also acknowledge the work of crossbench parties who have played a key role in bringing this about.

The status quo, whereby investors were terrified of buying off the plan as a result of systemic failures and defects, could not have been allowed to continue. I mentioned on the last occasion that the word from the industry was that there had been a collapse in purchases of off-the-plan apartments of up to 75 per cent. That was tracking the pipeline of projects and would really just cause the whole industry to fall over at a time when I know the Leader of the Government opposite me in the Chamber has noted that we are moving into a recession. We hope it does not get worse. We need to have a construction industry to provide the best chance for success. As a responsible alternative government, Labor will do what it can to responsibly promote that. I commend the bill to the House.

The Hon. ROD ROBERTS (11:00:56**):** On behalf of One Nation I support the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. Just like the Design and Building Practitioners Bill 2019, this bill is long overdue and similar laws should have been implemented years ago. As I stated in this Chamber on Tuesday night, the building industry needs a robust regulatory framework. Because of their greed, negligence or straight-out incompetence some builders have turned the purchasing of an apartment into a game of Russian roulette. There are many well-publicised cases of residential apartment disasters, particularly in Sydney. Those incidents shatter the confidence of potential buyers and place the industry in a precarious position. As we all know, the building industry employs hundreds of thousands of workers and contributes billions of dollars to the State economy.

Bearing in mind the terrible news we received yesterday about the economy, the building industry has never been more important to us. The key to ensuring the building industry remains viable and an economic driver is consumer confidence. The bill will be crucial in returning that confidence. The strength of the bill is the ability to withhold occupation certificates. If a building has serious defects, the NSW Building Commissioner has the power to withhold those certificates. In simple terms, no occupation certificate equals no sales settlement, which in turn equals no money for the builder or developer. Therefore, it is in their financial interest now to ensure the integrity and safety of their product. The almighty dollar speaks loudly. Additional powers have been provided for appointed officers to enter building sites and exercise powers that include examining, inspecting, taking or removing samples, checking measurements and directing that records are produced for inspection.

One of the key points is the obligation to notify the department of the intention to apply for an occupation certificate within six months. This allows for important inspections to be undertaken, which will then allow for any required rectification work to be undertaken before completion. I congratulate the Minister and the Government on the appointment of Mr David Chandler as the NSW Building Commissioner. I have had a number of meetings with him and I am impressed with his knowledge of the building industry. He is enthusiastic to weed out the cowboys in this industry and to therefore protect vulnerable consumers. We believe this bill will give him

the tools and the authority necessary to do so. It is incumbent upon the Government to ensure that he always remains adequately staffed and resourced. One Nation supports the bill.

Mr DAVID SHOEBRIDGE (11:03:47**):** On behalf of The Greens I indicate support, with amendments, for the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. Whilst members of The Greens are glad to see the bill here, and we note the work of the Minister and the department in the last six months to bring it forward, it is around two decades late. This bill does only part of the job that is needed to re-establish confidence and standards in the building industry. I say at the outset that whilst we support it, The Greens looks to the Minister and to this Parliament to provide substantial additional legislative changes over the next 12, 18 or 24 months so that we go from having a very fractured, piecemeal regulatory framework to eventually establishing a standalone building commission with consolidated powers and adequate resources to do the job that is necessary to restore standards in the New South Wales construction industry.

As Chair of the Public Accountability Committee I am grateful for the work of my colleagues from across the political spectrum in that committee in shining a light upon the lack of standards, the lack of confidence and the cost to both home owners and the industry that that is causing across New South Wales. It is not unique to New South Wales, but the scale of the development industry and the very fractured nature of the building regulation in New South Wales means that this State has the largest problem, which means this Parliament has the biggest job to restore standards. As I said, the bill does a small but important part of the work that is before us to re-establish standards. It states:

> The object of this Bill is to prevent developers from carrying out building work that may result in serious defects to building work or result in significant harm or loss to the public or current or future occupiers of the building.

It allows the secretary or his or her delegate to:

> … issue a building work rectification order to require developers to rectify defective building works …

It also allows for the secretary or delegate to:

> … prohibit the issuing of an occupation certificate in relation to building works in certain circumstances …

Namely where they are not satisfied as to the standards or the quality of the building work. The bill requires developers to notify the secretary no more than 12 months before, but at least six months before, an application for an occupation certificate is made. In those circumstances the bill also gives the secretary or delegate the power to investigate and enforce the powers given to them under the bill. A number of penalties are in place under the bill and it also allows for the recovery of costs for that work and the enforcement powers being undertaken.

This is not a building commission, which is what New South Wales needs, but it is a minor step forward. It has been brought forward in frank acknowledgement by the Government that the Design and Building Practitioners Bill 2019 that we passed two days ago will not do the job for which it was sold. When the Government introduced a bill last year, it said, "Here is a solution for the building industry." The Public Accountability Committee then undertook a detailed inquiry into that bill and it was very clear that the industry did not agree with the Government, nor did building owners or the general public, that the Government's Design and Building Practitioners Bill was anything like the solution necessary to re-establish standards in New South Wales. I appreciate that the Minister and the department has taken that critique on board.

That was indeed the genesis of the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020 that we see before us now. It is not just about setting forward some perfect future state where standards will be magically recreated, insurance will be available and designs and building work will somehow magically become compliant and safe. It is also about establishing oversight, providing adequate powers and providing adequate resources in an independent regulator to make that happen in the meantime. The bill at least does some of that work by giving the investigation and enforcement powers that it does. However, the legislation has a number of significant gaps. First, despite the Government repeatedly saying that the NSW Building Commissioner is on the beat and that Mr Chandler is a cover-all solution to all the problems that are not otherwise addressed in the legislation, we still do not see in this bill or the Design and Building Practitioners Bill 2019 any statutory creation of the position of the Building Commissioner, let alone the building commission.

Therefore we will be moving amendments to the bill, and I am glad to say that they are being supported by the Government, the Opposition and the balance of the crossbench, I understand, to finally establish a building commissioner in legislation. It is clear that there must be a building commissioner. The amendments aim to provide in the legislation for the first time that not only must there be a building commissioner, which is a statutory office, but also the Building Commissioner must be provided with the powers of an authorised officer to do his or her work going forward. Without those amendments it would have been extremely difficult for us to support the bill. At some point the rhetoric and the reality—the verbiage and the legislation—need to catch up. We believe

with those amendments that we bridge at least some of that gap between the Government's rhetoric and the legislative reality that we are seeing come out of the department and the Minister's office.

We also know that for many years property owners have been living with building defects, often at huge emotional and financial cost. The original drafting of the bill proposed to give inspection powers retrospectively to only look at residential building work that had been completed in the last six years, but we know that building defects have existed for many decades. We have had some discussion about the extent of the retrospective inspection powers and we formed the view that it needed to substantially extend beyond just the last six years. After negotiation and discussion we have come to a position where we will be moving amendments to allow that inspection power to be exercised on buildings that have been completed in the last 10 years. That is a negotiated outcome and we think it is a significant improvement.

Finally, for us to support this bill and the Design and Building Practitioners Bill just two days ago required a commitment from the Government that there will be a clear and unambiguous statutory review of this bill not just by the department and the secretary but also by the Public Accountability Committee of this House. The committee is to review and consider the functions exercised or delegated by the secretary to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain effective for securing those objectives and, critically, to consider the desirability of establishing an independent New South Wales building commission to instead exercise the regulatory and oversight functions under this Act and other Acts relating to the construction of buildings. The terms of this review provision match the terms of the review provision under the Design and Building Practitioners Bill. We would understand and expect those reviews to be undertaken concurrently in the one inquiry by the Public Accountability Committee. While this is a step forward we see that it is far from the end of the journey for re-establishing standards in New South Wales.

There is so much more work to be done. We have not yet grappled with the appalling conflict of interest embedded in the private certification system. We have not yet addressed the disaster that is flammable cladding. We have not yet come to grips with the need to provide proper financial redress to innocent home owners in New South Wales who are paying the cost of decades of deregulation brought to them by both Labor and Coalition governments. We have not yet provided that single, unified, coherent oversight body that will ultimately be essential for re-establishing standards. I appreciate the fact that today we have a product of all the parties who engaged in this, particularly those represented on the Public Accountability Committee, to try and advance matters. It is not a perfect solution but I think the active engagement and the negotiation that the Government has been willing to enter into will provide a far better product than we saw at the end of last year. This bill is an acknowledgement that so much more needed to be done than where the Government was at the end of last year. The Minister's office has taken that on board and has helped to negotiate and deliver this outcome, but there is so much more to be done.

The Hon. JOHN GRAHAM (11:16:18**):** I make an additional contribution for the Opposition to debate on what has come to be referred to as the "powers bill", the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. I will add a couple of extra things, particularly since we debated some of these issues in this Chamber earlier in the week. The NSW Building Commissioner needs two things to do his job and he has been pretty upfront about this. First, he needs the powers that are contained in the bill, and I welcome the fact that they have now been brought forward; secondly, he needs the resources to do the job. If those two things are in place he has a chance of succeeding; if they are not, he will certainly fail. The bill is one of those two things being brought to the table. I urge the Government to make sure that the second is carried through as well. The Public Accountability Committee will take an interest in how that develops. That is the first view that I wanted to put to the Chamber, but we are on the way on that front with the bill being passed and the negotiation referred to.

The second point is to press the case I referred to in the debate on the Design and Building Practitioners Bill 2019. This problem is not just hurting people who end up being unlucky because the waterproofing has failed or they have a major cladding issue in their apartment. They have made the biggest financial investment of their lives and when it goes horribly wrong and turns out to be a major drain on their finances and a major life crisis, it hurts us all. This problem is of such a scale that anyone in Sydney and New South Wales who hopes to own a property and is successful in doing that is hurt by it. I want to press that point briefly. This is what is referred to as the economic problem of lemons. It is exactly the same issue as when you buy a used car. It is the reason why as soon as a used car is driven out of a lot it is immediately worthless; unlike selling a new car. The price drops because there are risks involved in buying a used car—no-one is quite sure what is under the bonnet.

It is exactly the same problem with buying an apartment, but on a much bigger scale. It is a problem that happens with a particular class of building and it is driving down the price of all buildings in Sydney and New South Wales. It is particularly the case with buildings that might have been built after 2014, with buildings that might be more than three storeys and, as we have heard, if those buildings are off the plan. On all of those

there is a large, and getting larger, risk discount with people driving down the price of these houses, worried about what might happen when they get under the bonnet. That is the issue here.

If you are buying in that class of buildings—a lot of apartments and a lot of buildings in New South Wales—those prices are being driven down. But it is not only those people who are affected. You might be lucky and have no defects in your building or you might be unlucky, as many people are, and have defects. But you will not be the only one being impacted. There is another class of people who are buying buildings that are not new or over three storeys or are off the plan, that might be in perfectly good nick and might be older buildings. Their prices are being driven up as we are driving buyers out of this class of buildings that are at risk.

My key message to the Chamber is that this is not just bad if you are unlucky, this is not just bad if you make the biggest financial investment of your life and it goes horribly wrong. This is bad if you are trading in that at-risk section of the market, and it is bad if you are not—the prices are going up unreasonably in those sections. This is a systemic problem and for all those reasons we have to fix it. Will this bill fix the problem? As my colleague Mr David Shoebridge just said, we have had plenty of answers to this question solved. The bill was previously sold as the answer to this problem, and it was not. The bill we debated in 2018, which was rushed into this Chamber and was sold as the answer—urgently debated, urgently driven through this Parliament and was sold as the answer—has yet to come into effect. It is still not in place as law in New South Wales because the regulations took so long to be put in place. It was sold as the answer and it turned out that it was not.

For the reasons that have I referred to, this bill itself is not the answer either but it is a real step forward particularly with the negotiation that has occurred. The reason this bill will not fix the problem on its own is that it only applies to those class 2 buildings. There are still many defects out there that have not been addressed and are there as a historical legacy. There is no building commission and there needs to be, and the issue about cladding is still not addressed—certainly not in the way it has been in Victoria—and until that is the case there will be many owners, many strata committees and many buildings where people simply do not know what to do; they cannot get coordinated advice and there is no funding to assist them. That problem remains unresolved. But this bill is a good step forward. I commend the bill and the resolution—which I hope is imminent in the Committee stage—to the House.

The Hon. COURTNEY HOUSSOS (11:23:06**):** I make a contribution to debate on the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. Like the previous speakers I am also a member of the Public Accountability Committee, which has conducted a long-running inquiry into the building industry generally. We have indicated publicly that we will continue to keep a close eye on the progress that the Government makes in this area because of the importance of the industry and because of the significance of the issues that it faces. I have spent a lot of time on my feet talking about the building industry this week so I will be brief in my contribution. I will outline a few key issues in relation to the bill.

We know that building is an incredibly important part of the New South Wales economy. We have already reflected this morning on the fact that this is the first day after New South Wales has officially gone into a recession. Construction is undoubtedly going to be a key part of our way out of that recession. This morning we heard the Federal Government announce a stimulus package targeted specifically at this sector. There is no doubt about the importance of this bill. But, as other speakers in this debate have said, the importance of the sector is not just to the general economy. The importance of the sector often underpins the financial situation of families, because buying a home will be their major financial investment. Their home is not just where they live, it is going to be a key part of their future financial prosperity, and the role of government has to be to provide a robust regulatory system to give certainty to and underpin that financial investment. That is why this bill is so important.

Other speakers have reflected on the fact that there have been countless reviews in this area. I place on the record my recognition of Mr Michael Lambert, who released an incredibly important review to this Government in 2015. It provided a clear road map that I think has been very helpful for members of the Public Accountability Committee in conducting the building inquiry and, over time, I believe it is also informing the work of the Government in this area. I also acknowledge the Shergold Weir report, which in 2018 provided another road map. I acknowledge the work of Ms Bronwyn Weir, who I know worked directly on this bill with the Building Commissioner himself, Mr Chandler. It was her incredible honesty that got headlines when she said that, given the current situation, given what she knows, she herself would not purchase a newly built apartment building. This is the situation we find ourselves in.

As other speakers have said, this bill is a step forward; for the first time it will give the Building Commissioner not necessarily statutory authority but statutory recognition. I want to put on the record that only days into his taking on the role, the Building Commissioner appeared before the building inquiry and we, as members of the committee undertaking the inquiry, which was only months into existence at that point, said we thought he needed more powers, that he needed more staff and a commission and we thought he needed statutory authority. We are getting there slowly.

Mr David Shoebridge: What do we want? Gradual change. When do we want it? In due course.

The Hon. COURTNEY HOUSSOS: I acknowledge the eminently sensible interjection of the member of The Greens and the chair of the building inquiry. The building inquiry has certainly had a cross-party approach with members of The Greens, the Shooters, Fishers and Farmers Party, and the Government working with the Opposition to formulate this plan. I am a little bit hesitant to say that we have added to the tome of reviews and information, but there are 42 very good recommendations that I strongly recommend to the Minister and to the department to continue to work their way through.

The bill gives important powers to the Building Commissioner. It is the ability to withhold the occupation certificate at that crucial financial juncture that will allow the Building Commissioner to apply pressure. I just hope that he continues to be given the staff and the support that he will need in order to implement this properly because, as other speakers have reflected, the progress has been too slow. If nothing else in the face of this pandemic, we need to move faster to provide certainty within the building industry. Our future economic prosperity is so important. I will place on the record just a couple of the issues we need to pursue. First, the issue of financial support for cladding, as other States have done—not just the financial support but the certainty to building owners about what is an appropriate remediation. Those are incredibly important issues and they need to be addressed as a matter of urgency.

If we can provide building owners with financial support and if we can provide them with certainty around the regulation of what needs to be remediated, that can form an important part of our pathway out of this economic crisis. We also need to ensure that this applies to all buildings. Class 2 buildings are a good start, but we need to ensure that our entire housing industry is provided with the certainty that the buildings are going to be well constructed, that they are going to be safe for people to purchase and that people are not entering a lottery when they make the major financial investment of their lives. With those remarks, I look forward to supporting the amendments in the further stages of this debate. I commend the bill to the House.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (11:29:35**):** In reply: I thank all those who have contributed to this debate. I principally thank members who participated in the Public Accounts Committee. They spent a significant amount of time listening to stories about issues in the building industries to try to make the Government's approach an evidence-based approach that addresses the problems that members heard. Significant things have been adopted in the bill as a result of those hearings. I note that not everyone is happy with the position we have reached and that some members think we can go further.

The Leader of the Opposition said that in 2022 he will apply the lens of the Opposition over the manner in which the Building Commissioner has exercised his powers pursuant to this bill and also to how the Design and Building Practitioners Bill is operating at that time. The review process is important—although the Opposition would have liked a building commission with funding and staff to be established right now. Mr David Shoebridge echoed that position and emphasised that point. However, I stress the observations made by the Hon. Rod Roberts, who has gone to the kernel of the powers of the commissioner. First of all he identified that the Government has appointed a strong and robust commissioner. I have in fact met with the commissioner and he is a no-nonsense person with definite views. If he came onto a building site I would have thought that a builder would be compliant with discussions that he had with them.

Commissioner David Chandler is very experienced in the building industry, which underlies his appointment. The six pillars that he identifies when working through issues relating to the building industry are practical and significant steps that he takes when exercising his powers. But the fundamental power that he has is to prevent the issue of an occupation certificate; that is a key component of the power that is being given to him. The Hon. Rod Roberts quite capably illustrated that if someone who has a lot of money riding on the settlement of a project is prevented from recovering those completions because they cannot get an occupation certificate due to the building commission's intervention, that is a big incentive to get it done quickly and to get it right the first time. That component of the commissioner's power is the key to ensuring that the quality of buildings being built in New South Wales is in the best interests of consumers.

Every member has indicated that the purchase of a home is generally the most important purchase that a person makes in their life. One does not write a cheque for $1 million every day of the week. After the first time you say to a house purchaser, "I want you to bring me in a cheque for $1 million," they are never going to write another one. Settlement periods are important and we need to protect people the most at that point in time. As the Hon. John Graham said, if you are buying a really expensive car you will often look under the bonnet and check out all the bits and pieces to make sure that you are getting value for money. The powers given under this bill ensure that consumers have the best possible chance of getting the best outcome for the money they hand over at the point of settlement.

I emphasise the manner by which we have sought to outline the definition of a serious defect. I note that a contentious part of building work is the definition of what constitutes a serious defect. There has always been a dislocation between cosmetic defects and serious defects. Generally serious defects are what would entitle a purchaser to not complete or even disregard an occupation certificate, whereas cosmetic defects can often be fixed at a later time. When drafting this bill an important component that the drafters engaged in was ensuring the alignment between the definition of "serious defect" under this bill and the definition of "major defect" in the Home Building Act 1989.

It is important to note that the bill has been designed to work cohesively with statutory warranties under the Home Building Act. Because it applies to existing buildings that are within six years of the date of the occupation certificate being issued, owners can still access statutory warranty periods to claim against any serious defects, provided that they are also major defects under the definition of the Home Building Act. Under this bill if a building work rectification order is brought to the attention of the NSW Civil and Administrative Tribunal or any other court, it must be considered when determining a building claim under the Act. The existing definition of "serious defect" is deliberately broad and is interdependent on definitions now adopted in the Design and Building Practitioners Bill.

The powers in the bill are intended to provide broader and more targeted investigation and enforcement to holistically lift standards within the construction sector. The bill gives the regulator discretion to determine what serious defects it will target. One of the main differences, however, between the definition of "major defect" in the Home Building Act and the definition of "serious defect" in this bill is that the Home Building Act requires a defect to meet a two-stage test. The first stage is that the defect is attributed to a failure to comply with performance requirements, a defect of the design, defective or faulty workmanship, or defective materials. The second stage is that the failure or defect causes an inability to inhabit the building, the destruction of the building or the threat of collapse. Consumers would often say, "It is a defect, but it is still inhabitable under the Home Building Act." The two-stage test generally calls for completion because the occupation certificate can be issued and the owner can fix it up because the building is inhabitable. It is a test of whether a building is inhabitable.

I note that Mr David Shoebridge suggests that I am now engaging in a second read. I know he is anxious to have his amendments considered. In conclusion, as members have heard, the Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020 delivers robust powers of investigation and rectification of serious defects. The bill arms the Building Commissioner with a suite of powers to intervene in ongoing construction and completed buildings through delegated authority. The bill provides for game-changing powers that provide the building commissioner with the ability to prohibit the issue of an occupation certificate. It is worth noting that the Government really is taking a no-nonsense approach to the regulation of building in this State. The bill reflects a new era for the industry and is about putting public safety and consumer interest first to ensure that New South Wales has a leading system of design and building regulation that delivers well-constructed buildings into the future. I commend the bill to the House.

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

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will deal with the bill as a whole. There are two sets of amendments: The Greens amendments on sheet c2020-068B and a further amendment from The Greens on sheet c2020-083A.

Mr DAVID SHOEBRIDGE (11:41:39**):** By leave: I move The Greens amendments Nos 1 to 7 on c2020-068B in globo:

No. 1 **Building Commissioner**

Page 2, clause 3(1). Insert after line 20—

Building Commissioner means the Building Commissioner referred to in section 60A.

No. 2 **Residential apartment building work to which Act applies**

Page 4, clause 6(b), line 17. Omit "6 years". Insert instead "10 years".

No. 3 **Extension of scope of Act**

Page 4, clause 6. Insert after line 18—

(2) The regulations may provide that a specified provision, or specified provisions, of this Act extend to other classes of buildings (within the meaning of the *Building Code of Australia*).

No. 4 **Building Commissioner**

Page 8, clause 11, definition of ***authorised officer***, line 5. Omit all words on that line. Insert instead—

authorised officer means—

(a) the Building Commissioner, and

(b) any person appointed under Division 2.

No. 5 **Building Commissioner**

Page 24. Insert after line 31—

60A Building Commissioner

A Building Commissioner is to be employed under the *Government Sector Employment Act 2013*.

No. 6 **Building Commissioner**

Page 25, clause 62(a), line 13. Omit "any person". Insert instead "the Building Commissioner and any other person".

No. 7 **Statutory review**

Page 27, clause 68, lines 34–41. Omit all words on those lines. Insert instead—

68 Review of Act

(1) The Public Accountability Committee of the Legislative Council is to review this Act—

(a) to consider the functions exercised or delegated by the Secretary, and

(b) to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain effective for securing those objectives, and

(c) to consider the desirability of establishing an independent NSW Building Commission to instead exercise the regulatory and oversight functions under this Act and other Acts relating to the construction of buildings.

(2) The review is to be undertaken as soon as possible after 30 March 2022.

(3) A report on the outcome of the review is to be tabled in the Legislative Council by 30 June 2022 (or by a later day determined by the Committee).

(4) The Minister is to table in the Legislative Council a written response to the report within 3 months after the tabling of the report.

I addressed some of these amendments in my contribution to the second reading debate, so I will briefly run through what each of these amendments does. Amendment No. 1 establishes for the first time the Office of the Building Commissioner as a statutory position. Up to now the Building Commissioner's existence has depended on the goodwill of the Minister and the goodwill of the secretary. There was no requirement to have a Building Commissioner. The Building Commissioner may have disappeared tomorrow but this amendment establishes, for the first time, the Office of the Building Commissioner. Amendments No. 1 and No. 5 taken together do the job of establishing the Office of the Building Commissioner. I repeat, this is not a building commission. I would have liked to drop off the last two letters. However, as I have indicated before, this is a significant step forward.

Amendment No. 2 extends the inspection and other powers granted to authorised officers and to the Building Commissioner, extends the ability to operate those powers to buildings that have been completed within the past 10 years rather than the past six years, and I have explained the rationale for that in my contribution to the second reading debate, so I will not repeat it. Amendment No. 3 provides a regulation-making power to extend the provisions of this Act beyond just class 2 buildings. I did not address this in my contribution to the second reading debate, so I will just briefly explain why we do that.

Undoubtedly the largest body of defects comes about from residential apartment buildings, class 2 buildings. They are quite rightly described by many of the witnesses to the Public Accountability Committee's inquiry as highly complex industrial creations with complex machinery, electrical, engineering and other works. They are quite complex facilities. As a result of that complexity, and as a result of substantial changes in the way in which those buildings have been created—many of them have been very positive, because they create substantially increased efficiencies—but as a result of the complexity and the very dynamic changes that are happening to the construction industry it is also the place where we are seeing most of the defects.

When we look at some of the data that has been provided to that committee, we see certain classes of defects coming back again and again and again in class 2 buildings, at the top of which I would put waterproofing, which seems to be one of the major cost drivers in terms of rectifications. It is also one of those defects that quite literally seeps out over time and is not apparent at the moment you purchase a building. It is also one of the defects that, with quality inspections and a rigorous application of the Australian standards in the waterproofing itself, could be most easily removed. However, repeated evidence was given in the Public Accountability Committee

about people without qualifications or understanding who made no attempt to comply with the application sheets that come with waterproofing products. As a result, inadequate waterproofing is costing the industry quite literally billions of dollars.

