



New South Wales

Legislative Council

PARLIAMENTARY DEBATES (HANSARD)

**Fifty-Seventh Parliament
First Session**

Thursday, 18 June 2020

Authorised by the Parliament of New South Wales

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LEGISLATIVE COUNCIL

Thursday, 18 June 2020

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

The PRESIDENT read the prayers.

Documents

FLOODPLAIN HARVESTING

Tabling of Documents Reported to be Not Privileged

The Hon. MARK BANASIAK: I move:

- (1) That, in view of the report of the Independent Legal Arbiter, the Hon Keith Mason, AC, QC, on the disputed claim of privilege on documents relating to an order for papers regarding floodplain harvesting, dated 11 June 2020, this House orders that the documents considered by the Independent Legal Arbiter not to be privileged be laid upon the table by the Clerk, subject to paragraph 2:

- (a) the following Department of Planning, Industry and Environment documents, with associated documents described in the return to order as "family" documents, which the department has advised the Independent Legal Arbiter that it no longer presses privilege:

- (i) DPL001.003.2658;
- (ii) DPL001.004.7541;
- (iii) DPL001.004.7549;
- (iv) DPL001.004.7886;
- (v) DPL001.004.8117;
- (vi) DPL001.004.8119;
- (vii) DPL001.005.0096;
- (viii) DPL001.005.0243;
- (ix) DPL001.005.3204;
- (x) DPL001.005.3265;
- (xi) DPL001.005.3415;
- (xii) DPL001.005.5255;
- (xiii) DPL001.008.6960;
- (xiv) DPL001.008.6966;
- (xv) DPL001.008.7429;
- (xvi) DPL001.008.7431;
- (xvii) DPL001.008.8676;
- (xviii) DPL001.008.8679;
- (xix) DPL001.008.8681;
- (xx) DPL001.009.0400;
- (xxi) DPL001.009.2612;
- (xxii) DPL001.012.0226;
- (xxiii) DPL001.012.0228; and
- (xxiv) DPL001.012.0230.

- (b) redacted versions of the following Department of Planning, Industry and Environment documents, with associated documents described in the return to order as "family" documents:

- (i) DPL001.005.4314;
- (ii) DPL001.005.4317;
- (iii) DPL001.005.4321;
- (iv) DPL001.005.4326;

- (v) DPL001.006.0143;
- (vi) DPL001.012.0101;
- (vii) DPL001.012.0103;
- (viii) DPL001.012.0015; and
- (ix) DPL001.012.0021.
- (c) the following Water NSW documents, with associated documents described in the return to order as "family" documents, upon which Water NSW no longer presses privilege, identified in appendix A of the Water NSW submission to the Independent Legal Arbitrator:
 - (i) WTN.001.005.1326;
 - (ii) WTN.001.005.1329;
 - (iii) WTN.001.006.5027;
 - (iv) WTN.001.006.5029;
 - (v) WTN.001.006.5513;
 - (vi) WTN.001.006.5515;
 - (vii) WTN.001.006.5516;
 - (viii) WTN.001.006.6207;
 - (ix) WTN.001.008.3928; and
 - (x) WTN.001.008.3930.
- (d) redacted versions of the following Water NSW documents with associated documents described in the return to order as "family" documents, upon which Water NSW no longer presses privilege identified in appendix B of the Water NSW submission to the Independent Legal Arbitrator:
 - (i) WTN.001.006.5785;
 - (ii) WTN.001.006.6118;
 - (iii) WTN.001.006.6120;
 - (iv) WTN.001.006.6135;
 - (v) WTN.001.006.6403;
 - (vi) WTN.001.006.6404;
 - (vii) WTN.001.010.8359;
 - (viii) WTN.001.006.5788;
 - (ix) WTN.001.006.6406;
 - (x) WTN.001.006.6408; and
 - (xi) WTN.001.010.8358.
- (2) That this House orders the Department of Premier and Cabinet to produce, within seven days of the date of passing of this resolution, versions of documents referred to in paragraphs 1(b) and 1(d) with phone numbers and email addresses redacted.
- (3) That, on tabling, the documents are authorised to be published.

Motion agreed to.

Motions

BEYOND BLUE BIKE RIDE

The Hon. TAYLOR MARTIN (10:04:22): I move:

- (1) That this House notes that:
 - (a) in June 2020 Wesley Jones, Luke Farquhar, Shannan Dodd, James Bibby, Dean Chivas, Blair Sidhu and Ben Holdstock are cycling from the Cricketers Arms Hotel in Melbourne to the Cricketers Arms Hotel in Sydney;
 - (b) the 900 kilometre journey over six days will raise funds for Beyond Blue to help improve the lives of individuals, families and communities affected by anxiety, depression and suicide;
 - (c) the ride also aims to raise awareness of mental health and the importance of friendships during rough times; and
 - (d) the men initially aimed to raise \$10,000 and have now exceeded their goal with more than \$12,000 donated to Beyond Blue.
- (2) That this House:

- (a) congratulates the men on achieving their fundraising goal; and
- (b) wishes them every success as they complete their journey from Melbourne to Sydney.

Motion agreed to.

Documents

WESTERN HARBOUR TUNNEL AND BEACHES LINK

Correspondence

The CLERK: According to the resolution of the House of 17 June 2020, I table correspondence relating to a further order for papers regarding the Western Harbour Tunnel and Beaches Link business cases, received on Tuesday 18 June 2020 from the Secretary of the Department of Premier and Cabinet, stating that no relevant department holds documents covered by the terms of the resolution and which are lawfully required to be produced are held.

Committees

PORTFOLIO COMMITTEE NO. 4 - INDUSTRY

Extension of Reporting Date

The Hon. MARK BANASIAK: By leave: I move:

That the reporting date for the Portfolio Committee No. 4 - Industry inquiry into the provisions of the Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019 be extended to the last sitting day in September 2020.

Motion agreed to.

Documents

FLOODPLAIN HARVESTING

Tabling of Documents Reported to be Not Privileged

The CLERK: According to the resolution of the House this day, I table documents in paragraph 1 (a) and 1 (c) identified as not privileged in the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 11 June 2020 on the disputed claim of privilege on papers relating to floodplain harvesting.

Special Adjournment

SPECIAL ADJOURNMENT

The Hon. DAMIEN TUDEHOPE: I move:

That this House at its rising today do adjourn until Tuesday 4 August 2020 at 2.30 p.m. unless the President, or if the President is unable to act on account of illness or other cause, the Deputy President, prior to that date, by communication addressed to each member of the House, fixes an alternative day or hour of meeting.

Motion agreed to.

Business of the House

SUSPENSION OF STANDING AND SESSIONAL ORDERS: CENSURE

The Hon. JOHN GRAHAM: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith for censure of the Leader of the Government for failure to produce documents in accordance with orders of the House.

Motion agreed to.

Motions

THE HON. DAMIEN TUDEHOPE

Censure

The Hon. JOHN GRAHAM (10:20:40): I move:

- (1) That this House notes the repeated refusal of the Government to comply with orders of the House relating to the final business case for the proposed Western Harbour Tunnel and Beaches Link, and strategic business case for the proposed Western Harbour Tunnel and Beaches Link made on Thursday 14 November 2019, Thursday 27 February, Wednesday 13 May and Wednesday 17 June 2020.

- (2) That this House notes that on repeated occasions in ordering the production of the final business case for the proposed Western Harbour Tunnel and Beaches Link, and strategic business case for the proposed Western Harbour Tunnel and Beaches Link, this House has:
 - (a) reasserted its power to order the production of all documents in the possession, custody or control of the Executive Government with the exception of those documents that reveal the actual deliberations of Cabinet, as articulated by Spigelman CJ in *Egan v Chadwick*;
 - (b) rejected the definition of Cabinet documents used in the Government Information (Public Access) Act 2009 which if followed may lead to a much broader class of documents being withheld from the House; and
 - (c) reiterated the power of the House to take the necessary action, including censuring the Leader of the Government, adjudging the Leader of the Government as guilty of contempt and suspending the Leader of the Government for whatever period necessary to cause compliance with this order of the House.
- (3) That this House notes:
 - (a) the numerous opportunities given to the Government to comply with orders of the House to produce documents necessary for this House to undertake its function of scrutinising the Executive Government; and
 - (b) the continued failure of this Government to produce the documents.
- (4) That this House:
 - (a) accordingly censures the Leader of the Government as the representative of the Government in this House for the Government's failure to comply with the resolutions of the House of Thursday 14 November 2019, Thursday 27 February, Wednesday 13 May and Wednesday 17 June 2020; and
 - (b) calls upon the Leader of the Government to table in the House or deliver to the Clerk by 2.00 p.m. on 4 August 2020 the documents ordered.
- (5) That:
 - (a) should the Leader of the Government fail to table the documents in this resolution, this House orders the Leader of the Government to attend in his place at the table at the conclusion of prayers on Tuesday 4 August 2020 to explain his reasons for continued noncompliance; and
 - (b) this House notes that in the event of continued failure to comply with this further order it is open to the House to immediately adjudge the Leader of the Government guilty of contempt and to suspend the Leader of the Government from the service of this House.

In speaking to the motion I want to put a couple of points on the record. Members will be familiar with some of it as this issue has come up repeatedly. This call for papers was originally moved by the Hon. Mick Veitch in November 2019. This motion is no rush of blood to the head. We on this side have proceeded slowly. We have put this to the House on four occasions in order to gently persuade the Government. It is out of frustration that we are coming forward with this censure motion today. What we are proposing is to censure the Leader of the Government not in any personal capacity—and I will come back to that point—but in his role representing the Government. There is a serious case of noncompliance here.

Members will recall that when this matter started the Opposition attempted a call for papers from Transport agencies and these agencies came back listing eight separate entities which they said were not included in the original call for papers. They made the case to this place that we had simply noted a single place, the Department of Transport, which only employed the Secretary of Transport. So originally we had that legal evasion, which slowed down the production of documents. We have carefully moved through that. We did not accept the argument made by the Government that the Department of Transport and the Secretary of the Department of Transport had no control over papers that might be sitting within various parts of the Transport cluster. That was a deeply alarming argument from the Government but was the first attempt to frustrate the intention of this House. Members will recall that element of it.

I acknowledge the role that the Leader of the Government has played in attempting to resolve this matter. He has been helpful in trying to get the Minister to produce papers, but there has been a total refusal to return any papers to this call. Without going into detail, I indicate that there have also been discussions with the Minister. Ultimately those discussions have not resulted in any significant response to this call for papers. I am comfortable with the role the Leader of the Government has personally played but in the end he is responsible for the actions of the Ministers of this Government and there has been a total refusal to deal with the reasonable position that this House has taken on multiple occasions.

I also put on the record that the Opposition has no objection to some of these papers being provided under privilege. We reserve the right to test those through the arbitrator's process. But with previous productions, including with calls for papers by other members of this House, the Government has provided significant financial detail about deals under privilege and none of it has ended up in public or led to any breach of confidence. We cannot understand why the Government does not use similar provisions here to provide documents as it has in the past when these powers have been tested.

I will not speak to the substance of the policy issue that sits behind the matter but I will note that more than 10,000 people have signed a petition raising concerns about the local impact of this Western Harbour Tunnel and Beaches Link project, particularly on the north side of the bridge. That petition debate will be considered in the other place on 30 July, before we in the Legislative Council return and consider any additional steps we might take. There are real concerns in the community. That is why we on this side seek these documents. We seek to do our job. The dates in the resolution commenced in November. We have proceeded slowly.

The Leader of the Government has, quite reasonably, set out tests that these calls for documents under Standing Order 52 should undergo and of which the House should take regard. I have been quite conscious of those in the course of doing my job as a member of the shadow ministry. We seek two single documents. We have proceeded slowly; there has been no rush to justice. We are simply seeking to do our job. These have been the subject of applications under the Government Information (Public Access) Act from concerned community members. But my biggest concern is this: The Government is refusing to put these papers in front of the House following multiple requests. It is refusing to let us do our job.

Any reader of *The Sydney Morning Herald* a couple of years back—and I have referred to this in the House before—would have seen leaked documents from this Government which revealed key details of that strategic business case. Any reader of *The Sydney Morning Herald* anywhere around the world has seen elements of those documents but no member of this place will be provided with them by the Government. The Minister needs to give the Leader of the Government the ability to do his job. It is humiliating to leave the Leader of the Government in this position where he has to front up and explain why any reader of *The Sydney Morning Herald* has the information but this place does not.

The Opposition seeks to defend the dignity of the House. We are happy to do it in a reasonable way. We take this single step today, a censure motion, although we have set a deadline for when we return when the House may take a very serious step. I indicate that before we introduce that motion it will be the subject of discussion with all members. We understand that it is a serious step and we will be open to advice from members about the mood of the House. We ask for support today to take this step in order that we can all do our jobs. That is what we are asking for. Without an ability to police this power, the power does not exist. We ask for the ability to do our jobs to police this power. That is why I move this motion today.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (10:31:10): I thank the Hon. John Graham for the courtesy he has shown me both in the manner in which this has proceeded and in his address today. In many respects I have come to this party a bit late. Notwithstanding my late arrival, I have to now deal with the consequences of the motion of the Hon. Mick Veitch. I may have had more to say about the motion when it was moved if I had been the Leader of the Government at the time. I take censure motions very seriously. On Tuesday I took the censure motion very seriously because of the imputation of disrespect in some ways for this House.

An argument was made by the Hon. John Graham about the importance of the compliance of the Government with Standing Order 52 motions. I have made lots of arguments about Standing Order 52 and there is an ongoing process to look into the procedure surrounding Standing Order 52 applications. I welcome the contributions of all members of the Procedure Committee about a potential roundtable on the issue. I also welcome a contribution that was made by Clerk to the Procedure Committee to assist members in the drafting of Standing Order 52 applications.

I start with this point: Censure motions are important. They are analogous to a person who does not comply with a subpoena to attend court. A person who does not comply with a Standing Order 52 motion faces consequences. The Hon. John Graham has outlined some of those consequences, one of which is this censure motion today. He has foreshadowed other steps that may be taken on 4 August—the Lord alone knows what they might be. In any event, there are potential further consequences.

We are debating an important action. The very first point of inquiry by all members voting on this censure motion should be: Has the Government not complied with a Standing Order 52 application? Let us go to the Standing Order 52 motion. In my respectful submission, I put to the Hon. John Graham that the Government has complied with the Standing Order 52 application. If it has complied, this censure motion in many respects has no merit or substance. What the Standing Order 52 motion does was summarised in the motion moved yesterday. It is in the same terms as the previous Standing Order 52 motion that was moved in this House last November by the Hon. Mick Veitch, and reference was made to previous Standing Order 52 motions. On Thursday 27 February 2020 it states:

- (3) That this House:

- (a) reasserts its power to order the production of all documents in the possession, custody or control of the Executive Government with the exception of those documents that reveal the actual deliberations of Cabinet, as articulated by Spigelman CJ in *Egan v Chadwick* ...

The Hon. John Graham has gone through that. In paragraph 3 the motion further states that this House notes that on 5 March 2020, in response to the further order for papers of 27 February 2020 relating to the final business case for the proposed Western Harbour Tunnel and Beaches Link and strategic business case for the proposed Western Harbour Tunnel and Beaches Link, the House received correspondence from the Secretary of the Department of Premier and Cabinet advising that "no documents covered by the terms of the resolution and which are lawfully required to be produced are held". That is the advice that was given. Today identical advice was again provided to the House in response to a further agitation of this motion. The Standing Order 52 motion was reiterated for the purpose of moving this motion today. It states in paragraph 4 that under Standing Order 52 there be laid upon the table of the House by 9.30 a.m. on the day following the passing of the resolution:

... the following documents created since 1 January 2019 in the possession, custody or control of Transport for NSW:

- (a) the final business case for the proposed Western Harbour Tunnel and Beaches Link;
- (b) the strategic business case for the proposed Western Harbour Tunnel and Beaches Link; and
- (c) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

The primary point in response to this censure motion and the Standing Order 52 motion is that the Government's position is that no documents have been created since 1 January 2019. Unless there is evidence that suggests that there have been documents created since that date, the motion itself is defective. It is not our job to draft motions on behalf of those opposite. If the Government is right that there are no documents, there is no noncompliance. How can the Hon. John Graham move a censure motion against a Government Minister in circumstances where there is no noncompliance? To make out the censure motion, the Hon. John Graham has to demonstrate that there is evidence of noncompliance since that date. I reiterate the position of the Government that since 1 January 2019 no documents have been created. If that is the case the motion must fail.

I call on the Hon. John Graham to demonstrate that since 1 January 2019 documents have been brought into existence by the Government. If he cannot do that the motion fails in the same way that a subpoena would be set aside in the Supreme Court on that basis. I foreshadow that if on 4 August steps taken against me include an attempt to suspend me from this place, I will walk down the road and my first application will be that there has been no noncompliance. That is the substance of it. If the member wants to make out the censure first as a preliminary step to moving to a suspension, he must make sure that the Standing Order 52 application sets out the right dates and circumstances for the documents sought.

There are some very intelligent lawyers in this place who would understand the obligations of people who draft subpoenas. I welcome the intervention of the Clerk to assist members because there are other serious obligations. Some Standing Order 52 applications do not comply with a lot of what I have articulated in this Chamber, and anyone looking at the circumference of the Standing Order 52 application would say it is oppressive. It is important that members of the Chamber do not consistently ask the Government to use the resources of those who work for the Government, the public servants who stand behind us, to spend inordinate hours complying with Standing Order 52 requests. It would be a lot better to target the documents that we want to see and, in those circumstances, make this a smoother process. The Leader of the Opposition was very agitated yesterday because he took the view that we were not acting in the spirit of cooperation in relation to Standing Order 52.

I welcome the fact that, in respect of at least one Standing Order 52 request, he gave a much longer time for compliance by the bureaucrats who have to put these documents together. I welcome the concession he has made, that this is a burden on the Government and potentially on this House. My primary submission in relation to the censure motion is that it has to be demonstrated that there is noncompliance. I do not think the member has demonstrated one iota of noncompliance. The member has to address the date from which he called for documents that were created since that date. If he cannot demonstrate that there are documents that have been brought into existence since that date, in those circumstances the censure motion must fail because there has been no noncompliance with Standing Order 52.

My further point is, based on the assumption that the date was not wrong, would there be a defence open to me today? Members opposite would argue that there is no defence but I would argue that there is. I have often said that there must be some legitimate forensic purpose in relation to the documents. The Hon. John Graham has in one sense made out the forensic purpose by demonstrating the concerns of many of the residents in relation to that project. He has a legitimate concern in respect of the reason why he seeks these papers. However, in relation to the documents, there is a requirement that documents of this sensitive nature should not be disclosed. I put it on this basis because the honourable member did indicate that he thought there was a process that could be gone through for the purposes of redacting information which would allow the documents to be brought and given to

the House in circumstances where there would be no prejudice. It will be appropriate to produce these documents in the future but now is not the time.

The Western Harbour Tunnel and Beaches Link project is currently at a critical point, as the Government is engaging with the market regarding the constructing operator maintaining the project. Currently there is significant sensitive information in the business cases for the program and the Government will be at significant disadvantage in upcoming commercial negotiations, which would cost the New South Wales taxpayer if that material was made public. The Government is about to commence the market engagement process and subsequent procurement of components of the Western Harbour Tunnel and Beaches Link program, including the Warringah Freeway upgrade and the Western Harbour Tunnel itself. In tandem with these processes, Transport for NSW is also actively developing its commercial position in relation to other aspects of the program, such as the operations and maintenance of the future project, the potential inclusion of private finance options and traffic data analysis market development.

The proposed Beaches Link component of the project will undergo a market engagement process as early as next year. Given the sensitivity of the information contained within the business cases, their release would undermine the competitive environment that the New South Wales Government has fostered for effective procurement processes and this would be detrimental to the State's objective of achieving value for money for the people of New South Wales in delivering the program. This would be detrimental to the Government's position in future commercial negotiations, which would compromise the financial interests of taxpayers. Infrastructure NSW has now published a 16-page summary of the final business case which shows the Government's commitment to transparency about the program where feasible. However, I come back to my primary point, which is that the censure motion must fail because it is predicated on the premise that documents that were created since 1 January 2019 have not been produced. There has been no case that makes that out. That being the case, the motion must fail.

Secondly, even if it were the case that the date was right, the Government would be entitled to say that there is an obligation to get the best possible outcome for the taxpayers of New South Wales in relation to this program and the commercial and sensitive nature of this material should not be in the public arena. For those reasons, I urge members of the House that now is not the appropriate time to censure any member of the Government. Now is the time for the mover of the Standing Order 52 to get the date right before he moves to censure a Minister. The failure to get the date right is not a failure of this side of the House; it is a failure of that side of the House. Not everyone is a drafter and members need to consider how Standing Order 52 applications are drafted. This Standing Order 52 application calls for documents after a particular date. The Government has answered in relation to the documents which were produced after that date and there has been no noncompliance with the Standing Order 52 request.