Class 2 buildings are the most complex, but we also had significant evidence about building defects across the industry; that is, in ordinary residential homes, and in commercial and industrial buildings as well. Whilst the focus in the initial stage should be on class 2 buildings, because that is where the greatest body of evidence happens to be, and that is where we have individual home owners in apartment blocks who are most affected, there needs to be a capacity to extend these powers to class 1 buildings—that is, ordinary detached dwellings, and dwellings up to three storeys in height—and in time there should be the capacity to extend these powers to commercial, industrial and retail buildings as well. That being said, living in a class 1 building I have some reservations about the Building Commissioner knocking on my door without restraint with all of these powers, and I am not alone in that. As these powers are considered by the Government, we need to ensure that the culture is in place, and the checks and balances of the administration are in place, which is why we believe that over time this can be extended by regulation.

We give the regulation-making power to the Government, and because it is a regulation-making power to extend the exercise of those powers to different classes of buildings we can have oversight of this through the Chamber. That is what amendment No. 3 does. Amendment No. 4 gives the Building Commissioner, for the first time, unambiguous statutory powers and provides the Building Commissioner with the same powers that an authorised officer would be proposed to be granted. In other words, the Building Commissioner's powers do not depend upon him or her keeping sweet with the secretary and the Minister of the day.

The Building Commissioner has statutory powers and can exercise them unambiguously and, hopefully, without fear or favour—not yet on class 1 buildings, I might add. Amendment No. 4 has been critical for The Greens in getting a negotiated outcome on these two bills. Amendment No. 6 is consequential upon amendment No. 4. Lastly, amendment No. 7 puts in place that statutory review. I will not repeat the observations from my contrition to the second reading debate. It is for those reasons and with that scope that the review is contained in these amendments. With those observations, I commend these amendments to the House.

The Hon. ADAM SEARLE (11:49:01**):** Labor supports the amendments moved forward by Mr David Shoebridge. Amendments Nos 1, 4, 5 and 6 will ensure that the Building Commissioner is recognised under the Government Sector Employment Act 2013, which goes some way to ensuring the commissioner is an independent position and its powers are safeguarded. Of course, like The Greens our position was to have an independent building commission that would have full operational and legal independence; this is a compromise position. We thank Mr David Shoebridge for bringing it forward. It is a step in the right direction. Amendment No. 2 is the extension of time from six years to 10 years, which will give comfort to apartment owners who may not be able to seek a resolution to issues within the six-year time frame. We think this is appropriate and consistent with changes made also to the Design and Building Practitioners Bill 2019 in relation to the duty of care, also ably advocated for in this Chamber by Mr David Shoebridge.

In terms of amendment No. 3 we are very supportive of the move to include classes of building that may not be high-rise apartments. We have heard from many home owners who have had significant defect issues that have not been resolved satisfactorily by NSW Fair Trading and who have now been working directly with the NSW Building Commissioner to resolve issues with the builder. It stands to reason that where development works around a particular class of buildings become so problematic the Minister has the power in the regulations to extend the commissioner's powers to include that class of building. In the future this could include class 1 buildings, houses or semidetached houses, particularly where developments are built by large developers and those owners have significant defects and are powerless to resolve those issues directly with the developer or builder. In fact, many years ago when I was a relatively new barrister, in my one foray into building and construction work—

The CHAIR (The Hon. Trevor Khan): A big error.

The Hon. ADAM SEARLE: Well, not necessarily. We had the ridiculous situation of a single developer, the same house, essentially—the same design—the same town and even the same street: seven of them, all with the same kind of defects, but because of the drawbacks in the legislation there was no capacity to resolve issues with the developer then. We could not even resolve things with the insurer. Each matter had to be battled out to finality. I think the changes made here and in the other legislation significantly improve matters.

We also support amendment No. 7, which is the shorter statutory review. A shorter statutory review will give everyone the opportunity to review this critical piece of legislation early during its implementation. This will give ample opportunity to make changes or fine-tuning if serious problems with the legislation become evident or if in fact there are opportunities to strengthen the legislation for home owners and for the industry in the light of

early experience. Sometimes if you can nip a problem in the bud earlier it does not become cultural or endemic and a baked-in problem for the industry. We support all of these amendments because they really promote the public policy that underpins the legislation and the whole suite of reforms in the building space more generally.

The CHAIR (The Hon. Trevor Khan): Mr Searle, before I call upon the Minister, in anticipation that Mr David Shoebridge is going to move his amendment on sheet c2020-083A would you be in a position to indicate what your position would be with regards to that amendment?

The Hon. ADAM SEARLE: Yes, I can do that.

The CHAIR (The Hon. Trevor Khan): I am not seeking to rush you, but I just think there is a possibility of achieving something.

The Hon. ADAM SEARLE: At the risk of keeping the Committee in suspense, I can tell the Committee and yourself, Mr Chair, that the Opposition also supports that amendment. As we understand it, the amendment makes the language between the Home Building Act 1989 and this legislation consistent. We think that is a good thing to do, because the more complementarity there is between different pieces of legislation that deal with essentially the same subject matter the smoother the whole system will work. We support the package of amendments now before the Committee.

Mr DAVID SHOEBRIDGE (11:53:40**):** I move The Greens amendment No. 1 on sheet c2020-083A:

No. 1 **Occupier of land to permit developer to carry out work**

Page 18, clause 41 (3), line 25. Omit "fail to comply". Insert instead "refuse or fail to comply".

The Owners Corporation Network has raised concerns that the current wording of clause 41 (3), which provides a "reasonable excuse" defence for an occupier of land to fail to comply with an order that would be sending a developer back in to do rectification work, may not pick up where the occupier of the land, instead of failing, refuses to comply. I think probably the current drafting is adequate for the task, because the only offence is "fail to comply", but for the avoidance of doubt and to ensure that there is no such concern for home owners we move this amendment to make it express that the reasonable excuse defence covers both refusal and failing to comply. I commend the amendment for those reasons.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (11:55:00**):** I can say at the outset that the Government will not be opposing either the set of amendments moved on sheet c2020-068B or the amendment recently moved by Mr David Shoebridge. I will say a couple of things. We covered a fair bit of the territory regarding the amendment relating to the extension of the Act from six years to 10 years in debate on the design, construction and building Act and there was a significant and well-founded argument made. I put on record that in accepting this the Government will in fact analyse this bill as it goes forward. As I indicated in my reply speech, the Government is committed to making sure that this works and is a robust bill and that the commissioner has sufficient powers available to him to make sure that the bill does work. Amendment No. 2 seeks to extend the power to various different classes of buildings and the like. I am looking forward to knocking on the doors of some of the class 1 buildings and assisting him. In fact, I will accompany the commissioner when he does that at those inspections for the purposes of ensuring the quality of the building work.

Mr David Shoebridge: Just don't bring David Elliott.

The Hon. DAMIEN TUDEHOPE: We will bring a television crew, mate. The Government has worked with all parties in relation to this. The Minister and his chief of staff are here again in the Chamber today. Over a six-month period they have worked collaboratively and will continue to work collaboratively not only with the parties in this place but also with all stakeholders involved in this industry with the commissioner to make sure that we are working in the interests of protecting the consumers and the industry in this State. I think that the conclusion that has been reached in relation to this bill is a credit to the Minister and to the people who have worked with the Minister for the purposes of arriving at this stage and the Government does not oppose any of the amendments.

The CHAIR (The Hon. Trevor Khan): Mr David Shoebridge has moved Greens amendments Nos 1 to 7 on sheet c2020-068B. The question is that the amendments be agreed to.

Amendments agreed to.

The CHAIR (The Hon. Trevor Khan): Mr David Shoebridge has moved Greens amendment No. 1 appearing on sheet c2020-083A. The question is that the amendment be agreed to.

Amendment agreed to.

The CHAIR (The Hon. Trevor Khan): The question is that the bill as amended be agreed to.

Motion agreed to.

The Hon. DAMIEN TUDEHOPE: I move:

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

Motion agreed to.

Adoption of Report

The Hon. DAMIEN TUDEHOPE: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. DAMIEN TUDEHOPE: I move:

That this bill be now read a third time.

Motion agreed to.

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

Questions Without Notice

STATE BUDGET

The Hon. ADAM SEARLE (12:00:00**):** My question without notice is directed to the Minister for Finance and Small Business. Given that Federal Treasurer Josh Frydenberg has provided a full statement to the Federal Parliament on the state of the national budget, when will the Government provide a similar statement on the economy and the budget outlook to the families of New South Wales?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:00:31**):** I thank the Hon. Adam Searle for his question, which has been raised in relation to the current status of the State's financial position. Of course the state of the economy and the state of the nation's financial position was outlined in some detail yesterday by the Federal Treasurer and some of the figures he gave in relation to the position of New South Wales, which were part of his statement, reflect the impact of the COVID-19 pandemic on the State of New South Wales.

The reality is that the State budget has been delayed until later this year so that the full impact of this crisis can be assessed by Treasury and reported to this House. The people of New South Wales will be updated at that time when a budget is moved. Everyone knows that we are facing significant revenue reductions. Everyone knows that we are facing significant unemployment problems. Everyone knows that there is significant impact on small business and everyone knows that there is a requirement to have a strategy in place for the creation of jobs and the revival of the economy going forward. The requirement to somehow have some demand that the Treasurer or I come into this place and give an update, it will be an update about things that everyone should and reasonably know about.

The Hon. Walt Secord: Josh Frydenberg did it. Mathias Cormann did it.

The PRESIDENT: Order! I call the Hon. Walt Secord to order for the first time—not for his first interjection or the third, but for the fourth and for the finger-pointing.

The Hon. DAMIEN TUDEHOPE: The demand for the Treasurer to get up and say, "We are in trouble", is a bit hollow in many respects because everyone knows that this pandemic has caused businesses to close; it has caused revenues to drop; and in fact the speculation is that there has been as much as a $10 billion reduction in revenues and the like. For example, I know that the payroll tax revenues have declined and land tax collections have declined. [*Time expired*.]

The Hon. ADAM SEARLE (12:03:35**):** I ask a supplementary question. Will the Minister please elucidate on those parts of his answer when he referred to the state of the budget position for New South Wales and also his discussion on significant revenue reductions in which I think he said, "We are in trouble"? Why will he not inform the Parliament of the current state of the New South Wales budget? Just how much trouble are we in?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:04:51**):** I thank the Hon. Adam Searle for his supplementary question because where I was up to in any answer I was not nearly finished. The word "trouble" is like this: if you look at your household economy and you set your budget for your

household and you have debts and things you have to pay and suddenly the money is not coming in in the same way it was, most households and families would turn to each other and say, "I think we're in trouble. The money's not coming in." When I use the word "trouble" I use it in the sense of any ordinary person saying "When I'm running the State"—

The PRESIDENT: The Minister will resume his seat. The Clerk will stop the clock. I call the Hon. John Graham to order for the first time. That was his fourth interjection. I do not want the Hon. Walt Secord to think that I am not treating all members equally and fairly. I know that a number of other Labor Opposition members have interjected up to three times. I am waiting for their fourth interjection before I call them to order. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: When I use the expression "trouble" I use it in the sense that every person running any household would use it. In the sense that we are responsible for running the finances of the State, the finances coming into the State are a lot less than were predicted in the previous budget.

The Hon. Adam Searle: Yes, but how much? Come on.

The Hon. DAMIEN TUDEHOPE: I say to the Opposition Leader that in the fullness of time the Government will give a complete picture of what the budget position is. In fact the fluid position of the budget makes it almost impossible to give accurate figures on a day-to-day basis that the Opposition Leader asks for. The analysis provided by the Federal Treasurer yesterday gave a complete picture in relation to where we stand as a nation. We do not resile from any of the observations made by the Federal Treasurer. He has observed that we are in recession for the first time in 29 years. This Government does not resile from that position. In those circumstances I will leave it to the Treasurer to deliver the budget in November.

The Hon. MARK BUTTIGIEG (12:06:38**):** I ask a second supplementary question. I ask the Minister to elucidate on his answer. In his answer he specifically referred to "trouble" and made the clear implication that it does not really matter how much trouble we are in because we are in trouble. Is the Minister suggesting by that answer that Treasury does not have a calibrated snapshot of where we are at now in order for us to determine what we need to do now to get out of the mess we are in now as opposed to in six months time?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:07:19**):** There are two parts to that question. In relation to the use of the word "trouble" I tried to explain to the member that the use of the word "trouble" is that we are like any household that does not have the same level of revenue.

The Hon. Courtney Houssos: The Government is not a household. It is different.

The PRESIDENT: I call the Hon. Courtney Houssos to order for the first time. I know it was just one interjection but it was worth four. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: To the extent that I use the word "trouble" I use it in the colloquial sense like any householder who would say that the revenues of the State are significantly reduced; that there are businesses that have had their doors closed; and that there are circumstances that have caused the complete shutdown in many respects of this economy. Anyone—and I hope that even those opposite get this—would recognise that those circumstances give rise to a different economic outlook going forward. That is why the budget has been delayed. It will be delivered later this year. I urge members opposite to wait for the delivery of that budget.

The second component of the question relates to whether there are calibrated figures. I do not want to speak for the Treasurer but I know in relation to revenue we receive updates on a regular basis in respect of collections and the like. In looking at those collections from time to time, we know in certain circumstances that there is less money coming in than was previously budgeted for. [*Time expired.*]

The PRESIDENT: I remind all members that although it is Thursday we are dealing with Government business, not private members' business. In the past members wanted an early mark on Thursdays and I am coming to the conclusion that some members who are making continual interjections are seeking an early mark today. I am very pleased to see members shaking their heads, indicating that I am wrong. However, we are only in the first 10 minutes of question time and three members are already on one call to order.

JOB GROWTH

The Hon. SAM FARRAWAY (12:10:25**):** My question is addressed to the Minister for Finance and Small Business. How is the New South Wales Government fast-tracking projects to create jobs and are there any alternatives?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:10:39**):** I thank the member for his question and his interest in the creation of jobs, especially regional jobs. There is no sugar-coating

it: The health pandemic has brought on Australia's first recession in almost 30 years and now our focus must be on job creation. That is why we are keeping our infrastructure projects moving. The Government's infrastructure pipeline has increased to over $100 billion. Every major project we deliver—whether it is a school, a hospital or a new railway line—brings with it new opportunities for small businesses and families, and creates jobs. We are fast-tracking the economy with a second tranche of 24 priority projects including a new retail centre, industrial precincts, three new schools and the relocated Sydney Fish Markets, all of which could inject more than $5.37 billion into the State's economy. Those projects will have their planning assessments fast-tracked and finalised through the Planning System Acceleration Program and, if approved, could provide more than 15,000 jobs.

Our commitment to jobs is clear: more frontline workers in the public service, more investment in our communities, and an infrastructure pipeline that is the biggest New South Wales has ever seen. And what is the alternative? It is the Labor Party of New South Wales. Leaders of that once-great party would hang their heads in shame. Jack Lang used to be a regular guest of my grandfather—they were great friends. Those opposite have abandoned the workers of this State and projects that create jobs such as the Narrabri gas field development. Labor has turned its back on the miners in the Hunter, the factory workers and the workers on gas fields. But do not take my word for it. Joel Fitzgibbon from Federal Labor says Labor's actions could cost hundreds of jobs. Ask Daniel Walton, who the Hon. Daniel Mookhey described in his inaugural speech as his friend from the great Australian Workers Union, who has invited those opposite to meet some of those people whose livelihoods depend on affordable gas. I say to those opposite that Labor now represents only the workers of the inner city. Does the Hon. Mick Veitch stand with his fellow union members? Did he stand up in his party room and stand up for jobs?

The Hon. Penny Sharpe: Point of order—

The Hon. DAMIEN TUDEHOPE: She wants to stop me.

The Hon. Penny Sharpe: I just want the Minister to follow the standing orders, which say he must be directly relevant. The Minister is straying well away even from his own dixer.

The PRESIDENT: There is no point of order.

The Hon. DAMIEN TUDEHOPE: I say to the Hon. Mark Buttigieg: What about the workers from the Electrical Trades Union? Did he stand up for them? This side of the House looks after workers. We are the party of the workers. [*Time expired*.]

CLETUS O'CONNOR CHILD SEXUAL ABUSE ALLEGATIONS

The Hon. PENNY SHARPE (12:14:06**):** My question is directed to the Minister for Education and Early Childhood Learning, representing the Minister for Families, Communities and Disability Services. Was the behaviour of Cletus O'Connor ever reported to the New South Wales Department of Communities and Justice, and its predecessors? Will the Minister provide information to the House on any reports that were received?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:14:34**):** I thank the member for her question directed to me in my capacity representing Minister Ward. Yes, of course I will take the question on notice and get the information that the member has asked for through that process. In relation to the matters around Mr O'Connor—and questions were asked about this matter and the confidentiality clauses yesterday—I reiterate for the benefit of the member and the House that the Department of Education only includes confidentiality clauses in historical sexual abuse settlements at the request of survivors and their lawyers, and that each survivor is advised that the Government does not require a confidentiality clause.

In relation to the settlement of claims, the department only uses confidentiality clauses after taking into consideration both the claimant's preference and whether there is a cross-claim or other related proceedings. I make it very clear that in the event that a confidentiality clause is used, it does not restrict a survivor from discussing the circumstances of their abuse, their claim and their experiences of the claims process, and that is in accordance with the royal commission's guiding principles. But, as I said, I will take the bulk of the member's question on notice, and refer it to the relevant Minister and the department for an answer.

SHOALHAVEN ZOO

The Hon. EMMA HURST (12:15:47**):** My question is directed to the Minister for Mental Health, Regional Youth and Women, representing the Minister for Agriculture and Western New South Wales. Last week a zookeeper at Shoalhaven Zoo was attacked and seriously injured by two lions while she was cleaning their enclosure. In 2014 another Shoalhaven Zoo zookeeper sustained serious injuries to both his hands from a crocodile attack. How does the New South Wales Government ensure that zookeepers who work closely with wild animals are properly trained and accredited?

The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:16:20**):** I thank the member for her question. As the member opposite said, it is a very good question. The Shoalhaven Zoo is down near where I live in southern New South Wales. The New South Wales Government is aware of the incident at the zoo mentioned by the member. It is an incredibly tragic event and our thoughts are with the zookeeper involved and her family. While an investigation into the incident is underway we would like to respect the privacy of the persons involved and also the process of that investigation so that an acceptable outcome can be reached.

The zoo holds an authority under the Exhibited Animals Protection Act 1986 with the New South Wales Government, and staff's experience and qualifications are assessed at the time of each application assessment to ensure compliance. These assessments ensure that staff are among the most experienced in the country, which makes this isolated incident even more unfortunate. Authority holders, including the Shoalhaven Zoo, are also subject to annual compliance audits to ensure that safety standards are continually met, and that staff are experienced and suitably trained when dealing with dangerous animals. These audits of exhibitors' records also review the procedures for staff who deal with dangerous animals, given the unpredictability of wild animals—even those raised in captivity. These audits ensure that staff do not place themselves or others in potentially dangerous situations. If authority holders do not reach any of these standards the New South Wales Government will simply not license them.

While the Government completes these audits annually, it is the responsibility of the exhibitor to ensure they are upholding their duties and their obligations under the Work Health and Safety Act 2011, to make sure that staff are complying at all times with these procedures. While the events that unfolded at Shoalhaven Zoo are most unfortunate, they are also incredibly isolated. The New South Wales Government's strict procedures and WorkSafe guidelines that exhibitors are obligated to adhere to as well as the protocols put in place by our exhibitors—who are some of the best in the world—ensure that incidents of this nature rarely occur. Again, and I am sure I speak on behalf of every member in this Chamber, our thoughts are with the zookeeper and her family at this time.

COVID-19 AND EDUCATION

The Hon. TAYLOR MARTIN (12:19:18**):** I address my question to the Minister for Education and Early Childhood Learning. Will the Minister outline to the House how the New South Wales Government is supporting vulnerable students through the COVID-19 pandemic?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:19:33**):** I thank the honourable member for his question. The COVID-19 pandemic has been challenging for students across the State, especially for vulnerable young people. We know that many young people and their families have felt the strain of financial pressure during this difficult time. It is crucial that there is continuity of learning for our most vulnerable students, regardless of the financial position of their families. Last month I was pleased to join Minister Ward in announcing that almost 850 of the State's most vulnerable young people would receive a $1,000 scholarship to support their studies. The annual program aims to improve educational outcomes for students in years 10, 11 and 12 at a New South Wales high school or a TAFE equivalent, including young people completing a school-based apprenticeship or traineeship, or students studying a vocational education and training subject at school in 2020.

This year a record 841 students will receive an investment in their future, which will help them to achieve their educational goals and break the cycle of disadvantage. The program will give priority access to young people who live in supported accommodation, who identify as being at risk of homelessness, who have experienced domestic and family violence or who have been in contact with the youth justice system. These $1,000 grants will help equip vulnerable young people with the tools they need to excel in their studies, including information technology equipment, internet access, textbooks, course costs or tools for tradies. We are committed to supporting vulnerable students to maintain continuity in their education through this time. Schools have been working closely with community organisations to ensure that students remain engaged while they learn from home and as they make the transition back to school.

The Department of Education will continue to work closely with the Department of Communities and Justice to ensure that vulnerable students are supported as they continue their learning in the classroom going forward. The COVID-19 pandemic has been a stressful experience for all students. This is why we have provided students with access to remote counselling services through an online video telehealth platform or by telephone. While students are now back in their classrooms, we will continue to utilise the lessons learned through the remote provision of school counselling services to better meet the needs of students in the future. Vulnerable students are not just those from low socioeconomic demographics. Students with disabilities have also been adversely affected by COVID-19, which is why the Department of Education has been providing additional resources for students with disabilities or additional needs and their families throughout the pandemic.

Students with disabilities who utilise specialised technology at school were provided with this specialist equipment so that they could continue to use it while learning from home. Teachers have been working with families to ensure students' personalised learning and support plans continued during at-home learning in order to make the transition as seamless as possible. We have had many staff including student learning and support officers working to provide that individualised support remotely and to support students and their families as they transition back to school. We know that the transition back to school presents additional challenges and a range of emotions for all students, especially those with additional needs. I thank our teachers, school counsellors, and support staff for their commitment to supporting students. [*Time expired*.]

BUSHFIRES AND FORESTRY INDUSTRY

Mr JUSTIN FIELD (12:22:37**):** I direct my question to the Minister for Finance and Small Business, representing the Minister for Energy and Environment. In reference to a deferred answer submitted this week by the Minister for Energy and Environment to my question regarding evidence relied on by the Environmental Protection Agency [EPA] when granting new site-specific conditions for bushfire-affected forestry operations, can the Minister confirm whether an on-ground assessment was conducted by the EPA for the South Brooman State Forest, whether this involved an on-ground fauna survey, whether any expert advice was sought and, if so, from whom, before the EPA granted special conditions to allow bushfire-affected logging operations?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:23:28**):** I thank Mr Justin Field for his question. Last summer's bushfires were unprecedented. Over 40 per cent of State forests were burnt, which has resulted in impacts on not only our native wildlife but also regional timber industry jobs and businesses. The New South Wales Government is committed to striking a balance between protecting the environment and securing regional jobs. The harvesting of native timber within State forests must already comply with IFOAs—integrated forestry operations approvals. IFOAs manage the impact of native forestry operations on the environment and prescribe rules which protect soils, water, ecosystems, native plants and animals. However, IFOAs did not contemplate the scale and severity of the recent bushfires on the environment and additional measures are required.

The EPA is working with the Forestry Corporation of NSW to understand where regional job pressures are and to identify burnt State forest sites across New South Wales where the environmental risks of conducting forestry operations can be reasonably managed through supplementary IFOA conditions known as site-specific conditions. Those conditions are tailored to mitigate the specific environmental risks posed by the bushfires at each site. They have been informed by scientific literature, expert advice from various bodies, existing threatened species data and, where it is safe to do so, on-ground assessments. The EPA has also utilised various data on fire extent and severity, biodiversity, water quality and aquatic impact generated by the Department of Planning, Industry and Environment following the 2019-20 bushfires.

At the time of issuing the first site-specific condition in South Brooman State Forest in early February 2020, it was unsafe for the EPA or Forestry Corporation to undertake on-ground assessments or fauna surveys. Those forests had only recently burned and fires were still alight on the South Coast. The site-specific conditions designed for this operation reflected this and took a precautionary approach to protect unburnt or lightly burnt areas, increased food and habitat tree retention and significantly greater buffers on streams. The conditions also required Forestry Corporation to undertake a survey for threatened species and habitat immediately prior to logging. I am advised that the EPA sought expert advice from its own experts, the Department of Planning, Industry and Environment and external experts across a range of academic institutions and consultancies to identify the likely environmental risks at the site including biodiversity, water quality and aquatic ecosystem risks. The experts also provided advice on possible mitigations for those risks. I can provide the member with more information. [*Time expired*.]

Mr JUSTIN FIELD (12:26:31**):** I ask a supplementary question. Will the Minister elucidate his answer with regard to the expert advice that the Minister indicated the EPA sought from the department and others? Will the Government provide that advice and will the Minister confirm why, if the forests were too dangerous to conduct fauna surveys, they were not too dangerous to log?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:26:57**):** I thank the member for his supplementary question. The EPA issued site-specific conditions for an additional site in South Brooman State Forest in early May 2020. The EPA visually assessed South Brooman State Forest to understand the scale and severity of the fires and what further risks required mitigation. Similar precautionary conditions applied, including a requirement for Forestry Corporation to survey for threatened species prior to harvesting the site. The same expert advice was utilised in the design of the site-specific conditions. Members in the other place have a longer time to answer questions and, accordingly, my answer was a bit longer. However, in relation to the substance of the supplementary question, I will refer it to the responsible Minister and come back to the member with the information that he seeks.