The Hon. ADAM SEARLE (10:48:27): I support the motion moved by my colleague the Hon. John Graham. I have listened carefully to the arguments made by the Leader of the Government. In substance, most of what he has had to say really is a re-litigation of the merit of the order, which has already been made by this House on a number of occasions. The first thing to bear in mind is that, whether we agree with it or not, once a motion has been passed by this House requiring the Government to produce State papers under this House's undoubted common law powers, it is not the property of the mover and it is not the responsibility only of the mover to ensure the compliance by the Government. It is the motion and the requirement of this House as a Chamber of Parliament. It is not properly described as a burden on government in regard to compliance; it is a responsibility.

Having looked at the case law on this issue, the power of this House extends to the ability to compel the production of State papers that the House believes are reasonably necessary for the discharge by the House and its members of their functions. Despite repeated efforts by Executive governments of both persuasions to persuade legal arbiters that those functions are simply to make laws, it is not so. The functions extend to all activities to hold the Executive to account, not just through the formal mechanisms—questions on notice, questions without notice, budget estimates and what have you—but through the scrutiny that comes with the disclosure of information and its public discussion. That has been held to be the case time after time by various independent legal arbiters.

Although the Minister tries to put a gloss on a set of requirements that should be met before this House makes orders—and I note that the Hon. Mark Latham said that he had a number of precepts before he would vote in favour of a call for documents under Standing Order 52, and I understand that it is useful to have a discipline—in fact there is no objective legal standard required of this House. It is a simple decision of this House that the House believes the production of documents is reasonably necessary.

The Hon. Mark Latham: We make our own standards.

The Hon. ADAM SEARLE: I acknowledge that interjection. We do make our own standards and the courts have held that it is not a matter for the courts to second-guess the motives of a House of Parliament. It is a matter of essentially self-regulation by the Parliament to require the production of documents. The House has no less power and should have no less trust reposed in it than do the legal system and the courts in regard to subpoenas or compulsion of production of documents. It is important to note that that is what we are discussing here. There is no particular standard that this House has to meet. Having regard to the documents that we are discussing, they are clearly not just matters of very significant import to the affected residents, given the magnitude of potential public expenditure in support of these projects—they are undoubted matters of wider public interest. So whichever lens through which we look at these matters there is no doubt that as a matter of substance any tests would be met in connection with these matters.

The first point that the Leader of the Government raises in his and the Government's defence—and it is a matter which I believe this House has not heard before—is that there is an incorrect date or, having regard to the date specified, there are no documents. This matter has been agitated in this Chamber four times and discussed more often. In relation to this very matter—the iteration of this discussion between the Parliament and the Executive—the Hon. John Graham has been in extensive discussions with representatives of the Government and not once has the issue of the date being wrong or of there being no documents that meet that prism been raised. Those who appear in courts know it does not matter whether one's point is raised late; it is either a good point or it is not.

The Hon. Trevor Khan: It is called never give a sucker an even break.

The Hon. ADAM SEARLE: That is true. But unfortunately for the member who made that interjection, it rests on the Government because it is not for this House and it is not for the Hon. John Graham to discharge any burden of proof. This House has made its order repeatedly. It is for the Government to persuade the House that it has met the compliance required. It is not for us to prove the case; it is for the Government to prove. That could simply be an affidavit from the Secretary of the Department of Premier and Cabinet [DPC]. But a Minister standing in this place saying, "Minister Constance told me to say this," frankly does not cut it at this point.

We have been discussing this matter since last year and at the heel of the hunt, when the Leader of the Government is under the pump and facing some very serious consequences for the Government, suddenly for the first time this issue of the date is raised. Well, I am sorry, Leader of the Government, you are going to have to do a bit better than that. If you want to persuade this House or if you want this House to take you on trust, you are going to have to produce something a bit more than your assertion from the lectern that the date is somehow incorrect. I am not going to labour that point. It is a matter for the Government to produce a definitive statement by the Secretary of Transport or the Secretary of DPC, a sworn document—

The Hon. Scott Farlow: There it is.

The Hon. ADAM SEARLE: No, I will come to the letter. The letter says there are no documents that meet the description.

The Hon. Don Harwin: You are calling Tim Reardon a liar, are you?

The Hon. ADAM SEARLE: I acknowledge that interjection. No, I am not because when we read the letter in its full capacity, it says documents meeting the description "which are lawfully required to be produced". That is always the get-out-of-jail card for governments; it is usually a reference to the fact that some Cabinet-in-confidence claim attaches to the documents. I will come to that because this is a matter of, again, some ongoing discussion between this House and the Executive. This is not a matter that was determined in the Egan and Chadwick cases but Chief Justice Spigelman essentially said that the power of this House does not extend to the production of Cabinet documents. Justice Priestley said that even in the court system, in extreme cases courts can require the production of Cabinet papers.

So the dividing line in Priestley's formulation was documents that disclosed the opinion of Cabinet Ministers or actual Cabinet deliberations—discussions in the Cabinet—were immune but documents that were simply provided to Cabinet for its information to facilitate the discussion but that did not reveal deliberations, discussions or views were not immune. This House has asserted its ability to compel the production at least of some Cabinet documents that did not reveal the deliberations of Cabinet or the opinion of Cabinet Ministers. That has not been tested in court but this House has asserted that power. In relation to the Powerhouse, which the Hon. Don Harwin will recall, and I understand it was made without any concession, when this House was about to hold the Government, through him, to account, the Government folded like a cheap suit. Appropriately, it met the requirements of the House. The Government complied with the order of the House.

The Government has not fully explained whether or not it relies on the Cabinet-in-confidence aspect but my understanding from discussions with the Hon. John Graham is that that was the substance of the Government's

resistance hitherto to produce documents relating to both elements but certainly the northern beaches part. Obviously other speakers for the Government will outline their continued defence, but if in fact their full defence rests on the date, they will need to do better than they have to date. The third point raised by the Leader of the Government is about commercial sensitivity and exposure: that if these documents were produced precipitantly it might place the Government at a commercial disadvantage. That is not a reason to not produce the documents.

The Hon. Trevor Khan: It might place the State at a commercial disadvantage.

The Hon. ADAM SEARLE: I acknowledge that interjection but, as the member well knows, in Standing Order 52 matters that is an argument that is raised by government in support of a claim of privilege. The rule is, whatever the reasons, if the House has made an order and the Government has to comply, the usual approach of government is to produce the documents to the House, as it is required to, but under a claim of privilege. Under the privilege claim, various arguments are there advanced. A frequent argument is one of commerciality, commercial-in-confidence or potential commercial disadvantage to the Government as a commercial player or, to use the interjector's wider parlance, the commercial interests of the State. That is not a matter for this debate; it is up to the Government to make a claim of privilege when it produces documents to the House. Then those claims can be properly tested through the independent legal arbiter process that this House has adopted as a way of resolving those disputes.

The test is not one of commercial disadvantage to the Government; the real test, and the test that the Government has to meet in order to persuade the House or the arbiter that it should not have these documents disseminated more widely than to members, is whether it would impair the public administration of the State. It is a very high test, but when we look through successive decisions of the independent legal arbiters, which have been accepted without demur for the most part in this Chamber—we find that that is the high bar. It can have various formulations such as commercial-in-confidence. But mostly the arguments made by Executive Government have been held to be without merit or substance—for example, that it would identify people's names. Nobody wants to do that and it is usually just a case of redacting those details. Then there is the argument that it would reveal people's bank account numbers. Again, those are matters that can be dealt with.

The substance usually comes down to the fact that the Government would find it inconvenient or embarrassing because it would contradict things the Government has said in public or it would reveal details that the Government does not want to see the light of day. By the way, the very essence of this House of review in holding the Government to account is to shine a spotlight on the things that the Executive does not necessarily want the public know. The third argument is that it would disadvantage the Government as a commercial actor. That is sometimes dressed up as the public interest of the State, and sometimes I accept that it may rise to that level. But mostly it is the Government as a commercial actor not wanting other people to know what it is doing. That is understandable as a commercial actor, but when it is involving public moneys and assets it is not nearly good enough. Successive independent arbiters have held that to be the case and this House has acted accordingly. That disposes completely of the argument of the Government and the Leader of the Government.

It comes back to one issue: Is the Government saying that it is not producing the documents because it does not have to because they have Cabinet-in-confidence attached to them, or is the argument that, based on the framing of the motion, there is nothing to comply with? The Government is going to have to do better than its assertion from the lectern. I look forward to hearing it attempt to do so.

The Hon. MARK LATHAM (11:02:42): My attitude on the one hand is that the House deals with too many Standing Order 52 applications. On the other hand, with a reduced number of successful applications, the Government should be much more genuine in trying to assist the House to look at the public accountability aspects of public information and decision-making. My party set out criteria along those lines at the beginning of this parliamentary term. It is a shame that other members of the crossbench have not also adopted some criteria for sifting through the vast number of Standing Order 52 applications that come forward.

I acknowledge that in our Westminster system the alternative government—the Australian Labor Party—will go on fishing trips. That is the nature of modern politics. But there is a crossbench responsibility to sift through the applications to make sure that the matter at hand is not a fishing trip but a matter of substantial public concern worthy of investigation. From time to time I feel like we are getting more fishing trips than a Mark Banasiak family long weekend—they are happening left, right and centre. But the Standing Order 52 motion in question is not a fishing trip. The Hon. Mick Veitch and the Hon. John Graham have raised a legitimate matter that requires some scrutiny of the decisions of the Government.

I was first alerted to the controversy around the northern beaches tunnel during the election campaign when residents complained about the loss of Balgowlah golf course, including the open space and the recreational activity. They were legitimate concerns. More recently I was alerted to claims in the electorate of Willoughby no less that the Premier had made an election promise to reveal the business case not only to the people of New South

Wales but also to her own electorate. I placed a question on the *Notice Paper* to ask the Premier whether she would honour that election commitment and reveal the business case in some format. I was provided with a very dismissive answer. It said that it was a matter of concern for the Minister for Transport and Roads, fobbing it off to Andrew Constance. No, it was not a matter for the Minister for Transport and Roads. If the Premier of this State makes an election commitment we have the right to ask whether that commitment will be met and the business case will be produced. That, as I understand it, forms part of the Labor Party's justification for the Standing Order 52 motion.

The censure motion is, in many respects, directed at the wrong culprit. It is the Premier who should be held to account for failing to be frank about the nature of her election commitment, trying to fob it off to another Minister and not taking responsibility for her own promises and stumping up with some form of cooperation in this Chamber to scrutinise the relevant documents. I do not think we should censure an innocent person, particularly one who made such an impressive legal submission about his innocence in this matter. He must have been quite a lawyer back in the day. The next time I get in trouble—which is inevitable, of course—I will have to sign up the Hon. Damien Tudehope in my defence. The Hon. Adam Searle also made an impressive submission.

My attitude—and the attitude of One Nation—is that the documents should be produced on a privileged, confidential basis. We should be able to have a look at the business case. That was, certainly in the view of the electors of Willoughby, an election commitment made by the Premier—the very top of the Government. But we should not censure someone who is not directly responsible for this and who has probably acted in good faith. He has only held his current position for a short space of time.

I considered amending the motion to delete the words "Leader of the Government" and insert the words "the Premier" but, given the complications in the last clause about the removal from the Parliament, I really cannot do that. I would have supported a censure of the Premier. There is a legitimate crossbench role to try to mediate and get good outcomes on these Standing Order 52 motions. I say to the Government that, given the nature of the public concerns about this issue and given the nature of the concerns in the Premier's own electorate about her election promise, it would be an act of sensibility and good faith for the Government to provide these documents on a privileged basis and confidential to the Opposition and to other members of the Parliament. I take the view that the most important relationship in a democracy is not between the Parliament and the Executive but between the Parliament and the people it represents: the electors of New South Wales.

Whether it is the loss of Balgowlah golf course, the financial viability of the project or the suggestion that there are public transport alternatives—I would not necessarily agree with that—it is clear there is a whole raft of concerns. It has been a lively issue in the northern beaches of Sydney. It featured in the last Federal election campaign and Tony Abbott, AC, was an advocate of the project. The controversy went on. All of the concerns are legitimate. It is not a fishing trip. The Government has a responsibility to provide the business case on a privileged basis in the room upstairs. It would not be a document that was openly available to the mainstream media, although the point has been made that some of it has already featured in those forums. That would be the sensible solution to this. A censure motion, if directed at anyone, should be directed at the Premier. I do not support one directed at the Hon. Damien Tudehope in these circumstances. But I hope he takes back to the Premier and the Minister for Transport and Roads what is clearly the view of this Parliament. Given the circumstances, and in an act of good faith and good government, providing the documents would be appropriate and the best resolution of the matter.

Mr JUSTIN FIELD (11:08:47): I am not a lawyer, but I understand the argument of the Leader of the Government to be, "Ha ha, gotcha! You got the date wrong so we don't have to do it." That might work in a court—I do not know, I have never been in a court—but it does not work for the people of the northern beaches and it does not meet the expectations of the public around the obligations of this House to do its job and the obligations of the Government to be transparent and accountable in its actions. I have seen this play out before a number of times. I ask the Government, even if it is correct in what it says, that the date was wrong, that is has no obligation, why would I believe it? That case was made by the Leader of the Opposition but the Government has used—

The Hon. Trevor Khan: It is a Minister of the Crown saying it at the table.

Mr JUSTIN FIELD: I say this in the capacity of the position, not as the individual sitting in that position. The same line that has been raised here today, that no documents are held that are covered by the order which are lawfully required to be produced, has been used by the Government in not providing documents that I have requested under Standing Order 52, which was supported by the House. As an example, I will put back on the agenda the business case for the Broken Hill pipeline. This was a matter of significant concern for the local community. It was not the case at that stage that there was a contract that was waiting or that there were commercial interests. The pipeline had already been built, but the Government provided the same answer and had the same unwillingness to respond. We went through all of these steps over time, there was substantial public

discussion, we got to the point of censure and what happened? A folder was delivered in hard copy to my office with the document in it. The Government did not produce it.

I wanted the issue and the information out there. I made the decision not to proceed with the censure, though I wonder whether I should have, because that was a totally inappropriate process. I will remind the House what we found in that document, because it goes to my point about why I do not trust what is being said here. It was not Cabinet-in-confidence, the pipeline was built, but it did have significant information that would have been of concern to the public about what the motivations for the construction of that pipeline were. It was not only, as was claimed in the media as the justification, that it was about water for the people of Broken Hill; it was also about providing more water for the northern Basin irrigators. That was part of the business case, but of course it was not part of the public discussion. Why should these business cases be provided to the public ahead of these public decisions? Because the Government has a record of manipulating the public presentation of these projects to benefit its own interests. It is the responsibility of this House to test some of those things.

The Government has a terrible track record on this. Again, why would I believe what the Government says? I support this censure motion today. I am censuring the arrogance of the Government. It thinks it knows better about what the public has a right to know regarding major projects in this State, and the Government has form on this. I hope that this process today will accelerate an essential discussion about how we get to a resolution on what the powers of the House really are around these orders for documents and Cabinet-in-confidence. I have had Cabinet-in-confidence used against requests for information on many issues now. I can clearly make the case that there was no effective claim of Cabinet-in-confidence on those documents, but there is no way to resolve this question other than through motions in this House, which we now see have their own challenges. There may well be a legal argument that the Government can make; however, there is a moral argument that the other members of this Chamber can make. The public expects this House ultimately to resolve this.

The Hon. TREVOR KHAN (11:13:31): I will not make a lengthy argument here, but I point out to all members of this place that this is a censure motion. It is a censure motion, notwithstanding what the last member said, against a member of this House, the Minister. This is not a censure motion against the Government, this is not a generalised discussion about Standing Order 52 applications, this is a censure motion against an individual, the Minister. The Minister has said things at the table and we all know the responsibilities of Ministers when they address this House. But, in addition to what the Minister says, we have a letter from the secretary, Rodd Staples, which reads:

The Order requires the production of the following documents created since 1 January 2019 in the possession, custody or control of Transport for NSW:

- (a) The final business case for the proposed Western Harbour Tunnel and Beaches Link,
- (b) The strategic business case for the proposed Western Harbour Tunnel and Beaches Link, and
- (c) Any legal or other advice regarding the scope of validity of this order of the House created as a result of this order of the House.

Certification

I certify that, to the best of my knowledge, no documents covered by the terms of this order and which are lawfully required to be provided are held by Transport for NSW.

That certification and that process of certification have been in place for years. This is not just the agreed procedure adopted by this Government since 2011, it was the agreed procedure of former Labor governments, if I can describe them so, which has existed to comply with Standing Order 52 applications. It is the standard procedure that is adopted by the Executive in agreement with the House. We rely upon those certifications. If what is said by the Hon. Adam Searle is, "It needs to be an affidavit", I say the process has always been at all relevant times the certification from the secretary, and it is here. Quite frankly, the requirement of evidence is on the table now. In this weird exercise the obligation falls upon the Minister who is to be censured to prove something. It is the House that wants to censure him.

Let me go back to a case that we had to deal with on noncompliance, because I will deal with the issue of onus that was raised. The case was the order for papers on Mount Penny. The Minister was that well-known character about town, Ian Macdonald. What we knew in the Privileges Committee, which I chaired at the time, was by the time we were looking at it a bucketload of documents had not been produced. We knew this because documents had been produced to the Independent Commission Against Corruption. In the second inquiry with regard to Mount Penny we were looking at whether Ian Macdonald had been responsible for the noncompliance. We found it was all a terrible administrative stuff-up. These documents had not been produced because Ian Macdonald was losing his job and the Hon. Peter Primrose was becoming the new Minister.

Quite frankly, in the confusion at the time, notwithstanding the suspicions that might have been drawn—indeed, a member of The Greens, who was a participating member on that inquiry in the form of the

Hon. Jeremy Buckingham, was looking to grab conspiracy theories out of the air all over the place—the responsible members of that Privileges Committee, the responsible members of this House, said, "No. Notwithstanding the suspicions, there is no evidence that we could sensibly rely on." Notwithstanding that we were of the view, as reported in the report, that one really could not rely upon anything that Ian Macdonald said, that the former Minister was unreliable in his evidence in a whole variety of ways—something that could not be said about this Minister at the table today—and notwithstanding that he had the odour about him, we did not have the evidence to pin him as having been responsible for it.

The position that the Privileges Committee adopted, and that this House adopted in accepting that report, was essentially that the onus rested upon us to demonstrate that Ian Macdonald was the cause of the problem. The onus rested upon us to demonstrate the noncompliance by the Minister. When the Hon. Adam Searle seeks to shift the onus onto the Hon. Damien Tudehope, I say that is not the precedent that was set in the Mount Penny Privileges Committee inquiry. We accepted that we had to show noncompliance and we could not show it. Quite frankly, as chair of the report, I was quite comfortable, and the majority of the members on that inquiry were certainly comfortable, that when we discharged our obligation, we discharged it in finding what we did; that is, essentially we could not prove he had done anything wrong because we were not entitled to rely upon suspicion.

Quite frankly, when we hear some of the speeches in this place, we are not allowed essentially to pin an odium upon the former Government, upon that former Minister, simply because we did not like that we did not get all the documents we thought we should have at the time because it would have been great politically. What some members here today want to do is the Jeremy Buckingham exercise: Let us make an example of somebody because we can. That is not what we should do in this place. We have to take our responsibilities as members of this place extremely seriously. If the certifier, Mr Staples, certifies there are no documents, we take that at its face value. And maybe other lines of inquiry are pursued, whether through budget estimates, a select committee that brings him before it or a portfolio committee. Do that. But do not prosecute and persecute a Minister who comes to this place with the capacity of saying "no documents" because the vibe says, "We are not getting the documents we want over an SO 52". With the greatest of respect to the mover of the motion and others, that is sloppy and we should not be sloppy.

The Hon. MICK VEITCH (11:21:07): My contribution will not be as eloquent as that of the lawyers and the senior counsels in the building because I am just a busted up old shearer. This is quite an interesting debate, with all due respect to the poor soul who is at the centre of all this. New members should get a hold of Lovelock and Evans *New South Wales Legislative Council Practice* and read from page 474 onwards where it deals with orders for documents under Standing Order 52 and the Egan cases in detail. I recommend members read that to understand how we get to this position through that process. This has happened for a while and has evolved over time. I was the original mover of the first order for documents under Standing Order 52 in this matter. I will read it so that everyone understands how we started on this journey. The *Minutes of Proceedings* of 14 November state:

Mr Veitch moved, according to sessional order: That private members' business item no. 363 outside the order of precedence be considered in a short form format.

The actual motion that was adopted states:

That, under standing order 52, there be laid upon the table of the House within 21 days of the date of passing of this resolution the following documents in the possession, custody or control of the Treasurer, the Treasury, the Minister for Transport and Roads, the Department of Premier and Cabinet, Infrastructure NSW or the Department of Transport:

- (a) the final business case for the proposed Western Harbour Tunnel and Beaches Link;
- (b) the strategic business case for the proposed Western Harbour Tunnel and Beaches Link; and
- (c) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

There is no date. One of the main planks in the Minister's defence is, "You got the date wrong. Talk to us about the date." The original motion did not have a date.

The Hon. Damien Tudehope: I am not being censured on that motion.