STATE ECONOMY

The Hon. WALT SECORD (12:27:59**):** I direct my question to the Minister for Finance and Small Business, representing the Treasurer. Given that New South Wales began entering a recession prior to COVID-19, with the biggest decline in State final demand in Australia for the March quarter, as reported yesterday, will the Minister now admit that the drought and bushfire recovery stimulus measures were inadequate, that the economy had already stalled and that the Treasurer was incorrect when he claimed on 26 April that the economy was roaring? It was roaring. The economy was roaring!

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:28:41**):** Did you get a letter from Daniel Walton?

The Hon. Walt Secord: It was a roaring letter.

The PRESIDENT: Order! The Clerk will stop the clock. The Hon. Walt Secord repeated his roaring on a number of occasions, but there is no reason for the Minister to acknowledge this. The Minister should answer the question and remain directly relevant. The Minister has the call.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:29:37**):** I apologise for exciting members opposite.

The Hon. Penny Sharpe: Inciting.

The Hon. DAMIEN TUDEHOPE: Was it "inciting"? I deny the premise of the member's question. The premise of the question was that we were already in recession prior to the pandemic. The answer is: That is not true, and it follows that in relation to all the other observations that the honourable member made about the state of the economy the answer is "no".

REGIONAL YOUTH TASKFORCE

The Hon. WES FANG (12:30:17**):** My question is addressed to the Minister for Mental Health, Regional Youth and Women. Will the Minister update the House on the Regional Youth Taskforce's most recent meeting?

The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:30:43**):** I thank the honourable member for his question. Plans were made, flights were booked and task force members had bags packed to make their way to Queanbeyan in March to attend the second Regional Youth Taskforce meeting. Then our world changed. However, as people from the bush are so used to doing, we rearranged our plans and made it work. I am pleased to inform the House that on Sunday 5 April we held our second Regional Youth Taskforce meeting via videoconferencing. The meeting was well attended and focused on the second pillar of our regional youth framework, which is connectivity. Connectivity looks to prioritise both physical and digital connectivity and being able to access those services and opportunities easily, so it was quite apt that we had this meeting online.

Minister Dominello was able to join us, which was just fantastic. He discussed how young people connect to government services. He was very popular. Our task force members had some fabulous ideas. I will share one in particular with the House today. Did members know that when someone learns to drive—many members who have L-plate drivers in their household would know this—they have to record all their training hours in a logbook and have them signed them off? Young people are so digitally savvy and yet we still ask them to record hundreds of hours of numbers in a logbook. Since we can have our licence on our phones, the task force has suggested using the Service NSW app to digitally record driver training hours. The simple solution with real, tangible benefits actually came from young people directly to a Minister attending our Regional Youth Taskforce meeting.

Task force members also heard from Transport for NSW and had informative comments about how we can adapt our existing services to better meet the needs of young people in regional areas. With restrictions in place at the time many of our task force members were learning online, and continue to do so. We have heard many discussions lately about everything that the Department of Education has been doing about learning online. We allowed attendees the opportunity to share how online learning was working for them and their peers and the effect that COVID-19 restrictions were having on their wellbeing, and they had some really valuable insight. All of this was shared with the education Minister, the Hon. Sarah Mitchell, and the Department of Education to better inform their decisions and their response. The task force came up with ideas, suggestions and issues and was able to directly speak to my friend and colleague the Hon. Sarah Mitchell, who was able to pass them on to the department to look at. Again, it is an example of real-time, real-life experiences of our young people getting directly to our Ministers.

The feedback we have received so far from the young people on the task force has been invaluable. It just goes to show that our young people have incredible, meaningful ideas that can help change the lives of thousands

of other young people—and older people, too—when we give them an opportunity to be heard. I encourage all members of this House, Government Ministers and agencies to reach out to young people to see how they can engage. I look forward to updating the House on our next Regional Youth Taskforce meeting, which will be focused on wellbeing.

ENERGY POLICY

The Hon. MARK LATHAM (12:33:57**):** My question on jobs is directed to the Minister for Finance and Small Business, representing the Premier, the Treasurer and the energy Minister. Has the Leader of the Government seen comments by Matt Howell, CEO of the Tomago Aluminium smelter in Newcastle, who earlier today said that using renewable power backed up by battery power would not keep the lights on for Australian industry? He stated, "The biggest battery in the world in South Australia would not run this smelter for eight minutes." What is the Government doing to fulfil our State's potential as a global energy superpower, giving our industries and workers a competitive advantage in energy supply as the best way of getting New South Wales out of this deep recession, especially in the creation of mining and manufacturing jobs?

The PRESIDENT: I remind members sitting in the public gallery that interjecting is disorderly.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:35:05**):** I thank the member for his question. It really is a question that brings into stark focus the debate that we had last night on the Petroleum (Onshore) Amendment (Coal Seam Gas Moratorium) Bill 2019. The supply of energy and the creation of jobs in this State, which was so fundamental to the Government's rejection of that bill, is intimately connected with ensuring that our manufacturing industry in this State can be maintained. The observations made by the CEO of Tomago Aluminium, Matt Howell, are pertinent. It is a pity that those members opposite do not listen to people like Daniel Walton and Matt Howell. They too should say that the creation of jobs is so fundamental that we will embrace energy sources, wherever they are, for the purposes of giving sure-fire assurances to the manufacturing industries that New South Wales is the place not only where energy is guaranteed but also where energy is cheap and opportunities exist to start businesses and create jobs?

The rejection of the Narrabri gas field says it all: they were engaging in policy work which is fundamentally designed to pander to the interests of minority groups rather than in fact having a focus on how we create jobs. Every member on the opposite side of the Chamber would have received a letter. I invite them to table the letters that they received from Daniel Walton. I am sure the Hon. Mark Buttigieg, the Hon. Walt Secord and the Hon. Mick Veitch got a letter. Every member opposite got one on behalf of the workers of this State pleading with them to deliver energy—

The Hon. Courtney Houssos: He is just upset because he didn't get one. We will send a copy to you.

The Hon. DAMIEN TUDEHOPE: Please send me a copy. I would be delighted. I will come into this House and read it onto the record. The letter was pleading with members opposite to ensure energy supply for the manufacturers—not only for industries like Tomago but for all industries—so they have reliable and cheap power to operate and provide jobs in this State.

The Hon. MARK LATHAM (12:38:04**):** I ask a supplementary question. On the question of letters, could the Government now write a letter to Tomago Aluminium guaranteeing the reliable energy supply that is needed to give those workers an economic future? I ask that in light of the Government's own policies, which very much emphasise renewables and battery storage while running down dispatchable base load power in New South Wales.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:38:35**):** I thank the Hon. Mark Latham for his supplementary question. I am a great letter writer but I will not be writing this letter because the letter he seeks to have written is the responsibility of a Minister in the other place. I am sure those like Mr Howell at Tomago will have been in regular communication with him in relation to the provision and reliability of the power that we supply to this State.

The Hon. Mick Veitch: Are you going to drive Matt Kean's electric car around? Write him a letter about that!

The Hon. DAMIEN TUDEHOPE: The suggestions and policy provisions of those opposite are fantastic to listen to. In fact, they ought to be given an opportunity on a more regular basis to tell us their policy positions for making sure that the people of New South Wales do not have the jobs that we want to provide for them—those policy provisions that say that we do not want gas to be provided and those that say we do not want infrastructure to be delivered. Which is the party that did not want the metro rail line delivered in the way that this Government delivered that and similar infrastructure projects? Which is the party that opposed all the infrastructure projects?

The Hon. Scott Farlow: Point of order: I am very much looking forward to hearing more from the Hon. Damien Tudehope but unfortunately I cannot. I am sure that members seated in the upper gallery also cannot hear because of all the interjections in the Chamber. Mr President, I ask you to call to order all members of the Opposition.

The PRESIDENT: I do not blame the Hon. Scott Farlow for not hearing. He could not possibly hear with all the interjections being made. I uphold the point of order. All that is occurring as a result of continual interjections is that time is truly being wasted in question time, which means that one or possibly two members who would have had an opportunity to ask a question will lose that opportunity. That cannot be of benefit to the members of this House. I know that the Ministers are very keen to get as many questions as possible asked of them during question time and they do not want to be deprived of that opportunity. I again ask members to cease interjecting. I also indicate to the Parliamentary Secretary that it was not only members of the Opposition or the crossbench interjecting but also the members of the Government were interjecting at times.

The Hon. Mark Latham: Point of order: My point of order relates to relevance. My question was about guaranteeing the jobs of the Tomago workers. It was not about Labor's metro policy in years gone by. Mr President, I ask you to please bring the Minister back to the relevance of his answer to the question I asked.

The PRESIDENT: I uphold the point of order. I ask the Minister to be directly relevant to the supplementary question.

The Hon. DAMIEN TUDEHOPE: I acknowledge the point of order. This is a government that is committed to the protection of jobs for all the people of this State—public sector workers, private sector workers and including, as best as we possibly can, the workers at Tomago. But it is only by the creation of jobs that we can guarantee the future of jobs. [*Time expired.*]

CHILDCARE SUPPORT SCHEME

The Hon. SHAOQUETT MOSELMANE (12:42:39**):** My question is directed to the Minister for Education and Early Childhood Learning. Given that the Federal childcare support scheme concludes on 28 June, what discussions has the Minister had with her Federal counterparts to ensure that early childhood education remains affordable for parents and for women to be able to return to work?

The Hon. Courtney Houssos: Good question.

The Hon. Tara Moriarty: Great question.

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:43:03**):** It is a good question. It is a great question. I know how important it is for women, particularly working women, to have access to early childhood services. It is something I know on a personal level with our youngest daughter. I know other women and men in this Chamber would be in the same position and know that it is important for working families to have good access to early childhood education. Obviously the member has asked specifically about conversations that I have had with my Federal counterpart in relation to early childhood care affordability and the sector going forward. Obviously a range of measures has been put in place.

The Federal Government completely changed its normal childcare subsidy and brought in the package referred to in the question asked by the Hon. Shaoquett Moselmane. For us in New South Wales, as I have said in the House on previous occasions, we have given support to preschools that we fund to the tune of being able to opt in to extensive funding for terms two and three in preschools and by continuing our Start Strong funding at the same levels regardless of attendance. The Government has also put in extra support for long day care services run by local government, which also is not an area that is normally the Government's responsibility to fund. Nevertheless the Government has been involved in that.

Of course there are questions related to what happens at the end of June. The Federal Government has said that it is giving consideration to what it will do in relation to that program. Education Ministers are due to meet next week to discuss a range of issues: childcare support schemes will be one that is on the table. I certainly will be advocating on behalf of our early childhood services. I speak to them regularly as does my office. Our department speaks to the Federal department. It is very important that families are supported. I will be making that case on behalf of our communities and our families.

TAFE NSW

The Hon. TREVOR KHAN (12:44:52**):** Mr President—

The Hon. Mick Veitch: You are sitting on this side?

The Hon. TREVOR KHAN: I remember what it was like to be on the Opposition side of the House.

The Hon. Mick Veitch: Not many of you would.

The Hon. TREVOR KHAN: No, indeed. But I remember how difficult it was. I will never be on the Opposition side of the House again. Opposition members can be rest assured of that. My question is addressed to the Minister for Finance and Small Business. How are the TAFE courses being provided free by the New South Wales Government helping people to upskill during this period of restrictions?

The DEPUTY PRESIDENT (The Hon. Taylor Martin): The Minister has the call.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:45:36**):** Mr Deputy President—

The Hon. Mick Veitch: Don't respond to interjections.

The Hon. DAMIEN TUDEHOPE: It is the objectionable nature of the interjection that matters. I thank the Hon. Trevor Khan for his question. I also thank the Hon. Ben Franklin for the contribution he made earlier this week when he acknowledged the work that had been done in relation to TAFE courses. I am pleased to inform the House that enrolments in the New South Wales Government's fee-free TAFE NSW short courses have passed 100,000 since being introduced in April as a response to the COVID-19 pandemic. The short courses are designed to help people to take advantage of the extra spare time they may have had due to restrictions to upskill, particularly with those skills likely to be in demand as we emerge from restrictions and seek to reboot.

Anyone living or working in New South Wales who is an Australian or New Zealand citizen, a permanent resident or is here on a humanitarian visa and is over 17 years of age, or in some circumstances is between 15 and 17 years of age and has left school, is eligible for these fee-free online courses. There have been 21 fee-free courses offered. With regional areas of New South Wales facing so many challenges it is encouraging to note that 54 per cent of enrolments in these courses are from regional New South Wales. The most popular course in regional New South Wales has been the statement of attainment in medical administration skills. The most popular course in metropolitan New South Wales has been the statement of attainment in team leader skill sets.

Other short courses include digital security basics, build your digital literacy with coding, create a brand presentation, undertaking projects and managing risk, business administration skills and enhanced customer service. Members opposite will be pleased to note that the Queensland Labor Government was so impressed by the New South Wales initiative that it has adopted it. I acknowledge the Minister for Skills and Tertiary Education who observed that when last checked Queensland had reached 7,000 enrolments for the Queensland fee-free TAFE courses. If this was a State of Origin match the score would show that New South Wales, the Blues, would win with 93,000 to 7,000, or 93-7, which is a pretty good win in anyone's parlance. New South Wales has invested in a program of TAFE courses that is very popular.

The Hon. Mick Veitch: Did you get V'landys permission to use that line?

The Hon. DAMIEN TUDEHOPE: I did. [*Time expired.*]

COVID-19 AND SYDNEY GAY AND LESBIAN MARDI GRAS

Reverend the Hon. FRED NILE (12:48:40**):** My question without notice is directed to Minister for Mental Health, Regional Youth and Women, representing the Minister for Health and Medical Research. I refer to the Minister's response to my question on notice No. 1409 concerning the spike in coronavirus infections some two weeks after the Sydney Gay and Lesbian Mardi Gras. Will the Minister outline the social distancing strategies the Government encouraged for those attending the event and how those were implemented? Does the Minister for Health and Medical Research stand by his claim that there is no evidence that attendance at the Mardi Gras had impacted on coronavirus's 19 cases in New South Wales? In light of the fact that the virus has an incubation period of up to two weeks, is the Minister still confident in his response?

The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:49:32**):** I thank the honourable member very much for his question, which refers to Minister Hazzard from the other place, who I represent in this Chamber.

The PRESIDENT: Order! The Minister has the call.

The Hon. BRONNIE TAYLOR: As this is a question that contains quite a bit of detail, I will take it on notice and will provide a further answer in due course. But the story that this State and this country has to tell about the containment of the COVID-19 virus, which we refer to as corona, is one that, as I have said before in this place, we should be very proud of. When we knew what we were faced with we implemented the strategies that we needed to, which have clearly reflected the incredible outcomes that we have had. We know that the most effective strategies that we implemented included containment and social distancing. The processes and strategies that we put in place have proven to be extremely effective.

The fact that we have not had the enormous rate of infection and contamination that we have seen in other countries speaks volumes about the processes we have put in place. Through the strategies we have implemented, through the way we have dealt with data—and I give Minister Dominello a huge shout-out for his Data Analytics Centre and his ability to be able to access the data—and through the COVID-19 app, which enables the tracing of people's exposure to the virus, we have been able to shut things down very rapidly and have protected our citizens.

I am very proud to be part of this Government which has had this incredible response but, more importantly, I am very proud to be part of a community that completely came on board with the restrictions and strategies that we had to put in place. In relation to that part of the question asking if the Minister stands by his claim, I am sure that will be something the Minister will be very confident to reply to. I will pass this question on to him and get a detailed response for the member in due course.

EARLY CHILDHOOD CENTRES

The Hon. GREG DONNELLY (12:52:39**):** My question without notice is directed to the Minister for Education and Early Childhood Learning. Given reports that some New South Wales childcare centres have not been cleaned for a week, what is the Minister's response to parental concerns that educator ratios in early childhood centres are being compromised, forcing centres to choose between care and education or hygiene?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:53:07**):** I thank the member for his question in relation to the cleaning of early childhood centres and reports that some of them are not being cleaned. I have not been made aware of these reports, but I am very happy to look into any particular concerns of the member or of any other member in relation to these matters. Obviously we are the regulator of these early childhood services and we are here to support them during what is a very difficult time. As the member would appreciate, there is a difference in New South Wales in the way our school communities are being run. There is a systemic group of schools that the Department of Education runs and has responsibility for and the cleaning provisions are in place through the department.

Early childhood services have different mechanisms for how they are run. Many are run by local government, some are run by the not-for-profit community and some are run as small businesses. Therefore, ultimately, meeting guidelines around the cleaning and hygiene that are required is the responsibility of individual services. But we need to make sure the services are supported to be able to carry out those important tasks, particularly for services where very young children attend. We know that there have been issues in relation to accessing some supplies, particularly early on in the COVID-19 period, in the same way that we all had problems in the community accessing things like toilet paper or sanitiser—those items that were not on supermarket shelves. I know there were some issues about getting nappies for some of those services because the supply chains were under a lot of pressure, and we all saw it at our local supermarkets as well.

The department's authorised officers have been working very hard to help supply services with the hygiene and essential supplies we know these services need, and they have been providing care packages with things like nappies, hand sanitiser and baby wipes. We are still very much willing and able to assist services who need essential supplies, and if there are any issues around the supply of products or the sourcing of cleaning products we will keep those lines of communication very open with the sector, the peak stakeholders and peak bodies, and we will continue to do that throughout this process.

The Hon. GREG DONNELLY (12:55:36**):** I ask a supplementary question. In her answer the Minister commented that the Government is the regulator of these early childhood services. Will the Minister elucidate on that part of her answer and confirm whether there have been any applications received by her to reduce the ratios in place with respect to early childhood centres and the cleaning of them?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:56:09**):** I thank the member for his question. I am happy to take the question on notice. Obviously any applications in relation to regulations or things that services need do not come to me as the Minister; they go to the department as the early childhood directorate is responsible for those matters. I am very happy to take that question on notice and come back to the member with any advice that may have come from services in relation to the issues that he has raised.

The Hon. COURTNEY HOUSSOS (12:56:34**):** I ask a second supplementary question in relation to that part of the Minister's answer in which she referred to the financial support package that has been provided to systemic schools to provide additional cleaning—I believe it is a $250 million package that has been provided. Is the Government considering providing that to the early childhood education sector that she also spoke about in her answer?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:57:03**):** As I said in my answer, and I think I was quite clear, the systems are set up in different ways. As the Department

of Education we are responsible for running those 2,200 public schools, we are responsible for the employment of staff and we are responsible for cleaning those schools, whether in the COVID-19 period or not. Obviously, the way that early childhood education is set up is different; it is regulated by the State Government but services are run separately. They are run through various funding mechanisms—Federal, State and a combination of some service types—and, as I said, they are run as individual services. There are more than 5,000 services across New South Wales and they have responsibilities for how they operate, their staffing, their cleaning and meeting the regulatory requirements.

We are here to help our early childhood services through this pandemic. As I said, we are here to help them with what they need; we have done that by continuing their funding and by saying to them that we are putting in that extra over $50 million, particularly for our preschool services, and that we are keeping Start Strong at their current rates. We are keeping the Government funding at their current rates even if they do have issues with attendance and enrolment. We have guaranteed funding to support them if there are issues with fee revenue coming in for families by giving that fee relief through the opt-in package that I spoke about yesterday. What that means in practice is that our preschool services in particular are receiving funding at levels either the same or very similar to what they were getting pre-COVID-19.

The PRESIDENT: The Minister will resume her seat. I remind the Hon. Courtney Houssos that it is at the discretion of the Chair if members are allowed to ask a first supplementary question or a second supplementary question. Using that discretion I allowed the member to ask a second supplementary question. It goes without saying that the member should then allow the Minister to answer that question without interjecting. The Minister has the call.

The Hon. Courtney Houssos: Point of order: My point of order relates to relevance. My supplementary question was quite specific. The Government directly funds community preschools. Therefore, will the Government consider funding a relief package for cleaning community preschools? The Minister was talking generally about the early childhood centres. It is a very specific question. I ask the President to draw the Minister back to the question in her remaining time.

The PRESIDENT: Before I rule on the point of order, I congratulate the member. That is exactly how a point of order is called if the Minister is not being directly relevant. Do not interject four or five times, as the member was doing. The Minister was being directly relevant. There is no point of order. The Minister has the call.

The Hon. SARAH MITCHELL: As I was saying, we have been providing this financial support to our early childhood services, specifically our preschools and the local government early childhood services, to give them that financial viability throughout this process, to do what they do on a day-to-day basis and to keep staff employed, including cleaning staff. As I have said, I have seen them in my own children's centre. This is about making sure we have viability for those services. As I have already said in answer to the question from the Hon. Greg Donnelly, I am happy to take on notice any requests that have come for additional cleaning support and what has been provided— [*Time expired*.]

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

Supplementary Questions for Written Answers

EARLY CHILDHOOD CENTRES

The Hon. COURTNEY HOUSSOS (13:00:59**):** My supplementary question for written answer is directed to the Minister for Education and Early Childhood Learning. Will the Minister outline or list any early childcare centres that have applied for a reduction in ratios as a result of the COVID-19 pandemic?

The Hon. Penny Sharpe: I have a supplementary question for written answer.

The Hon. Sarah Mitchell: Point of order: I am loath to do this, but my understanding was that each party was only able to put one supplementary question for written answer. I apologise if I am wrong.

The PRESIDENT: That is correct. The sessional order indicates at point (3) that:

> Each party and any independent member is limited to one supplementary question each question time under this order.

ENERGY POLICY

The Hon. MARK LATHAM (13:02:09**):** Will the Minister for Finance and Small Business detail the guarantees that the Minister for Energy and Environment has given to Tomago and its workers about the security of their jobs in light of the supply of reliable, dispatchable baseload power to the site?

Questions Without Notice: Take Note

TAKE NOTE OF ANSWERS TO QUESTIONS

The Hon. WALT SECORD: I move:

That the House take note of answers given to questions this day.

COVID-19 AND SYDNEY GAY AND LESBIAN MARDI GRAS

STATE ECONOMY

The Hon. WALT SECORD (13:02:58**):** I take note of questions on COVID-19 and questions on the economy. During question time Reverend the Hon. Fred Nile asked the Hon. Bronnie Taylor about Australians and COVID-19. He said that in New South Wales it was not the Berejiklian Government or the Morrison Government that protected the community, it was Australians protecting Australians, doing the right thing by each other by socially distancing. Putting aside Newmarch House and the *Ruby Princess*, we had record low rates of infection. That was because we looked after each other—it was not the Government. Australians had the best social distancing in the world. Compare Australia with North America—for example, 24 people died in my mother's home town of 2,200 people. That is a quarter of the number of people who have died in Australia.

I will return to the economy and the lack of an answer from the Minister for Finance and Small Business, representing the Treasurer. The fact is, New South Wales is the weakest State in Australia. I will say that again: New South Wales is the weakest State in Australia. That is not my view; that is the evidence we saw yesterday in the national accounts data released by the Australian Bureau of Statistics. New South Wales used to be the engine room of the Australian economy. We used to lead the nation in so many ways—on job creation and low unemployment. We even used to lead the nation on literacy and numeracy rates. It is extraordinary that in this context the New South Wales Treasurer and the New South Wales Minister for Finance and Small Business would refuse to make a statement in the Chamber.

Their equivalent counterparts in the Federal Parliament, Treasurer Josh Frydenberg and Minister for Finance Mathias Cormann, both detailed the State of the economy in their respective Chambers. They provided the budget outlook, they talked about revenue, they talked about unemployment projections and they gave the business community and families the information that they needed. However, in New South Wales my colleague the Hon. Daniel Mookhey and I officially wrote twice to the Minister for Finance and Small Business and the Treasurer seeking a formal briefing on the New South Wales economy. We also asked for an in-confidence briefing from the Secretary to the Treasury, Michael Pratt, AM. We got absolute silence. Upon repeated contact with the office, a ministerial adviser said that the Minister was considering this request. It is extraordinary that the Treasurer would say that the New South Wales economy was roaring.

The Hon. Damien Tudehope: No, he did not say that.

The Hon. WALT SECORD: He said it was roaring. The front page of *The Daily Telegraph*, the people's paper.

The PRESIDENT: Order! The Minister will have time to respond.

The Hon. WALT SECORD: The people's paper. He said the economy was roaring.

The PRESIDENT: The member's time has expired. Order! The Minister will have time to respond.

The Hon. Sarah Mitchell: Point of order: I have tried to be respectful today, but the language used by the Hon. Walt Secord—

The Hon. Walt Secord: I meant to say fool and liar.

The Hon. Sarah Mitchell: The member is being unparliamentary.

The PRESIDENT: I will reserve and come back to this. I do not want to take up Mr Justin Field's time.

BUSHFIRES AND FORESTRY INDUSTRY

Mr JUSTIN FIELD (13:06:48**):** I take note of answers to questions relating to the logging of bushfire-affected forests. The reason I have been raising this question in the House, and in budget estimates before that, is because 80 per cent of the South Coast's State forest was burned in the bushfires and more than 60 per cent on the North Coast. Despite that, back in February 45 sites were approved by the Environment Protection Authority [EPA] for logging to commence in burnt forests. Since then another 20 have been added. I have been trying to find out on what basis the Environment Protection Authority made those decisions to support logging in those forests. The EPA has an obligation to protect species, communities and habitats in those forests.

On what possible basis has it made the decision to allow bushfire-affected logging when no broad environmental assessments, ecological assessments or wood supply assessments have been conducted in those forests? How does the EPA determine that? Under New South Wales logging rules, if the Forestry Corporation wants special conditions and rules to apply—which is what the Minister has acknowledged have been given—it is to submit a report to the EPA to consider when making a judgement. I was unable to get a copy of the report for the South Brooman State Forest, which was the first to be given these exemptions. There are 54 words in the report that details the reasons for the exemption, whether there are alternatives available and what the impact is on endangered species. There is no information or detail.

I asked the question on what basis this exemption was made and I received an answer the other day, and the Minister has given me more today about the things that could be done. There could be on-ground assessments, existing scientific literature could be looked at and expert advice could be sought. But I have asked what has actually been done. That still has not been made clear. We heard today that the fires were still burning, it was too dangerous to go and do the assessments, so we just approved it anyway. How can it be too dangerous because of the effects of the fires to do the surveys and assessments, but it is not too dangerous to go in and log the forests? That is nonsense. The Government is deliberately hiding this information from the community. People are furious that their forests have been so badly impacted by these fires and they are now being logged. Members of the community are watching these logs going out of these burnt forests, travelling through their towns on a daily basis and they are wondering what the future is for the recovery of these forests and for the species of New South Wales.

STATE ECONOMY

The Hon. ADAM SEARLE (13:09:05**):** I take note of answers to questions this day passing between the Leader of the Government and myself. The Hon. Walt Secord has raised a very serious point. We know that the New South Wales economy is in trouble and we assume, because the Government has said so, that there is a concomitant impact on State revenue. We also know that the Government has put in place a number of initiatives where it has foregone revenue through the form of rebates. However, it is not credible for the Government to not account for what the situation is to either House of Parliament. As the Hon. Walt Secord has said, at the Commonwealth level it is not just about the state of the economy; it is about the state of the Government budget. We need to know where that is at so that we can make policy decisions about how we get the State out of the situation that it is in.

It is the responsibility of the Government to account for its actions and decisions to the Parliament. In good faith we accepted the deferral of the State budget to later this year—I assume not less than 21 days after the Commonwealth budget is delivered. That is fair and reasonable in the circumstances. However, after 30 June we get into an interregnum period where we do not know what revenue is coming in, what expenses are going out and what the impact of a number of the Government initiatives around revenue has been so that we can see what the profile is for the State budget. We know that the State Government will have to reveal information when it delivers the budget, but in many senses that will be well after we need the information to have a proper discussion as lawmakers and as a community about what should be the proper policies and initiatives going forward. Leaving that to the budget in October, possibly November could well be too late.

The Minister has given no credible reason why the Government cannot give the same information, the same facts and figures to this Chamber and the other place as with its Federal counterparts. As duly elected representatives of the people it is incumbent upon the Government to answer to this and, through us, to the wider community. I earnestly implore the Minister to do two things: firstly, to indicate in his reply when the Government will give that economic statement to Parliament, because that is its responsibility and its duty; and, secondly, to give an explanation of the impact of the Government's decisions and what those decisions will be on the finances of the State going forward. Its obligation to the community can be no less.

STATE ECONOMY

ENERGY POLICY

The Hon. MARK LATHAM (13:12:06**):** I take note of the answers given on economic policy. To follow up the point of the Leader of the Opposition, he has raised the burning dilemma of the twin deficits: the budget deficit and the employment deficit in New South Wales. There is only one common answer and that is growth: roaring economic growth. It brings down the budget deficit and brings down the unemployment rate. How good would it be over the next couple of years to see a rise in the overall payroll tax revenue in New South Wales as more people are employed? That is the only solution here. Fiddling with the budget or banning industries and driving up gas and electricity prices, hurting manufacturing: these are damaging policies for both the budget and employment deficits.

We hear a lot of talk about emergencies from members—I am sorry; other people are normally sitting on the bench I am indicating to. They talk about a climate emergency—maybe the honourable member seated there does as well. However, we have an economic emergency in New South Wales. As of yesterday that is the new reality that needs to be confronted by all parliamentarians. I raised the point made by Matt Howell, the CEO of Tomago Aluminium. He said very clearly that a policy of relying on renewables and battery storage is not sufficient to keep the lights on. We are in a deep recession. How bad would it be for other flaws in economic policy—a lack of energy security—to lose an existing manufacturing concern?

I do not know what the members for the electorates of Port Stephens, Newcastle, Wallsend, Cessnock, down to Lake Macquarie and related electorates are doing, but they should be trying to change Labor electricity and energy policy for a start to ensure that it is not just renewables and battery storage but also gas peaking plants with the gas coming out of Santos, driving down gas and electricity prices; that it is also nuclear; that it is also coal; that it is whatever it takes to keep the lights on and keep jobs at Tomago and every other manufacturing concern around New South Wales. We cannot afford to lose them.

In this regard I say that the Government's policy is only marginally better than the flawed Opposition policy. The Government's stance is to run down and see the closure of coal-fired power in New South Wales. That is also the Opposition's stance. That is bipartisanship between the shadow Minister and Minister Kean. It is the policy of them both to rely on renewables and battery storage and also the policy of both to be against nuclear. The only difference here in degrees of quality is that the Government is supporting the gas peaking plants, which is a bit better than the pure reliance on renewables and battery storage. If you are marking these things the Government policy is a four out of 10 and the Labor policy is a one out of 10. The only 10 out of 10 here is the Walton economic plan. The Australian Workers' Union [AWU] wants to let it all rip, quite sensibly, to make New South Wales a global energy superpower with flourishing gas, nuclear, coal and renewables. That is the sensible plan. The next time the shadow Treasurer speaks, how about bipartisanship endorsing that excellent plan— [*Time expired.*]

STATE ECONOMY

The Hon. JOHN GRAHAM (13:15:21**):** I also take note of the answer of the Leader of the Government on these questions. I want to talk about the economy. My colleague the Leader of the Opposition has talked about the importance of this to the budget and I agree with it. I speak about why it is a problem for the economy for the Treasurer to not update these figures. Businesses are relying on it—that is the truth. Banks are relying on it. All the forecasts in the private sector are built on the foundation of these government figures. Businesses are out there trying to make difficult decisions and they need to do it with the best information possible. It will not be perfect information. The Leader of the Government said it is almost impossible to know what is going on at the moment and I agree with that. The Government has made a good point there. But if it is impossible to know for the good women and men of Treasury with their expert forecasting how difficult is it if you are running a business in New South Wales, trying to put employees back on the payroll, trying to get the doors open? How are you supposed to know where the economy is up to? We need these baseline figures.

The Treasurer should update the Parliament. He should update businesses all across the State, and he should go further than that: He should set out a road map for what the stages are for how we will open up, not move industry by industry and restriction by restriction as the Government is doing at the moment. The reason for that is the same: While Government works that way, that is not how the real world works. That is not how businesses work. They cannot make those decisions. They are not scrolling through the pages of the Government website trying to work out what the restriction is today. They are living in the real world balancing budgets, dealing with employees and trying to make difficult decisions, not getting up each day and waiting for the Government to announce it. They need forward planning. They acknowledge it will not be perfect, but it is better than what they have as they make these difficult decisions. That is why the Treasurer should update the Parliament and the public on these questions.

COVID-19 AND EDUCATION

The Hon. ANTHONY D'ADAM (13:17:33**):** I take note of the answer to the question from the Hon. Taylor Martin to the education Minister about the initiative in terms of addressing educational inequality arising from COVID-19. While the initiative is a good one and I welcome it, I think it raises more questions than it answers, particularly the proposal around providing learning support officers and additional resources. Are these going to be additional resources or are they being drawn from existing resources? There is no clarity about whether there are systematic assessments being conducted to identify educational inequality that has arisen out of COVID-19.

There is also a question about whether there is going to be additional support provided to schools to provide targeted assistance where required. Scholarships of $1,000 are good for kids to obtain, as well as internet access

and access to devices. It is great that 841 students are getting support, but on the department's own estimates 80,000 students in New South Wales have a technology gap. The Minister advised on 28 March that the department was conducting a survey just to find out how many students did not have access to internet. How is it possible in this day and age that the department does not know which students have access to internet and digital devices to enable them to survive, prosper and learn in a digital world?

It is shameful that this is the case. I cited the example of the Cabbage Tree Island Public School, which is predominantly an Indigenous school. The entire student population was without devices and without internet access for the whole of the COVID-19 crisis. How is it possible that on the Government's watch it is ignorant of the fact that there are so many students in our system who do not have access to the necessary basic tools to survive and prosper in our education system? I think the initiative is a good one but, as is the case with this Government, in terms of correcting educational inequality it is too little and it is too late.

CHILDCARE SUPPORT SCHEME

The Hon. PENNY SHARPE (13:20:01**):** My contribution to the take-note debate will be brief. In particular, I wish to discuss the answers given by the Minister for Education and Early Childhood Learning when it comes to support for preschools, child care and early learning generally in the context of COVID-19 and the impact it has had on women. In the last two months, 55 per cent of the job losses that have occurred were suffered by women. Women have had a greater reduction of hours. Over 11.5 per cent of women have had a reduction in hours of work as opposed to a 7.5 per cent of men. Labour force participation of women has gone down by 2.9 per cent whereas for men the decrease has been 1.9 per cent. Thousands who have just left the workforce are not seeking work. This is an economic disaster for New South Wales and the entire country.

If we do not come to grips about how we raise support and allow women to go back to work then we will not recover from the pandemic. Much more work needs to be done on the pathways for women back into work as they have been the most likely to have lost the work, they are the lowest paid and they are also in the least secure employment. That is why I want to talk about the importance of child care and its being a fundamental plank in the workforce platform. Child care is not just about viability of services that are nice to have. Child care is absolutely fundamental for women to have a job and work in the workforce and contribute to the economy. Unless we want to say, "No, it's okay; women can just stay at home and men will do all the work." If we are doing that, then we are going back to the 1950s and we have come a long way since then.

We need women in the workforce. Women want to be in the workforce. When we are talking about stimulus and what happens with the childcare system at the Federal level, I note that today the Federal Government announced $660 million for a construction stimulus. That is fine, but where is the discussion about getting women back to work? Where is the discussion about pathways for women to try to get back in there? Child care is fundamental to economic recovery and to getting women back to work and that means recovery for all of us. Women working is good for the entire economy. We are yet to see very little from this Government about its plan to do just that.

STATE BUDGET

STATE ECONOMY

The Hon. MARK BUTTIGIEG (13:22:25**):** I take note of answers to two questions. One was about the Federal Treasurer giving an updated statement in the light of the impending calamity with the economy and the State Government not following suit—a question asked by my colleague the Hon. Adam Searle. The answer given was, "Look, we're in trouble." Those degrees of trouble might vary from medium to big, but "We're in trouble. It is a fluid situation. Things are changing day to day, so why give an updated economic statement?" I just find that proposition preposterous. If members of this House are to serve in our role as a House of review and an Opposition keeping the Government under the lens to ensure the Government has a snapshot of where we are at and what we are going to do about it, we should be provided with those figures so that we can make an objective judgement.

The idea that the Treasury would not have a set of up-to-date numbers is absurd. This request is not revelatory. It is standard practice. The economy has fallen off a cliff. Basically the Minister for Finance and Small Business is telling this House that the budgetary settings from the previous cycle are out the window and we are in trouble. The Opposition needs an updated set of figures to be able to determine where we are at because the previous figures are no longer relevant. The Opposition agrees with the Government on that score but the Opposition needs to see the metrics so that we can judge where we are at and what we are doing about it.

The answer to the second question, which was dismissed out of hand because the question was based on the pretext that New South Wales began entering a recession prior to COVID-19, was that we are not in a recession. That was not the question. The question was: Given that New South Wales began entering a recession,

as my honourable colleague and shadow Treasurer the Hon. Walt Secord pointed out, New South Wales State final demand was negative 1.5 per cent for the March quarter.

The Hon. Damien Tudehope: I rejected that premise.

The Hon. MARK BUTTIGIEG: The Minister rejects that premise?

The Hon. Damien Tudehope: That it was already in recession.

The Hon. MARK BUTTIGIEG: It is from the Australian Bureau of Statistics, Minister. New South Wales was definitely entering a recession. The pretext of the question was absolutely valid and the Minister should not have dismissed it out of hand. It was a valid question and it should have been answered properly. Instead the Minister obfuscated by trying to say that the question was invalid because the State was not entering into a recession. That is just not good enough. Clearly the stimulus that happened after the bushfires was not enough to pull the State through. The figures belled the cat and the Minister for Finance and Small Business refused to answer. That is unacceptable.

STATE ECONOMY

CHILDCARE SUPPORT SCHEME

The Hon. COURTNEY HOUSSOS (13:25:30**):** I participate in the take-note debate of answers given today to first discuss the answer provided by the Leader of the Government and Minister for Finance and Small Business in relation to the request from the Opposition for a comprehensive briefing on the state of the economy. I note that the shadow Treasurer stated during his take-note of answers speech that this is not the first attempt by the Opposition to engage in a productive conversation to ascertain where the economy actually is. The Opposition wrote to the Government.

The Hon. Walt Secord: Twice.

The Hon. COURTNEY HOUSSOS: I stand corrected: The Opposition wrote to the Government twice to engage in conversation. That the response to the situation is fluid is self-evident. We all know that the situation is fluid but every day we are seeing new research being published by different industry groups that are giving us small pieces of the puzzle. Today the National Australian Apprenticeship Association told us more than 100,000 apprenticeships and traineeships will be lost, which means a 30 per cent reduction in New South Wales as a result of the current recession. That is six times worse than the last major economic shock, which was the global financial crisis. We know that during a recession some people will leave the workforce and never return and that will result in serious consequences for them for the rest of their working lives. These people are starting out in their working lives. This is the next generation that we are fundamentally letting down.

This is a very small part of the puzzle. The Opposition needs to see the broader picture. The Opposition needs to know the broader context we are working in. Affirmations that the situation is fluid or that we are in trouble is not enough. Other members have noted we have received an update from the Federal Treasurer and an update from the Federal finance Minister even during the health pandemic's period of closures. Members of Parliament were invited to Zoom and webinar conferences with the health Minister and Chief Medical Officer as they were fighting the peak of the pandemic to provide special briefings for members of Parliament. If we are genuinely all in this together, we need to have a clear picture of where we are. There will be some issues that we cannot resolve. There will be some issues that we will debate over but if we are to genuinely come together as a Parliament to address this economic crisis then we need to be given the full picture.

In the limited time that remains for my speech I must say that part of that picture has to be a better approach to early childhood education and the manner in which it is funded at both the Federal and State level. The questions today have clearly shown what anyone in the sector will tell you: It is incredibly complex. There is a dual purpose in early childhood education. There is an educational benefit and an economic benefit and we need a better approach. Surely there is no better time to adopt that better approach than as we try to rebuild the economy out of this recession. [*Time expired.*]

TAKE NOTE OF ANSWERS TO QUESTIONS

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (13:28:36**):** I understand that the Hon. Walt Secord sought the job as the shadow Treasurer. If ever there was a member in this place who is totally unsuited to the position—

The Hon. Walt Secord: Point of order: The Minister for Finance and Small Business is not giving a reply. Mr President, the Minister launched into a personal attack while you were distracted by the Clerk, who was giving advice. The Minister waited until you were distracted and then he methodically began a systematic attack on me as a person.

The PRESIDENT: Order! The Hon. Walt Secord will resume his seat.

The Hon. DAMIEN TUDEHOPE: The Hon. Walt Secord asked a question about the economy and the Treasurer allegedly saying that the economy is roaring, full stop. However, he failed to tell the House the context of that comment so I will tell the House the context to illustrate the incompetence of the person who purports to be the shadow Treasurer.

The Hon. Walt Secord: Point of order—

The PRESIDENT: I uphold the point of order. The Minister will withdraw that comment.

The Hon. DAMIEN TUDEHOPE: I withdraw it. He might be fit to—

The Hon. Walt Secord: Point of order: The Minister has flouted your ruling.

The PRESIDENT: The Hon. Walt Secord will resume his seat.

The Hon. DAMIEN TUDEHOPE: I did not.

The PRESIDENT: The Hon. Walt Secord will resume his seat. The Minister will continue. One minute and 22 seconds remain for his speech.

The Hon. DAMIEN TUDEHOPE: This is what the Treasurer said in an article and what the article went on to state: Meanwhile New South Wales Treasurer, Dominic Perrottet, has mapped a vision to slash red tape and reform the tax system so that business can flourish after COVID-19. He revealed he wants landmark reform of the State's economic structures including major tax cuts with a view to driving productivity and putting business growth at the centre of the economy as New South Wales charts the road back from the coronavirus pandemic. Critical elements of the Treasurer's path to growth include deregulation and tax reform, turbocharging our trade and investment strategy to gain first mover advantage, reskilling the State's workforce and breaking down federation barriers to finance rewards for performing States. "New South Wales has always been the engine room and we're going to come roaring out of this and drive our State to the next level." I urge the shadow Treasurer, the next time he makes a statement to the House about what the Treasurer has allegedly said, to ensure that he tells this House the context in which the statement was made and not mislead the House. [*Time expired.*]

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

Motion agreed to.

Written Answers to Supplementary Questions

SCHOOL SOCIAL DISTANCING

In reply to **the Hon. COURTNEY HOUSSOS** (3.6.2020).

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning)—The Minister provided the following response:

> The Department of Education has not provided any New South Wales public schools with hand sanitisers with a Category 2 carcinogenic warning or with a "suspected of causing cancer" warning label listed on the bottle.

Personal Explanation

UNPARLIAMENTARY LANGUAGE

The PRESIDENT: Earlier the Deputy Leader of the Government commenced a point of order in relation to the Hon. Walt Secord. I did not allow her to complete the point of order because I did not wish to take up the time of Mr Justin Field. More importantly, the Hon. Walt Secord would not have been given an opportunity to respond to the point of order. I intend to call on the Deputy Leader of the Government to now indicate her point of order, if she so wishes, and then I will call on the Hon. Walt Secord to respond.

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (13:32:38): Thank you, Mr President. Earlier I rose to take a point of order in relation to the language used by the Hon. Walt Secord to describe the Treasurer during an interjection. I believed the language to be unparliamentary. I think it should be withdrawn and that the Hon. Walt Secord should be called to order.

The Hon. WALT SECORD (13:32:51**):** To save the time of the Clerk, Hansard and you, Mr President, having to review the record of proceedings I apologise to the House and retract calling the Treasurer a fool and a liar.

The PRESIDENT: Does The Hon. Walt Secord wish to make a personal explanation?

The Hon. WALT SECORD: That was it.

The PRESIDENT: I shall now leave the chair. The House will resume at 3.00 p.m.

Bills

WORK HEALTH AND SAFETY AMENDMENT (REVIEW) BILL 2020

Second Reading Speech

The Hon. SCOTT FARLOW (15:01:13**):** On behalf of the Hon. Damien Tudehope: 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 Work Health and Safety Amendment (Review) Bill 2020.

The bill seeks to amend the Work Health and Safety Act 2011 to expedite implementation in New South Wales of 12 proposals based on recommendations of a national review of the model Work Health and Safety Act, on which the New South Wales Act is based. The reforms are intended to make workers in New South Wales safer, and are being expedited ahead of completion of the national process to ensure that the issues in the Work Health and Safety Act identified by the national review do not continue to affect New South Wales workplaces.

The Work Health and Safety Act 2011 commenced on 1 January 2012. Its primary object is to protect workers and other persons from harm to their health, safety and welfare by eliminating or minimising the risks arising from work.

The Act creates a strong framework for managing risks to health and safety in New South Wales. But workplace deaths in this State remain too common: in 2017 there were 62 work-related fatalities, in 2018 there were 47. Last year, on preliminary figures, there were 59 work-related fatalities in this State.

Workplace injuries are also too common. In 2016-17, there were 32,998 serious injury or illness claims accepted in New South Wales.

The Government believes that every worker who goes to work in this State should come home safe at the end of the day. It wants workers to have healthy, safe and productive working lives.

The Work Health and Safety Act on the whole enables workplaces in New South Wales to manage health and safety issues effectively. But in the last 18 months, two national reports have identified critical issues in the Act which need to be addressed to ensure workers' safety.

The first of these reports followed a Senate inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia. The report of that inquiry, They never came home, was published in October 2018.

It highlighted the devastating impact that workplace fatalities have on the families of victims, and identified a number of issues in prosecuting and investigating workplace deaths which are currently affecting workplaces in New South Wales.

The second is the 2018 Review of the Model Work Health and Safety Laws. The 2018 review was conducted by an independent reviewer, Ms Marie Boland, on behalf of Safe Work Australia.

In conducting the review, Ms Boland consulted extensively with stakeholders. The review began with the publication of a Discussion Paper calling for written submissions. 136 submissions were received. Ms Boland held in-person consultations in every capital city and in regional centres, including Tamworth, where she met with safety regulators, businesses, workers, unions, industry organisations, health and safety legal practitioners, academics, and community organisations.

Ms Boland's final report was published in February 2019. She made 34 recommendations for improvements to the work health and safety laws.

In June last year, Safe Work Australia published a Consultation Regulation Impact Statement on the recommendations of the 2018 Review. 102 submissions were received in response to the Consultation RIS with most publicly available, including that of the NSW WHS Regulators. Safe Work Australia has since provided a Decision Regulatory Impact Statement [Decision RIS] to WHS Ministers for their consideration, which remains confidential according to Commonwealth protocols.

The Commonwealth will schedule a meeting of all WHS Ministers, likely to be late this year, to consider and decide on the recommendations in the Decision RIS. The Decision RIS is expected to address all of the 2018 national review recommendations.

Having regard to the critical issues identified by Ms Boland in her final report, as well as the Senate report, I am of the view that New South Wales cannot afford to wait until a decision is made to amend the model Act to address these issues at a national level. How much longer that will take is still unclear.

New South Wales remains committed to national harmonisation of the work health and safety laws. I acknowledge that harmonisation has had great benefits for businesses in this State, and enabled businesses operating nationally to deal with health and safety issues consistently and efficiently.

In making these amendments, New South Wales is not intending to permanently diverge from the model laws, but to anticipate the changes which will be made to them in due course.

Careful consideration has been given to the amendments likely to be made at a national level, as well as to the needs of New South Wales now. There are a number of recommendations made by the 2018 review we do not propose to expedite, because the form they are likely to take in the model Act is still unclear, including recommendation 2, which is about amending the WHS regulations to deal with how to identify psychosocial risks and have appropriate control measures

The proposed amendments strike an appropriate balance between the objective of maintaining nationally consistent work health and safety regulation, and the government's overarching objective of reducing risks to workers' safety in New South Wales.

The amendments aim to address the ongoing issue of workplace deaths, to strengthen support for the families of workplace victims, to streamline investigations, and to give workers and businesses greater clarity on aspects of the Work Health and Safety Act.

I turn now to the substance of the bill. The Work Health and Safety Amendment (Review) Bill 2020 makes the following amendments to the Work Health and Safety Act.

First, the bill inserts a note after the heading to division 5 of part 2 in the Act stating that workplace deaths may be prosecuted as manslaughter under the Crimes Act 1900.

It has long been the case that where appropriate, a workplace death can be prosecuted as manslaughter by criminal negligence. This is an offence for which the Crimes Act imposes a maximum penalty of 25 years imprisonment.

But this is not well known or well understood in the community.

The insertion of the note is intended to make it clear to employers, business owners, workers, and the community more broadly, that anyone who causes the death of a worker through negligence can face serious criminal sanction. Alerting duty-holders to the existing manslaughter provision will increase their vigilance and the deterrent power of this most serious offence.

Secondly, the bill amends section 31 of the Act to make it easier to prosecute the most serious work health and safety offence—the Category 1 offence.

The Category 1 offence is committed when a person who owes a work health and safety duty recklessly exposes a person to whom that duty is owed to a risk of death or serious injury or illness.

The Category 1 offence carries the highest penalty imposed by the Act. An individual who commits a Category 1 offence is liable to imprisonment for up to 5 years and/or an increased fine of $346,500. A corporation who commits a Category 1 offence is liable to an increased fine of $3,463,000.

This offence is key to the deterrent power of the Act.

But in all jurisdictions which have adopted the model Work Health and Safety Act, it is rarely prosecuted.

In New South Wales, since the Act came into effect in 2012, there has been just one prosecution for a Category 1 offence.

The 2018 review identified the lack of Category 1 prosecutions as a serious issue with the offence provision in the Act. It found that regulators have been hampered in bringing prosecutions because the fault element of the offence, recklessness, is too difficult to prove.

A person acts recklessly when they have actual knowledge of a risk and consciously disregard it. This requires the prosecution to prove matters relating to the defendant's subjective state of mind.

The 2018 review proposed adding "gross negligence" as a fault element to the Category 1 offence. This is a legal concept that has evolved through the common law on manslaughter by criminal negligence. A person is grossly negligent when their behaviour falls so far short of what is reasonable and involves such a high risk of death or serious injury that it deserves criminal punishment.

The bill gives effect to Ms Boland's recommendation in New South Wales by adding "gross negligence" as a fault element to the Category 1 offence.