The Hon. MICK VEITCH: I am talking about how we got started on this path. The original motion did not have a date. We then got the return to order under Standing Order 52 [SO 52] and we read what was in the boxes. Some members in the House probably have not been through this exercise. Often there are a lot of boxes and one works one's way through them. Then we move on to the next phase, which the Hon. John Graham has been prosecuting. I say to the Minister that we on this side have been fair and reasonable in this process. The Minister is the subject of the censure in his capacity as the Leader of the Government in this Chamber. It is not a personal attack on the individual Minister; it is because of the role he gallantly took on a few weeks back. He is the Leader of the Government in this House. That is why he is the one mentioned.

The Opposition did not come at this overnight to say, "We will censure the Minister". We have been working through this process for quite some time—since way back when we started on the trail. That is how we have come to this point. I say to Government members, particularly the Ministers in the Chamber, that to get to this point is a fairly serious step and it is not one we take lightly. My experience with SO 52s is that some Ministers are much better at working with the Opposition than are others. A good example is the Minister for Education and Early Childhood Learning, who is at the table, and a current SO 52 application from me regarding Young. We have negotiated, talked through and discussed the scope and worked on it. It is a good example for others to follow. We can do this together if we go through the process.

But that has not happened completely in this SO 52. I suggest to the poor soul who is at the centre of this motion that I accept that some Ministers, particularly those in the other Chamber, do not fully appreciate or completely respect the processes of this place. Some of where we are at today has a lot to do with that. As a member of the Chamber who spends a lot of time talking about securing, sticking to and respecting the forms and processes of this Chamber, whether they be committees, SO 52s or what have you, it would be refreshing if some of the Ministers in the Legislative Assembly took the time to talk to the Ministers in this Chamber about the processes and forms and the respect that everyone in this Chamber has for this process which has evolved over time.

I say to the Minister that this is not a personal attack upon him. We have followed a process. It would have been nice if the Minister responsible in the other Chamber had taken the time to sit with us and work through this in a manner that did not get us to this point. There are examples where it has not been necessary to do that. This is not a matter that has been taken lightly. The Hon. John Graham and I have had lengthy conversations about this process. We have had lengthy conversations about other mechanisms we could follow to try to get the document.

The reason the document is mentioned in the order for papers is, as the Hon. Mark Latham said, it is cited in the media. If it does not exist, how can it be cited in public media by members of the Government? If it does not exist, what were they citing in their media before and after the last State election? If it does not exist how was that possible? There is something not right about this. Firstly, originally there was no date. Secondly, it has been cited in media so there must be a document that exists. I want to make it clear that, whilst we are not attacking the Minister at the table in his individual capacity, this censure motion relates to his role as the Leader of the Government in this Chamber, which he gallantly took on a few weeks ago. I commend the motion to the House and I wish there was a better way so we could have avoided this.

The Hon. MATTHEW MASON-COX (11:28:28): One cannot produce a document that does not exist. Everybody in this place understands the Standing Order 52 process. There are recent examples of it. A multitude of these applications have been put before this House. The consistent advice from the Clerk in each of these cases is that the precision in regard to the documents being requested pursuant to that Standing Order 52 matters. It matters because the Government has to respond in a specific way through a certification process. The identification of documents and the prescribing of dates is absolutely critical to ensure a proper response is furnished by the Government. That is why a comprehensive internal process is set out by the Premier's guidelines in relation to the identification of documents in each of the government agencies which is linked specifically to the Standing Order 52 application and the date that is written within that Standing Order 52.

Today we have heard from the Minister that there were no documents that could be brought to this House that fitted within the dates prescribed in the Standing Order 52 application for which this censure motion is being lodged against the Leader of the Government. The first motion moved by the Hon. Mick Veitch is not being disputed in this censure motion; it is a specific subsequent Standing Order 52 motion that refers to 1 January 2019. That is the critical date and the date that this issue turns upon. The Leader of the Government has made it absolutely clear that the advice he has received is that there are no documents created after that date that can be delivered to this House. The Opposition leader has suggested that the onus is on the Government to prove that. The fact is that we have a certification, which the Minister has provided to the House and which has been read out by the Deputy President. I completely endorse the comments that were made on that.

I call on the Opposition to reconsider the course of action it is taking. I want for a moment to cast my mind back to the last time this House found itself in this position. Indeed, I played a pivotal role. I recall a few of the weighty considerations that were critical in the judgement I made at that time. Members may remember that the Hon. Don Harwin was Leader of the Government. We had a situation where we had a business case for the sports stadia, a business case for the Powerhouse Museum and the Tune report into child protection. Members may recall that there was a very similar process to what we have seen for the northern beaches tunnel and the Standing Order 52 motion that we are discussing today. It was a very considered process. The Hon. John Graham and the Opposition have gone through a similar process in putting their arguments here today. But in response to the

censure motion before the House today, the Minister made the critical statement that there are no documents that were created after the specific date of 1 January.

The problem is that we cannot assert that there is a document if we do not know whether it actually exists. The critical difference between this process and the former process—the Hon. Don Harwin as Leader of the Government was found to be in contempt—is that the Tune report was provided to the Leader of the Christian Democratic Party on the floor of this House and everyone could see there was a document. The document was identified and the document was produced by the Government to a member of this House but was not at the time produced to the House. It was an absolutely appalling situation and as a member of this place and a member of the Government I could not let the powers of this House be undermined in such an outrageous fashion. This is a very different and very serious situation. The Minister, in his capacity as the Leader of the Government, has made it very clear that these documents do not exist.

The onus is on the Opposition. It is akin to a situation where a subpoena is produced in a court. It has to be construed narrowly and literally. It is up to the person who puts the case to make the case. Frankly, the Opposition, despite the very deliberate and thoughtful way in which it has gone through this process—and we are all familiar with the steps and precedent—has failed in the critical matter of identifying the document. If Opposition members cannot identify the document they cannot come in here and suggest that a Minister has not provided it. They do not even know whether it exists. It is fundamental to their case and fundamental to the Standing Order 52 process. They cannot hold any Minister or person in contempt for not providing a document that they cannot even identify. It is fatal to this contempt motion and it is fatal to the Standing Order 52 application.

The Hon. Adam Searle: Point of order: We are not debating contempt; we are debating censure.

The PRESIDENT: I uphold the point of order.

The Hon. MATTHEW MASON-COX: By all means, Mr President. But we are talking about a very strict process. We should let the barristers on the other side have their day in court but they have not made their case. Sadly, they cannot chase a ghost. They have to have a specific document. They need to be able to identify that document and they must be sure it does exist. Chasing the wind is no substitute for ensuring they have done their homework and have their dates right. That goes to all manner of issues within the Opposition, which shows again and again that it is not worthy of government.

The Hon. DANIEL MOOKHEY (11:35:41): I resisted all my urges to enter the fracas to censure the Minister, whom I ordinarily shadow, but I join with the Hon. John Graham in saying that none of this is at all personal and none of the comments I make should be taken as being personal towards him. There are many other reasons why that person could be censured but they are not the ones before the House today. I was moved to enter the debate after listening to the contributions of the Hon. Matthew Mason-Cox and the Hon. Trevor Khan, both of whom introduced arguments into this debate that have perhaps—and do not take this the wrong way—served to confuse the issues rather than simplify them.

The Hon. Trevor Khan: Outrageous!

The Hon. DANIEL MOOKHEY: I acknowledge the interjection of the Hon. Trevor Khan so that it is in *Hansard*. I start where the Hon. Matthew Mason-Cox left off, with the assertion that these documents do not exist and are not identified. The documents are clearly identified: They are the final business case and the strategic business case. If any member of this House thinks that those terms can be arbitrary, they cannot. They are legally required if the Executive Government wishes to use the Restart NSW Fund Act. Those documents are lawfully required to exist if the New South Wales Government is intending to rely on either of those sources of funding. We know that the New South Wales Government intends to rely on those sources of funding because it is in the budget papers for 2018-19.

The budget papers quite clearly list that the Western Harbour Tunnel has \$1.1 billion reserved. It is not possible for that \$1.1 billion to be triggered without these documents being brought into existence. That is the first point. Legally, they must exist. If we take the Hon. Matthew Mason-Cox at his word when he asserts that the documents do not exist, the only inference we can draw is that the Government has broken the law in respect of the Restart NSW Fund Act. They must exist. In case any other member further disputes that, this is not a matter that has not been contested in other forays of this House. The Hon. John Graham and I asked multiple questions about this during budget estimates. That brings me to the submissions of the Hon. Trevor Khan, who said that we ought to rely upon the certification provided by the Secretary of Transport for NSW, Mr Rodd Staples, when he says that no documents exist that are lawfully required to be produced—

Reverend the Hon. Fred Nile: From that date.

The Hon. DANIEL MOOKHEY: I acknowledge the interjection—from that date. The Hon. Trevor Khan made the point that ordinarily we should rely upon that certification and not peer below it without suspicion. That is the case put forward by the Hon. Trevor Khan but it is not necessarily one that this House has to accept. Ultimately it is still the submission of someone from Executive Government to the House. It is for the House to judge whether that submission should be accepted. At various times we do and at various times we do not. That is why we have the arbitration process. We reserve the right to contest such submissions. But even if, Mr President, you do accept the submission of the Hon. Trevor Khan that we should accept on face value the certification of Mr Rodd Staples, there is the problem that in the 2019-20 budget estimates in September last year and February 2020 the Hon. John Graham and I asked Mr Staples questions about these documents. We asked him to set out where precisely in the Infrastructure NSW process the Government was up to. He answered that the final business case was completed and awaiting investment approval by the Government. He made that very clear. He gave that evidence after 2019. He gave that evidence after 2019 and he made it very clear in 2019-20 that those documents were reviewed and updated.

Let us be clear: If Transport for NSW photocopied just one of those documents, it needs to be produced. The secretary came before this Parliament in budget estimates and made it very clear that it had been reviewed. He made that point because Transport for NSW was under serious scrutiny as to how well these business cases were being developed. He and his Minister advanced an argument in estimates that the Government ought not be blamed for blowouts on projects because there had been changes in market conditions, which is what led me and the Hon. John Graham to ask, "Are you updating the other business cases?" To which he said, "Yes, in 2019-20."

If one accepts the Hon. Trevor Khan's submission that we ought to have a reasonable basis of suspicion to question Rodd Staples, I submit that is one reason why we ought to look below what he has merely asserted—without Mr Staples even certifying the reason he objects is to do with 2019 and not the other issue to do with Cabinet information. That is the evidence before the House in other forums, and it should be considered in adjudging the claims that have been advanced by the Hon. Trevor Khan and the Hon. Matthew Mason-Cox. That brings me to my other point, which is about the actual purpose of these documents. We heard earlier in this debate an argument that the Government seems to be moving away from but that I am sure Government members still maintain—that this information is by its nature inherently commercial-in-confidence. The problem we have with that submission is that it does not square with the Government's record on other strategic business cases.

The Government released two business cases publicly prior to the commencement of any procurement processes or tendering on WestConnex. The Government introduced that information in the public domain twice—the Hon. Duncan Gay did it, to his credit—in 2014 and 2015. At that point that information did allow meaningful scrutiny by this House in its various fora as to how well that project had been delivered. To be fair to the Hon. Duncan Gay, he recognised that to release that information would advance the Government's position and its case for WestConnex. All of this is my way of saying that there is no consistent standard from the Government on the question of whether or not this information is commercial-in-confidence.

If members do not accept that precedent they should look at what these documents are legally meant to do. It is not like it is arbitrary as to what must be in a strategic business case or what must be in a final business case. There is a clear law that spells out what must be in it and there is a clear template. This is not some perfunctory process; this is a process which we have written into law that Infrastructure NSW must undertake as a precursor to any investment that it lodges from the Restart NSW Fund. As to the question of whether or not the final business case inherently contains commercial-in-confidence information, I will read what Infrastructure NSW says is the purpose of the final business case in the template that it gives to every applicant from every agency. It says a final business case should:

... explain as clearly as possible to the non-specialist:

- The problem—what is the service need and why is further capital expenditure required?
- Why this problem is of strategic importance (i.e. alignment with Government objectives and/or policy)?
- What options have been considered and why the proposed option is preferred?
- What are the relative net benefits of the project option—for the users and the general community?
- How much will the project cost to the Government over its lifecycle?
- What risks should be considered and actively managed?
- What stakeholders should be taken into account and what the management strategy is for key stakeholders?
- How the department plans to construct and manage the asset?

These are all reasonable requirements that Infrastructure NSW attaches to anyone who wishes to use the Restart NSW Fund or the Rebuilding NSW plan, but it does not contain information over which the Leader of the Government has claimed commercial-in-confidence. In the submission of the Leader of the Government he was

trying to protect commercial contracts. He was trying to protect traffic volumes and information data. We know that those processes are yet to come. We are not at that stage of the commissioning process. This is about whether or not there is a case to do so. On that basis we ought to seek these documents, and there are further reasons for why we should. I do not wish to re-litigate the debate that the House has already had. The Leader of the Opposition is right in saying that the House has made up its mind up as to the merits of this, so take my comments as reasons why the House should escalate and insist on its orders being followed.

Since the House has made these orders, we have had further evidence about how Executive Government often gets these strategic and final business cases wrong. Just a week ago the Auditor-General released a report about the light rail project. In her two performance review reports on that project she clearly stated that errors and omissions in the business cases led to the blowouts. That is why it is important that this House scrutinise the business cases. Yes, we have to use our discretion and our judgement; no, we should not ordinarily move censure motions on every example of noncompliance. In orders for papers under Standing Order 52 that I have moved, I have received the same certification that there are no documents to be produced. I did not move a censure motion because I did not think it merited that action, but we are talking about billions of dollars here.

These are projects which we know from *The Sydney Morning Herald* leak could be worth up to \$14 billion. They would be amongst the biggest sources of public expenditure on infrastructure, not just in New South Wales but in Australia. We are at a moment in time where additional public scrutiny could save taxpayers billions of dollars and could avoid other errors. That is why this falls within a different category to other Standing Order 52 requests and should be escalated. We ought to insist upon the production of documents. I will make another point. If the Government is confident enough in its election promises and in its case for these projects, the release of this information should assist it, not detract from its position. As these projects are delivered over the next decade it should allow us, on behalf of those communities, to make sure that the Government delivers exactly what it has promised. Those are the reasons why we seek these documents. Nevertheless, a furphy has been introduced in this debate about whether the date is an issue. I have already addressed that in substance in my earlier remarks but I wish to be abundantly clear. I move:

That the question be amended by inserting after paragraph (4):

- (5) That given the issue raised by the Leader of the Government during this debate concerning the date "1 January 2019" contained in the orders of 27 February 2020, 13 May 2020 and 17 June 2020, the order is amended as follows and the Leader of the Government is responsible for tabling in the House or delivering to the Clerk the following documents regardless of the date of their creation:
- (a) the final business case for the proposed Western Harbour Tunnel and Beaches Link;
 - (b) the strategic business case for the proposed Western Harbour Tunnel and Beaches Link; and
 - (c) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

That amendment should put the issue to bed once and for all. Putting aside any issues of form or technicality that the Government may wish to advance, the question is one of substance. On major projects to the tune of up to \$14 billion for which the Government is advancing an argument in the public domain, members of the House have an obligation to provide scrutiny and to use our powers as reasonably necessary to make sure that taxpayers are getting what was promised to them.

The Minister ought to be censured not in a personal capacity but because he is the representative of a government that is not complying with the orders of this House. It is important that we send that signal. As the Hon. John Graham has argued, to not send that signal is to effectively dissolve the power of the House. The stakes are bigger here. The House ought to assert its dignity and its authority when it comes to these requests under Standing Order 52. The House ought to censure the Minister accordingly.

The Hon. Don Harwin: Point of order: My point of order is that we are considering a censure motion for a failure to comply with orders of the House. To proceed with a censure motion for effectively a new order is extraordinary. I wonder how this can possibly be in order. I ask you to rule on this matter before it proceeds any further.

The Hon. Adam Searle: To the point of order—

The PRESIDENT: Before I hear from the Leader of the Opposition, so that I might assist him I will indicate my initial thoughts. There are in fact two parts to the motion. There is the part of the censure of the Leader of the Government for failing to comply with the previous orders for documents under Standing Order 52. Then there is the second part that says, "Then the Minister should ...". My understanding of the Hon. Daniel Mookhey's amendment is that he is seeking to amend the second part. The problem I have is that it is one motion. The House requires a vote on the one motion to in part (a) censure the Minister and then in part (b) to ask him to produce documents, but if the Minister is in fact correct about the documents not being there because of the date issue that

he then produce other documents. I have a real difficulty with that. I want the Leader of the Opposition to be aware of that when he addresses me.

The Hon. Adam Searle: Thank you, Mr President. Unless I have misread the original censure motion, the censuring is for the noncompliance with multiple orders made by the House. That includes the original order, which did not have a date issue. The noncompliance is with a number of orders. The first one had no date and the subsequent ones did. That is one issue. The motion already provides after the censure a further opportunity for redemption by the Government—that is a further option for compliance—before any other steps are considered. In furtherance of that second part, for the avoidance of any further doubt or controversy, this amendment moved by the Hon. Daniel Mookhey addresses the date issue. I think it is definitely in order and should be allowed as an amendment to the motion. It certainly responds to and clarifies an important part of the Government's defence in this matter.

The PRESIDENT: As business will be interrupted at 12.00 p.m., I will continue to hear argument. We will then go to question time and then the lunch break. When we come back I will rule. I have no intention of putting this motion and the amendment without first having had time to give it further consideration. I will be assisted enormously by members if they wish to put argument to me.

The Hon. Damien Tudehope: To the point of order: The amendment moved by the Hon. Daniel Mookhey is a concession that this censure motion is ill-founded. If in fact there is a disposition to withdraw the censure motion and replace it with a new Standing Order 52 application returnable on 4 August, that is a matter for the mover of the motion if he wants to move in that way. But this amendment should only be accepted if in fact there is a concession that the censure motion is ill-founded to the extent that it is predicated upon documents that came into existence after 1 January 2019 which do not exist and certification evidence of that has been provided by the secretary of the department to the House. So my submission to you, Mr President, is that the only basis on which this amendment can be accepted is if the censure motion is withdrawn and the amendment is couched in terms of a new Standing Order 52 application.

The Hon. Daniel Mookhey: To the point of order: Firstly, I reply to the submission of the Leader of the Government and ask you, Mr President, to weigh his argument much as you would weigh a debating point. I do not necessarily think you need to judge the motivation of the mover of an amendment in any respect. Therefore I do not think that is a basis upon which you can proceed as you rule whether or not the amendment is in keeping with the standing orders. As to the Hon. Don Harwin, who took the point of order to rule against the amendment, his argument was that the amendment was extraordinary but he was not able to identify which standing order is being breached.

The only question you are being asked to rule upon is whether or not it is procedurally within order, not whether there is merit or wisdom to it, which of course is a decision of the House when it votes on the amendment. It would be helpful if the Hon. Don Harwin or any other member of the Government could identify a standing order which they say the amendment transgresses and therefore should be ruled out of order. To the extent of precedent, there are two things I ask you to keep in mind. The first is on the question of bills. Of course the precedent is whether an amendment is in keeping with the long title of the bill as well as whether it is apt. But on motions it is a slightly different question. There needs to be a nexus with the substance of the motion and the loose precedent that has been adduced. There is clearly a nexus between our amendment and the substance of the motion before the House. They are related.

The other point I make is as to the specifics of the amendment. It is not to delete or otherwise alter the motion; it is to add new content to the motion, which is well and truly in keeping with motions that are debated in the House. Often members move amendments in response to material that is introduced into debate, as we saw yesterday during private members' business. That is a good function of the House that ought to be upheld so that members can be responsive to the contributions of other members, to factor that in and to respond by way of amendment. That is in fact entirely consistent with how the House goes about its deliberations. As you make your decision, I point out that no-one has yet identified any standing order or for that matter any previous ruling which is alleged to have been breached. Furthermore, the body of precedent that exists favours a conclusion that the amendment, subject to it being related to the substance of the motion, ought to be allowed and there is nothing wrong with amendments that are responsive to debate on the substance of the motion.

The Hon. Scott Farlow: To the point of order: Essentially the motion seeks to censure the Minister for failure to comply with a resolution of the House. The members opposite are seeking via the amendment to change the resolution of the House. Therefore, by inference, you cannot censure the Minister for not complying, as asserted by the Opposition, by way of a resolution that is changing because it is incapable of being complied with. Paragraph (4) of the motion states:

- (4) That this House:

- (a) accordingly censures the Leader of the Government as the representative of the Government in this House for the Government's failure to comply with the resolutions of the House of Thursday 14 November 2019, Thursday 27 February, Wednesday 13 May and Wednesday 17 June 2020 ...

The amendment moved by the Opposition would mean that paragraph (4) of the motion would have to be ruled out of order because it would be impossible for the Minister to be able to comply with what is effectively a new resolution.

The Hon. John Graham: To the point of order: I want to make it clear that the Opposition's view is that nothing has been conceded about the date. Could the Minister have complied or not? A range of these resolutions have included a date. The Opposition's view is that these matters are best decided by weighing the arguments of the Opposition and the Government according to the will of the House rather than seeking to strike out one or other of those arguments on the merits of a censure by virtue of the standing orders. The Opposition certainly concedes nothing but we on this side ask that the merits of those arguments be weighed.

The PRESIDENT: I will reserve my ruling on the amendment until after the luncheon break. That does not in any way stop further debate on the motion.

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

Questions Without Notice

COVID-19 AND SCHOOLS

The Hon. ADAM SEARLE (12:00:51): My question without notice is directed to the Minister for Education and Early Childhood Learning. Will the Minister confirm that essential deep cleaning of schools for COVID will cease at the end of term 2?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:01:13): I thank the Hon. Adam Searle for his question on the deep cleaning of our schools based on COVID. The short answer to the member's question is that we have contracts and measures in place for deep cleaning until the end of term 2. That is my understanding. It is something that I am discussing frequently with the secretary and members of the department who are working in our COVID response team. We have always said that we will do what is necessary for the cleaning of schools as it relates to health advice. I am awaiting some decisions and advice about what we will do for term 3. I expect to have that information available shortly.

PLANNING SYSTEM ACCELERATION PROGRAM

The Hon. TAYLOR MARTIN (12:02:03): My question is addressed to the Minister for Finance and Small Business. How is the Government's Planning System Acceleration Program helping to create jobs, jobs and more jobs across New South Wales, including in the Sydney CBD?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:02:21): I thank the member for his question. There is no doubt that some members in this place have phrases on their minds that are like songs stuck in their heads. It is a tune they have learned from this side of the House, and it says that it is all about the creation of jobs. There might be some on the other side of the House who are lining up for a new job. We might ask ourselves whether the Hon. Walt Secord will be the shadow Treasurer next time around or if the Hon. Daniel Mookhey might get the job—I am not looking for interjections, by the way.

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

The Hon. Adam Searle: He brought it on himself.

The Hon. Penny Sharpe: He's inviting interjections.

The PRESIDENT: I agree with that. I remind the Minister of previous Presidents' rulings, including the ruling of former President Harwin, that Ministers should not encourage interjections. Notwithstanding that, members should not respond to the Minister's wonderful encouragement by interjecting—especially when Government and Opposition members both do it and there is no chance of being able to hear the answer being given.

The Hon. DAMIEN TUDEHOPE: While I am not fishing for interjections, I am pleased to announce that the final plans for the new Sydney Fish Market have been approved under the Planning System Acceleration Program.

The Hon. Bronnie Taylor: Point of order: You just made a ruling about interjections. As soon as you made that ruling Opposition members started interjecting again. I ask that members be called to order for continuously flouting your ruling.

The PRESIDENT: I call the Hon. Walt Secord to order for the first time, not because of his interjection during the Minister's answer but because of his interjection while Minister Taylor was trying to take a point of order. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: The 36 projects approved to date under the program have created opportunities for more than 23,000 direct jobs and almost \$13 billion worth of economic investment across the State. Early works are expected to commence within the next eight weeks, with the stage one contract to be awarded shortly. A tender process is underway for the major construction phase, which is expected to start in early 2021. The project will create 700 jobs during the construction phase and once the new markets are opened in 2024 another 700 ongoing jobs will be created. The new building will include a variety of fishmongers, restaurants, cafes, bars and speciality food retailers in a four-storey market hall setting, as well as a new public promenade and ferry wharf. The approved design also provides more than 4,700 square metres of new public open space and paves the way for a future pedestrian and cyclepath that will provide waterfront access all the way to Woolloomooloo. Visitor numbers to the market are expected to double over the next 10 years, from three million to six million each year. Executive Director of the Sydney Business Chamber Katherine O'Regan said:

The NSW Government is to be applauded for its quick response to the Covid crisis and its impact on jobs and the State's budget, by accelerating key infrastructure projects like the Fish Market, to kick-start and rebuild Sydney's economy—the engine room of the NSW economy.

That is spot on. From Sydney to the bush, we are working to fast-track projects to deliver—you guessed it—jobs, jobs and more jobs.

EARLY CHILDHOOD EDUCATION

The Hon. PENNY SHARPE (12:07:36): My question is directed to the Minister for Education and Early Childhood Learning. Given the role that early childhood centres play in children's development and women's participation in the workforce, will the Minister continue to provide fee-free community preschool and support for local government childcare beyond September?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:08:04): I thank the honourable member for her question. I agree with her comments about the importance of early childhood education and what it means for workforce participation, particularly for women. It is something I have spoken about in this House many times before, as has my friend and colleague the Minister for Mental Health, Regional Youth and Women and many other members. I have also acknowledged the importance of early childhood services for men, including some men in this Chamber who I know have children who attend those services. As the member indicated in her question, we have provided support for early childhood services to remain open and viable during the COVID-19 pandemic.

First I will deal with the issue concerning community preschools. The member asked whether we will be continuing that support. We have publicly committed to providing that support for terms 2 and 3 for our community preschools. I put on the record that that support has been very well received by the community preschool sector. It was made available to more than 700 State-funded community preschools and 38 mobile services to opt in. There has been good take up of that support. It has meant a lot to families who have been able to have that fee relief. Our funding model has meant that no preschool has received less than 80 per cent of their fee income.

We agreed to keep our Start Strong funding at the levels it was, regardless of attendance, for this year. That will remain the case. There is that support available. Even if numbers drop, which would normally have a correlation with funding, we have agreed to keep it as it was to keep those services sustainable and viable. But, as I said, no preschool will receive less than 80 per cent of their 2019 fee income. In fact, 49.3 per cent were eligible to have 100 per cent of their fee income covered over the six-month period, 21 per cent were eligible for at least 90 per cent of their fee income and everyone else was eligible for 80 per cent.

In relation to long day care centres that are run by local government, as members would well know and as I have canvassed in the House, New South Wales stepped up to fill a gap that was left by the Federal system. We were quite honest about that. Long day care services that the local government funded were not eligible for JobKeeper. There were concerns about that viability, which is why we said we would provide this money for up to six months, but it was in conjunction with JobKeeper and it was about plugging the gap that existed for local government. We have met with the eligible local government providers about what we will do going forward, given that the Federal Government has made those changes. It is going through a transition period. They are very comfortable with the approach that we are taking. We are working closely with them. In regard to what will happen post-September, we are actively considering what options we need to pursue. Obviously with local government it is linked to the JobKeeper package, so that will be transitioned. We are working with the sector in

relation to this and we will consider other options for community preschools going forward, as we always do. [Time expired.]

COMPANION ANIMALS

The Hon. EMMA HURST (12:11:17): My question is directed to the Minister for Education and Early Childhood Learning, representing the Minister for Local Government. According to RSPCA NSW, there has been a rise in the number of companion animals being surrendered to shelters due to financial hardship this year, increasing from 10 per cent in 2019 to 18 per cent in 2020. Given that widespread financial hardship is likely to continue in coming months due to COVID-19, what is the Government doing to ensure that a wave of cats and dogs are not going to be surrendered and then potentially euthanised?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:11:54): I thank the Hon. Emma Hurst for her question, which was directed to me as the representative of the Minister for Local Government in the other place. I have some advice from the Minister which may be of interest to the Hon. Emma Hurst. I am sure the honourable member would be pleased to hear that the Government is committed to reducing euthanasia rates for the animals that she has mentioned in her question and will continue to work with councils and animal welfare agencies to promote responsible pet ownership. Government members understand the importance of pets to the community and we are very committed to ensuring that animals are well looked after throughout their lives. It is important to note that, in part, responsible pet ownership reduces the burden on pounds and shelters by ensuring that fewer animals are lost, abandoned or required to be seized after an incident.

I am proud that our Government supports councils to reduce euthanasia rates by making it easier for pet owners to register their cats and dogs through the online NSW Pet Registry, which launched in 2016. It is now easier for pet owners to keep their pet's records up to date online, which will help to get lost pets home safely. This is incredibly important. I am pleased also to inform the honourable member that the latest council data shows a long-term downward trend in euthanasia rates. Since 2015 we have funded half-priced registration for pets adopted from pounds and shelters. This helps to ensure that cats and dogs that are not reclaimed by their owners are more quickly adopted by their new families. In 2018 this subsidy was extended to animals adopted from 95 rehoming organisations as part of a new companion animals regulation that came into effect on 31 August that year.

On 4 May 2020, in response to the COVID-19 pandemic, the Minister for Local Government announced an additional \$512,000 to council-run pounds across the State to ensure that they run as close to normal as possible and to ensure that the welfare of the animals was maintained. If any person has any specific concerns about the management of a council pound, they should raise them directly with the council's general manager. Concerns can also be raised with the agencies responsible for enforcing the Prevention of Cruelty to Animals Act. The Government is also encouraging councils to work with rehoming organisations and community volunteers to care for animals while they are awaiting a new home. This improves the likelihood of successful rehoming.

As council rangers and veterinarians can access the NSW Pet Registry, there is a greater chance for lost animals to be quickly reunited with their owners, thereby avoiding the cost and the stress of impoundment. The member may be aware that since 2015 we have also provided \$1.49 million to fund half-priced registrations of pets adopted from pounds and shelters. Again, this is all about ensuring that cats and dogs that are not reclaimed by their owners are more quickly adopted by new families. I am happy to pass on some additional information to the member. As she would see, there is a lot of support for these animals. [Time expired.]

GOVERNMENT BOARDING SCHOOLS

The Hon. WES FANG (12:15:00): I address my question to the Minister for Education and Early Childhood Learning. Will the Minister update the House on the New South Wales Government's alternative solutions to public boarding schools which ensured that students could return to the classroom amid the COVID-19 pandemic?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:15:34): I thank the honourable member for his question and for his keen interest in regional education. As members are aware, New South Wales public school students returned to full-time face-to-face learning in week five of term 2, on 25 May 2020. However, separate restrictions were enforced by the Australian Health Protection Principal Committee [AHPPC] which meant that many students attending government boarding schools were unable to return to their dormitory living and had to continue home learning. To comply with the AHPPC guidelines for schools, principals were instructed to enact a phased approach to welcoming students back to school. For boarding schools this meant student sleeping arrangements were limited to one student per room or a maximum occupancy of 25 per cent of previous levels in larger dorms.

Principals were also recommended to prioritise the return of students in the following order: year 12, more vulnerable students, year 11, the remaining senior students, siblings and all other students. In New South Wales there are three government boarding schools: Farrer Memorial Agricultural High School, Yanco Agricultural High School and Hurlstone Agricultural High School. Due to its size and the number of enrolments, there was minimal impact to students returning to Hurlstone. Students either had their own room or the school could fortunately comply with the 25 per cent capacity guideline. At Farrer in Tamworth they were in quite a different situation. They have 624 students in total, 50 per cent of whom use the boarding facilities. With the AHPPC guidelines enforced, only 152 of the boarding students were able to return to the facilities on 25 May.

To ensure that the remaining 168 students did not miss out on getting back to the classroom, we looked at alternative accommodation for them. I was thrilled that we were able to secure the Tamworth flying school to accommodate the remaining students, as the facility was unused. The school was perfect for the students; it had ensuite accommodation, appropriate security, wi-fi and healthcare, catering and recreational facilities. The acquisition of the accommodation meant Farrer students were able to return to school from Monday 8 June. I am advised that the students are thrilled to be back with their mates and are particularly keen on their new digs. I acknowledge the principal, Clint Gallagher, local department staff Ruythe Dufty and Frank Potter as well as Tamworth Regional Council. This has been a really innovative solution to an interesting issue. As I have said, it has had a great ending.

We also had to look at what we could do for the students at Yanco. This was a different model again, because all students attend the school in a boarding capacity and it is more geographically isolated than Farrer. In the absence of any external accommodation close to the school, we made some structural adjustments to the current boarding facilities at Yanco to allow for the return of students. We did this by expediting construction at the school to undertake minor works which ensured that previously unused dorms were in proper condition to be used again. We also installed partition walls in larger dormitories to space out the students. This has meant that all students have been able to return over the course of the past couple of weeks. It is a great outcome and it is another innovative way that ensured that regional kids did not miss out on their education. [*Time expired.*]

NSW ANTI-DISCRIMINATION BOARD

The Hon. MARK LATHAM (12:18:40): I direct my question to the Leader of the Government. Why is the NSW Anti-Discrimination Board investigating a Queensland resident, Katrina Tait, for alleged homosexual vilification concerning a January Facebook comment objecting to adult entertainers in Brisbane municipal libraries that did not in fact even mention homosexuality? Why are New South Wales taxpayers being used to police legitimate debate on municipal issues in other States at the request of a serial vexatious complainant, Mr Garry Burns?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:19:29): I thank the member for his question. This is an issue which he aired in a contribution to the take-note debate some two days ago. The first point I make is that there is in this State a separation of powers. The Government does not necessarily tell the Anti-Discrimination Board what matters it should investigate. It would probably be inappropriate for governments to do that.

The PRESIDENT: Order! I call the Hon. Rose Jackson to order for the first time.

The Hon. DAMIEN TUDEHOPE: The member has put before this House the appropriate way that governments should deal with issues that impact on the community of the nature he has outlined. In fact, I have seen some of the material and the distress it has caused to the person who is the subject of the complaint. It appears that the evidence he provided to this House and the evidence he provided in his second reading speech on his bill are compelling in relation to a particular litigant before that board, all of whose complaints appear to be accepted by the board. He introduced a process through which a government should in fact act on the interests of citizens of this State—that is, to have a bill come before the Parliament for the purposes of addressing the serious issue that he identified.

The bill he has introduced has some serious ways in which it approaches this problem. It would remove a complainant's right to require the president to refer a complaint to the NSW Civil and Administrative Tribunal where the president has declined a complaint during the investigation. The bill has been referred to the portfolio committee of this House and, as I understand it, over 190 submissions have been made in relation to that bill. That shows the level of participation by the general public in issues of this nature. I welcome the report of the portfolio committee on that bill because the case which the Hon. Mark Latham makes in respect of that defendant or respondent to a claim of the Anti-Discrimination Board is compelling.

COVID-19 TESTING AND SCHOOLS

The Hon. ANTHONY D'ADAM (12:22:42): My question is directed to the Minister for Education and Early Childhood Learning. Given concerns expressed by parents and teachers in the Sutherland shire, why are school communities not being advised when pupils are living with a COVID-positive family member?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:23:01): I thank the member for his question. He mentioned the Sutherland shire. Obviously as members would know there was a positive case in a school community there over the weekend. We have students needing to self-isolate. I am going to make the assumption that when he speaks about some concern in the community it may have been and probably has been in relation to that matter at Laguna Street Public School.

I take the opportunity to put on record my thanks to that school community. I spoke to the principal on Monday. They are doing an amazing job to support their students. It is obviously a bit of a different circumstance when we have the situation where all students need to self-isolate, given the health advice that that was the required response in relation to this positive case. I think it is important to put that on record. In regard to the specifics of the member's question when he has asked about why students and staff have not been given advice about self-isolating when there is a positive case, I make it clear to the member who has asked the question and to all members that in relation to matters of COVID-19 that affect school communities the Department of Education works closely with the Department of Health and there is a clear delineation of responsibility.

When we include the government, Catholic and independent sectors we have more than 3,000 schools across New South Wales. The statistic I was given the other day is that on any given day 1.4 million people are in a school community as either a teacher or a student. When we think about that in relation to the number of people in New South Wales we realise that there are going to be positive cases that affect or impact our schools while COVID is in our community. It is just going to happen and we know that. We have made the decisions knowing that we have good systems in place when there is a positive case that affects our school communities. When there is one, as I said, the Department of Education works closely with the Department of Health.

All advice relating to self-isolation, communications to families about what is required and the health elements of who needs to be told to self-isolate, what the conditions are and who else needs to be given that information is handled by the Department of Health, which is appropriate. It is a public health response which involves school communities—and our departments work closely together. But in regard to the advice that comes in relation to self-isolation, who is informed and what advice is given, that comes from NSW Health. That is the appropriate body for that to come from. If the member wants some more information about how that process works in school communities or any other case, he should direct a question to the health Minister or the member representing him in this Chamber.

The Hon. ANTHONY D'ADAM (12:26:02): I ask a supplementary question. I ask the Minister to elucidate in respect of her answer as to why the arrangements at Sutherland shire are different to the arrangements that were made for Laguna Street Public School.

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:26:16): I said in my answer that I was talking about what happened with Laguna Street Public School as a specific example. As I said, every case that comes in that affects a school community is taken on a case-by-case basis. We work with NSW Health and take its advice in relation to the appropriate public health response.

SHOALHAVEN YOUTH UNEMPLOYMENT

The Hon. DON HARWIN (12:26:38): My question is addressed to the Minister for Mental Health, Regional Youth and Women. What is the New South Wales Government doing to address youth unemployment in the Shoalhaven?

The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:26:58): I thank the member for his question. The New South Wales Government has a laser focus when it comes to addressing youth unemployment right across New South Wales and the Shoalhaven region is no different. We have the STEMship program operating in the Shoalhaven, which is a pilot funded by Training Services NSW in partnership with the Commonwealth, the New South Wales Government and the defence sector which is open to young people who have completed year 10. It is designed to bridge the gap between secondary school and university science, technology, engineering and mathematics programs. The industry-led program guides students into technical apprenticeships and traineeships or to continue with VET courses. So far 12 young people have transitioned into traineeships in the defence sector at HMAS *Albatross*—a great result.

The Infrastructure Skills Legacy Program, otherwise referred to as ISLP, is attached to major New South Wales government infrastructure being built and boosts the number of skilled construction workers to create fresh pathways to employment. In the Shoalhaven, the Berry bypass, the Berry to Bomaderry upgrade and the Nowra Bridge have all adopted the Infrastructure Skills Legacy Program and the youth targets have been incredibly strong. In addition to this, since 2016 the Illawarra Youth Employment Strategy, or the Illawarra YES program, delivers training programs across the Illawarra-Shoalhaven linked to employment pathways and connects young people with industry, government and non-government organisations.

Illawarra YES programs scheduled specifically for the Shoalhaven in the coming months include a manufacturing program which is a collaboration with TAFE, a trade taster program, a retail program which is in collaboration with the Australian Retailers Association, a hospitality and tourism program that will build on the expected increase in demand following the post-COVID-19 opening of tourism on the South Coast and an aged care and disability program. The fact is the Illawarra YES program has been so successful across the Illawarra-Shoalhaven that it has been adopted in other communities. We are also providing fee-free training to support bushfire-affected communities. Those free courses are being run across the State, including in the Shoalhaven region, where towns like Ulladulla, Moruya, Batemans Bay and Bomaderry have courses in things such as fencing, white card, chainsaw and fell trees, and forklift operations so that young people have the opportunity to upskill themselves for jobs and help to rebuild their communities—a really important part of recovery.

While many programs have hit the pause button due to recent COVID-19 restrictions, the New South Wales Government has made sure that every young person has had the opportunity to reskill and be job ready when restrictions ease. TAFE has had more than 20 short courses available online. Since April more than 100,000 people have enrolled, with 54 per cent of enrolments from regional New South Wales. That is a great result. The fact is that this Government is working right across New South Wales to improve youth employment in our regional communities. We will continue to do so and continue with these innovative programs.

AGED-CARE SECTOR

Reverend the Hon. FRED NILE (12:30:11): My question is directed to the Minister for Health and Medical Research, represented in this House by the Hon. Bronnie Taylor. The COVID-19 pandemic highlighted the inadequacies in aged-care facilities to care for and protect the most vulnerable people in our communities. The Australian Nursing and Midwifery Federation submission to the Senate inquiry warned that there are no guarantees that the \$750 million promised for aged care by the Commonwealth Government in support of responses to the virus will be spent to protect patients rather than being pocketed by the providers. Will the Minister ensure that providers are spending all the extra funding for the sector on protecting patients and not their profits?

The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:31:15): I thank the honourable member for his question to me, representing the Minister for Health and Medical Research in the other place. The question referred to the Australian Nursing and Midwifery Federation submission to the Senate inquiry. I have not seen that submission to that inquiry but I will have a look at it as a past member of the NSW Nurses and Midwives' Association—I do say "past". Reverend the Hon. Fred Nile has just very kindly handed me the submission. The NSW Nurses and Midwives' Association makes very high-calibre submissions. Its submission during the inquiry into the assisted dying legislation was extremely powerful. I commend those submissions.

Reverend the Hon. Fred Nile referred to Federal funding for our aged care facilities as part of the COVID-19 response. As the Minister responsible for mental health and as a registered nurse—look out, I am here to save you all—whose speciality was palliative care, I would need to refer this question to the Minister for Health and Medical Research. I can honestly say—and I am sure every member of this place, regardless of their political colour, would expect—that any money that was allocated to assist our vulnerable people in our aged-care facilities should be spent on ensuring that their care is the best it can be all the time. That would be the expectation of all of us, regardless of where we sit in the political spectrum. I thank the honourable member for his question and for providing me with a copy of the submission, which I look forward to reading. I will take the details of his question on notice and get back to him with a more specific response as soon as possible.