This is expected to make it easier for regulators to bring Category 1 prosecutions, particularly following a workplace death. Those responsible for workplace deaths through gross negligence will be able to be held to account.

But a death is not required to bring a Category 1 prosecution. Regulators will be able to prosecute grossly negligent duty-holders who expose workers to a risk of death or serious injury or illness whether or not a worker is killed.

This will strengthen the deterrent power of the Act and is consistent with the risk-based preventative framework which underpins it.

Thirdly, the bill will insert new offences into the Act relating to insurance or indemnity arrangements for work health and safety penalties.

The bill will make it an offence for a person to enter into, provide, or benefit from insurance or indemnity arrangements for liability for a monetary penalty for a work health and safety offence.

Both the 2018 review and the Senate report strongly condemned the availability of such insurance and found that it had the potential to seriously undermine the deterrent power of the Act.

If those who breach work health and safety duties are able to escape the financial consequences of their actions, their incentive to take those duties seriously is substantially lessened.

The new offences will put an end to the practice of insuring for liability for work health and safety offences, and contribute to creating a strong health and safety culture in New South Wales workplaces.

Fourthly, the bill increases the maximum penalties for offences in the Act to reflect increases in the Consumer Price Index [CPI] since 2011.

The maximum penalties for offences in the Act have not increased since the Act came into operation in 2012.

This means that the penalties for non-compliance with the Act have not kept pace with increases in the costs of compliance.

The increase in penalties will ensure that the penalties retain their real value as deterrents.

At the same time the bill increases the maximum penalties which may be imposed for an offence created by the Work Health and Safety Regulation 2017 to reflect CPI, with the intention that the Government will also move to increase the maximum penalties for offences in the Regulation. This will ensure consistency across the Act and regulation.

The Senate inquiry found that the trauma experienced by families following a workplace fatality can be greatly exacerbated by prolonged investigations and a lack of information about how the investigation is proceeding.

The bill proposes two amendments to the Act to improve support for the victims of workplace accidents and their families.

First, it will amend section 231 to extend the time within which a person can make a request that a regulator bring a prosecution in relation to a workplace incident involving a risk of death or serious injury or illness from 12 to 18 months.

At present, a person who believes a Category 1 or 2 offence has been committed can make a request to the regulator between 6 and 12 months from the date of the alleged offence asking that the regulator bring a prosecution. If the regulator decides not to bring a prosecution, the person can request a review by the Director of Public Prosecutions.

Complex investigations of workplace incidents can take longer than 12 months. When they do, victims and their families can be left without an effective right of review process.

Extending the time to 18 months will allow extra time for the completion of the investigation and a review by the DPP before the expiry of the two-year statute of limitations for offences.

Section 231 will also be amended to add a provision requiring regulators to provide regular updates to a person who has made a request that the regulator bring a prosecution while the investigation is ongoing. Regulators will be obliged to provide an update on the progress of the investigation every three months until it is complete.

These amendments will ensure that workers and their families are kept informed during investigations into workplace incidents.

The bill also contains three amendments intended to streamline the investigation process and remove barriers to efficient and effective investigations of workplace incidents.

First, the bill amends section 171 of the Act to enable an inspector to exercise the powers which inspectors presently have on entry to a workplace—that is, powers to require the production of documents and answers to questions—up to 30 days after they or another inspector have entered the workplace.

Requiring inspectors to enter and re-enter a workplace when they discover that they need further documents or information has the potential to delay investigations, particularly of workplace incidents in regional and remote areas.

Secondly, the bill amends the Act to make it easier for work health and safety regulators in New South Wales to share information with regulators in other jurisdictions. Restrictions on information sharing can impede investigations. This amendment will enable the Act to respond to changing work patterns and technologies which have the potential to increase the number of cross-jurisdictional investigations.

Finally, the bill will make the processes for issuing and serving notices in the Act consistent. Regulators will be able to serve notices by post and e-mail, rather than personal service. This is also expected to reduce delays in investigations.

These amendments will ensure that investigations of workplace incidents in New South Wales are as effective and efficient as possible.

Lastly, the bill contains three amendments which are intended to give workers and businesses in New South Wales greater clarity on key aspects of the Act.

First, the bill will add a note to sections 5 and 7 of the Act to make it clear that a person can be both a worker and a person conducting a business or undertaking at the same time.

In complex, multi-contractor worksites which are common in New South Wales, the Act intends that a contractor or subcontractor in a contractual chain can be both a worker owed a duty by persons conducting a business or undertaking further up the chain, and a person conducting a business or undertaking who owes duties to workers further down the chain.

This amendment reflects the way that worksites in New South Wales are operating and makes duty-holders' obligations clear.

The bill will also amend section 72 of the Act to clarify that health and safety representatives can choose their course of training.

At present, the Act provides that health and safety representatives can choose their course of training, but must do so in consultation with persons conducting a business or undertaking.

A lack of clarity about what this means is leading to stalemates and disputes in New South Wales workplaces, and delaying health and safety representative training. This is preventing health and safety representatives from playing their part in monitoring and addressing health and safety issues on behalf of their co-workers.

The new provision will reduce disputes by making it clear that health and safety representatives can choose their course of training. They will still need to consult with persons conducting a business or undertaking about time off to attend training and the reasonable costs of training. Work health and safety regulators intend to develop guidance on what the reasonable costs of training are in consultation with stakeholders.

Finally, the Act will clarify that in cases of discriminatory or coercive conduct, courts in New South Wales have the power to grant declaratory relief. The discriminatory and coercive conduct provisions protect workers from retributive action in a variety of circumstances connected with performing duties under the Act or raising WHS issues.

This will give courts flexibility in responding to discriminatory and coercive conduct where other orders are inappropriate.

As a whole, the reforms in the Work Health and Safety Amendment (Review) Bill 2020 will strengthen regulators' efforts to reduce the number of workplace deaths and injuries in New South Wales. They do this by making it easier to prosecute workplace deaths, enhancing the deterrent power of the Act, streamlining investigations, and clarifying key aspects of the Act's framework. They will also enable regulators to provide greater support to workers and families affected by a workplace death.

In bringing forward this bill, the Government is seeking to address the critical issues in the Act identified through the national process as quickly as possible, to ensure that workplaces in New South Wales are in the best possible position to manage risks to workers' health and safety without further delay.

I note that the recent inquiry held by a committee of this House found that the bill enjoyed broad stakeholder support and contained positive amendments to work health and safety laws in this State.

I commend the bill to the House.

Second Reading Debate

The Hon. ADAM SEARLE (15:01:22**):** On behalf of the Labor Opposition, I lead in the second reading debate on the Work Health and Safety Amendment (Review) Bill 2020. As the Minister outlined in his second reading speech, and I assume in the Parliamentary Secretary's incorporated speech, the bill seeks to make small changes to improve the work health and safety framework in New South Wales. We do not oppose the legislation as it represents a series of small improvements to the current system, a system that we think remains deeply flawed and compromises the safety of workers across the State. I foreshadow that we will seek to make some significant amendments as we believe the legislation before the House falls far short of what is needed: legislation to enable the prosecution for industrial manslaughter and a change in approach across industry in order to embed a culture of workplace safety that is of a higher standard. In that respect we believe the bill falls short of community expectations and the expectations that we say were raised by the Government every time it told the families of someone killed at work that those responsible will be held to account.

What is most disappointing about the bill is that we believe the Government has squibbed on an opportunity to do much more and to fulfil a promise we believe the Minister made to the Cassaniti family, who lost their son in a tragic and avoidable workplace accident in April 2019. I will come to that matter in a moment. We say that the legislation can be seen as a response to the 2018 Safe Work Australia review, otherwise known as the Boland review, and the 2018 Senate inquiry into industrial deaths, as well as in response to a spate of workplace fatalities in 2019. One fatality in particular—the death of Christopher Cassaniti, an 18-year-old apprentice who died at a Sydney construction site in April 2019—appears to have galvanised community sentiment for strengthening penalties for deaths in the workplace. Christopher's mother, Patrizia, has been advocating for the adoption of industrial manslaughter laws and has met with the Minister on multiple occasions.

The stated objective of the bill is to amend the Work Health and Safety Act 2011 to address risks, prevent harm and improve the Act to better protect workers, based on the recommendations of the Boland review of the model Work Health and Safety Act on which the New South Wales Act is based. In the Minister's second reading speech he stressed the need to make the process of bringing forward prosecutions for negligence after workplace fatalities easier. Amongst the bill's range of provisions is to enhance the most serious offence provision, the so-called category 1 offence, to capture grossly negligent conduct and thereby strengthen the deterrent power of the Act. We do not disagree with that objective and we do not seek to amend that part of the legislation.

Other aims of the bill are to prevent people from using insurance or indemnity arrangements to avoid responsibility for paying work health and safety fines; and to reinforce the need for compliance through providing not just general but also specific deterrents, which is a very important feature of the criminal law generally, but also, in my experience in dealing with workplace breaches, is very important to make the case to industry and all those in it that they cannot evade the penalty. There is an increase in penalties for work health and safety offences to reflect increases in the consumer price index. Further aims of the bill are to ensure an effective review mechanism for decisions not to prosecute and timely updates to families on the progress of investigations; to allow inspectors to exercise some of their powers upon entry without requiring re-entry; to streamline cross-jurisdictional cooperation and make service of notices easier; and to clarify that a person conducting a business or undertaking [PCBU] can both owe a duty to workers and be owed a duty by another PCBU up a contractual chain.

The choice of training provider for health and safety representatives has also been a long-running bugbear in industry, leading sometimes to disputes between the workplace and employers. This bill seeks to address that. The ability of courts to make orders in relation to coercive and discriminatory conduct and the duty-holder for high-risk work, plant and dangerous goods not in use at a workplace are also addressed. In part, I think it is right to say that New South Wales is the first jurisdiction to move on the so-called Boland review, but, rather than waiting for a meeting of the Labour Ministers Council, the Government acted early—some say rushed in—possibly to avoid the growing impetus for industrial manslaughter, which was recommended in the Boland review.

Members should also be cognisant, and I know a number of them in this Chamber would be, that there was a report on this legislation by a Legislative Council inquiry on which I served. The Work Health and Safety Amendment (Review) Bill 2019 report was ordered to be printed on 24 March 2020. The report did not make an explicit recommendation for industrial manslaughter but it did collect a lot of the information and it notes that the

Boland review recommended that a new offence of industrial manslaughter be included in the model work health and safety laws for the following reasons from Ms Marie Boland:

> I am recommending a new offence of industrial manslaughter be included in the model WHS laws. The growing public debate about including an offence of industrial manslaughter in the model WHS laws was reflected in consultations for this Review. I consider that this new offence is required to address increasing community concerns that there should be a separate industrial manslaughter offence where there is a gross deviation from a reasonable standard of care that leads to a workplace death. It is also required to address the limitations of the criminal law when dealing with breaches of WHS duties. More broadly, the ACT and Queensland have already introduced industrial manslaughter provisions, with other jurisdictions considering it, and so this new offence also aims to enhance and maintain harmonisation of the WHS laws.

Since then Victoria has implemented its somewhat different model from Queensland. I am not going to reprise all the arguments pro and con raised in the inquiry, but a lot of emphasis was put on the fact that the ACT model, which in some respects stakeholders found was the superior model in relation to toughness, had not been used, whereas the Queensland model introduced in 2017 had had one prosecution underway but not yet finalised. Since then it is fair to say that Queensland has had at least two offences dealt with under that legislation.

I may address this more when we come to the amendments part of the legislation because we think it is important to have this debate; we think it is an important omission in the law more generally. For full disclosure for members, some years ago when I was a practising barrister I was one of four lawyers engaged by then WorkCover to inquire into and report on whether there should be specific laws dealing with workplace death. Others involved in that report included: Peter Hall, QC, as he then was, now the Chief Commissioner of ICAC and previously a Supreme Court judge; Professor Ron McCallum, professor of industrial law at Sydney University; and Adam Hatcher, who later became senior counsel and who is now vice president of the Fair Work Commission—

The Hon. Don Harwin: I remember him from the SRC.

The Hon. ADAM SEARLE: I acknowledge that interjection. And, of course, the least distinguished of the four, myself. The point was that we looked very closely into this and the inescapable conclusion was that the power imbalances and the exigencies of the workplace did require very stringent regulation and did require specialised workplace death laws to recognise not just the risk that people could be seriously injured or killed, but to recognise where there was a breach of duties that were owed when people were killed. A lot of the discussion in the committee and in the community, and no doubt in this debate, will be centred on, on the one hand, whether the law is currently appropriate. There is some focus on how, under the general criminal law, proving criminal negligence is very hard, as it appropriately should be. I note in this legislation, rather than dealing explicitly with the subject matter of industrial manslaughter or industrial death, there is simply a note in the legislation that indicates that a person can be prosecuted for that. We think that is inadequate. We think that is an attempted get-out-of-jail-free card by the Government. It is not appropriate.

The truth is, when you look at the power imbalance in the workplace, or what workers are dealing with, whether it is dangerous substances or heavy machinery, or some industries which are just regarded as being inherently dangerous, you do need to have very high standards. We challenge the notion that the current standard of criminal negligence is the appropriate threshold for criminal liability here. Given that workers are subject to control and direction, there needs to be a reorientation and a lowering of that threshold. We make no apologies for holding that view because of the terrible and tragic incidents such as those that happened to the Cassaniti family. On 28 April each year I am one of many Labor MPs, and other MPs as well, who attends the International Day of Mourning, where there is a recognition and a commemoration of all of those who have lost their lives at work, never to return home. On the one hand I am always uplifted by the fact that so many people take the time out of their busy schedules to come to the commemoration and to reflect on these important matters, but I am always saddened that there is the continued need to do so.

Each year there is an address by a family who has lost a loved one in terrible circumstances. The continuing theme through all of these tragic stories is that they were all preventable if only more care and attention was taken. Tragically, it is not the case that it was simply a moment of inattention or someone overlooking something; in my observation there is always a clear, systemic failure of corner-cutting, of under-resourcing, of not giving workers enough time to perform dangerous tasks, often in bad weather. You can go through each scenario and it is terrible. I think the evidence given by Mr and Mrs Cassaniti was really powerful. As I indicated earlier, their son Christopher died. They have campaigned for an industrial manslaughter offence in New South Wales. They say:

> The biggest game changer here that must not only be considered but must be actioned is introducing industrial manslaughter into New South Wales. Most States in Australia have this law introduced already and it is proving to be effective in preventing accidents and incidents from happening. How is it even possible that a cat is more important than my son? And an interstate worker is more important than a worker in New South Wales? … Other States have taken action and New South Wales should too.

So much of their evidence could be read out. I will not do that, but it is powerful and affecting. That is not to say that we should be motivated by emotion in terms of public policy, but you would have to have a heart made of

stone not to be moved by that and to not think that there is something tragically wrong that needs to be addressed. NSW Labor has long supported the creation of an industrial manslaughter offence in the Work Health and Safety Act. We think there should be significant fines for businesses and their senior officers, and we think there should be the possibility of up to 25 years' jail for senior officers. It is a bit old-fashioned now, but we have also long argued for the reinstatement of the Industrial Court of New South Wales, in which work safety prosecutions would be brought, including cases of industrial manslaughter.

Labor has contended in this place and in other places for conferring new mechanisms to enforce rights and responsibilities that currently exist in work safety and workers compensation laws in the Industrial Relations Commission [IRC]. We have also contended for ensuring workers and their representatives can actually meaningfully enforce workplace safety laws, including obligations on employers and insurance for work safety, rehabilitation and return to work through the IRC. There are many other things that we think in this space; I will not recite them all. They will not form part of our amendments, but they reveal our view about how far short the legislation in this State falls. I also put on record that Labor has committed to implement what the Cassaniti family have been campaigning for, and what they call Christopher's Law.

This proposal would see that all safety officers that are appointed to large-scale construction sites be independent and not employers of the builder, so that there is the requisite independence when it comes to safety matters. They also argue for bringing in third-party valuers and estimators to check all bids and tenders on large-scale construction to try and eliminate bad construction that occurs due to cost-cutting. The white card should not be able to be obtained online, but only after an approved TAFE course or an approved similar course. The whole notion that goes through the Christopher's Law proposal is to try and move away from self-regulation in an industry that is extremely dangerous and where cost pressures often lead to safety coming last. That is something that I note the relevant trade union, the Construction Forestry Maritime Mining And Energy Union [CFMMEU], has often been campaigning on.

A really basic proposal from the Cassaniti family is that apprentices should simply wear different coloured safety hard hats so that they can be more readily identified, supervised and kept free from unsafe locations. There are other provisions as well; again, these will not form part of our amendments or the legislation before the House, but we think much more needs to be done at an operational and administrative level to improve safety, and that comes from changing culture. One of the other things that was picked up in the review of the legislation is the need to address psychosocial health through amending the regulations under the Work Health and Safety Act. Again, that is not something that we can deal with here. It is the second recommendation made by Boland review. It has not yet been taken up by the Government. One of the few recommendations of the committee was that the Government should do that.

Given that the committee was quite sparing in the direction it was giving to the Government in relation to the legislation, we think that it would behove the Government to listen and to act on that. We look forward to it doing so. We do not take issue with the provisions in the bill. It is a good start, but it does not go far enough. We have clearly outlined industrial manslaughter is the key defect. There are others where the Boland review set down benchmarks that have not been followed. They will have to be issues pursued at a later time. Labor will be supporting this legislation, but it does have two amendments.

The first is to put industrial manslaughter into the law of New South Wales, and the second is to remove what we say is the misleading note in the legislation, which simply notes that a criminal prosecution can be brought under criminal negligence laws. The key problem with that notion is, yes, that can happen with individuals, but I think there is a real query in law whether you can bring a criminal negligence prosecution in the general criminal law against a corporation given that the only penalty for that offence is imprisonment. You cannot imprison a corporation.

Mr David Shoebridge: Sadly.

The Hon. ADAM SEARLE: I note that interjection, but this is a fundamental problem and a limitation of the existing criminal law.

Mr David Shoebridge: You can execute them—

The Hon. ADAM SEARLE: I am not going to get into that. Given the inherent dangers of many industries and workplaces in general, the issue here as we say is that the threshold at which criminal liability falls is too high and needs to be redrawn. Again, you cannot use the general criminal law of criminal negligence against a corporation. That really informs our approach, as well as a basic commitment to worker health and safety. I leave my comments there and will come back to it in the Committee stage.

Mr DAVID SHOEBRIDGE (15:20:20**):** On behalf of The Greens I speak to the Work Health and Safety Amendment (Review) Bill 2020. I indicate that The Greens support the bill, although we share many of the

concerns of the prior speaker in this debate, the Hon. Adam Searle, about some of the deficiencies in it. What does the bill do? The bill's explanatory note is perhaps not the most fulsome, in the modern sense. It states:

> The object of this Bill is to amend the *Work Health and Safety Act 2011* (the ***Act***) and the regulations under that Act to—
>
> (a) Implement proposals based on recommendations made by the 2018 *Review of the model Work Health and Safety laws: Final Report* (the ***2018 Review***)—

also often called the Boland review; and—

> (b) Make minor amendments to the Act recommended by the *Work Health and Safety Act 2011 Statutory Review Report* (the ***Statutory Review***) in relation to the application of the Act to dangerous goods and high risk plant.

As members will be aware, this bill was referred to Portfolio Committee No. 1 – Premier and Finance for review and report. That review was done as promptly as possible. I think there was an intention that it be done rapidly so that the matter would not be delayed. Other factors have delayed the passage of the bill, most principally the pandemic, which messed with the sitting days of this Chamber.

The review sets out in more detail what exactly the provisions of the bill are. The actual nuts and bolts of the bill provide the following key amendments. There is a provision in the bill that acknowledges that workplace deaths may be prosecuted as manslaughter under the Crimes Act 1900, which is simply a note; it is not a fresh legislative provision. There are provisions that make it easier to prosecute the most serious work health and safety offences, with the addition of "gross negligence" as a fault element. There are some increases to the penalties for the most serious work health and safety offences. The bill also extends the time within which a person can request that a regulator bring a prosecution in relation to a workplace incident involving risk of death or serious injury or illness—it increases that period from 12 months to 18 months.

Save for our caveat on the first point—the acknowledgement, the concerns of which we will discuss in more detail in Committee—The Greens support each and every other element in the bill. However, we are firmly of the view that the bill does not go far enough. Members may recall that the explanatory note says that the purpose of this bill is to implement the proposals based on recommendations from the Boland report. That report was completed at the end of 2018 and I think handed through Safe Work Australia to each of the Federal, State and Territory Ministers in early 2019. That Boland report had a series of critical recommendations that are not found or legislated in the bill. Perhaps the most serious absence is the failure to enact the recommendation from the Boland report in relation to industrial manslaughter. It may be useful at this point to simply read onto the record a passage from the Boland report that explains the thinking in bringing forward that new offence of industrial manslaughter. The report states:

> I am recommending a new offence of industrial manslaughter be included in the model work health and safety [WHS] laws. The growing public debate about including an offence of industrial manslaughter in the model WHS laws was reflected in consultations for this Review. I consider that this new offence is required to address increasing community concerns that there should be a separate industrial manslaughter offence where there is a gross deviation from a reasonable standard of care that leads to a workplace death. It is also required to address the limitations of the criminal law when dealing with breaches of WHS duties. More broadly, the ACT and Queensland have already introduced industrial manslaughter provisions, with other jurisdictions considering it, and so this new offence also aims to enhance and maintain harmonisation of the WHS laws.

The report sets out that there was an expectation Victoria would be legislating for industrial manslaughter; it has since done that. The report also deals with the fact that the Crimes Act, being focused on criminalising and punishing the behaviour of individuals, cannot in the context of murder and manslaughter be applied to corporations. As members know, the great bulk of employment in this country occurs either through government or through corporations. Therefore, simply relying upon the criminal law is a seriously inadequate way of seeking to have manslaughter properly dealt with in an employment and an industrial context.

In the course of the consideration by Portfolio Committee No. 1 there was some powerful evidence provided by a series of critical stakeholders. Probably the strongest ongoing advocate for industrial manslaughter laws in this State and in the country is the Construction Forestry Maritime Mining Energy Union [CFMMEU]. There is no wonder why this is the case, as its members all too often go to work and do not come home because of the deaths and serious injuries that remain endemic in that industry. The CFMMEU indicated that it was doubtful that the notation approach in this Act will:

> … bring about the organisational and cultural changes necessary to bring the required focus on the prosecution of industrial deaths in New South Wales.

Given the experience the union has and the tragedy it so often sees amongst its membership, its views should be given serious weight in this debate. The Australian Manufacturing Workers' Union also recommended that the bill include a provision introducing the offence of industrial manslaughter. I believe that by quoting from its submission members can see why its arguments should be given weight by this House. It states:

> Given the stronger and broader obligations placed on employers by the WHS Act, the AMWU believes that offences that deal with workplace deaths are best dealt with through offences in the WHS Act. Those with the responsibility for making decisions—whether

> they are officers of the company, senior managers of the company or trustees of a trust—should also be required to face the consequences if the actions they took, or failed to take, resulted in the death of a worker.

The New South Wales Teachers Federation also took issue with the response found in this bill of putting that notation in the Work Health and Safety Act that manslaughter can be separately prosecuted under the Crimes Act. It states:

> Federation supports the government's intent to deliver justice for the families of victims of workplace deaths. However, the proposed amendment makes no substantial change to existing law in this area. It merely inserts a note in the Act that references the existing provision in the Crimes Act. What is of great concern to workers and the community is that workplace fatalities can be currently prosecuted under the Crimes Act but they are not. That is a problem that needs the government's urgent attention more than a new note in the Act. Federation notes that in the Minister's second reading speech no reference was made to the terminology "industrial manslaughter" nor "workplace manslaughter". The use of such terms assists in deterrence and ensure that work health and safety is given serious priority at an organisational level. Unions NSW in its submission also sought that the Act be amended to expressly include industrial manslaughter provisions. In the course of giving evidence to the inquiry one of the learned industrial officers of Unions NSW, Ms Natasha Flores, who I think is probably one of the experts on work health safety laws in New South Wales, gave the following evidence:
>
> Our concern, of course, is that the Crimes Act has not been utilised and putting a note in the legislation—I do not know whether that will actually go far enough. If it is utilised, there are so many questions as to how it will be utilised.
>
> One of the concerns that we have is the crossover or, I guess, the lack of interaction between the regulator—SafeWork NSW—and the police, and the different approaches that are taken. Generally speaking, if there is a death at a workplace, a fatality at a workplace, then the regulator—SafeWork NSW—will respond to that. If there is a death outside the workplace, the police respond to that.

I believe what Ms Flores said reflects everybody's experience who has had any experience of dealing with the tragedy of workplace deaths. If a death occurs at a workplace, rarely will police be seen there. SafeWork NSW and SafeWork inspectors deal with it under the Work Health Safety Act and no consideration is ever given to a police investigation or a prosecution under the Crimes Act. No note in the Act will change that and there is no commitment from the Minister to put in place a policy whereby SafeWork and the police work together when there has been a workplace death. There is no suggestion of any organisational changes and no suggestion of any policy change. The practice that Ms Flores set out in her evidence will continue and the note in the Act will simply gather dust and irrelevance going forward.