UNEMPLOYMENT RATES

The Hon. WALT SECORD (12:33:47): My question without notice is directed to the Minister for Finance and Small Business. Given that this morning the Australian Bureau of Statistics reported that New South Wales lost another 44,000 jobs and the official unemployment rate in May was 7.1 per cent and is expected to rise to 8 per cent by the end of the month, and given the Minister's comments yesterday that small business grants

were directed at businesses "most at risk", why does the Government's programs exclude sole traders and partnerships that have been hit by the economic crisis?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:34:27): I thank the member for his question. Clearly unemployment rates have gone up. It is tragic that these figures reveal that 824,000 Australians are out of work. It is incumbent upon all governments to do what is within their powers to be job creators. I reiterate what I said during the debate on the pay freeze: It is better to give people a pay cheque rather than a pay rise. That is the priority of this Government. The fact that people are unemployed is an assault on their dignity and we ought to support the measures that are being undertaken by governments for the purpose of trying to get people back into work. I was delighted by the announcement of the Planning System Acceleration Program, which was introduced by the Minister for Planning and Public Spaces, and the announcement this morning about the new Sydney Fish Market.

When talking about the job figures, the shadow Treasurer failed to say that 7.1 per cent is the Australian figure. For the benefit of the House, the figures can be broken up in this way: the State with the greatest unemployment figure is the saviour from the west, with a 8.1 per cent unemployment rate; Queensland and South Australia both have 7.9 per cent unemployment rates; Victoria has a 6.9 per cent unemployment rate; and New South Wales has a 6.4 per cent unemployment rate. That is less than what we were anticipating but it is nothing to glory in. Indeed, any circumstance where people lose their employment should be a red light that triggers a response from government to work harder and move faster for the purpose of job-creation programs. The evidence is yet to be borne out but some of the programs that the Government has introduced during the pandemic have helped a little to suppress the impact on New South Wales job figures. In the future we will know more about that but we ought to look at what we can do now to create more and more jobs. The \$10,000 business grants have contributed to— *[Time expired.]*

The Hon. WALT SECORD (12:37:46): I ask a supplementary question. Will the Minister elucidate his answer? In his answer he said that unemployment is a great assault on people's dignity and he referred to the Sydney Fish Market. How many jobs are being created in Denmark due to the contract for the fish market going to Denmark?

The Hon. Natasha Maclaren-Jones: Point of order: That is a new question and not a supplementary question.

The PRESIDENT: The supplementary question is in order.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:38:53): I thank the member for his supplementary question. The inference is that because a Danish architect won a design competition for—

The Hon. Shayne Mallard: Walt doesn't like the Opera House.

The Hon. DAMIEN TUDEHOPE: Indeed. The point I was coming to was that we are establishing on the foreshore of Sydney another Danish icon.

The Hon. Don Harwin: We would have a box on Bennelong Point if it was up to him.

The PRESIDENT: Stop the clock. On behalf of all members, I apologise to Hansard. I do not know how they will possibly work out who was saying what with the continuous interjections. A supplementary question was asked of the Minister. A point of order was taken on the supplementary question. I ruled that the supplementary question was in order. The Minister started to answer. Only the Minister had the call, not other Government members.

The Hon. DAMIEN TUDEHOPE: The process for these major projects, as it should be, is that a design competition is conducted to get the best possible result for this potentially iconic place for the people of New South Wales. The Sydney Fish Market has the second highest number of tourist visitors of any institution in Sydney. After people get off the plane and go to the Sydney Opera House they go to the Sydney Fish Market. That sounds like a conjunction worth supporting. The fact is that there are two Sydney-based architectural firms that are the winners, assisting in the design work and the completion of the construction.

Members may have heard—and I am sure the Hon. Walt Secord paid particular attention—that this project will create 700 jobs during the course of construction and an additional 700 jobs for all those people who will work in that precinct after its completion. We should be celebrating this project as an initiative of this Government, celebrating the design of this new project and saying that this Government is in fact delivering for the people of New South Wales.

The PRESIDENT: I had an opportunity to look at the list of members who have been called to order both last year and this year. I congratulate the members who are coming first equal. It is a tie between a couple of them. But it is not a gallant award where the one who gets the most votes wins. I remind Government members that they are not assisting the Chair when they interject. The Hon. Daniel Mookhey has the call.

The Hon. DANIEL MOOKHEY (12:42:34): I congratulate the Hon. Walt Secord on winning that competition.

The PRESIDENT: He is not ahead of you.

The Hon. DANIEL MOOKHEY: Challenge accepted. The President has just put a big target on my back! I digress. I ask a supplementary question. Will the Minister elucidate his answer? When he reports that the New South Wales unemployment rate is at 6.4 per cent, will he confirm that that figure excludes the 44,000 people in New South Wales who left the workforce in the month of May? Will he confirm also that that is a record number of exits from the New South Wales labour market in a single month?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:43:37): Those job figures were released at midday today.

The Hon. Walt Secord: At 11.31 a.m.

The Hon. DAMIEN TUDEHOPE: I thank the member for his contribution.

The Hon. John Graham: Why don't you ask the crossbench?

The Hon. Adam Searle: He's checking his emails.

The Hon. DAMIEN TUDEHOPE: The shadow Treasurer makes a good point.

The Hon. John Graham: He is the shadow finance Minister.

The Hon. DAMIEN TUDEHOPE: Is he? Sorry. In order to drill down on those figures and the number of people who have just left the workforce and the like, I would need to assess those figures with the opportunity of time, rather than giving an answer now that may—

The Hon. Penny Sharpe: I can tell you it is no.

The Hon. Shayne Mallard: Point of order: My point of order relates to interjections. I point particularly to the Hon. Penny Sharpe and the Hon. Daniel Mookhey, who interjected while I was taking my point of order. I ask that you call the Hon. Daniel Mookhey to order.

The PRESIDENT: I knew it was a mistake to tell the Hon. Daniel Mookhey that he was in the lead. I uphold the point of order. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: The analysis of the job figures needs to be done by Treasury to establish the impacts on us. But what the Hon. Daniel Mookhey should say is that although the figures are bad and anyone not having a job is bad, the New South Wales Government is doing something that is not bad, because we are at the bottom of the league table for unemployment rate increases. It would be helpful if the shadow finance Minister or shadow Treasurer supported the measures taken by the Government to deliver jobs for this State.

COVID-19 AND SMALL BUSINESSES

The Hon. SAM FARRAWAY (12:46:19): My question is addressed to the Minister for Finance and Small Business. What is the New South Wales Government doing to help small businesses reopen to their customers in a COVID safe way?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:46:40): I thank the member for his question. One thing that is occurring in the community at the moment is the reopening of businesses. Whilst the lifting of COVID-19 restrictions will have hugely positive impacts for businesses, jobs, the economy and even our way of life in New South Wales, we cannot forget the health advice that must continue to be followed. This virus is very contagious, there is no cure and it kills people. We ought always remind ourselves that that is what we continue to deal with. It is easy to get caught up in economic discussions about where everything is going, but if we look at some of the images available from around the world of where other countries are going and we look at where China is at the moment, with a second wave hitting, we need to be very cautious. That is why it is important that we reopen businesses in a COVID safe way. There are steps for businesses to take to become COVID safe. They can complete a COVID-19 Safety Plan, register as a COVID Safe business and show that they are COVID safe to their customers.

There are 18 industry-specific COVID-19 checklists and safety plan templates readily available on the Service NSW website, and Service NSW is ready to assist to provide advice on hygiene, safety, physical distancing and to record the contact details of customers and staff wellbeing. COVID-19 safety plans are available for industries including auctioneering; beauty, nail, waxing, tanning and hairdressing salons; hotels and accommodations; libraries, markets, museums and galleries; places of worship; clubs, pubs and bars and the list goes on. Once those plans are completed, registered businesses can display downloadable badges in their premises to show their COVID safe status. They can even integrate their COVID safe status with Google Maps, giving customers a level of comfort when they are searching online. Nearly 4,000 businesses have already taken up the option of registering as a COVID Safe business, with thousands more downloading a COVID-19 Safety Plan template. That is why the \$3,000 Government grant should be used to deliver a COVID safe environment.

INFORMATION SHARING

The Hon. MARK PEARSON (12:49:37): My question is directed to the Minister for Finance and Small Business, representing the Premier. Research conducted over recent decades has concluded that perpetrators of violence against humans often commence their history of abuse with the harming of animals. Is the Premier concerned that critical information stored in the databases of departmental children's services, police, the RSPCA and the Animal Welfare League NSW about perpetrators of violence against women and abusers of vulnerable victims of crime, such as children and animals, is not being shared due to a lack of interconnectivity between the databases? If so, what is being done to remedy the problem?

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:50:30): I thank the member for his question. I make this observation in relation to the premise of his question that there is interconnectivity between particular assaults on children and women and the potential cruelty to animals. I accept that that research exists. I think the substance of his question goes to this: Is there the relevant sharing of information relating to those particular incidents so that organisations can potentially predict in relation to those in the community who have displayed attitudes of cruelty towards animals that there are indicators that certain other pathologies may arise.

The Hon. Shayne Mallard: Arsonists, too.

The Hon. DAMIEN TUDEHOPE: I thank the member for his interjection—people who burn down buildings too. I accept the premise of what the member says. In relation to the level of sharing of information that would give agencies an insight into people who potentially have pathologies relating to cruelty to animals—or for that matter people who engage in arson activities, as the Hon. Shayne Mallard mentioned—who then potentially graduate towards serious paedophilia, violence towards women or other forms of criminality, I think that is something that I will direct to the Premier to get a more fulsome answer.

SCHOOL INFRASTRUCTURE

The Hon. GREG DONNELLY (12:52:37): My question without notice is directed to the Minister for Education and Early Childhood Learning. Given it was revealed earlier this week that the New South Wales Government is creating prefabricated schools in Victoria, will the Minister confirm that the schools in Catherine Field, Marsden Park and Wagga Wagga will be built completely in New South Wales?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:53:08): I thank the member for his question in relation to the new schools that the Government is building using a new technology for us in New South Wales, which we call DFMA, designed for manufacture and assembly. They are buildings that are built off site to high standards and then assembled quickly on site, reducing the amount of time for onsite construction. There are a lot of advantages in building this way. It encourages innovation in the construction and manufacturing sector, creating a more competitive market and improving productivity. It opens up participation in the construction industry to a broader market and also supports apprenticeship, trade and production management skills training and greater workforce diversity in safe conditions.

The Hon. Walt Secord: In Victoria.

The Hon. SARAH MITCHELL: I am answering the question. Let me answer. In relation to the specifics of the member's question about why the construction of the school at Jordan Springs took place outside New South Wales there is a very simple answer: The method of construction of public school facilities on this large scale is new to New South Wales. That is why we have done a pilot program with the five schools. I will say that local building contractors were procured and the services of specialist contractors were engaged. One of these manufacturers has facilities based in Victoria; another has a facility based in New South Wales. What we have seen through the success of this pilot program is that it has worked. School infrastructure has commenced engagement with the building industry more broadly—

The Hon. Greg Donnelly: Point of order: The question was quite specific with respect to three school sites and specifically about the complete building of the schools for those three sites. The Minister has one minute and twenty-five seconds left and we are not even getting particularly close. I ask the Minister to—

The PRESIDENT: I believe the Minister is getting to the heart of the question. The Minister has the call.

The Hon. SARAH MITCHELL: I was asked about construction of those buildings outside New South Wales and was explaining that the reason is that the scale is new to New South Wales. That is why we are engaging with contractors who have facilities based in Victoria; another has a facility based in New South Wales. The pilot has worked well. We now have ability, as the Government and School Infrastructure NSW are doing, to talk to industry in New South Wales. This is really exciting for industry in New South Wales. There are a lot of schools in the pipeline and there are some great opportunities—

The Hon. Greg Donnelly: Point of order: I reiterate my point of order—

The PRESIDENT: I do not have a copy of the question. It would assist if I had a copy. The Clerk has stopped the clock. What is the honourable member's point of order?

The Hon. Greg Donnelly: The question is specifically with respect to the three schools mentioned. We are not talking about pilot projects and a range of other things—

The Hon. SARAH MITCHELL: Those schools are part of the pilot.

The Hon. Greg Donnelly: It is asking about the three schools and whether they are going to be completely built in New South Wales.

The Hon. Bronnie Taylor: To the point of order: The Minister was being directly relevant to the question. She was specifically referring to each component of the question. I ask that the member allow her to continue because she was being directly relevant.

The PRESIDENT: The first part of the question states, "Given it was revealed this week that the New South Wales Government is creating prefabricated schools in Victoria...". It then goes on to talk about three specific schools. The Minister is being directly relevant, especially to the first part of the question. The Minister has the call.

The Hon. SARAH MITCHELL: It is directly relevant because two of the schools that the member has talked about in his question, Catherine Field and Wagga Wagga, are DFMA projects that are part of this pilot. They are two of the five schools that are part of the pilot. I can tell the member that the Catherine Field Primary School is a DFMA project. Hansen Yuncken is the contractor and Modular Building Systems has been subcontracted to deliver the school. Its factory is based in Smithfield in western Sydney. That is where the structural framework will be built and the fit-out of the modules will be completed in Queensland. Out at Wagga Wagga the new primary school is also a DFMA project and is part of the pilot. Again Hansen Yuncken is the contractor and it will be the same scenario where the factory for building the structural framework is based in Smithfield. The fit-out of the modules will be in Queensland as part of this pilot project. The third school that the member referenced in his question, Marsden Park, will be a traditional build and not one of the DFMA projects. It will be constructed in the usual manner.

The Hon. Walt Secord: In Queensland!

The Hon. SARAH MITCHELL: The market is not in New South Wales yet. We are creating it. It is exciting.

The Hon. GREG DONNELLY (12:58:18): I ask a supplementary question. In answering the question, with respect to the Catherine Field and Wagga Wagga schools, I understand the Minister specifically referred to an element of this work being done in Queensland as part of this trial. Will the Minister elucidate her answer with respect to explaining clearly to the House what aspects of the pilot for these two schools is going to be completed in Queensland?

The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:58:56): I think I did cover that in my original answer but I am happy to reiterate. As I said at the beginning, the nature of the scale of the facilities is new in New South Wales. This is actually exciting for industry and advanced manufacturing in New South Wales because we have done the pilot of five schools and it has worked exceptionally well. We are actively looking at ways to engage industry because the scale is there. The construction industry is excited about this and we are talking to it about opportunities. We know that this is an opportunity for us and for those advanced manufacturers to have a great—

The Hon. Greg Donnelly: Point of order: My supplementary question was quite specific regarding the element of the work with respect to those two schools that is going to be completed in Queensland. It is specifically with respect to the elements to be completed in Queensland. I ask that the Minister be drawn back to the specifics of my question.

The PRESIDENT: The Minister was being directly relevant at the commencement of her answer, when she indicated she had already answered that part of the question. I believe she then started to move a little away from the question. I bring the Minister back to being directly relevant to the question.

The Hon. SARAH MITCHELL: I will reconfirm what I said in my earlier answer. The factory for modular building systems is in Smithfield and the structural framework will be built there. The fit-out of the models will be completed in Queensland. That is the case for both the school at Catherine Field and at Wagga Wagga.

The Hon. Walt Secord: I wish to ask a second supplementary question.

The Hon. DAMIEN TUDEHOPE: Mr President—

The PRESIDENT: Supplementary questions are allowed at my discretion.

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

ANTI-DISCRIMINATION BOARD OF NSW

The Hon. MARK LATHAM (13:01:12): My supplementary question for a written answer is directed to the Minister for Finance and Small Business. For each of the past five years, how many single individuals lodged complaints with the Anti-Discrimination Board of NSW and how many single individuals lodged more than (a) five, (b) 10, (c) 20, (d) 30 and (e) 40 complaints?

SCHOOL INFRASTRUCTURE

The Hon. COURTNEY HOUSSOS (13:01:39): My supplementary question for a written answer is directed to the Minister for Education and Early Childhood Education. Would the Minister list whether any additional schools have signed contracts or are currently being planned to be built as prefabricated buildings in either Victoria or Queensland?

Questions Without Notice: Take Note

TAKE NOTE OF ANSWERS TO QUESTIONS

The Hon. PENNY SHARPE: I move:

That the House take note of answers to questions.

EARLY CHILDHOOD EDUCATION

The Hon. PENNY SHARPE (13:02:26): I take note of the answer given by the Hon. Sarah Mitchell regarding early childhood centres and the funding that New South Wales is putting into both community preschools and the local government childcare centres. I commend the Government on the money that it put in during the COVID crisis. It put \$51 million into 700 community preschools and \$82 million into 267 council childcare centres. The reality is that this Government is going to stop that funding in September. It was unclear from the Minister's answer whether the money for those local councils centres would continue, given the Morrison Government has pulled the rug out from underneath working women, their families and those centres by getting rid of free child care.

We have talked a lot about economic recovery and some terrible figures have come in this morning. The unemployment rate is 7.1 per cent. The unofficial rate is actually 11.3 per cent. Over one in 10 people are not working. We have an under-utilisation rate of 20.2 per cent. The Australian Bureau of Statistics has told us this morning that one in five employed people in Australia have either lost their job or have lost hours. We have spoken a lot about that this week. We have talked about women bearing the brunt of that. There are things that New South Wales can do to get women back to work. If we get women back to work we will see much faster economic recovery. We get two dollars' worth of benefit to the economy for every dollar spent on early childhood. The KPMG report in 2018 said that halving the gap between male and female workforce participation would increase gross domestic product in this country by \$60 billion over 20 years.

The figures speak for themselves and yet we do not see any commitment to women's work, to women's jobs or to giving serious support to women returning to the workforce. We all support the money that is going into infrastructure and manufacturing but we need to understand that that workforce is 70 per cent to 90 per cent male. We are fundamentally relying on the women who are at home and who are out of work to pick up the caring for the children or the elderly parents of those male workers. We have to come to grips with that and have specific projects that will get women back into work. The Government has an opportunity to do two things here. It needs to break down the doors of the Federal Government to reform child care in this country so that it works for all families and it is affordable. It currently is not. In our small corner of the world we can at least extend the programs that we are responsible for so that women can reap the benefit and get back to work. [*Time expired.*]

COVID-19 AND SMALL BUSINESSES

The Hon. SAM FARRAWAY (13:05:28): I take note of the answer of the Leader of the Government to my question today on small businesses reopening in a COVID-safe manner. It was fantastic to hear that there are some easy steps to do that. The Minister outlined three easy steps to complete the COVID-19 safety plan, to register as a COVID-19-safe business and to show that businesses are COVID safe for their customers. The Minister outlined the 18 industry-specific checklists. I want to highlight one of those categories, which is pubs, clubs, bars and breweries. As a regionally based member, it was fantastic to see Sydneysiders head out to the regions over the recent long weekend. It was fantastic to see travellers head to the regions to support these local businesses, particularly local restaurants, eateries and pubs.

In these uncertain times, these businesses embraced the measures that obviously needed to be put in place for them to open their doors with restrictions. There was hand sanitiser and a record book at the front and many businesses embraced the QR code scanning as customers entered their establishments. Businesses are working in uncertain times and it is good to see they have embraced what they need to do to open. It was also really good to see a lot of people from the city embrace the regions during the long weekend—staying in motels, eating at clubs and visiting parks. It was incredibly pleasing to see that happen. This ties in with feedback on the ground, despite what some members have said in this House about the \$3,000 small business recovery grant.

Many businesses have been able to utilise these grants for their reopening. They have been able to use it for advertising, whether on social media, in print or at a local level, that they are COVID safe, that they have their COVID plans in place and that they are open for business. More importantly, they can re-engage with the workforce. Whilst many workers have been on the Federal Government's JobKeeper plan, many want to re-engage with their employer and their workforce as well. It is good to see people back at work. I will put on record the Minister's answers on unemployment figures. New South Wales is at 6.4 per cent. I say with pride that my home area in the Central West, as confirmed by the lead economist at Commonwealth Securities, has an unemployment rate of 4.7 per cent. This is testament to the resilience of the regions and to the types of industries that are placed throughout regional areas. It shows that we can bounce back from this pandemic. [*Time expired.*]

UNEMPLOYMENT RATES

EARLY CHILDHOOD EDUCATION

SCHOOL INFRASTRUCTURE

STATE ECONOMY

The Hon. WALT SECORD (13:08:37): As shadow Treasurer I take note of the debate on the economy, schools and child care and the answers provided by the finance Minister and the Minister for Education and Early Childhood Learning. The finance Minister did not know that this morning at 11.31 a.m. the job figures came out. We were told by the Australian Bureau of Statistics that in May New South Wales lost another 44,000 jobs. Unemployment by the end of this month will be at 8 per cent and 43,000 people have left the workforce. That is extraordinary. I will build on the question asked by the Hon. Penny Sharpe about child care. The best thing that this Government can do to support women and get them back to work is to provide free child care and to extend that beyond September. Again, this is 50 per cent of the workforce which must be supported properly. We have a situation.

I also take note of the Sydney Fish Market. I cannot believe the finance Minister would trumpet that project when he knows that, while I talk about jobs, jobs, jobs and even more jobs, this Government is creating jobs in Copenhagen. The Government should be creating jobs in New South Wales. I make no apologies for putting New South Wales jobs ahead of Danish jobs. I find it extraordinary that this Government would provide a contract for that. I note that we found out today there was an issue with prefabricated schools being built in Victoria instead of in New South Wales. Instead of reassuring the House, the Minister for Education and Early Childhood Learning made it worse by explaining that they are being assembled in Queensland. They are flying or driving them through New South Wales, assembling them in Queensland and then bringing them back. That is extraordinary. They

should be built in New South Wales. Those jobs should be here. The Government should put New South Wales jobs first. It should be jobs, jobs, jobs and even more jobs—not jobs in Queensland, not jobs in Victoria, not jobs in Denmark but jobs in New South Wales.

Finally I take note of a written answer given earlier this week. I asked about the number of screwdriver-ready projects and I asked for a list. The Minister in this Chamber boasted about a lengthy list that he had. I feel that the Minister has not complied with the spirit or the letter of what a written answer should be. In fact, I received an answer of four paragraphs where he talked about limiting the spread of COVID in rural and regional areas and how the Government has invested in the health and hospital system. He talked about how they are doing this and how they are doing that but there was no mention whatsoever of a single project. I hope this is not like the programs for small business, which are a cruel hoax in that no-one can apply for them. In fact, earlier this week we saw that only \$600,000 had been taken up from a grants program worth \$440 million. That is a scandal and the Government should be ashamed.

PLANNING SYSTEM ACCELERATION PROGRAM

The Hon. TAYLOR MARTIN (13:11:37): I take note of the answer of the Leader of the Government to my question on how the New South Wales Government's Planning System Acceleration Program is helping to create jobs across New South Wales. The Minister spoke about the new Sydney Fish Market, which this week had its final plans approved with key early works to commence within the next eight weeks.

The Hon. Penny Sharpe: Are you reading his dixer again?

The Hon. TAYLOR MARTIN: That is what you call fast-tracked. This project will create 700 jobs during the construction phase with a further 700 jobs when the new market is opened in 2024 or, as the Leader of the Government put it, "Jobs, jobs and more jobs." The design of the building is of an extremely high quality with its undulating roofline, waterside promenade and grand amphitheatre.

The Hon. Penny Sharpe: This is word for word what the Minister said.

The Hon. Bronnie Taylor: Point of order: The interjections are constant.

The PRESIDENT: Interjections are disorderly. I do not wish to take up the time of the Hon. Taylor Martin. I uphold the point of order. The Minister for Mental Health, Regional Youth and Women is absolutely correct. I will call members to order after the Hon. Taylor Martin has concluded his speech.

The Hon. TAYLOR MARTIN: The new Sydney Fish Market is sure to become a new landmark for the city of Sydney—just like the other Danish design in Sydney. I note the criticism from Opposition members who interjected during the Minister's answer that the design came from a Danish architectural firm, but if any Opposition members have criticism about that perhaps during the luncheon adjournment they should take a walk down to the other end of Macquarie Street and see another landmark that was designed by a Dane and then reconsider their opinion. The Leader of the Government told us in his answer that 36 projects had been fast-tracked under the Planning System Acceleration Program. That has created opportunities for more than 23,000 direct jobs—and of course we have only to think of the indirect jobs that will flow on from that—and almost \$13 billion worth of economic investment across the State at a time when it is very much needed.

Another of the projects that has been fast-tracked is the University of Newcastle Honeysuckle campus stage 1A, which will strengthen the university's presence in the Newcastle CBD even further by providing learning, cultural and social benefits to the region. That project is worth over \$23.35 million and it will create over 780 jobs in the Newcastle CBD during construction. Another of the projects to be fast-tracked is the new public school at Warnervale. The Warnervale primary school is a \$31.9 million project that has significant job investment in public benefits to the Central Coast. In addition to providing 225 jobs at this critical time, the new Warnervale primary school also will deliver vital infrastructure to this growing part of the Central Coast. I commend the Leader of the Government for his commitment to jobs, jobs and more jobs at this critical time.

The PRESIDENT: It is becoming clear to me that when Opposition members are speaking, Government members will continually interject. When Government members are speaking, Opposition members will continually interject. This has continued incessantly. I have made it clear that I am reluctant to rule on points of order intended to prevent a member from speaking because the time of the member with the call is taken up. I propose to allow the interjections to continue if they are fair. As soon as the member who has the call finishes speaking, I will then call to order—without any further warning or notice—the members who have interjected. I give the call to the Hon. Anthony D'Adam, who will be heard in silence.

LOCAL SCHOOLS, LOCAL DECISIONS

The Hon. ANTHONY D'ADAM (13:15:15): I take note of a written answer provided this day by the Minister for Education and Early Childhood Learning in response to a supplementary question I asked yesterday. Yesterday in question time the Minister took what I think was intended to be a dixer but which was an admission of failure by the Government. It was an admission that there are underperforming schools in our system. It was an admission of what we have known for a long time, what the data has told us and what the Government continues to ignore—that there are failing schools in our system, schools that are failing their students, schools that are failing their communities and schools that the Government is refusing to do anything about.

I can see that the Minister is sincere and that she genuinely wants to do something about this—at least that is the impression I have. Yesterday I asked a question about the number of underperforming schools that would be targeted for turnaround. Today the answer that I received is zero; that there is no action proposed. Despite knowing that these schools are underperforming there does not appear to be a sense of urgency in the Government or in the department to take action to fix that. Meanwhile students and communities desperately need that action now. I also raise concern about the approach the department takes in relation to this information. The department knows these schools exist yet it does not bring the parents, students and the community into its confidence. The department keeps them in the dark and is not honest. Worse, the department compounds the problem with an enrolment policy that effectively says, "You can't move to another school. You have to stay put and continue to receive an inadequate education", and that is a problem.

COVID-19 AND SCHOOLS

SCHOOL INFRASTRUCTURE

The PRESIDENT: Is a Government member seeking the call?

The Hon. Wes Fang: I am happy to wait for the Hon. Courtney Houssos to speak. Ladies first, Mr President.

The PRESIDENT: There is a system of Labor, Government, crossbench, et cetera. If the Government member is not seeking the call, I will give the call twice to Labor. I call the Hon. Courtney Houssos.

The Hon. COURTNEY HOUSSOS (13:17:50): Today in question time Labor asked a number of questions about when the additional cleaning measures that were announced will be ended in schools. We discovered that they will end in just over a fortnight's time. Teachers tell us that schools are only now being cleaned to an appropriate standard. This additional funding comes after years of cuts to school cleaning contracts that resulted in a ludicrous situation only a couple of years ago when cleaners were given only a matter of minutes to clean an individual classroom. The Labor Opposition knows that during COVID cleanliness is such an important factor of protecting against the disease, as the Leader of the Government outlined today. COVID is very contagious, has no cure and is killing people.

The advice in schools is that social distancing is not required so cleaning takes on an even more important role; yet today in question time the Minister refused to guarantee that additional funding will go past the end of the term in just over a fortnight's time. This morning we heard reports that the flu rates already are increasing with the very limited opening up of the economy. We have seen increased rates of flu. In a responsible question from me during budget estimates the health Minister said that the flu is a significant comorbidity when it comes to catching COVID. A person who has the flu and catches COVID is much more likely to have a serious ailment. The increased standard of cleaning in schools must be maintained until at least the end of the year. I call on the Minister for Education and Early Childhood Learning to make that announcement sooner to give parents, students and teachers the security they need.

In question time today it was revealed not only that prefabricated schools are being manufactured in Victoria but also that they are being manufactured in Queensland at a time when, as we learnt today, a further 227,000 jobs were lost throughout the country in May. I do feel for Victoria because its unemployment now is half a percentage point higher than is the rate in New South Wales, but during this time the Government must be focused on creating jobs in New South Wales. Last week NSW Labor called for a building blitz to begin with our schools. This week Labor discovered that the Government is doing a building blitz but is taking care of Victorian and Queensland tradies instead of our own in western Sydney. The schools for New South Wales should be built in New South Wales. They should be a crucial part of a construction-led recovery from COVID. We need to ensure that the multiplier effects of government contracts that have flow-on effects for the retail, hospitality and other sectors of the economy are experienced in New South Wales, not in Victoria and not in Queensland.

EARLY CHILDHOOD EDUCATION

The Hon. ADAM SEARLE (13:20:54): I wish to comment on the questions asked and answers given about the need for economic recovery and things that may contribute to that. I acknowledge the contribution of the Deputy Leader of the Opposition, the Hon. Penny Sharpe, about one of the key ways of driving economic growth and productivity growth being to increase women's participation in the labour market. She cited some very important research from KPMG published a couple of years ago that referred to a \$60 billion dividend for the economy over 20 years. That would mean an economic growth dividend for New South Wales of \$1 billion a year, but the economic potential does not stop there.

The McKinsey Global Institute recently estimated that the economy could grow by up to 12 per cent or \$225 billion over the next five years if we reduced structural barriers to women's participation in the labour market. That means not only addressing the high cost of child care and the interaction between childcare costs and marginal tax rates but also addressing the systemic undervaluation of feminised industries, as well as gender violence against women not only in the workplace but also across society and other structural barriers. That \$225 billion over five years would be \$45 billion a year, which means for the State of New South Wales anywhere between \$15 billion to \$18 billion in additional economic benefits. That is not small change. That is something worth striving for, not just for the economic benefit of us all but also to make New South Wales a fairer and more equal society, which I would hope is an aspiration shared by all members of this House and by all members of society. But it will not happen overnight and it will not happen by accident unless we redouble our efforts to address all of the matters I have referred to.

What is happening now? The Federal Government is turning off the tap on free child care and removing JobKeeper from the childcare industry, even though I think that approximately 87 per cent of employees in the childcare industry are women. This is again an instance of women bearing a disproportionate brunt of the withdrawal of certain forms of support. This is a matter that all members of Parliament should be aware of. The pay freeze or pay cut proposed by the State Government will impact upon the more than 60 per cent of employees in the public sector who are women. When governments make decisions, they should be very mindful of who bears the burden. Too often it is mostly women in our society. Governments should be mindful of that and should strive to avoid it. But more than that, the Government has to lift its game and should do so in the structural undervaluing of feminised industries—and we have the levers to do something about that—and violence against women across society. [*Time expired.*]

SCHOOL INFRASTRUCTURE

The Hon. WES FANG (13:23:58): We should communicate with the Leader of the Opposition in the other place. I think she needs to find another spot on her crossbench—

The Hon. Adam Searle: Point of order: First of all, the Hon. Wes Fang's speech has nothing to do with the questions asked or answers given. It has no relevance whatsoever. Secondly, it is quite clear it is intended to be an attack on a member of the other place, which can be done only by substantive motion. The speech is out of order.

The Hon. Natasha Maclaren-Jones: To the point of order: The Hon. Wes Fang had only just begun to make his comments. I am sure that he will be moving to more detailed remarks about the questions and answers.

The PRESIDENT: I will rule on the point of order. I agree with the Leader of the Opposition in relation to the first part of his point of order. I could not see how anything that was said had anything to do with the take note of answers or on the topic of the questions that had been asked.

The Hon. WES FANG: Okay. I take the—

The PRESIDENT: I will finish my ruling on the second part of the point of order.

The Hon. Bronnie Taylor: Point of order—

The Hon. Adam Searle: I will withdraw.

The PRESIDENT: I will finish my ruling. As far as the second part of the point of order is concerned, the member had not really said in any way anything that convinces me there was going to be an imputation or a reflection. Perhaps if he had been allowed to continue without the point of order being taken, he would have reached that stage but the point of order stopped him from reaching that stage and stopped me from even assuming that he would get there. I notice that the Leader of the Opposition has now withdrawn the basis of the next point of order taken by the Minister for Mental Health, Regional Youth and Women. I want to leave the Hon. Wes Fang some time in which to make his contribution. The Hon. Wes Fang has the call.

The Hon. WES FANG: I take note of the answer given by the Minister for Education and Early Childhood Learning. We are seeing a scare campaign being run by the Opposition. On the point of schools being manufactured in situ, certainly yes there are pilot programs where some schools have been built in Victoria and in Queensland, but Smithfield is delivering the next three modules, one of which is for Wagga Wagga. This is a new industry that is being introduced in New South Wales. Other States have had more experience in that industry but we are now delivering that experience in this State and it is delivering New South Wales jobs.

On the question of school cleaning, certainly we have seen increased school cleaning from the education department, which should be congratulated. Yet again this is another scare campaign being run by the Opposition to scare parents and teachers. I notice that the Yanco Agricultural High School was mentioned. The Minister for Education and Early Childhood Learning and I both visited the school and agreed it is in need of an upgrade. Getting students back to boarding schools is entirely important. [*Time expired.*]

TAKE NOTE OF ANSWERS TO QUESTIONS

The Hon. CATHERINE CUSACK (13:27:04): In concluding the take-note of answers to questions debate, I acknowledge all members who contributed. The Hon. Penny Sharpe raised an issue that I think vexes every member of Parliament, which is how we increase female participation in the workforce and what can we do as we come out of the COVID crisis to utilise that opportunity to make some of those changes. The Productivity Commission and similar bodies repeatedly have said for years that of any economic reform that could be undertaken, the lowest hanging fruit is increasing female participation in the workforce and removing barriers.

During the lockdown period I was fascinated to read in *The Sydney Morning Herald* when news was scarce a story on data showing that women are not enjoying the lockdown nearly as much as are men, and that big mystery was being investigated. I did think to myself that there is not much mystery there. In getting that balance right, we should ensure that the money invested in child care is actually going to work-related purposes. To me, that is the single biggest policy hurdle that State and Federal governments have to overcome. Of all the increased expenditure on child care it seems that less and less funding makes its way to work-related child care. Indeed, for women who have incomes the notorious three days' worth of child care after which they end up paying the Government and paying other people, thereby losing money themselves, is a conundrum. That needs to be sorted.

I thank the Hon. Sam Farraway for referring to the small business and COVID safety plans mentioned by the Minister for Finance and Small Business. The Hon. Sam Farraway spoke really well and made an important point for all of us to remember: That residents of Sydney jammed motorways going out to the regions, which really created a wonderful sense of optimism and hope in the regions. I was really interested in the Central West employment statistics. The regions are resilient, as the Hon. Sam Farraway said. The Hon. Walt Secord and other members referred to Labor's prescriptions for economic success, but the idea that we go back to the old days of interfering in government contracts and we should ignore value for money in government contracts and do special deals using government contracts is something that just will not be entertained ever by this Government. That approach landed so many Labor Ministers in jail and it is so fraught and difficult. The State Government must continue to utilise every taxpayer dollar for best value and ethically. [*Time expired.*]

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

Motion agreed to.

Written Answers to Supplementary Questions

LOCAL SCHOOLS, LOCAL DECISIONS

In reply to **the Hon. ANTHONY D'ADAM** (17 June 2020).

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

Key to the reform of Local Schools, Local Decisions will be delivery of school targets for student performance, underpinned by a supportive accountability framework for schools. The support for schools will include enhanced assistance for those schools unable to meet established performance targets, tailored to account for the specific areas where schools need to build capacity in order to improve student learning outcomes. The Government will consult with key stakeholders on the additional targets that would support schools in driving improvement in student outcomes.

The outcomes of the review of Local Schools, Local Decisions, including details of the support available to schools, will be finalised at the end of this year for implementation in 2021.

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

*Business of the House***SUSPENSION OF STANDING AND SESSIONAL ORDERS: CENSURE**

The Hon. JOHN GRAHAM: I move, according to sessional order:

That standing orders be suspended to allow the order of the day for resumption of the debate on the motion to censure the Leader of the Government for failure to produce documents in accordance with orders of the House be called forthwith.

Motion agreed to.

ORDER OF BUSINESS

The Hon. JOHN GRAHAM: I move:

That the order of the day for resumption of the debate on the motion for censure of the Leader of the Government for failure to produce documents be called on forthwith.

Motion agreed to.

*Motions***THE HON. DAMIEN TUDEHOPE****Censure**

Debate resumed from an earlier hour.

The PRESIDENT (15:01:43): Before question time today, the Hon. Daniel Mookhey moved an amendment to the motion moved by the Hon. John Graham that seeks to censure the Leader of the Government. On its face, the amendment moved by the Hon. Daniel Mookhey amends the further order of the House to produce the documents being sought. However, in order to do so, it effectively involves amending the terms of the three previous orders of this House dated 27 February, 13 May and 17 June this year. Whilst there is nothing contrary to the standing orders in amending a previous order—and I note that the Hon. Mark Banasiak did that yesterday—the difficulty I have with the amendment moved by the Hon. Daniel Mookhey is that it would effectively amend previous orders by which the motion moved by the Hon. John Graham is seeking to censure the Leader of the Government for noncompliance. For that reason, I uphold the point of order taken by the Hon. Don Harwin and rule that the amendment moved by the Hon. Daniel Mookhey is out of order.

In doing so, I note that a censure motion is a very serious matter and that a censure motion of this nature may in fact be a preliminary step towards a more serious course of action. It is therefore imperative that any such steps be based on a sound and secure foundation and be able to withstand scrutiny. As the independent and impartial representative of this House, it is incumbent upon me to uphold the privileges of all members and the House. In making this ruling I am seeking to ensure the soundness of any decisions of the House in this important area of scrutiny of Executive Government. I invite further speakers in the debate to take part in regard to the motion.

The Hon. PENNY SHARPE (15:03:59): I move:

That the question be amended as follows:

- (1) Omit paragraphs (1), (3) (b), (4) and (5).
- (2) Insert before paragraph (2):
 - (1) That under Standing Order 52 there be laid upon the table of the House by Friday 31 July 2020 the following documents in the possession, custody or control of Transport for NSW:
 - (a) the final business case for the proposed Western Harbour Tunnel and Beaches Link;
 - (b) the strategic business case for the proposed Western Harbour Tunnel and Beaches Link; and
 - (c) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.
- (3) Insert after paragraph (3):
 - (4) That should the Leader of the Government fail to table the documents in this resolution, this House orders the Leader of the Government to attend in his place at the table at the conclusion of prayers on Tuesday 4 August 2020 to explain his reasons for noncompliance.

I am seeking to find a way through this by moving the amendment. Today we have heard a lot of debate and discussion about the powers of this House, the need for this House to have powers to stand up for the people of New South Wales and the need to compel the Government to produce documents. The amendment I have moved will move us forward in relation to this debate because it gives the Government yet another opportunity to provide these documents, which the Opposition knows exist, which the people of New South Wales have a right to see

and which need to be produced along the lines of the orders of this House. My amendment makes it very clear that the muddying of the water by the Government today in relation to the date issue is no longer an issue and that this House requires and wants to see those documents. The Opposition is calling for the documents and urges the Government to provide them because we know that they exist.

The PRESIDENT: Before I call another speaker, I wish to ensure that the amendment is understood by the House. It is important for the House to understand the amendment. By deleting "paragraphs (1), (3) (b), (4) and (5)", all aspects relating to the motion to, firstly, censure the Minister and, secondly, deal with, according to paragraph (5), any failure and any further orders for noncompliance have been removed.

The Hon. PENNY SHARPE: Correct.

The PRESIDENT: We are simply now dealing with a motion that has a bit of history to it, if I may use that expression, and then in effect the amendment has inserted new paragraphs (2) and (3) regarding what will occur afterwards.

The Hon. PENNY SHARPE: Correct.

The PRESIDENT: If there is no point of order taken to the amendment, I see no objection to the amendment and debate on the amendment will proceed. Any member now seeking the call may speak to the motion and the amendment.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (15:07:34): I will speak to the amended motion. I thank Opposition members and those who have been involved in the discussions. The Government will not oppose the amended motion.

Reverend the Hon. FRED NILE (15:07:58): I support the motion. I thank the Opposition for coming to this conclusion to assist the House to resolve what was almost a deadlock so that the House can move forward. I will be very happy to vote for the motion.

The Hon. JOHN GRAHAM (15:08:26): In reply: I thank the House for the time taken to canvass this issue, not just today but also on a number of previous occasions. I will dwell briefly on what has just happened in the House with the amended motion which I understand is acceptable to both the Opposition and the Government. Essentially we have had to choose between business and pleasure. I believe that had the previous motion been put to a vote there would have been a censure of the Minister. There may be other views but I indicate my view to the House. What would have happened is that we would have lost a day in pursuit of these documents and on a future sitting day we would have had to pursue the documents in a form that the Government would not have contested. Having to choose between business and pleasure, the Hon. Mick Veitch and I are not opposed to pleasure. But if it comes to that choice when it comes to the Roads portfolio we will choose business. I am grateful that we are now in a position to move forward.

I want to directly address the question about whether this was directed to a Minister or to the Leader of the Government. I do not direct this to a Minister of the Crown. I directed this to the Leader of the Government in that capacity and it is an important distinction. Our interest is the public interest. I say to the Government, and I ask the Leader of the Government to convey this to whatever Ministers are relevant, that all this ducking and diving looks appalling to the public. All the process we have had to go through for concerned citizens who just want to know some of the details of this project is just making this worse. Does this document exist? The Hon. Daniel Mookhey indicated it must—it is required to. It is referred to in correspondence and the Government has set out the Cabinet-in-confidence protections that it is invoking—it must exist. It is referred to in *The Sydney Morning Herald* under the headline "Revealed: The \$14 billion Western Harbour Tunnel Beaches Link price tag." The article reads:

The costing document seen by Fairfax Media is titled "Final Business Case". A separate cabinet-in-confidence report includes three slightly different routes for the tollway, but only one set of locations for exhaust stacks.