That would be my submission in relation to its utility. It may have a momentary sense of achievement by the Government but in reality it will do nothing to make workplaces safer. Why should we be making workplaces safer? Why should we be introducing industrial manslaughter laws? I doubt I can persuade members to the view that that should happen but I urge members to listen to what has been said by Mrs Patrizia Cassaniti, who is the mother of Christopher Cassaniti. On 1 April 2019 Christopher went to work as an apprentice. He was a very young man. He left home and was excited about his work. He was loved by his family. Mrs Cassaniti said this:

> The day Christopher died is a day that I will never forget. It will haunt me for the rest of my life. The knock-on effects of such tragedies are detrimental. I know my life and the lives of my family will never be the same. It not only destroyed us, but all his friends and co-workers who are still traumatised today. Some quit their jobs and some are still unable to go back to work at full capacity. The costs involved for mental health, rehabilitation and trauma outweigh the costs required for prevention of these incidents in the first place.
>
> The penalties currently in place to hold directors and those responsible accountable are appalling and do not bring justice to the victims. My penalty is a life sentence, yet the entities who are responsible for my son's death will walk away with a slap on the wrist and a fine that will not exceed $1 million. If the persons plead guilty they instantly get a 25 per cent discount, bringing down the penalty to $750,000, which insurance pays in most cases. But wait, here comes the sting: Where is my discount? Do I get half a son back? No. The people responsible get a discount, but not us as victims. The biggest issue here is that the penalties in place are a joke and not taken seriously enough. Therefore, why should a builder even care?
>
> My poor baby died a horrible and frightening death. He was alive for 20 minutes and died of suffocation and bled to death internally from his horrific injuries. He had only just turned 18 four days prior. He was in his prime and had just picked up his first car on the Friday before. He had bought himself a boat and was ready to conquer the world with an infectious and beautiful happy smile. He had plans. He was very proud of himself for what he had achieved so far. He had a great life ahead of him, but it was all cut too short. My husband, Rob, my two other sons, Adriano and Michael, and I have been served a life sentence. Our lives will never be the same. But life must go on and we need to endure the pain and sorrow to only learn to live with it.

When Mrs Cassaniti gave that evidence to the inquiry, you could not listen to it and not want to act upon it. She and her husband sat through the inquiry that included a video of the moments immediately following the scaffolding collapse when their son was trapped, suffocating and dying. Mrs Cassaniti sat through that, she had a report and she asked us to take action on it. One of the key things she wanted, and one of the key things I think she deserves, are industrial manslaughter laws. This bill does not provide that. Yet the very report that the Government says it is seeking to implement recommended it as one of its key provisions.

If the Government is not persuaded by me, I urge Government members to look to the evidence of Mrs Cassaniti and look to the pain that not only that family suffers but also every family suffers when their son, their daughter, their husband, or their partner goes to work and does not come home because our workplace laws are not tough enough and because corporate employers, in particular, know that if somebody dies at their

workplace they can write it off as a cost of business. No-one should be a cost of business and everybody should feel that in those circumstances the full weight of the law will come down on them. That will happen only when this State has industrial manslaughter laws. I accept the bill makes some improvements but it goes nowhere near far enough.

Reverend the Hon. FRED NILE (15:35:50**):** I support the Work Health and Safety Amendment (Review) Bill 2020 and commend the Government for this legislation and the improvements it will bring. As members know, in 2019 there were 59 work-related fatalities in New South Wales, 47 in 2018 and 62 in 2017. One of the 47 in 2018 was my brother, who was two years younger than me. He was a builder-carpenter. He went to work after hours late on a Saturday—he was very conscientious—and had not come home. His son went to the work site and found his father, Jim Nile, unconscious on the ground. He was taken to hospital and spent three days in hospital while various tests were conducted to ascertain what had happened. Eventually it was found that he had had a brain haemorrhage. It was thought that he was lifting some very heavy objects—large doors—on his own and while working alone had suffered a brain haemorrhage. After three days I reluctantly had to agree to life support being turned off.

This legislation is very important. I support the Government's objective of preventing workplace fatalities and injuries and wanting workers to have healthy, safe and productive working lives. I agree 100 per cent with that. The key objective of the work health and safety [WHS] laws is to address risks and prevent harm. Improvements to the Work Health and Safety Act are needed now to better protect workers. New South Wales cannot wait until a decision is made to amend the model WHS Act to address these issues. The proposed amending provisions have been carefully considered to ensure that the risks of New South Wales amendments differing from amendments made at the Federal level are diminished. In March Portfolio Committee No. 1 issued a report on the bill that found the majority of stakeholders are supportive of the bill and did not recommend extensive amendments to it. The Hon. Adam Searle referred to the annual service that is held at Reflection Park in Darling Harbour. Usually I attend that every year with other family members to remember those who have died in the workplace, one of whom was my brother, Jim Nile. I am very pleased to support the bill.

The Hon. ROD ROBERTS (15:39:33**):** On behalf of One Nation I make a contribution to debate on the Work Health and Safety Amendment (Review) Bill 2019. No-one is more interested in workers' rights than my colleague Mark Latham and me. In debates in this Chamber over the past two days we were the only party that voted for both public service wage rises and job security and growth in last night's debate over affordable and reliable gas supply—gas that will enable industry to grow and employ more people. So no-one in this Chamber can lecture to us about workers.

Prior to entering this Parliament I was under the misapprehension that Labor was the party of the workers; in fact, in my naivety, I mentioned that in my inaugural speech. Last night certainly cleared up that opinion that I held. No-one in this Chamber has a claim to ownership of workers' rights and therefore workplace safety. We here are all workers and we want and demand a safe workplace. We only have to look around this Chamber at the bottles of hand sanitiser, stickers on the floor and bottled water, and note the temperature checks to see what has been implemented to ensure our safety in the workplace. For example, it has been proven with COVID-19 that prevention is far better than cure.

Our employment in this Chamber may not be deemed high risk, but we all have wives, husbands, sons, daughters, loved ones and friends who work in potentially dangerous industries. I do not believe that anybody in this Chamber has more experience in workplace injury and illness than I have. It is well-known that my police career was cut short as a result of workplace injuries and illnesses—injuries and illnesses that the NSW Police Force denied was its liability. Fortunately, due to the actions of some very experienced senior counsel that I engaged, after four days of hearings in the Industrial Relations Commission the NSW Police Force was found responsible for injuries and illnesses I received. My wife—24 years a detective and a senior hostage negotiator—also had her career cut short as a result of injuries received in the workplace when trying to wrestle down an 18-stone drunken lout in the middle of the night in Goulburn. So no-one has had more personal experience in workplace injuries and illnesses than I have.

In my adjournment speech last evening I talked about Australian values and the Australian ethos of a fair day's work for a fair day's pay. We all expect, demand and deserve to go to work in the morning and to return home safely at the end of the day. The best way to make a workplace safe is to eliminate the risk. We are not naive enough to think that all risks in all walks of life can be eliminated completely—that would be lovely but it is not achievable. We all probably would agree that sometimes the best way to achieve a result is to incentivise people to change their behaviour; however, on other occasions the only way to achieve a result is to penalise. That is part of what the bill sets out to achieve: to ensure employers or those in a position of responsibility or those with a duty of care are liable to penalty.

The bill enhances the most serious offence provision, category 1 offences, to capture grossly negligent conduct as distinct to having to prove recklessness. This allows prosecutions to occur in a preventative manner, not just in a responsive manner. It is always better to prevent workplace incidents than it is to prosecute after the event. This does not alter the right or obligations of the NSW Police Force to investigate workplace incidents that lead to death and to investigate the possibility of manslaughter charges. The bill also prevents people from using insurance or indemnity arrangements to sidestep their obligations, it increases penalties to reflect the current consumer price index range and it allows inspectors to exercise their powers of entry.

I am aware that the Opposition has an amendment relating to industrial manslaughter. I have spoken to the Leader of the Opposition and have explained our position on that. We will not support that amendment. Whilst sympathetic to the Opposition's cause, we believe that its proposal is overreach and disproportionate. One Nation will always support the rights of workers in New South Wales and that extends to their workplace safety. We support the bill.

The Hon. ANTHONY D'ADAM (15:44:28**):** I make a contribution to debate on the Work Health and Safety Amendment (Review) Bill 2020. I will address a number of elements of the bill. Broadly, the bill contains many positive measures, particularly the increase in penalties and not being able to insure against penalties. Both of those provisions recognise the deficiency in the current state of deterrence and the measures will have a positive impact. I also address the measure that deals with training choice for health and safety representatives. I have some personal experience with this issue where in my former life as an official with the Public Service Association we had a number of disputes with employers within the public sector who wanted to designate a particular training provider, primarily for cost reasons.

The whole premise of health and safety representatives is to empower workers to have the capacity to speak up and take action when they think there is a health and safety risk in their workplace. It is very important that workers have that power and are empowered to do that because that is a key condition for establishing and maintaining a safe workplace. The question of how workers obtain the necessary expertise and information to discharge those duties is critical, and the fact that workers are able to make that choice and it will not be able to be challenged and used by employers to obstruct workers from exercising the powers that they are intended to exercise under the Act is a very good measure.

I am concerned about the pre-emptive nature of the bill. It is true that further deliberation still needs to occur at a ministerial council level. I believe that the Government's position on industrial manslaughter is, in part, designed to anticipate a discussion about the form of the implementation of the Boland recommendations around having an industrial manslaughter provision in the uniform harmonised legislation. The measures relating to extending the deadline around initiating prosecutions are also important. We know that, particularly with workplace fatalities, the time it takes to undertake investigations can often be lengthy and that means that there is a truncated timetable for initiating prosecution. Extra time in which to initiate prosecutions is also a good initiative in the bill. I also believe that the sensitivity around providing feedback to families is a recognition of the difficulty that families experience when there has been a workplace fatality and they are left wondering because the investigations go on for a long time. Making provision for regular updates to the families is also a good measure.

Fundamentally, the bill fails to address a gaping hole in our work health and safety laws. People are dying at work and the people who are responsible are not being properly held to account. There is clearly a core problem with prosecutions in the system: not enough prosecutions are occurring and the prosecutions that are occurring are for lower-category offences. That suggests that the legislative settings are not at the right level. The bill, in part, recognises that problem with its proposal to change the fault elements for category 1 offences to include gross negligence. Hopefully that will assist in obtaining further effective prosecutions.

The question of inserting a note in the bill has been canvassed already in the debate. In my view, the note serves no useful purpose and it is really just a sop to cover the lack of action on the substantive question of introducing industrial manslaughter. There is also the question around the operation of the Crimes Act and the manslaughter provisions being applied to an industrial context. There are questions around the WHS expertise in the DPP. It is clear in the behaviour of the regulator that it has a preference for progressing and prosecuting its own matters using the Work Health and Safety Act. This is where it has expertise, as is indicated by the nature of the prosecutions that the regulator currently takes. A fundamental discordance exists in the operation of the legislative framework. Workplace deaths are occurring and there is an absence of accountability. That is reflective of the legislation not actually addressing community expectations around penalties and consequences when there has been a workplace fatality.

That brings me to the question of industrial manslaughter. Firstly, I acknowledge the work of Patrizia and Robert Cassaniti. Obviously they have gone through a horrific experience. To their credit, and partially to channel their grief, they have sought to make changes in workplace laws so that the experience that they have gone through is not experienced by others. That is a very commendable thing. People have canvassed this already, in

Christopher's accident scaffolding had not been properly attached to the structure and came loose. This accident was entirely foreseeable and preventable. In fact, the accident was clearly a product of corner-cutting and particular failures where individuals, or perhaps a number of people, failed in their duties to look after the work health and safety of those around them. The fundamental problem that has occurred here is a failure in the safe systems of work.

The key thing about an effective safe system of work is that it should not be reliant on the judgement of a single person. A safe system of work has overlapping oversight. In that sense, trying to attribute responsibility to the particular workers who made poor judgement calls that lead to an accident is the wrong way to proceed. We actually need to ensure that those who are responsible for the safe systems of work are held responsible because, ultimately, we are never going to reduce workplace fatalities if we cannot ensure that safe systems of work are in place. That is not the responsibility of individual workers; that is the responsibility of the person who controls the business unit or the undertaking. Those people should be suffering the consequences of their actions. They need to be held liable for their failures.

It is not a question that those who follow their direction should be prosecuted. The buck should ultimately stop with those who control the business. The reality is we need to make it easier for those people to be prosecuted. Those people are not being prosecuted, which is why we have this discordance with community expectations. Those people are not being held to account. If people want to avoid prosecution, then they need to take their duties seriously. If we are going to improve work health and safety outcomes, we need to change employer behaviour. As I said, that requires employers to take their work health and safety duties seriously, particularly around the issue of maintaining safe systems of work. This will not occur if employers think they can negotiate down penalties and sanctions and that the real consequences will not flow if they neglect their duties.

This is a weakness of the risk-based framework that has been advanced by the Government as a reason for not implementing industrial manslaughter. There is this notion to have a legislative provision that focuses on the consequences to deviate from the risk-based approach; quite frankly, I think that is a bit of a bureaucrat's concern. To really want to make sure that the legislation has a consistent theme should not be the priority when clearly there is this misalignment with community expectations. We can have both. We can have a primarily risk-based approach in terms of the majority of the legislation and we can have a consequences-based provision in terms of industrial manslaughter.

The fundamental problem around the risk-based approach is in the way it informs the behaviour of the regulator. The regulator is looking to the future, and that is appropriate; they are there to try and prevent future workplace accidents. But if you are not looking at the consequences of past failure, then you do not actually change the behaviour. If people think that they can get away with something, if they can make promises to do better next time, then ultimately that behaviour never changes and we do not end up saving lives and preventing further workplace fatalities.

The Hon. SCOTT FARLOW (15:56:14**):** On behalf of the Hon. Damien Tudehope: In reply: I thank the members who contributed to the debate: the Hon. Adam Searle, Mr David Shoebridge, the Hon. Rod Roberts, the Hon. Anthony D'Adam and Reverend the Hon. Fred Nile, particularly for his reflections on his brother, Jim Nile, who lost his life at a workplace. As members have heard, the Government is committed to ensuring that workers in New South Wales have healthy, safe and productive working lives. I acknowledge that all members in this House share the same objective: we all want our workers to return home each day to their families and to their loved ones. We all want to ensure that our laws are effective and ensure that everyone is vigilant about health and safety at the workplace.

The reforms in the Work Health and Safety Amendment (Review) Bill contribute to this goal by addressing critical issues in our work health and safety laws identified at a national level through the 2018 Review of the Model Work Health and Safety Laws. It is vital that these reforms take effect in New South Wales workplaces as soon as possible to prevent workers from being exposed to unacceptable risks to their health and safety. While I talk about the 2018 Review of the Model Work Health and Safety Laws, I note the comments made by members in debate in respect of the Boland review. It has been contended that industrial manslaughter was recommended by the Boland review. This is not correct. It provided the jurisdictions with options. The New South Wales Government is choosing the option of amending category 1 offences. There was no recommendation for the inclusion of industrial manslaughter in this bill.

The bill seeks to introduce the option that the Government thinks will have the greatest impact on workplace safety. The most appropriate way to prosecute for workplace manslaughter is under the Crimes Act. Work health and safety laws must remain focused on reducing the risk of injury or death in workplaces.

The Hon. Natalie Ward: Point of order—

Mr David Shoebridge: Point of order—

The Hon. Natalie Ward: The Parliamentary Secretary was addressing matters raised by members. Those members were able to address the Chamber in silence. We listened to them carefully. It is important that members do the same. I ask that you direct Mr David Shoebridge to contain himself. He has had the opportunity to speak. He should allow the Parliamentary Secretary to respond to the issues that were raised.

Mr David Shoebridge: To the point of order: It is difficult to sit in silence when the Parliamentary Secretary is reading from notes that were no doubt provided to him and are plainly false. Recommendation 23b says:

> Amend the model WHS Act to provide for a new offence of industrial manslaughter.

It is just plainly false. It is hard to sit in silence when the reply is so plainly false.

The PRESIDENT: Order! Both points of order taken by members well and truly became debating points. I am sure the Parliamentary Secretary is well aware of the requirements of a speech in reply. The Parliamentary Secretary has the call.

The Hon. SCOTT FARLOW: The Government's focus is that the laws remain focused on reducing the risk of injury or death in workplaces. We should not need to wait for a death to prosecute for egregious conduct which exposes workers to a risk of death. We need to step in before anyone is killed so that at the end of every day workers do go home to their families and loved ones. This is what we in the Government see as the major advantage of enhancing the category 1 offence over industrial manslaughter.

The amendments in this bill to the category 1 offence in the Work Health and Safety Act 2011 achieve all the objectives of an industrial manslaughter offence in a more appropriate and effective way. The best deterrent to putting workers at risk of serious injury or death is an offence that can and will be prosecuted when a health and safety duty-holder exposes their workers to unacceptable risks. It is not an offence which sits in the statute book unused. The Hon. Adam Searle mentioned it with respect to offences in place in the Australian Capital Territory and Queensland. The ACT has not had a successful prosecution and neither has Queensland at the moment. I note that the Hon. Adam Searle mentioned that there was a case in progress at the moment.

The Hon. Adam Searle: There are two cases, in fact, but I will come back to that.

The Hon. SCOTT FARLOW: There are two cases. Health and safety duty-holders who are failing to fulfil their obligations to workers need to know that they will face serious penalties, including jail time, if they do not take their obligations seriously—not in theory, but in practice. I turn to some of the discussion in the debate with respect to manslaughter under the Crimes Act and its impact on corporations. Manslaughter is defined by section 18 (1) of the Crimes Act as a punishable homicide other than murder. It carries a maximum penalty of 25 years imprisonment. Under the Crimes Act manslaughter can be committed by an individual or a corporation as per section 10 of the Criminal Procedure Act 1986. If a corporation commits manslaughter a court may instead impose a fine of up to 2,000 penalty units, which is $220,000.

If members wish to look they can see section 16 of the Crimes (Sentencing Procedure) Act 1999. Work-related deaths can be prosecuted in New South Wales as involuntary manslaughter. There are two categories of involuntary manslaughter: manslaughter by unlawful and dangerous act and manslaughter by criminal negligence. The elements of each of these offences are established by the common law and, of course, being prosecuted under the Crimes Act will be brought by the DPP, which the Government believes to be the appropriate means of dealing with such offences.

New South Wales is committed to and strongly supportive of national harmonisation of our work health and safety laws. We are actively participating in the continuing 2018 national review process. We will also continue to consider initiatives to improve the outcomes for New South Wales workers. I share the concern of the Legislative Council committee that reviewed this bill about psychosocial hazards in the workplace. The 2018 national review recommendation that the Work Health and Safety Regulations 2011 be amended to address psychological health deserves thorough and serious consideration.

Developing regulations on the appropriate control measures for psychosocial risks in the workplace will be a complex task. In the meantime, I am pleased that SafeWork NSW is implementing its NSW Mentally healthy workplaces strategy 2018-2022 with the goal of assisting businesses to take effective action to protect workers from risks to their psychological health. I am heartened that members also are united in support to prohibit insurance or indemnity arrangements for work health and safety fines. This is a practice which we must bring to an end in this State. Similarly, I welcome the support of the House in seeking to swiftly restore the real deterrent value of work health and safety penalties in line with the recommendation of the 2018 review by increasing

penalties for offences in the model Work Health and Safety Act, which have not been increased since it began in 2011.

I take note of the comments of members in respect of the tragic death of Christopher Cassaniti at a worksite on Delhi and Epping roads in North Ryde. I pass that site every day on my way in to this place. It is just around the corner from where my parents live and where my mother works, so it is something that I reminded of every single day as I pass that site. The Hon. Kevin Anderson, a friend of this House and the Minister responsible, has worked extensively with the family in crafting this legislation. Both the Minister and I acknowledge that the family requested that industrial manslaughter be a part of this bill. However, the family has been advised of the way the Government is proceeding and understand the manner in which it is proceeding.

Of course, the family has worked with the Government in introducing other parts of our program to improve workplace safety, such as launching the Speak Up, Save Lives app in October 2019 in recognition of the fear that workers may have of the repercussions of reporting work health and safety issues. The app allows individuals on worksites to report dangerous work practices and risks to worker safety via an anonymous mobile app. As all members have done, we commend the Cassaniti family for its commitment to workplace health and safety in the memory of the tragic death of Christopher Cassaniti.

SafeWork NSW is the first regulator to engage with customers this way, allowing workers to raise work health and safety issues anywhere and anytime without fear of repercussions. Since launching in October 2019, some 541 notifications have been received. New South Wales has more than half a million young workers aged up to 25. We know that these workers need extra support to stay safe at work. SafeWork NSW's 2018 At Risk Workers' Strategy includes an online young workers e-toolkit, providing young workers with easy access to a range of resources specifically developed to support them, their parents and guardians, their educators and their employers.

In large part the remaining reforms seek to improve the efficiency and effectiveness of investigations to bring relief to affected families whose trauma can be greatly exacerbated by prolonged investigations. Enhancing the powers of inspectors, streamlining processes for service of notices, clarifying amendments about inter-jurisdictional sharing of information and orders that can be declared by a court are all reforms that have attracted the support of the House, and I thank members for their support of that part of the bill. There is no doubt that this bill is a welcome step forward for work health and safety in New South Wales. The reforms before us have broad support from employer and employee representative groups. This bill will strengthen our work health and safety regulators' efforts to reduce workplace fatalities and injuries and embed a health and safety landscape in New South Wales workplaces. I commend the bill to the House.

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

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will deal with the Work Health and Safety Amendment (Review) Bill 2020 as a whole. I indicate to members that I have three sets of amendments, the first being Opposition amendment No. 1 on sheet c2020-084, the second being Opposition amendment No. 1 on sheet c2019-248A and the final being the Shooters, Fishers and Farmers Party amendment on sheet c2020-004D. We will start with the Opposition amendment on sheet c2020-084. Of course, it is a matter for the Hon. Adam Searle as to whether he wants to deal with another amendment at the same time.

The Hon. ADAM SEARLE (16:08:11**):** By leave: I move Opposition amendment No. 1 on sheet c2020-084 and Opposition amendment No. 1 on sheet c2020-248A in globo:

No. 1 **Note about Crimes Act 1900**

Page 3, Schedule 1[3]. Omit lines 11—19.

No. 1 **Industrial manslaughter**

Page 3. Insert after line 27—

[6] Part 2A

Insert after Part 2—

Part 2A Industrial manslaughter

34B Definitions for Part 2A

(1) In this Part—

conduct means—

(a) an act, or

(b) an omission to perform an act.

executive officer, of a body corporate, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

senior officer, of a person conducting a business or undertaking, means—

(a) if the person is a body corporate—an executive officer of the body corporate, or

(b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.

(2) For this Part, a person's conduct causes death if it substantially contributes to the death.

34C Exceptions

(1) A volunteer does not commit an offence under this Part.

(2) Despite section 34(2), a senior officer of an unincorporated association (other than a volunteer) may commit an offence under this Part.

34D Industrial manslaughter—person conducting business or undertaking

A person conducting a business or undertaking (the ***first person***) commits an offence if—

(a) a worker or other person—

(i) dies at a workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking, or

(ii) is injured at a workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking, and later dies, and

(b) the first person's conduct causes the death of the worker or other person, and

(c) the first person is negligent or reckless about causing the death of the worker or other person by the conduct.

Maximum penalty—

(a) for an individual—25 years imprisonment, or

(b) for a body corporate—100,000 penalty units.

Note. See section 244 or 251 in relation to imputing to a body corporate or public authority particular conduct of employees, agents or officers of the body corporate or public authority.

34E Industrial manslaughter—senior officer

A senior officer of a person conducting a business or undertaking commits an offence if—

(a) a worker or other person—

(i) dies at a workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking, or

(ii) is injured at a workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking, and later dies, and

(b) the senior officer's conduct causes the death of the worker or other person, and

(c) the senior officer is negligent or reckless about causing the death of the worker or other person by the conduct.

Maximum penalty—25 years imprisonment.

The amendment on sheet c2020-084 seeks to delete the note referring to criminal negligence in the mainstream criminal law and the amendment on sheet c2019-248A contains the industrial manslaughter amendments. I will address the industrial manslaughter amendment first. There are two main models that we could look to for inspiration: that in Queensland and that in Victoria. The amendments I have moved draw on the Queensland model. They propose to create a new part 2A in the work health and safety legislation entitled "Industrial manslaughter" and set out what is the conduct and the definitions of "executive officer" and "senior officer". The operative provisions are on the second page.

New section 34D creates the criminal offence of industrial manslaughter for a person conducting a business or undertaking. Again, there has to be a worker who dies or is injured at the workplace where the first person's

conduct causes the death of the worker and the first person is negligent or reckless about causing the death. There are penalties of up to 25 years' imprisonment or, for a body corporate, 100,000 penalty units. The same type of drafting is in new section 34E, which deals with the offence of industrial manslaughter regarding a senior officer. Again, we have to have the worker dying at the workplace or being injured and later dying. The senior officer's conduct must cause the death of the worker or other person. Again, negligence or recklessness about the cause of the death has to be an element. The maximum penalty is 25 years.