This document exists. I will deal briefly with the contortions the Government has moved through over what is now seven months. The Government argued that the Secretary of Transport does not have control of these documents. If the Secretary of Transport does not have control of these documents, who does? What sort of message does that send to the public?

The Government raised the issue today of the date. I have had good discussions with the Minister. While I would not disclose those, I can say, as my colleagues have said, that this matter about the date has never been raised, nor was it raised in the letter that was submitted by the Secretary of Transport until the Leader of the Government got to his feet. I do not diminish it but it was never raised. The Opposition has put clearly in the debate that the Government refused this whether or not there was a date. There was a date in some resolutions and there was not in others. The answer was no regardless of whether there was a date there. The Government has

relied on the commercial-in-confidence and Cabinet-in-confidence protections. There is a way and there has been a way—as you know more than most, Mr President—to work this through. The House has done that repeatedly in the past. We on this side of the House say that the intention of the House is clear and we ask the Government to take note of that.

I make these commitments in dealing with the issue from this point forward as we work our way through it. The first is we on this side have said we will consult with members as we bring this back. We are not going to take serious steps without taking the mood of the House. I say to the Leader of the Government that we will make sure—and we have made sure again today—that we are on solid ground before we take serious steps that may lead to court proceedings. But through you, Mr President, with the cooperation of the Leader of the Government, I say to the Minister that he should come to the sort of arrangement which many Ministers have come to over time, without conceding the principles but allowing the public interest to be served, by producing documents to this House. The House has made its intention clear. No-one should be in any doubt after the time we spent doing this. We have been happy to comply with the request of the Government again today, but I say to the Leader of the Government that today the Minister has made this matter ending up in court more likely, not less likely. Faced with business or pleasure, we are choosing business and we are choosing the public interest. We thank the House for its cooperation.

The PRESIDENT: The Hon. John Graham has moved a motion, to which the Hon. Penny Sharpe has moved an amendment. The question is that the amendment of the Hon. Penny Sharpe be agreed to.

Amendment agreed to.

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

Motion as amended agreed to.

Documents

INDEPENDENT PRICING AND REGULATORY TRIBUNAL

Reports

The Hon. DAMIEN TUDEHOPE: I table the following papers:

- (1) Independent Pricing and Regulatory Tribunal Act 1992—
 - (a) Report of the Independent Pricing and Regulatory Tribunal entitled *Review of Prices for Sydney Water from 1 July 2020 – Final Report*, dated June 2020;
 - (b) Report of the Independent Pricing and Regulatory Tribunal entitled *Sydney Water Corporation: Maximum prices for water, sewerage, stormwater drainage and other services from 1 July 2020 – Final Determination*, dated June 2020;
 - (c) Report of the Independent Pricing and Regulatory Tribunal entitled *Review of Prices for Hunter Water Corporation from 1 July 2020 – Final Report*, dated June 2020;
 - (d) Report of the Independent Pricing and Regulatory Tribunal entitled *Hunter Water Corporation: Maximum prices for water, sewerage, stormwater drainage and other services from 1 July 2020 – Final Determination*, dated June 2020;
 - (e) Report of the Independent Pricing and Regulatory Tribunal entitled *Review of Prices for WaterNSW Greater Sydney from 1 July 2020 – Final Report*, dated June 2020; and
 - (f) Report of the Independent Pricing and Regulatory Tribunal entitled *WaterNSW: Maximum prices for water, sewerage, stormwater drainage and other services from 1 July 2020 – Determination*, dated June 2020.

I move:

That the reports be printed.

Motion agreed to.

Committees

JOINT SELECT COMMITTEE ON THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

Establishment and Membership

The PRESIDENT: I report receipt of the following message from the Legislative Assembly:

MR PRESIDENT

The Legislative Assembly informs the Legislative Council that it has this day agreed to the following resolution:

That:

- (1) A joint select committee, to be known as the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, be appointed.
- (2) That the committee inquire and report into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, including whether the objectives of the bill are valid and (if so) whether the terms of the bill are appropriate for securing its objectives.
- (3) That the committee, in undertaking (2), have regard to:
 - (a) existing rights and legal protections contained in the Anti-Discrimination Act 1977 (NSW) and other relevant New South Wales and Commonwealth legislation;
 - (b) the recommendations relevant to New South Wales from the Expert Panel Report: Religious Freedom Review (2018); and
 - (c) the interaction between Commonwealth and New South Wales anti-discrimination laws and the desirability of consistency between those laws, including consideration of:
 - (i) the draft Religious Discrimination Bill 2019 (Cth) which has been released for public consultation; and
 - (ii) the Australian Law Reform Commission's reference into the Framework of Religious Exemptions in Anti-discrimination Legislation.
- (4) The committee will consult with key stakeholders as required.
- (5) The committee to consist of:
 - (a) Eight members of the Legislative Assembly as follows:
 - (i) three Government members, namely the Hon. Gabrielle Upton, MP, (Chair), Robyn Preston, MP, and Gurnesh Singh, MP;
 - (ii) two Opposition members, namely Paul Lynch, MP, (Deputy Chair) and Tania Mihailuk, MP;
 - (iii) three crossbench members, namely Alex Greenwich, MP, Jenny Leong, MP, and Joe McGirr, MP; and
 - (b) six members of the Legislative Council, namely three Government members, two Opposition members, and one crossbench member.
- (6) That at any meeting of the committee, seven members, including at least one member of the Legislative Assembly and at least one member of the Legislative Council, shall constitute a quorum.
- (7) The committee have leave to make visits of inspection within the State of New South Wales.
- (8) The committee report by 31 March 2021.
- (9) A message be sent to the Legislative Council requesting the Legislative Council agree to the resolution, nominate six of its members to the proposed committee, and to fix a time and place for the first meeting

Legislative Assembly
17 June 2020

JONATHAN O'DEA
Speaker

Business of the House

SUSPENSION OF STANDING AND SESSIONAL ORDERS: ORDER OF BUSINESS

The Hon. DAMIEN TUDEHOPE: By leave: I move:

That standing and sessional orders be suspended to allow consideration of the Legislative Assembly's message relating to the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 forthwith.

Motion agreed to.

Committees

JOINT SELECT COMMITTEE ON THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

Membership

The Hon. DAMIEN TUDEHOPE: I move:

- (1) That this House agrees to the resolution in the Legislative Assembly's message of Thursday 18 June 2020 relating to the appointment of a Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020.
- (2) That the representatives of the Legislative Council on the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 be Hon. Catherine Cusack, MLC, the Hon. Scott Farlow, MLC, the Hon. Sam Farraway, MLC, the Hon. Greg Donnelly, MLC, the Hon. Shaoquett Moselmane, MLC, and the Hon. Mark Latham, MLC.
- (3) That the time and place for the first meeting be advised once it has been determined.

Motion agreed to.

The Hon. DAMIEN TUDEHOPE: I move:

That a message be forwarded to the Legislative Assembly conveying the terms of the resolution of the House.

Motion agreed to.

Disallowance

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (COVID-19 PLANNING BODIES) REGULATION 2020

The PRESIDENT: According to standing order the question is: That the motion of Mr Justin Field proceed as business of the House.

Question resolved in the affirmative.

Mr JUSTIN FIELD: I move:

That the matter proceed forthwith.

Motion agreed to.

Mr JUSTIN FIELD (15:19:01): I move:

That, under section 41 of the Interpretation Act 1987, this House disallows in the Environmental Planning and Assessment Amendment (COVID-19 Planning Bodies) Regulation 2020, published on the NSW Legislation website on 27 April 2020, the words "public hearings and", "public hearings or" and "public hearing or" wherever occurring, and clause 294 (7).

It is useful for me to take a step back and explain the situation to members, who will be aware of some of the public discussion around this regulation and the public calls for it to be disallowed, along with other debates we have had on the matter in the House since then. I put that in context. As a result of the COVID-19 health restrictions, a number of government processes were required to be changed to facilitate the normal processes of government. One of the changes concerned planning assessments and the deliberations of planning bodies. Of course, one of the most significant of those bodies, particularly for State-significant developments, is the Independent Planning Commission [IPC].

The regulation brought into force by the planning Minister required the Independent Planning Commission to hold public hearings or public meetings by audio or visual link. At the time it made sense, given the nature of the health restrictions that limited the number of people who could be in a space, for those processes to be facilitated and conducted online. At the time I raised concerns about whether we had the balance right between ensuring the public had an appropriate say in controversial planning matters and the ability to make decisions in a timely way.

The motion before us seeks to disallow only the portions of this regulation that relate to public hearings, a process that is used almost exclusively by the Independent Planning Commission. The change really affects only three projects in New South Wales, the two most significant being the Vickery coalmine expansion and the Santos Narrabri gas project. I make clear to members that my concern has always been around the process. It was never the case that this disallowance motion was designed to stop a project, especially the Santos Narrabri gas project. In fact, that project has been in the planning system for many years. The Government announced in 2015 that it would fast-track that project. For several years Santos itself has raised questions about the potential for that project to come into place.

This is not a question of stemming the planning process to stop that project. It is about ensuring that in implementing the changes needed to manage the health crisis in New South Wales we do not inadvertently undermine the right of the public to have their say about controversial planning projects. At the time I said that it is totally inappropriate to use a temporary crisis to undermine—even if it were not the intention of the Government—the ability of the community to have a fair and reasonable say on projects that will affect them for generations. That is what we are talking about with projects such as the Narrabri gas project. I am glad that since I first gave notice of this disallowance motion the House has had the opportunity to debate the other question about the project, with members putting their views on that project and the coal seam gas industry and the appropriateness of the moratorium bill. I consider that we have addressed those issues. The House has spoken quite strongly on those matters.

I now draw the attention of the House back to the question at hand, which concerns a portion of the regulation relating to the IPC. Since that regulation came into effect, a number of things have changed. I am sure the Government will acknowledge that. Earlier this week the Premier announced substantial changes to the way in which health regulations and public health orders will apply in New South Wales from 1 July. Kids' sports and

community sports will recommence from 1 July. The number of people allowed in indoor venues will be determined by the one-person-per-four-square-metre rule, with no upper limit. That includes function centres with activity being ceded. Cultural and sporting events at outdoor venues with a maximum capacity of 40,000 people will be allowed up to 25 per cent capacity—10,000 people—again with the one-person-per-four-square-metre rule limit.

I highlight to the House that the regulation for IPC public hearings does not contain any of these sorts of rules. In fact, it says that public hearings or public meetings must be held by means of audio or visual link. It does not prevent the IPC from also conducting a face-to-face hearing inside the rules of the public health orders that might exist at the time. There are many who are concerned about the Santos Narrabri gas project and the potential lack of opportunity to fairly represent their views face to face with the commissioners. In order to assure them and the public, I have moved this motion today to give the Government the opportunity to facilitate, to the extent the Government can direct the IPC, a public hearing for as many people as possible to attend within public health rules so as to ensure the maximum possible participation of those concerned about this project and the assessment and determination process.

I do not believe that is an unreasonable ask when the resources Minister of this State is champing at the bit for people to be back watching the footy in large stadiums of up to 10,000 people. I am asking for a couple of hundred people to be able to participate in a face-to-face hearing with the commissioners so that they can hear the voices of farmers and the community and those concerned about water as well as those who want the project to go ahead. I do not think it is unreasonable in the current context. It is remarkable to me that this has not been addressed when so many other opportunities for lifting restrictions have been championed by the Government in the public domain.

I recognise that it is unlikely the Government will support this disallowance motion. I thank the Minister and his staff for the ongoing engagement they have been prepared to provide me on this issue. I recognise that there is a view that the regulation does not prevent the IPC from undertaking such activities. Should there be any conditions that would prevent that, I believe the Minister would be prepared to look at them. But the community would greatly benefit from members making that clear in the House today. I am providing the opportunity for that to happen through this disallowance motion. I invite the Government to make clear its position on this issue today.

The Hon. SCOTT FARLOW (15:26:44): The New South Wales Government is committed to keeping our economy growing and facilitating as much investment into our State as possible during the COVID-19 pandemic. In response to the COVID-19 pandemic, a series of regulatory amendments were made to modernise the planning system to allow it to continue to function at pace throughout this period, without impediment and to assist in the economic recovery of the pandemic. That is why the Government opposes this disallowance motion. I will let the Hon. Adam Searle speak for himself but I understand that he has indicated as much to *The Daily Telegraph* in the past. It is clear that the Opposition in this place also understands the importance of the planning system to our economy. I note the Hon. Mark Latham has spoken at length on this issue, as has Reverend the Hon. Fred Nile who supports the planning system. I note the impact that the planning system has on the economy.

The motion before us seeks to disallow parts of the Environmental Planning and Assessment Amendment (COVID-19 Planning Bodies) Regulation 2020. In New South Wales we have a number of different planning bodies that make decisions on development applications and planning proposals, including local planning panels, regional panels, the Department of Planning, Industry and Environment and the Independent Planning Commission [IPC]. For context, in the 2018-19 financial year the department approved 335 projects worth more than \$18 billion, planning panels approved 360 projects worth more than \$13.6 billion and the Independent Planning Commission approved 43 projects worth more than \$1.47 billion. Collectively these planning bodies facilitated more than \$30 billion worth of investment in our State's economy. Prior to COVID-19 these planning bodies were on track to meet and potentially exceed this investment value.

However, the pandemic has thrown into question the arrangements of these planning bodies, many of which operate their decision-making function in the public setting. Local and regional planning panels hold their meetings and hearings in a public setting and the IPC has the ability to hold public hearings and meetings. In order to clarify that these planning bodies could continue operating and facilitating as much investment into our economy as possible, on 30 April the Environmental Planning and Assessment Amendment (COVID-19 Planning Bodies) Regulation 2020 was made to require all planning bodies to hold public hearings and meetings online to ensure there were no delays in the system during the COVID-19 pandemic. The Environmental Planning and Assessment Regulation 2000 was amended to set out the minimum requirements—and I stress the word "minimum"—for the holding of public hearings and meetings using telephone and video conferencing.

The Land and Environment Court has been undertaking judicial proceedings throughout this period but our panels have not kept up due to an ambiguity in the law. The amendment in the planning bodies regulation clarifies the legal requirements for public hearings and meetings during the pandemic and ensures that interested

individuals and groups can continue to have their say on planning decisions that are important to them. As the public health order requirements are lifted, I understand that it is the expectation of the Minister for Planning and Public Spaces that consent authorities like the Independent Planning Commission consider how they undertake public hearings in a dual setting of "in person" where safe to do so and "online" to allow the maximum number of people to engage in the process as possible. This should hopefully alleviate some of the concerns raised by Mr Justin Field in his contribution to the debate.

The New South Wales Government is committed to keeping our economy moving and creating new jobs as the economy emerges from the pandemic. These changes will allow decisions on development applications and planning proposals to be made that are vital to driving investment and assisting the State's economic recovery. The regulation will require planning bodies to notify the public about the details of the hearing or meeting, ensure the virtual hearing or meeting can be heard or viewed by a member of the public at the time, and publish a recording or transcript of the hearing online. Importantly, it will also allow planning bodies to adjourn the hearing if there is a practical problem with the technology or public access. Since when is it a bad thing that planning panels and planning bodies make use of technologies available to them to modernise their consultation approaches?

I believe it is important that we in government are flexible during the COVID crisis and I consider that this regulation is a reasonable and sensible response by the Government to ensure that the planning system can continue to function during these unprecedented times. However, in his motion Mr Field wants to put at risk a potential \$30 billion of investment in our State and the many thousands of jobs associated with it because he does not like one proposal before one of the bodies. The disallowance motion before us is simply a mortar that seeks to completely stop planning processes in New South Wales because Mr Field and his supporters do not want an answer on the Narrabri Gas Project. The regulation is about more than one single project. It is about the potential to facilitate \$30 billion of investment from approvals from these planning bodies. It is about the tens of thousands of jobs that flow from these projects. It is about ensuring that we give as many people a go and a job during this tumultuous time as possible.

The Government's focus at this time is on two things: maintaining the health of our population and making sure it is creating as many jobs as possible. This disallowance motion puts all that at risk and sets New South Wales on a dangerous course because of one part of society that has a certain view on one particular project. I encourage all members to vote down this disallowance motion as it is a dangerous proposition for the sake of one project.

The Hon. ADAM SEARLE (15:32:15): The Opposition will not be supporting this disallowance motion, but for slightly different reasons than those outlined by the Government. Firstly, on my reading of the legislation it is not entirely clear that the regulation made by the Government is, strictly speaking, legally necessary. I understand the Government might also have some advice to that effect—that the notion of the regulation was more to put that matter beyond some doubt and to regularise it. If that is something the Government can address in reply that would be useful.

Leaving to one side the pandemic, now that we are well into the twenty-first century the notion that the Independent Planning Commission [IPC] and planning panels would not be able to conduct their decision-making and deliberation in a virtual setting like other workplaces using online tools would be a difficult proposition to sustain credibly when government agencies and multibillion-dollar private concerns are conducting transactions worth literally trillions of dollars every day using methods such as these. The idea that a New South Wales governmental body could not also use platforms and methods like these to undertake deliberations and decision-making would be found laughable by most people in the community.

Having said that, the genesis of this regulation is the pandemic. Certainly, at the time when it was conceived and executed the restrictions were much greater and it seemed that the pandemic conditions would be more prolonged than it appears they may have been. We are now in a phase where the Government is progressively lifting restrictions so that people can attend workplaces in greater numbers, go out and about and indeed even meet in larger numbers. Members on this side of the House have no objection to giving the Independent Planning Commission these tools, whether for the circumstances of the pandemic or, frankly, more generally. The issue is their judicious use.

We do understand that there will be planning proposals that greatly interest and animate our community. Members of our community will want their concerns to be heard and they will want to be able to come and present their arguments to the decision-makers. As useful as platforms such as Webex and Zoom and Microsoft Teams can be, all members know that they do not quite replace the same level of interactivity as we are experiencing here in this Chamber. For example, the virtual House of Commons did not quite have the same atmosphere or the same quality of deliberation as it would otherwise have. I do accept that and I understand that certainly for participants, particularly those wanting to voice their opposition to things, being able to go into an online chat

room or beam in to some kind of virtual town hall discussion may not be as intellectually or emotionally satisfying for them. I do understand that.

Leaving aside the Vickery project, I really think it is the Narrabri project that is animating the disallowance motion—I do not say that in any critical way. In the case of the Narrabri project, I would hope that the Government—and certainly the Independent Planning Commission—would of course be very conscious of people's concerns and the diversity of opinions. I hope that using the different tools it has at its disposal it does not simply take the easiest path of having online hearings but, to the extent permissible on health grounds, that it would have available to members of the community as many forms of input and interaction as can safely be permitted. I think that would be a fair and reasonable proposition, and it picks up on some of the comments made by Mr Justin Field. I earnestly hope that in the context of Narrabri and other matters that have a high level of public interest, particularly where there is a strong diversity of opinion, the IPC and decision-makers will choose forms of hearings that allow not just the maximum input but the highest quality input. That is a very important point and we earnestly hope that is the case.

However, we do not support the disallowance motion, because we think the planning bodies should have these tools. We think they should have them in an ongoing way. Certainly, whatever views we have expressed in this place around the regulatory apparatus that should be put in place for assessing matters such as the Santos project at Narrabri, that debate has been had. While this House had one view, the other place had a different view. The matter is now in the planning system and that is where it will be decided. We do not seek to re-agitate that set of propositions. We will not vote for this disallowance motion and we will hope and trust that the IPC carefully and deliberately deploys the tools it has at its disposal.

However, I make this request. I live in the Blue Mountains, and despite having an NBN box at either side of my property the NBN keeps receding into the distance. Every few months the due date for the connection of my household gets put back six or eight months. I know many other people have really bad internet. I would hope that if the Government is going to have these hearings out in the country, where internet connectivity is notoriously bad, it puts in place proper mechanisms. It would be very unsatisfactory to have a situation where, by having virtual town halls and online deliberations, people cannot be heard because there is lag, or where entire hearings drop out.

I know that would not be the Government's intention, but the Government and the IPC need to be mindful if they are going to use these tools that they have to make sure there are redundancies and supports put in place. If meetings do crash out they have to make sure that they are rescheduled rather than abandoned. I hope that the Government will take these issues on board. If it can respond to them here and now, all well and good. Those are Labor's earnest hopes. With those brief comments, Labor will vote against this disallowance motion.

Ms ABIGAIL BOYD (15:40:14): On behalf of The Greens I support this disallowance motion. If we see public hearings as a simple tick-the-box exercise instead of a true consultation, a virtual or online hearing can seem like a good substitute for the real thing. But these past few months have shown us all that although some amazing benefits have become apparent from online processes there have also been some limitations. Those limitations are different for different people, depending on their familiarity with technology, how good their internet access is, what they are used to and how much of their non-verbal communication they rely on and so on. Members have found that without having a gallery our processes are that bit less transparent and accessible, and it creates the potential for diminished accountability. Similarly, when making decisions that will impact negatively on people's lives in substantial ways, looking at each other across the room, getting the measure of each other and gaming the feel of a room or an audience cannot be replicated online.