The first provision deals essentially with individuals and corporate bodies and the second provision deals only with natural persons. There is no monetary penalty attached to the second provision. It is clear that this bill is not like the offences in the Occupational Health and Safety Act, whereby a company could be found liable for a breach of the legislation and then there could be a second prosecution against a director or person concerned with the management of the enterprise, and the individual could be prosecuted solely for holding that office or role for a corporate body that committed the offence.

There was the potential to be held liable even though there might not be any personal wrongdoing. It is a matter of conjecture whether prosecutorial discretion was ever abused in that regime but that was the framework of the law. That is not present here. The only bodies or individuals who can be prosecuted under this model are ones that have committed an act or omission and a person has died, either instantly or after receiving injuries, and the conduct causes the death and there was the requisite negligence or recklessness. The amendment is pretty straightforward and the Opposition holds the view that it strikes the appropriate balance between requiring individual moral turpitude, as it were, or moral culpability of the individual and, as I indicated during the second reading debate, an appropriate redrawing of the line to find the threshold at which criminal liability should arise in the workplace.

By way of background, I add that in 2018 the Australian Senate referred the framework around prevention, investigation and prosecution of industrial deaths to the Senate Education and Employment References Committee for inquiry and report. In October 2018 the committee tabled its report, *They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*. That 135-page report made 34 recommendations about how these matters are dealt with. The timing of the report and the response coincided with the independent review of the model laws, the Boland review. Both reviews shared some key recommendations: there should be an industrial manslaughter offence; there should be an amendment of the category 1 offences under the Work Health and Safety Act, which is the most serious offence under the harmonised WHS Act excluding industrial manslaughter; and increasing union officials powers to enter work sites to assist health and safety representatives [HSRs] without an entry permit under the Fair Work Act.

It has already been canvassed that one of the deficiencies in the mainstream criminal law is the difficulty about achieving a prosecution because of the very high threshold at which criminal liability arises. I have addressed that point. The second issue is in relation to corporate entities that cannot be prosecuted because the arising penalty cannot be carried out against a corporation. In relation to the ACT model, that is in the mainstream criminal law, which the Opposition does not recommend. In April 2018 a prosecution was commenced against a crane driver in the context of an incident at a Canberra construction site. I do not know how that resolved itself, but in relation to the Queensland model that was implemented in October 2017, my research in late 2019 showed that in February 2019 the Queensland District Court convicted a director of a roofing company and sentenced him to 12 months' imprisonment with a $1 million fine for the company following the death of a worker who fell almost six metres due to the absence of handrails. In that case, the director had decided that installing handrails was too expensive so that case had a clear omission causing death and individual culpability.

In May 2019 the manager of a quarry where a worker was crushed to death on site in Central Queensland was sentenced in the Brisbane Magistrates Court to 18 months in prison. There was a minimum prison time of six months under the relevant legislation. The company was fined $400,000. I am not aware of any prosecutions arising under the Victorian legislation. I think Western Australia is still in the process of implementing its laws and I am not sure where that is up to. Late last year in the Northern Territory a bill was presented to Parliament. I do not know whether that has been enacted. However, we can see that at least in Queensland there have been two successful cases. Obviously one would hope there were no cases but, as we know, there is a variety of reasons for putting matters into the criminal law. Among those is the imperative of sending a very clear signal about the behaviour that society finds acceptable or unacceptable. I will refer briefly to the joint dissenting statements of my colleague the Hon. Tara Moriarty and me to the report of the Legislative Council inquiry into this legislation:

> … a key role of the law is to set clear guidelines about what is acceptable and what is not acceptable in our society. In so doing, the law provides deterrence against proscribed behaviours. The criminal law is a clear example of this, as are laws of a similar character. An analogous example is the former anti-vilification provisions in s20D of the Anti-Discrimination Act … now replaced by s93Z of the Crimes Act … The fact that neither provision has been used is no reason to not have them in law, given the important public policy reasons underpinning them. We view industrial manslaughter laws in the same way, although we also believe they will have practical application.

Undoubtedly there will be circumstances in which it will be appropriate that they would be deployed, but even if they are never deployed it is very important we send a clear signal to workers, management, companies and anybody engaged in often dangerous businesses about the very high expectations that we have and what we find not acceptable. The mere fact that a law exists somewhere and may not have been used—which may be a good thing depending on the circumstances—makes it important to have these laws in place. I take up the point the Parliamentary Secretary raised about the Cassaniti family understanding the Government is not proceeding with industrial manslaughter. I will refer briefly to the evidence given by the Cassaniti family to the upper House inquiry.

Mrs Cassaniti referred in her submission to the number of meetings she had had with the Minister. I am paraphrasing but her evidence was she was getting mixed messages from the Government that the Government would enact industrial manslaughter laws and then would not. There is no doubt that her evidence was about her grave disappointment that the Government was not taking action. She said that the Minister had said to her, "Maybe we should look at it", and that he said repeatedly, "We want to do something", but then there were media reports that the Government was not going to do anything. This was after there were media reports, perhaps wrong, that the Government was going to act in this space. We acknowledge that there is the category 1 offence upgrade, as it were. It may be this is an example of a Minister wanting to do something but the collective Cabinet holding the decision back. Whatever the reason, the Government is not delivering on the expectations of the Cassaniti family or the reasonable expectations of families everywhere who tragically have lost loved ones at work.

We hope that the very carefully crafted amendments that we present will find favour. I can count and I am not hopeful at this stage, but on the issue of overreach I think it is important to recognise that under the formulation we provide no individual could be prosecuted and exposed to the penalties we propose without their individual conduct leading to death and there being an individual responsibility for those acts or omissions causing death, and that is with the original threshold of negligence or recklessness. We think it is a careful balancing of the rights and interests in the workplace and that there is no overreach. The last amendment is to simply omit those words from the Crimes Act about which there might be some typographical misadventure anyway, so perhaps we might be doing the Government a favour by taking those words out. We ask this House to support these carefully crafted amendments.

The CHAIR (The Hon. Trevor Khan): When we come to it I will move the first amendment; that is, the omission amendment first, and then move on to what I think is the substantive amendment.

The Hon. ROBERT BORSAK (16:20:48**):** I make a brief contribution to the Labor amendment that has just been spoken to by the Leader of the Opposition. When someone dies at work, the impact that can have on the family and friends can be devastating during that time of loss and grief. The bill before us, while not perfect, is a step forward and will make it easier to prosecute cases. We cannot support this amendment. We believe that at this stage by broadening the scope of category 1 offences under the Work Health and Safety Act to also capture grossly negligent conduct as well as reckless conduct will make it easier to prove and prosecute cases, and will deter unsafe behaviour by providing a greater incentive for businesses and individuals to comply with the work health and safety laws.

The Hon. SCOTT FARLOW (16:21:42**):** The Government opposes these amendments. I turn first to amendment No. 1 on sheet c2020-084. The section of the bill that the amendment seeks to remove is a notation that is intended to bring clarity on a matter where we have seen, even in this debate over the bill, there is a great deal of confusion. The note says that in certain circumstances the death of a person at work may also constitute manslaughter under the Crimes Act 1900 and may be prosecuted under that Act. Some people in our community are under the impression that a workplace death cannot be prosecuted as a manslaughter under our existing laws. It can. The Director of Public Prosecutions can, where appropriate, prosecute a workplace death as a manslaughter by criminal negligence under the Crimes Act. It is a serious offence for which the Crimes Act imposes a penalty of up to 25 years' imprisonment. This needs to be understood in our community; in particular, it needs to be understood by all of those who hold health and safety duties under the Work Health and Safety Act that if they do not comply with those duties they risk prosecution for manslaughter.

That is what adding this note to the Work Health and Safety Act is intended to achieve. It alerts duty-holders under the Act to the Crimes Act provision and in doing so increases the deterrent power of the offence. The duty-holder should be aware that a failure to comply with their duties, which then causes someone's death, could lead to a jail term of up to 25 years. This is a better approach than duplicating the offence of manslaughter in the Work Health and Safety Act. The offence of manslaughter already exists and sits appropriately within the Crimes Act. Causing a person's death as a result of gross negligence needs to be prosecuted through the most appropriate judicial process, and that is by the Director of Public Prosecutions and the Crimes Act. To duplicate the offence will only create confusion and an inappropriate division of responsibilities between our work health and safety regulators, the police and the Director of Public Prosecutions. It is vital that our laws send a clear

message to health and safety duty-holders about the consequences of failing to comply with their duty. The note in the bill on the Crimes Act provision will do so and that is why the Government believes it should not be removed.

With respect to amendment No. 1 on sheet c2019-248A dealing with industrial manslaughter and its inclusion, we have discussed this quite extensively and, of course, the Government opposes this amendment. The proposed offence is inconsistent with the objects of the Act. It has never been shown to work in practice in this country—New South Wales used to have a provision, but it was never used—and it risks further undermining the national harmonisation of our work health and safety laws, which have been so valuable to businesses and workers. What is more, every possible objective for introducing such an offence is better served by amending the category 1 offence, which is already in the bill.

This Act is about protecting people at work; it is underpinned by the principle that the work health and safety regulators should step in not when a worker is injured or killed but before that can happen, when a worker is exposed to even a risk of injury or death. That is why the most serious offence in the Act, the category 1, can be prosecuted whether or not a worker has been injured or has died. We take workers' safety so seriously that it is enough that they have been exposed to a risk of that happening. The offence proposed by the Opposition requires a death; work health and safety prosecutors will have to wait for someone to die before they can prosecute the offence. That is not what our workplace health and safety laws are about. What is more, there is no evidence that workplace health and safety prosecutors would be able to secure convictions for the offence.

Industrial manslaughter offences have long been an empty threat in Australian statute books. This State had one that was never used; the Australian Capital Territory has had one since 2004 and it has never been used; Queensland has had one since 2017 and to date there have been no convictions, but I note the comments of the Hon. Adam Searle with respect to the Queensland cases and the live decision in Queensland. What is needed in this Act is a deterrent to unsafe workplace behaviour, which our work health and safety regulators can put to use. That is the category 1 amendment, which will make it easier for our workplace health and safety regulators to bring prosecutions for an offence whose basic structure has already been shown to work in practice. Even with the current high threshold of recklessness, workplace health and safety regulators in this country have secured convictions for a category 1 offence. The category 1 offence will become an even more effective deterrent to unsafe workplace practices as a result of the bill—a more effective deterrent than an offence that may sit on the statute books and never be used.

Businesses have told us how important the national harmonisation of workplace health and safety laws has been to them; it has enabled them to streamline their operations and set up work health and safety systems that operate consistently across State borders. In bringing forward this bill the Government has been mindful of the value of national harmonisation and has carefully created amendments that are needed in New South Wales now to ensure that they will be as consistent as possible with those likely to be made at a national level at the end of the 2018 workplace health and safety laws review process—and I note that the review on that still has not been published at this stage. The Opposition's amendment undermines the ability to have that harmonisation. There has been no agreement at a national level to introduce an industrial manslaughter offence, and those jurisdictions that have introduced the offence unilaterally have taken widely differing approaches. In those circumstances, the New South Wales Government does not believe that it should add to diversity on this issue.

The very terms of this amendment make plain how ill-suited the offence is to the Work Health and Safety Act. The proposed offence carries a penalty for a corporation of a maximum fine of $11 million. Effectively, when a person dies, our work health and safety regulators could prosecute a corporation for an offence that carries a penalty that is 50 times greater than a prosecution that the Director of Public Prosecutions could bring against a corporation for manslaughter under the Crimes Act. That is disproportionate and inconsistent with the roles those entities play in our justice system. It is also inconsistent with the underlying framework of the Act itself. The Act already has an established and well-understood concept of an officer, which draws on the definition of "officer" in the Commonwealth Corporations Act. This has been working well in practice. The amendment seeks to muddy the waters by introducing a concept of "senior officer". The relationship of that term to the existing term in the Act is unclear. The offence uses the terms "negligence", which, in the context of a criminal provision like this one, is usually understood to mean the same criminal standard of negligence that will apply to the amended category 1, which uses the term "gross negligence".

Criminally negligent or grossly negligent conduct is conduct that falls so far short of what is reasonable and involves such a high risk of death or serious injury that it deserves criminal punishment. This amendment will create ambiguity about what is meant by both of those terms when both should mean the same thing. Further, the concept underpinning the Act is the idea that everyone in a workplace owes a duty not to risk the health and safety of other persons. Much of our regulators' efforts are directed at providing support and guidance to workplaces on how to comply with that duty. The offences in the Act are premised on failures to comply with that duty. This

offence makes no mention of a health and safety duty at all. That is a clear indication that it does not belong in this Act and that manslaughter offences are best prosecuted in this State as they are now, under the Crimes Act by the Director of Public Prosecutions.

Mr DAVID SHOEBRIDGE (16:29:17**):** On behalf of The Greens I indicate support for the Opposition amendments to insert part 2A and the provisions relating to industrial manslaughter. I will deal with a number of arguments raised by the Government. The first is that it is inappropriate to include part 2A in industrial manslaughter because an industrial manslaughter provision requires a death before a prosecution can be brought. In that regard it compares it to the provisions as to gross negligence that have been included in the amending Act. The flaw in the Government's argument is that the Opposition amendments are in addition to the gross negligence provisions that have been put in—those provisions remain in force. Therefore, if there is a risk that does not result in death it would still allow workplace prosecutors to prosecute for those risks. Indeed, it simply puts an additional provision in place when there is a death in the workplace and allows for the prosecution under industrial manslaughter. The Government raises a false dichotomy when it suggests those amendments somehow negate the existing law—they simply add to it.

Secondly, the Government's position is that it is inappropriate to have an $11 million penalty for corporations in the Work Health and Safety Act because that is out of kilter with the penalty that is provided under the Crimes Act. The maximum penalty for a corporation under the Crimes Act is $220,000 for manslaughter. All members would agree that that is a woefully inadequate penalty for a corporation. For a large, multinational corporation a $220,000 penalty would be derisory. Indeed, I believe most families would be in revolt if the DPP brought an application against a multinational for which the maximum penalty was $220,000. The real concern for the Government is to try to avoid having a meaningful provision that holds corporations to account.

We heard from the Parliamentary Secretary that the Government believes that the appropriate mechanism under criminal law is to identify individuals in a corporation and hold them to account under the Crimes Act and to let the corporate entity—the entity that benefits, that makes the decisions, that often cuts corners on safety, that delivers profits to shareholders—entirely off the hook. This is failing to understand that the corporate entity makes the decisions. The corporate entity puts in place the policies and practices that so often leads to shortcuts that leads to workers dying in the workplace. This is an ideological approach from the Government. It wants to shield corporates from a meaningful penalty for industrial manslaughter, which is why it opposes this amendment.

The last argument that has no merit is that because industrial manslaughter laws on the statute books in other States and Territories have not been used, it is a reason not to have it on the statute laws. There are dozens and dozens of important statutes on the statute books that have never been prosecuted against. One example I can point to is racial vilification laws. We would all agree that racial vilification laws are essential. Even though there has not been a successful prosecution for racial vilification, those set a standard and that standard holds people to account. We can go back in history and look at laws on the New South Wales statute books that have never been used but we probably all think are important, such as the Treason Act 1351. It is still on this State's statute books and remains part of the law. It has been reformed; we no longer do the hanging, drawing and quartering. I think that was changed in the 1700s. However, the Treason Act of 1351 remains on the statute books. Although it has never been used I do not see a push from this Government to appeal those provisions. The fact that a law has not been used does not mean it is not doing good work and setting a standard. These amendments set a standard, which is why The Greens support them.

The Hon. ADAM SEARLE (16:33:39**):** I will pick up on comments made by the Parliamentary Secretary. One thing that became apparent in the inquiry was the evidence that suggested that the resourcing of work safety regulators had been inadequate not only in New South Wales but also interstate, particularly in relation to issues of workplace death. There was a body of evidence to suggest that may well have been a contributor to the non-enforcement of those other provisions in other jurisdictions. We acknowledge the need to resource the regulator properly. When we look at the history of safety offences prosecuted in this State, there is a clear downward trend from about July 2011 to the present where frank prosecutions and enforcement of that kind as well as penalties have declined. That high-level enforcement has been replaced by a softer self-regulatory model which says, "We will come around and have a stern word. We will rely on performance improvement notices rather than actual prosecutions."

The CHAIR (The Hon. Trevor Khan): Government members will cease interjecting. I make the point that I have made in other circumstances: An added obligation falls upon Government members to maintain the discipline of the House. This is our piece of legislation that is sought to be passed through Parliament. I should not have to intervene to remind Government members to behave in a manner that keeps proper order in the House. I also invite Mr David Shoebridge to display a degree of discipline. We are getting through this debate fairly quickly. I have extended a degree of latitude to all members. I understand the importance of this legislation to both sides of the Chamber but I remind members that interjections are disorderly.

The Hon. ADAM SEARLE: We say there has been concomitant lesser prosecutions. The rolling three-year average of deaths is about 56 deaths a year. That would make it the highest in the Commonwealth. Obviously we are the biggest State but this is still a very worrying trend. Again, it is difficult to track the annual figures because the way WorkCover—now SafeWork—kept those records changed in about 2017 or 2018. I think I am right in saying that for each year this Government has been in office more often there has been an increase in workplace fatalities than a decrease, although there may be some debate about the overall arc of reduction. We can all agree there are too many workplace fatalities. We should do everything we can to raise the standard. Apart from the observation of the Parliamentary Secretary that the provision does not seem to require a breach of a WHS obligation, I think that is the only criticism with the drafting of the provision that we can offer. I urge members to think carefully before casting their votes on this matter. If we do not succeed on this occasion, debate on this issue will keep recurring.

The CHAIR (The Hon. Trevor Khan): The Hon. Adam Searle has moved Opposition amendment No. 1 on sheet c2020-084. The question is that the amendment be agreed to.

Amendment negatived.

The CHAIR (The Hon. Trevor Khan): The Hon. Adam Searle has moved Opposition amendment No. 1 on sheet c2020-248A. The question is that the amendment be agreed to.

The Committee divided.

Ayes 18
Noes 19
Majority.....1

AYES

Boyd	Buttigieg (teller)	D'Adam (teller)
Donnelly	Faehrmann	Field
Graham	Houssos	Hurst
Moriarty	Moselmane	Pearson
Primrose	Searle	Secord
Sharpe	Shoebridge	Veitch

NOES

Ajaka	Banasiak	Borsak
Cusack	Fang	Farlow
Farraway (teller)	Franklin	Harwin
Latham	Maclaren-Jones (teller)	Mallard
Martin	Mitchell	Nile
Roberts	Taylor	Tudehope
Ward		

PAIRS

Jackson	Amato
Mookhey	Mason-Cox

Amendment negatived.

The CHAIR (The Hon. Trevor Khan): The Committee will now deal with the final amendment, which is the Shooters, Fishers and Farmers Party amendment No. 1 on sheet c2020-004D.

The Hon. ROBERT BORSAK (16:50:50**):** I move Shooters, Fishers and Farmers Party amendment No. 1 on sheet c2020-004D:

No. 1 **Power of SafeWork NSW to issue permits for prohibited weapons**

Page 4, Schedule 1. Insert after line 5—

[11A] Section 153A

Insert after section 153—

153A Powers of regulator—permits to possess or use prohibited weapons

(1) Subject to subsection (2), the regulator has the functions of the Commissioner of Police under Part 2 of the *Weapons Prohibition Act 1998* to issue permits for the possession or

use of prohibited weapons of a kind described in clause 4(3) of Schedule 1 to that Act, namely, silencers or any other device designed for attachment to a firearm for the purpose of muffling, reducing or stopping the noise created by firing the firearm (a ***silencer***).

(2) The regulator may only issue a permit under this section—

(a) if satisfied that the genuine reason for possessing or using the silencer is to secure the health and safety of workers, and

(b) to a person aged 18 years or older.

(3) A firearm to which an authorised silencer is attached is no longer a prohibited firearm for the purposes of the *Firearms Act 1996*.

(4) For the purposes of subsection (3), an ***authorised silencer*** is a silencer that is possessed or used under the authority of, and in accordance with, a permit issued under this section.

This amendment makes a simple and logical improvement to the Work Health and Safety Act by extending the authority of the regulator, SafeWork NSW, to issue permits to own and use firearms suppressors to protect hearing. These devices offer the most effective hearing protection for firearms users and are certainly superior to earplugs and earmuffs. This amendment is necessary because decisions affecting the protection of hearing should not be left in the hands of those who are not technically competent to make those decisions.

Neither the Commissioner of Police nor his delegates at the Firearms Registry have the necessary training or expertise in hearing or health and safety matters to make these decisions. The Commissioner of Police is not vested with the authority to issue permits to undertake high-risk work practices, such as asbestos removal for example, for very good reason: He is not competent to make those decisions. Nor should the commissioner have the sole authority for issuing permits or for firearm suppressors. This authority should rest with the SafeWork regulator. There is no rational reason to withhold these essential safety devices from everyday firearms users. Any fears the Government and police have about these devices being used to conceal crime are irrational and factually unfounded.

In none of the suppressor cases heard by the NSW Civil and Administrative Tribunal have police produced any evidence of a suppressor being used in crime. As well, our analysis of over 40 gangland murders in Sydney shows that in all cases witnesses heard the shots fired by the killer. Killers do not use suppressors for a very good reason. First, assassinations by drug gang members are invariably carried out in public, often in broad daylight and in public places. These killers know that as soon as they start shooting the natural instinct of any bystanders is to duck for cover. This of course reduces the chances of visual detection and identification by witnesses. Secondly, attaching a suppressor to a pistol adds about 200 millimetres or so to the length of the pistol, making it that much harder to stuff inside a pair of jeans to conceal.

But of course logic and evidence-based decision-making is a rare thing for this Government. Withholding suppressor permits from 300,000 licensed firearm owners in this State is akin to saying to motor vehicle drivers, "No, you can't have access to the most effective safety devices, seatbelts and airbags." Clearly this is nonsense. Just as airbags and seatbelts have been available to all motor vehicle users, so too suppressors should be available to all licensed firearms users. I commend this sensible amendment to the Committee though I too can do the numbers. The Government needs to seriously reconsider its position in the longer term.

The Hon. SCOTT FARLOW (16:53:51**):** The Government will not be supporting the Shooters, Fishers and Farmers Party's amendment.

The Hon. ADAM SEARLE (16:54:07**):** The Opposition will not be supporting this amendment put forward by the Shooters, Fishers and Farmers Party. There are a couple of reasons for that. While I accept the genuine health and safety motivation of the mover of the amendment and it does echo a submission that we heard during the inquiry and it is a serious issue, having SafeWork as the dispenser of the approvals I am not so sure is a good idea. The truth is there is no SafeWork in New South Wales. The legislation defines SafeWork as the Secretary of the then Department of Finance; that is now the Secretary of the Department of Customer Services. There is no bespoke inspectorate, policy division or set of regulators. The regulation function is dispersed amorphously through the organisation. We are not properly tooled to have a real health and safety regulator in this State. That much is totally apparent. I do not think conferring such a profound new function of this kind on that non-organisation as we currently have is good public policy.

The second reason is that before embarking upon this the Opposition would wish to be informed at least of the attitude of the Commissioner of Police. I am not saying the commissioner's view would be determinative but it would certainly be worth understanding what the view is of the Police Force and what is informing those views if we are to give, as it were, a parallel jurisdiction in relation to the issuing of silencers. That is the Opposition's ballast thought on this matter at this time. The Opposition will not support the amendment, at least on this occasion.

The Hon. EMMA HURST (16:56:03**):** The Animal Justice Party will not support the amendment. We believe it has nothing to do with workplace health and safety but is simply another attempt by the Shooters, Fishers and Farmers Party to pursue a pro-gun agenda. A silencer is classified as a prohibited weapon in New South Wales under the Weapons Prohibition Act, and for good reason. When we reduce the sound of gunfire we increase the risk that humans and non-human animals in the vicinity will not hear that a firearm is being discharged or be able to determine where the shot is coming from, potentially putting them in harm's way.

The Hon. Mark Pearson has just highlighted to me that one of the reasons shooters want silencers on guns is to be able to shoot birds at night without frightening other birds away. Making it easier to obtain a silencer may well increase work health and safety incidents instead of reducing them, particularly given research shows that protective devices, such as earplugs and earmuffs, are already more effective in preventing hearing damage from firearms. The Animal Justice Party does not support the shooting of sentient animals for human enjoyment or convenience, nor do we support the relaxation of gun laws. For those reasons, the Animal Justice Party will not support the amendment.

Mr DAVID SHOEBRIDGE (16:57:22**):** The Greens do not support the amendment. We do not support what would effectively be a partial dismantling of the firearms legislation in New South Wales, either the Firearms Act or the Weapons Prohibition Act. The Greens also note, for the benefit of the Hon. Robert Borsak who moved the amendment, that when looking at this from a work health safety perspective the single and best way to address the dangers from hazard in the workplace is to remove the hazard. The Greens say that that applies especially in relation to firearms.

The CHAIR (The Hon. Trevor Khan): The Hon. Robert Borsak has moved Shooters, Fishers and Farmers Party's amendment No. 1 on sheet c2020-004D. The question is that the amendment be agreed to. Is leave granted to ring the bells for one minute?

Leave granted.

The Committee divided.

Ayes 4
Noes 33
Majority.....29

AYES

Banasiak	Borsak (teller)	Latham (teller)
Roberts		

NOES

Ajaka	Boyd	Buttigieg
Cusack	D'Adam	Donnelly
Faehrmann	Fang	Farlow
Farraway (teller)	Field	Franklin
Graham	Harwin	Houssos
Hurst	Maclaren-Jones (teller)	Mallard
Martin	Mitchell	Moriarty
Moselmane	Nile	Pearson
Primrose	Searle	Secord
Sharpe	Shoebridge	Taylor
Tudehope	Veitch	Ward

Amendment negatived.

The CHAIR (The Hon. Trevor Khan): The question is that the bill as read be agreed to.

Motion agreed to.

The Hon. SCOTT FARLOW: I move:

That you do now leave the chair and report the bill without amendment.

Motion agreed to.

Adoption of Report

The Hon. SCOTT FARLOW: On behalf of the Hon. Damien Tudehope: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. SCOTT FARLOW: On behalf of the Hon. Damien Tudehope: I move:

That this bill be now read a third time.

Motion agreed to.

RESIDENTIAL APARTMENT BUILDINGS (COMPLIANCE AND ENFORCEMENT POWERS) BILL 2020

Messages

The PRESIDENT: I report receipt of a message from the Legislative Assembly agreeing to the Legislative Council's amendments to the bill.

Adjournment Debate

ADJOURNMENT

The Hon. DAMIEN TUDEHOPE: I move:

That this House do now adjourn.

MODERN SLAVERY ACT 2018

The Hon. GREG DONNELLY (17:08:02**):** Members will recall that the Modern Slavery Act 2018 was passed by the Parliament on 21 June 2018. The Premier, the Hon. Gladys Berejiklian, MP, in her speech on the bill in the Legislative Assembly on 6 June 2018 said:

> It is not every day that members of this place or the other put forward something that will have a positive impact for literally thousands of people.

Further in her contribution she said:

> There is an undeniable moral imperative to take action in relation to all forms of modern slavery.

When the bill finally passed the Legislative Council after much debate and a number of amendments, there was a great sense of achievement felt by all who had worked together to bring about the passage of the legislation. A significant new law had been passed by the Parliament of the largest State in the Commonwealth that, when enacted, would play an important role in tackling the scourge of modern slavery and human trafficking. However, what followed its passage was one of the most shameful and cynical actions of any government in recent times.

Having passed the Parliament, the legislation was promptly forwarded to the Governor to receive royal assent, which it received on 27 June 2018. But then, instead of taking the final step and having the new law proclaimed, the Government, without telling anybody, hit pause. The hitting of pause at that final stage meant that, without proclamation, the Modern Slavery Act 2018 would not pass onto the statute books. In effect it had been placed into the deep freezer.

Many people, including me, considered this action deceitful and a most egregious breach of trust. It was not until May 2019 that the Government finally admitted that it had not proclaimed the legislation and that the matter was in limbo. What did the Government do after being called out for its deceptive actions? Instead of agreeing to proclaim the legislation, the Government insisted the Modern Slavery Act 2018 be subjected to a parliamentary inquiry. Why? The explanation given was that in the interim period the Commonwealth Parliament had passed the Modern Slavery Act 2018 (Commonwealth), which commenced on 1 January 2019.

The terms of reference for the Standing Committee on Social Issues to undertake an inquiry were reported in the Legislative Council on 7 August 2019. The inquiry into the Modern Slavery Act 2018 and associated matters has been completed and its report was tabled on 25 March 2020. It is important to note that the Opposition does not agree with all aspects of the report and its recommendations. Specifically, I draw the House's attention to pages 126 and 127 of the inquiry report. This is the joint dissenting statement made by my Labor colleague on the committee, the Hon. Daniel Mookhey, MLC, and me. In part, it says:

> The Opposition has said consistently that it is prepared to countenance minor or technical amendments to the *Modern Slavery Act 2018*. It wants the NSW Act to work concurrently with the Commonwealth legislation without ambiguities or conflict. However, it does not and will not support proposed amendments that in effect seek to rebase it with the Commonwealth legislation or remove or diminish key provisions that make it the cutting edge piece of anti-slavery and anti-human trafficking legislation that it is.

This State should have had its own modern slavery legislation operating by no later than July 2018. It is now June 2020. On 13 May, in a debate initiated by the Opposition in the Legislative Council to flush out the Government's position on the Modern Slavery Act 2018, the Government voted against a motion that sought to lock in the 1 January 2021 commencement date. The question is why would the Government do so unless it wanted to keep its options open? The truth of the matter is that there is one option and one option only: Take immediate steps to get the Modern Slavery Act 2018 fully enacted.

The fact is that Premier and Cabinet have the power to initiate the actions required to give New South Wales the modern slavery legislation its Parliament endorsed. There is no need for the Government to wait the full six months to report back to the Parliament regarding the recent inquiry report and its recommendations. Work on preparing minor or technical amendments, to the extent that they need to be made, can be done right now; so, too, can the preparation of any necessary regulations. The Modern Slavery Act 2018 must commence by no later than 1 January 2021.

DEPUTY PREMIER

The Hon. MARK BANASIAK (17:12:44**):** *The Scarlet Pimpernel*, Act 1, Scene 1: The lights are low, the curtains are drawn and the audience of rural New South Wales awaits with bated breath as John Barilaro stands in the wings. The wind section begins; enter John Barilaro. The spotlight is on him, which is how he likes it, and so the show begins. To the people of Menindee, his lines read something like this: "We simply can no longer stand by the Murray-Darling Basin Plan in its current form. The plan needs to work for us and not against us." The crowd roars in agreement. Act 1, Scene 2: To the people of Griffith, he reads lines about a new hospital. He says, "Following completion of the master plan, the need for a major upgrade at Griffith Base Hospital was clear. We said we would build a hospital that meets the needs of a growing community and that is exactly what today's funding will deliver." Griffith breathes a sigh of relief.

Act 1, Scene 3: Over in Barwon, Shooters, Fishers and Farmers Party member Roy Butler has for months been calling for cash-based assistance for drought-affected communities, rates relief and grants to re-sow and restock. These simple measures would allow Barwon communities to get on with the job, despite the prolonged drought. Smoke and mirrors are on the stage; enter John Barilaro from stage right. He says, "The additional $350 million we have added to the Farm Innovation Fund is another signal to our farmers that no matter what conditions you face, we will continue to stand side by side with you, now and into the future."

The Hon. Robert Borsak: Point of order—

The DEPUTY PRESIDENT (The Hon. Shayne Mallard): Order! I am reluctant to take up the member's time. I call the Hon. Wes Fang to order for the first time. The convention of this House is for members not to interrupt or interject during the adjournment debate. I uphold the point of order.

The Hon. MARK BANASIAK: The solution was low-interest loans to farmers who could not afford to feed their stock, let alone repay loans that would live on longer than the protracted drought. Act 2, Scene 1—

The DEPUTY PRESIDENT (The Hon. Shayne Mallard): I call the Hon. Wes Fang to order for the second time. If he continues to interject he will be asked to leave the Chamber.

The Hon. MARK BANASIAK: It is no skin off Bara's back, though. These are only lines to him, because backstage another play is being written. Gladys Berejiklian is directing it and her lead actor is merely playing his part. While John recites his lines on the Murray-Darling Basin Plan, the rest of the travelling sideshow are signing on to implement the plan in full. While he is "standing side by side" with farmers one day, the next day he is voting against cash-based assistance for them in the lower House of Parliament. Act 2, Scene 2: The hospital that Griffith is now getting is a cut-price facility that cannot treat broken bones and has no mental health services. A cut-price facility will hardly meet the needs of a growing community. Member for Murray Helen Dalton calls an urgent meeting to discuss what has happened and the dire need for community consultation, but the community is shut out. Communities are only there to see the John Barilaro show. The show cannot go on.

Act 2, Scene 3: That is never more evident than in Orange during the March 2019 election, when a $25 million sports stadium is announced by Director Berejiklian—but only if they vote in a Nat. The audience does not react well. Enter Barilaro, backflipping. He says, "If we win government we will honour all our election commitments, and that includes the project for Orange." In Parliament months later, when member for Orange Phil Donato asks about the funding, John Barilaro leaves the stage. Act 3, Scene 1: The Minister for Regional New South Wales is too busy in his other acting roles. His latest gig is playing parliamentary liaison officer for the National Rugby League [NRL] during the COVID-19 pandemic. Unfortunately, John has to choose between playing the lead in a Berejiklian production or being a supporting actor and representing his electorate. He chooses the former.

Act 3, Scene 2: In December 2019, while his electorate is burning, John Barilaro is busy signing off on the koala state environmental planning policy [SEPP]. That policy threatens farmers, landowners, developers and timber and mining industries, and leaves koalas and regional communities vulnerable to a repeat of the devastating bushfires. The policy is so bad that the mapping lists avocado trees as core koala habitat. Enter John stage left. He says, "We are relying on maps that have now been released. Those maps, in my mind, are wrong." Yet he signs off on the policy. Act 3, Scene 3: The Restart NSW Fund should have allocated 30 per cent of proceeds from privatisations towards regional projects. Six years later, in 2018, the Government had spent only 18.5 per cent of that fund on regional infrastructure. Shooters, Fishers and Farmers Party leader Robert Borsak takes Barilaro to task on the fact that he has short-changed regional New South Wales. Enter John from the wings, tap-dancing. He says, "Regional New South Wales will receive the full 30 per cent of proceeds it deserves and is legislated under the Restart NSW Fund Act 2011." But until then regional New South Wales will have to sit back and watch the show while $2 billion is spent to move a Sydney museum down the road and funds are allocated for a pool in North Sydney.

Closing Act: When Helen Dalton calls out John Barilaro for his lies about the royal commission, he calls her "a disgusting human". Surely that was not part of the script; it certainly was not befitting language. Was the recent scam about running for Eden-Monaro just that—a scam and another act in the play? It is time the Shooters, Fishers and Farmers Party pulled down the curtains on the John Barilaro show. On a closing note, we heard a lot of the usual waffle from the Deputy Premier in the other place today. Barilaro talks about an unholy alliance with The Greens, but he conveniently forgets that the koala SEPP he signed off on was designed by a former leader of Greenpeace. While his arguments in the other place earlier today about supporting the people in the bush may have had some merit, they might have been believable if he had not been fiddling around with his mate NRL CEO Peter V'Landys. [*Time expired.*]

The DEPUTY PRESIDENT (The Hon. Shayne Mallard): I remind members that it is the convention of the House that adjournment debates are heard in silence. Having to call a member to order twice during one speech is unacceptable.

COVID-19

The Hon. TAYLOR MARTIN (17:18:06**):** The COVID-19 pandemic has been one of the greatest threats that this State has faced, due to its dual threat to our health and our economy. As of 8.00 p.m. last night, there have been 3,106 confirmed cases of COVID-19 in New South Wales alone and, tragically, 50 people have lost their lives. It must be said that the worst fears that we all had in this place in March were not realised. That is due to the willingness of the community to follow the health advice, modify their behaviour and take a role in limiting the spread of the disease. We can all see the alternate reality of what the virus could have meant for us when we look to the various examples overseas, particularly in countries such as the United States, the United Kingdom, China, Italy, Spain and many others.

Here in New South Wales we have had just 15 new cases in the past week, which have all been from overseas arrivals. This indicates that the community spread of the disease appears to have been well contained. That is in no small part due to the extensive testing levels that we were able to achieve—among the highest, if not the highest, in the world. I thank all those people who have done what they can to get us to this point, including our medical professionals, police, many businesses and the public. Health professionals ramped up capacity in our system to respond to the worst-case scenario with additional intensive care beds, equipment, additional personal protective equipment and, of course, the huge testing capacity that we have here in New South Wales. The police were given the responsibility to enforce the public health orders that limited gatherings in response to health advice on physical distancing. Businesses responded by changing the way that they operate. In many cases businesses that rarely or never relied on having employees work from home had to change their practices and worked hard to enable their workforce to do so throughout this crisis.

Of course, Australians responded by staying at home and limiting or eliminating their interactions with people outside of their own household. People had to postpone weddings they had in planning, in some cases for more than a year. Parties were cancelled. Usual activities such as holidays, beauty treatments, sport and social outings were also cancelled without much pushback from people in the public. It is clear that both our Prime Minister and Premier had their eyes on the health of the public but also the economic crisis from the start. Restrictions have begun to be eased and will continue to be eased over the coming months so that we can aim to return to normality. However, the virus and restrictions have had a huge impact on businesses. It was great to see the Government supporting business and the public in general with a total $9.4 billion of financial support throughout this crisis.

This week it was great to see the announcement of a cut-off date for small business grants had been extended until 30 June. The $10,000 grant is all about keeping people in jobs and businesses in business as we pivot from a health response to an economic recovery. The Government is providing more than $420 million in

financial relief alone by reducing insurance premiums for businesses hit hard by the COVID-19 pandemic and maintaining current premium levels. We have also cut payroll taxes and waived payroll tax for businesses with payrolls of up to $10 million for the last three months of the financial year and brought forward the planned threshold increase to $1 million that was due in 2021. This move will save businesses in New South Wales some $450 million in payroll tax alone, along with additional administration savings.

In addition, the Treasury has supported the immediate payment in advance of all current suppliers of the contracted payment terms as part of its faster payments scheme, releasing $750 million into the economy earlier than it would have otherwise been. This has benefitted a range of small to medium businesses such as catering and cleaning companies, medical supply companies, local regional suppliers and community service groups, to name just a few of many. Paying suppliers and contractors as quickly as possible means money flows through to businesses, which allows them to hold onto their staff.

I could go on for some time about what measures were taken throughout the COVID-19 crisis to assist small businesses. However, as time is running short I encourage any small businesses to visit the Service NSW website and get in touch with the business concierge, a service set up to guide businesses through changes to regulation as a result of COVID-19 and the assistance available to small businesses. I thank everyone in New South Wales for playing their part, small and large, as it got us all through.

COVID-19 AND EDUCATION

The Hon. ANTHONY D'ADAM (17:23:12**):** The COVID-19 pandemic has exposed the fundamental inequalities that exist in our education system. There are vast gulfs between Indigenous and non-Indigenous students, regional and metropolitan students and, of course, public and private schools. These divides reflect and reproduce existing inequalities that afflict our society and prevent it from reaching its full social and economic potential. In the pre-pandemic era socio-economic divides may have been easier for the Government to gloss over, but as learning has shifted online the digital divide between particular demographics has become impossible to ignore.

As the need for online learning became a reality, private schools were able to seamlessly move to online delivery while their counterparts in the public system struggled. The experience of Cabbage Tree Island Public School is particularly telling. As has been noted in the media, access to the internet and suitable devices at the school was either inadequate or non-existent for all students. The challenges faced by Cabbage Tree Island Public School are sadly common. We know that the public school system educates the majority of disadvantaged and vulnerable students. These are students who do not have access to laptops or internet connections. I was staggered by the department's admission that it had not completed a survey of students and their digital capabilities prior to the lockdown. How can we possibly be preparing students for jobs in the new digital economy when our own education department had no idea which students had access to the internet and computers?

New South Wales students and their families have been let down by the negligence of a government that has no genuine interest in resolving these basic problems. All we get day in and day out are more platitudes and scripted answers while students are struggling to cope. The department talked a big game as it shifted staff and students to online models of learning, but now it is time to evaluate how effective these initiatives have been and to assess what lessons can be taken from the experience to make permanent systemic changes. Consideration should be given to the department's choice of technologies and delivery methods. Its investment in various platforms must be evaluated and reviewed.

I can attest to the high degree of variability in the quality and effectiveness of the delivery of remote learning for my own children. This is not a criticism of teachers. It is a criticism of the Government's management systems, which have resulted in vastly different remote learning experiences between students who are often in the same school. My personal interaction with these systems highlighted the importance of educational leadership and the failure of the department to set consistent standards for what students can expect in terms of the quality of the teaching and learning across New South Wales. Too often the Minister and the department hide behind the notion of local school autonomy as a cover for their own failure to ensure quality teaching and learning is occurring.

COVID has lifted the veil on the Government's neglect. Now our community is demanding answers. There are many lessons to be learnt. There are questions about what impact the school shutdown has had on the emotional and social development of students, particularly that of young children. Public discussion often understates the importance of this dimension of learning in the early years of school with its focus on literacy and numeracy. But a key part of the early development of children is learning the habits and personal disciplines that enable further learning later in life. There is also the open question about what is proposed to remedy both the enduring inequalities in the system and to close the gap that most experts accept has emerged as a result of the disruption caused by the crisis. What is needed is a plan to remediate the damage done to life chances and

opportunity. Where is this plan and who should this action be targeted at? There is no clear answer coming from the Government on this question.

Some of the answers must lie in a better strategy for the use of the equity loadings under the Resource Allocation Model [RAM] funding. This issue was highlighted in the Auditor-General's report on the Local Schools, Local Decisions policy. There has been a problem with the implementation of the RAM funding model. School executives and principals have not been adequately prepared for the increased financial responsibilities that flowed with the introduction of a new funding system. Often there is no clear nexus between the spending and the student who attracted the loading.

The Minister has been quick to refer to the Government's recent announcement that it will be providing roughly 800 students with one-off grants of $1,000. That is a total commitment of less than $1 million for the over 80,000 students who do not have adequate access to the internet. To add insult to injury, the announcement was made in the final stages of the lockdown, after much of the damage had already been done. Throwing a small amount of money at this problem will not resolve the impact of years of neglect. We need a bottom-up approach that acknowledges the interaction between socio-economic disadvantage and educational outcomes. I hope that now that the veil has been lifted on these issues the Government will commit to fundamental changes the New South Wales community is demanding.

DROUGHT ASSISTANCE

The Hon. ROBERT BORSAK (17:27:56**):** For an extremely long time the Shooters, Fishers and Farmers Party has called for proper drought assistance for our farmers. Farming is critical to the economic, social and cultural development of our State. Farmers have fed our growing population and they have always been at the forefront of this State's development. Farming not only ensures that New South Wales is fed but it ensures that the rest of Australia is fed, not to mention what we export internationally. Yet our New South Wales farmers are the sacrificial lambs for this Government. Our farmers are always competing with other land uses, with the migrating urban fringe, while our inner-city politicians impose ever more restrictive legislation and bureaucratic red tape and green tape at every turn. Then there is their struggle with the natural elements: drought and bushfire.

The drought has been ongoing since 2017. Combined with the many other challenges our farmers face, the industry cannot be expected to rebound without proper assistance. For the first time in a long time we now have a few farmers who can start planning for their future. They can start preparing to rebuild depleted herds and flocks and sowing their crops for the winter. However, the newest threat faced by New South Wales farmers is the price for livestock and the level of debt that farmers are now in. The Shooters, Fishers and Farmers Party believes the answer to this new threat is restocking and resowing grants. Many loans lead farmers further down the path of debt, which significantly inhibits their recovery. Without a cash injection these farmers cannot afford to plant crops, pay contractors, pay rates or maintain their tractors. Money does not start flowing simply because the rivers do.

If we invest correctly in our agriculture sector the rewards this State will reap will be quadrupled. For every $1 invested in agriculture there is a $4 return. This is a particularly important fact considering the recession this State is experiencing. Agriculture should be intrinsic to this State's post COVID-19 economic recovery. In 2017-18 the gross value of agriculture produced in New South Wales was $13 billion. If agriculture is not producing, the flow-on effects are felt statewide and they are particularly devastating for our rural and regional areas. If our farmers do not get back on their feet neither will our rural towns and villages; debts cannot be settled, farm supplies cannot be bought and, therefore, disposable income is not being spent on the main streets.

When agriculture is operating in full production it generates money, jobs and investment. Those three words carry a hell of a lot of weight at the moment. There is a simple way the Government can assist our agriculture sector so that we can reap the rewards of their hard work—that is, through resowing and restocking grants. The Government should not be making money off our farmers through interest and debt; that will be the nail in the coffin. Farmers cannot afford to pay contractors, pay rates, maintain their farms and repay debts; something has to give and our farmers have given enough. Resowing and restocking grants will allow farmers to approach their finances and prove that they have the capacity to generate income. This, in turn, will activate the entire supply chain—from the farm gate to the supplier to the manufacturer, distributor, retail and consumer. That is a massive flow-on effect.

The Shooters, Fishers and Farmers Party represents vast areas of New South Wales—great agricultural regions—with members in the Orange, Murray and Barwon electorates. We take our representation seriously, and our farmers across all other electorates deserve that support as well. We will strongly advocate for the introduction of a resowing and restocking grants program to rebuild the agricultural industry and return it to the pillar of the State that it should be.

STRONGER COUNTRY COMMUNITIES FUND

The Hon. BEN FRANKLIN (17:31:37**):** Tonight I speak on the importance and value of the Stronger Country Communities Fund. Across regional New South Wales, The Nationals in government have fought for and delivered over 1,000 projects to our country and coastal towns through this fund. We have invested $100 million in the recent round of funding alone, with 50 per cent of that fund directed to projects that support regional youth, and I thank the Hon. Bronnie Taylor for her strong advocacy in this space, along with Deputy Premier John Barilaro.

I am incredibly proud to be a member of a government that has delivered so much support to local community organisations and projects. The Stronger Country Communities Fund is about empowering towns to provide their community with what is most important to them. Across the State we have seen significant investment in sport, art, recreation facilities and health and wellbeing programs, just to name a few. I know we all speak about this time and time again, but it really cannot be understated how much our regions have suffered with droughts, fire, flood and now COVID-19.

This round of the Stronger Country Communities Fund could not have come at a better time for regional New South Wales. We are seeing massive injections into community-focused projects, making sure that our towns can bounce back and be even better places to call home. Since its inception in 2017, the Stronger Country Communities Fund has delivered over $400 million to regional New South Wales. But what does that really mean? We can often get lost in the dollar terms, but it is so important to acknowledge that this funding goes well beyond a cheque. The Stronger Country Communities Fund means that youth have access to mental wellbeing programs that they did not before. It means they have access to employment pathways that they did not before. It means that men's sheds can do more to help combat social isolation. It means that arts programs can help people express themselves and thrive. I could go on and on, but what it really means is that regional towns can truly make a positive impact in the lives of the people who call them home.

In speaking with some of the successful organisations in northern New South Wales, I know that each share this feeling. Let me highlight just a few examples. The Byron Youth Service is an amazing organisation committed to young people, and it is now able to restart its Youth Activities Centre and employ a youth activities coordinator thanks to over $230,000 from the Stronger Country Communities Fund. This program is designed to help reduce the rate of youth-related crime and drug and alcohol offences and create more positive outcomes for the future of young people in the shire. I spoke with the service's manager, Christian Tancred, who told me that they now have "a new sense of purpose and rigour" because of the fund.

In Lismore, Northern Rivers Performing Arts, also known as NORPA, is a 2020 recipient and can now educate more young people through its Youth Theatre Hub and create pathways for people to pursue a career in the arts. With over $100,000 in funding, NORPA's youth hub enables young people to engage in bespoke workshops and training opportunities. Typically this would only exist in a major city, but the Stronger Country Communities Fund means that people in northern regional New South Wales now have access to world-class theatre education.

Similarly, The Clubhouse in Ballina, run by Social Futures, will now have state-of-the-art technology where students can engage in coding, web design, 3D technology and robotics. Amazingly, The Clubhouse provides this for free as part of its afterschool program for students to learn and create. With nearly $400,000 from the Stronger Country Communities Fund, this is an amazing program that puts local kids in Ballina and in the surrounding towns at the forefront of technology, potentially opening incredible doors for their futures. But it is not just young people that are front of mind. The Bonalbo Community Men's Shed is a vital part of the community. It provides a place for men to build mateship, keep busy, have a break from issues they might be facing and potentially deal with mental health issues. With over $115,000 from the Stronger Country Communities Fund, the Bonalbo Community Men's Shed will create more working spaces and help make a real difference for so many people in that community.

We have also supported the Indigenous organisation Rekindling the Spirit in announcing play equipment and barbecue facilities for two parks in Goonellabah. Rekindling the Spirit is a wonderful organisation that supports local Indigenous families. It has been incredible in helping to provide services and amenities in areas with a significant proportion of public housing and socio-economic disadvantage. The upgrades to Elders and Shearman Park mean that children will now have an outdoor space to go and play, and parents and carers have a place to come together, relax and enjoy the outdoors. I feel very privileged to be involved in helping so many deserving projects and it is an absolute pleasure to deliver this funding on behalf of the Government. Through the Stronger Country Communities Fund we are building programs that assist young people, we are building programs that offer more to communities and we are building a legacy for regional New South Wales that is genuine, lasting and real.

THE HON. MARK BUTTIGIEG 12-MONTH ANNIVERSARY

The Hon. MARK BUTTIGIEG (17:36:48**):** It is 12 months to the day when I made my inaugural speech in this place and I want to make special note of that anniversary. It has been a privilege and an honour to be a member of this place; it is everything that I expected and more. I thank again the union movement and the Labor Party members who put me here. I thank my Labor Party colleagues and the many friends I have made here. I also thank the crossbenchers and all the members in the House; it has been great working with you. I have never been happier in my life; I feel like I am achieving something. It is an honour for all of us to be here. I thought I would mark the 12 months while there is time left before we adjourn. I thank the House for its indulgence. Hopefully I will have the opportunity to mark the occasion in another 12 months' time and I can say the same thing.

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

Motion agreed to.

The House adjourned at 17:38 until Tuesday 16 June 2020 at 14:30.