People cannot connect with each other and support each other as they make submissions. It is a very different thing to have an online Zoom call instead of a public hearing. That would not matter for run-of-the-mill stuff, but for something like the Narrabri project, which is so controversial, it is not just a public hearing process that says, "This is nice to have. We have consulted, so we can tick that box." This is something that acts to extinguish merit appeal rights. In the context of that impact from a legal perspective, as well as our duty to people who have felt so passionately about projects such as this, we have an obligation to make the public hearing process the best it can be, and to allow everybody to participate in it in a way that they feel they can best do so. It is for those reasons that The Greens wholeheartedly agree that this part of the regulation is an overstep. We can wait until further restrictions have been lifted, or we can go ahead without the public hearing and keep those merit appeal rights intact.

Mr JUSTIN FIELD (15:43:22): In reply: I thank all members for their contributions. I know that sometimes this is a convenient tactic that is used in these discussions, but my intention in moving this disallowance was never to try to stymie \$30 billion in projects or to try to undermine the economic recovery of New South Wales. The disallowance motion is very specific. Public hearings are primarily conducted via the Independent Planning Commission [IPC]. It currently only has a very small number of projects that have been referred, or were

intended to be referred, to a public hearing. We are talking about a couple of the most controversial projects in New South Wales. It is not unreasonable that we ensure the public has fair access. I do not think up until perhaps 1 July that it would be reasonable to conduct this hearing only in an online environment for some of the reasons that the Leader of the Opposition made with regard to connectivity. We are primarily talking about regional communities and a lot of people who may not have the most up-to-date technology available to them in their homes.

There is also the argument made by Ms Abigail Boyd around the legal consequences of a hearing which extinguishes the merit appeal rights of both the applicant and the proponent. I understand why this has happened. I recognise the point made by the Leader of the Opposition that it may not have been required. Of course, if this regulation does not prohibit the IPC from conducting face-to-face hearings, I contest that if it did not exist it would also not prohibit the IPC from conducting online hearings either. I concur 100 per cent that it would be ideal that we have online hearings for these types of decision-making processes in an ongoing way. In fact, perhaps what I should have moved to disallow was that it apply only to the prescribed period, because this regulation only exists for the next six months. That is my reading of the prescribed period.

I look forward to discussing either legislation or a regulation to ensure that the dual-access model that is being offered by the Government today is made available. The suggestion that it is the expectation of the planning Minister that the IPC work to facilitate this dual model of face-to-face hearings and online hearings makes sense. Let us do that in the future; let us make the planning system accessible and functional so that people can have their say and it can be the best quality evidence. In a committee meeting today we made the decision to have face-to-face hearings. The reason we want them to be face to face is that it enhances our ability to better understand the issues, how stakeholders feel about what is happening to them and their concerns, because these projects are hugely controversial.

I have been to these sorts of hearings before. They are emotional experiences. People will feel very hard done by if they cannot sit in front of the commissioners and express the grief they often feel or the genuine fear that they have for their future as a result of these projects. I do not think we should ignore the seriousness of that. I appreciate the commentary from Government members about the expectation of the planning Minister. I thank the planning Minister and his staff for their engagement on this issue. I understand that this disallowance motion will not be supported today, but ultimately we are in a better place as a result of this debate. I thank the House.

The DEPUTY PRESIDENT (The Hon. Trevor Khan): The question is that the motion be agreed to.

Motion negatived.

Business of the House

POSTPONEMENT OF BUSINESS

The Hon. SCOTT FARLOW: I move:

That Government business orders of the day Nos 1 to 5 be postponed until a later hour of the sitting.

Motion agreed to.

Bills

DIGITAL RESTART FUND BILL 2019

Second Reading Speech

The Hon. CATHERINE CUSACK (15:48:30): 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.

This bill provides the legislative framework to establish the Digital Restart Fund. The Digital Restart Fund has been created by the Government to fund the delivery of major digital infrastructure projects.

In the modern world, investment in digital infrastructure is essential for prosperity. Just like roads, power and water infrastructure, digital equipment and systems have become central to our everyday lives.

Effective digital infrastructure allows us to connect our citizens, increase economic growth, improve productivity and sustainability, as well as adopt emerging technologies. Getting this right will have positive ripple effects that flow to every New South Wales citizen and ensure that New South Wales is seen as a leader in both digital innovation and customer satisfaction.

This fund will reshape the way Information and Communication Technology is financed in New South Wales. Traditional practices around investment have often led to ineffective solutions, with limited cross agency funding for common platforms and a lack of in-house capability development.

The fund will address these shortcomings, cutting through complexity and enabling government to provide a more consistent and accessible customer experience. Our aim is to avoid duplication and waste, and better reuse government data, content and systems. We will also reduce the burden on customers by streamlining processes, including but not limited to them only "telling government once".

The purposes of the fund are to support whole-of-government citizen journeys and events, solutions that create cost savings and consistent user experiences for our customers, and modernisation of our aging systems to reduce the risk of failure and overhead costs to maintain them.

The fund will assist in generating benefits more quickly, reducing duplication in investment, and eliminating inefficient legacy systems. All clusters have contributed to the fund, ensuring that it is truly a whole-of-government initiative.

The new model for funding whole-of-government digital service products will allow for agile delivery methods, ensure that New South Wales digital infrastructure is up to date with current technologies, and customers are delivered the best services reflecting the best value for money possible.

Centred on the concept of supporting customers with smart, simple and seamless services, the fund moves away from the approach of funding large capital projects where benefits may not be realised for many years.

The fund is designed to allow focus on smaller, iterative solutions with products and teams focused on delivering better services linked to the life events and customer experiences that matter to people and that are known, through customer research, to drive higher customer satisfaction.

The fund will support citizens as they access related services across the whole of government, such as those needed after the loss of a loved one or in a child's early years. It will enable government agencies to use technologies with common components, optimise and extend the life of existing technologies, and uplift the digital capability of the New South Wales public sector. This new approach will create solutions that deliver consistent customer experiences.

The establishment of this fund will have lasting positive effects on the customer experience and will enable New South Wales to build digital infrastructure that citizens can be proud of in this age of ever-evolving technology.

The COVID-19 pandemic has highlighted the importance of customers being able to interact with government seamlessly and securely online. There is an opportunity for digital infrastructure to help shape the future of government service delivery into the post-pandemic period, supporting the broader goals of response, recovery and reform.

This morning, the Government announced a \$1.6 billion digital stimulus package to quickly deliver service improvements for all customers regardless of location and to have flow-on effects to the small and medium digital businesses in the New South Wales economy.

This \$1.6 billion funding envelope, dedicated to priority ICT and digital programs, will also be used to strengthen the New South Wales Government's cyber security defences, in an environment where cybersecurity threats are becoming more frequent and more sophisticated.

It is intended that this \$1.6 billion investment will be administered through the Digital Restart Fund, subject to the provisions included in this bill, building on the success of the original investment in the Digital Restart Fund to date.

I will now turn to the detail of the bill.

The bill provides the legislative framework for the enduring operation of the Digital Restart Fund.

The bill is modelled on existing legislation enacted to support similar funds, including the NSW Generations Fund Act 2018 and the Restart NSW Fund Act 2011.

Consistent with these Acts, the bill establishes the Digital Restart Fund in the special deposits account.

Clause 6 of the bill defines the purposes of the fund, as I outlined earlier.

Clauses 7 through to 10 define the processes by which the fund is controlled. This includes how money is paid into the fund, and how the fund may invest in projects which promote the purposes of the fund.

Clause 11 permits the Minister to seek advice in making investment decisions for the fund from any relevant person or body. This, for example, can include seeking advice on customer experience, data architecture, design, privacy, cybersecurity and transparency.

I will also draw attention to clause 13, which requires that the Minister produces an annual report on the administration of the Digital Restart Fund, which includes an audit by the Auditor-General.

On 7 February 2020, Portfolio Committee No. 6 held a hearing into the provisions of this legislation. It subsequently handed down its report on 28 February, which was largely positive. I note that the committee recommends that the Legislative Council proceed to consider the bill, and that the New South Wales Government address the committee comments and stakeholder concerns as set out in its report, during debate in the House.

I am confident that all issues raised through submissions and at the hearing have been addressed and resolved.

I commend the bill to the House.

Second Reading Debate

The Hon. DANIEL MOOKHEY (15:48:48): I lead for the Opposition in debate on the Digital Restart Fund Bill 2019. I state at the outset that NSW Labor will not oppose this bill. However, Labor believes the bill could be improved. I acknowledge the work of my colleague the shadow Minister for Better Public Services, who has been pushing for greater protections in relation to privacy and transparency for some time. I foreshadow that the Opposition will introduce amendments in this place to improve privacy protections and accountability for this

new fund. The purpose of this bill is to establish a new Digital Restart Fund. According to the 2019-20 budget papers, \$100 million will be allocated to this fund over two years. According to the budget half-yearly review issued in December last year, \$38.6 million has already been allocated from the fund to various projects. I note today the Premier has announced that \$1.6 billion will be invested into this fund.

The fact that this Government is already spending money from this fund before it has been established raises a question about whether this legislation is legally necessary. If the Government has already spent more than \$38 million before legislation to establish the fund has passed, then it does not appear that this legislation is necessary. On the other hand, if the legislation is necessary to establish a special fund for these projects, then the Government should explain on what legal basis it spent money from the fund before this legislation passed. I note that this issue was examined by the parliamentary inquiry into this bill, which was conducted by Portfolio Committee No. 6 earlier this year. I do not think the Government ever provided a clear answer to the inquiry on that issue. I invite the Parliamentary Secretary to address this matter in her reply.

The world has changed considerably since the bill was introduced in the other place last year. Over summer we saw the worst bushfires in our State's history devastate communities across New South Wales and this year we have seen the unprecedented catastrophe of the COVID-19 pandemic, which so far has claimed more than 400,000 lives around the world and has caused massive upheaval in our economy and in almost every aspect of people's lives. Both the bushfire crisis and the COVID-19 pandemic show the importance of investing in digital infrastructure. Robust digital infrastructure has proved to be essential in times of crises. For members of the public, it is essential that they have the ability to easily access information and services. For those of us who serve the public, digital infrastructure ensures that we can continue to operate even if there is significant disruption to our ordinary ways of doing business.

The importance of digital infrastructure in our lives shows how essential it is for governments to make sound investments and to not waste taxpayers' money. Each year the New South Wales Government spends more than \$3.8 billion on information and communication technologies. That is around 4.3 per cent of all New South Wales government expenditure. Put another way, almost 5c of every dollar spent by the New South Wales Government is spent on information and communication technologies. Again this raises a question about why a Digital Restart Fund is necessary. The Government claims this fund will enable an innovative and agile approach to facilitate a whole-of-government digital transformation. However, the Opposition is sceptical about what exactly is the Government's real agenda.

In effect the Government is taking \$1.6 billion of the \$3.8 billion it already spends annually on digital technology and placing it in a special fund that will be controlled by the Minister for Customer Service. We on this side suspect this fund is not really intended to be a vehicle for whole-of-government digital transformation as the Government has claimed. Rather, the Opposition is concerned that this fund will be used by the Minister for Customer Service to bypass normal budgetary processes in order to fund certain pet projects, with little accountability or oversight.

The inquiry into this bill by Portfolio Committee No. 6 heard from the Government about various processes that will be put in place to assess projects. However, the fact is that none of those processes will be legislated by this bill. Without legislation those processes can be changed on a whim by the Minister and by any Minister who succeeds him. The key provision of this bill is clause 7, which states that the Minister is to control and manage the fund. While the Government has made various claims about funding applications being subject to various assessment processes and assurance plans, it should be emphasised that not only will none of these arrangements be enshrined in law but the text of the bill gives the Minister the authority to sweep those arrangements aside if he sees fit.

Labor's concerns about this bill are illustrated by comparing this bill to the Restart NSW Fund Act 2011. This bill and the Restart NSW Fund Act are very similar. In fact, the Government claimed in its submission to the inquiry into this bill that the Digital Restart Fund Bill 2019 replicates the success of Restart NSW. Both this bill and the Restart NSW Fund Act have the same structure and many similar provisions. For example, they both establish funds in the special deposits accounts to be used for that particular purpose. However, section 6 of the Restart NSW Fund Act provides a specific list of physical infrastructure projects that may be funded from the Restart NSW Fund. That list includes public transport, roads and hospitals. In contrast, clause 6 of this bill is extremely vague and broad. Clause 6 provides that the fund may be used for:

... projects that—

- (a) develop and implement digital and information and communications technology products or services that ...
- (i) identify the actions required to be taken by an individual (or on the individual's behalf) in respect of significant events during the individual's life ...

The problem with this broad language is that the Minister could spend large amounts of taxpayers' money on projects that satisfy this broad definition but deliver little practical benefit for the public. It should also be noted that there is an important difference between digital infrastructure and physical infrastructure. It is impossible to build a road or a hospital in secret. At some point the existence of a physical infrastructure project will become known to the public—whether it is through the consultation process for an environmental impact statement or a giant hole in the ground having been excavated. The same is not true for digital infrastructure. It is possible to spend large amounts of taxpayers' money on digital projects without providing details regarding the scope of a project or what the project intends to achieve. The Opposition is extremely concerned about the prospect of the Minister spending \$1.6 billion without having to provide any details about the specific projects that have been funded. I foreshadow that Labor will move an amendment to address this concern.

Another point of comparison between this bill and the Restart NSW Fund Act 2011 is the role of Infrastructure NSW. Section 8 of the Restart NSW Fund Act provides that funding may be provided for projects approved by the Minister on the recommendation of Infrastructure NSW. In contrast, clause 9 of the bill provides that funding may be provided for projects approved by the Minister on the recommendation of the Secretary of the Department of Customer Service. While neither the secretary nor Infrastructure NSW is truly independent of government, it would appear an assessment by Infrastructure NSW is more robust. I note that section 13 of the Restart NSW Fund Act required that Act to be reviewed within five years of its commencement. A review of the Act was prepared by NSW Treasury and tabled in Parliament on 12 September 2017. The review found that the objectives of the Restart NSW Fund Act remained valid and the terms of the Act remained appropriate for achieving those objectives. On this basis the review stated that no legislative changes were recommended. In relation to Infrastructure NSW the review stated:

The Act confers [Infrastructure NSW] with the responsibility for independently assessing projects and making recommendations to the Treasurer for the use of Restart NSW funds ...

The independent role of [Infrastructure NSW] ensures that projects are fully assessed on their merit, including as to whether they improve productivity and growth in the State.

It is not clear why the Government has not followed the conclusions reached by NSW Treasury in 2017 regarding the benefit of Infrastructure NSW assessing projects. Whether Infrastructure NSW would be the right body to assess applications for funding under the Digital Restart Fund is beside the point. The fact is that neither the Secretary of the Department of Customer Service nor the department are independent of the Minister. So while the Government claims this bill is modelled on the success of the Restart NSW Fund Act, it has actually ignored Treasury's conclusions about the importance of having an independent body assess projects on their merits. I invite the Parliamentary Secretary to explain how the protection mechanisms in this bill interact with the investor assurance functions for ICT projects that Infrastructure NSW already administers and to clarify whether projects that are being pursued through this fund are still subject to the infrastructure investor assurance function undertaken by Infrastructure NSW.

Another of Labor's concerns relates to privacy and cybersecurity. A report published by the Office of the Australian Information Commissioner in 2017 found 69 per cent of Australians claimed to be more concerned about their privacy when using the internet than they were five years ago. That report also found 83 per cent of Australians believe that their privacy risks are greater when dealing with an organisation online as opposed to other means. Most concerning is that 16 per cent of Australians stated that they would avoid dealing with a government agency due to privacy concerns. We have seen the consequences of the debate about privacy and cybersecurity play out in relation to COVID-19 and the Commonwealth Government's COVIDSafe app. The Commonwealth Government claimed that it was essential that Australians download the app to allow contact tracing, which could help speed up the reopening of the economy. While many Australians downloaded the app, so far the majority of Australians have not.

Given the widespread public debate around privacy and cybersecurity concerns, it seems reasonable to conclude that many people did not download the app because they were concerned about how their data might be used. To put it another way, digital initiatives are unlikely to succeed if people have doubts about privacy and cybersecurity protections. There is nothing in this bill to guarantee that Digital Restart Fund projects will have these protections. I foreshadow that Labor will seek to address these issues by moving amendments to ensure that there is an independent assessment of privacy and data issues before projects are funded by the Digital Restart Fund.

As I said at the outset, NSW Labor will not oppose this bill. We believe it is essential that the Government invest in digital infrastructure to meet our State's future needs. However, this bill is not good enough. It is not good enough to give the Minister for Customer Service a blank cheque for \$1.6 billion and hope that he buys something useful. Given the economic circumstances our State now faces, it is vital that every dollar be spent wisely. The establishment of a Digital Restart Fund provides an opportunity to make investments that help our

State's economy recover by stimulating activity in the digital sector and making it easier for people to do business and access government services. However, this opportunity must not be wasted. We hope the Government will support our amendments and work to ensure that taxpayers' money is wisely invested in projects that will deliver lasting value for the people of New South Wales and create jobs for the people of New South Wales.

The Hon. CATHERINE CUSACK (16:00:47): On behalf of the Hon. Damien Tudehope: In reply: I thank the honourable member for his contribution.

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

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will deal with the bill as a whole.

The Hon. DANIEL MOOKHEY (16:01:15): By leave: I move Opposition amendments Nos 1 to 4 on sheet c2020-002B in globo:

No. 1 Access to information and privacy protection

Page 4. Insert after line 10—

9A Requirement for Minister to obtain advice

Before approving the payment of money under section 9(a), the Minister must obtain and have regard to advice from the Information Commissioner and the Privacy Commissioner as to the effect, if any, that the project may have on—

- (a) access to government information under the *Government Information (Public Access) Act 2009*, and
- (b) the protection of personal information under the *Privacy and Personal Information Protection Act 1998* or health information under the *Health Records and Information Privacy Act 2002*.

No. 2 Access to information and privacy protection

Page 4, clause 11, line 21. Omit "The Minister may".

Insert instead "Without limiting section 9A, the Minister may also".

No. 3 Annual report

Page 5, clause 13(2), lines 14 and 15. Omit all words on those lines. Insert instead—

- (2) The report is to be in the form determined by the Treasurer and include the following information—
 - (a) details of payments into the Fund during the year to which the report relates,
 - (b) details of payments from the Fund during the year to which the report relates, including, where money has been paid to fund all or part of the cost of a project, the following details in respect of that project—
 - (i) the name of the project,
 - (ii) the government agency, person or body responsible for delivering the project,
 - (iii) the total cost of the project,
 - (iv) the amount of money paid from the Fund in respect of the project,
 - (v) the date on which the project was completed or is expected to be completed,
 - (vi) the objectives of the project, including any change to those objectives,
 - (vii) whether the project has or is likely to achieve those objectives,
 - (c) any other information determined by the Treasurer.

No. 4 Annual report

Page 5, clause 13(3), line 16. Insert "also" after "report is".

The purpose of amendments Nos 1 and 2 is to introduce an important safeguard for the operation of this fund. Amendment No. 1 would require the Minister to obtain advice from the Information Commissioner and the Privacy Commissioner before approving funding from the Digital Restart Fund [DRF] for a project. Amendment No. 2 is a consequential amendment that would make clear that the Minister may also seek advice from other people when exercising functions in relation to the fund.

As I outlined in my contribution to the second reading debate, the Opposition is concerned that this bill lacks legislative safeguards to ensure that projects are independently assessed for their impacts on privacy. These concerns were examined by the inquiry into the provisions of the bill by Portfolio Committee No.6 - Transport and Customer Service earlier this year. In their written submission to that inquiry, the Information and Privacy commissioners said:

The Commissioners consider that initiatives funded by the Fund should promote and embed information access and privacy considerations into their design. In its current form the Commissioners are concerned that the Bill establishes the Fund and describes the purpose of the Fund, but does not provide for the criteria in which initiatives are to receive funding.

...

The Commissioners suggest that there is scope for the Bill to expressly safeguard information access and privacy rights, whether as a condition of funding or that, for example, the Minister is required to take advice about privacy and information access controls and mechanisms embedded in the proposed project.

These amendments seek to give effect to those submissions by the Information and Privacy commissioners. The amendments would require the Minister to seek advice from the commissioners about how any project may affect information access and privacy rights. The Government may claim that this is unnecessary because any projects funded by the Digital Restart Fund would be subject to the provisions of the Government Information (Public Access) Act, the Privacy and Personal Information Protection Act and, if relevant, the Health Records and Information Privacy Act. However, the Opposition believes strongly in the principle of privacy by design. We believe that information access and privacy rights should be considered at an early stage in a project's life and not treated as an afterthought when something has gone wrong.

As the stated goal of the Digital Restart Fund is to fund relatively small projects across the whole of government, we believe it is important that there be appropriate safeguards and independent scrutiny to prevent privacy breaches as new systems are rolled out. I acknowledge the information given by the Information Commissioner and Privacy Commissioner before the inquiry hearing on 7 February 2020. In that evidence the commissioners indicated that a measure of confidence in information provided by the Government meant their concerns were being addressed. Whilst the Opposition acknowledges that evidence given by the commissioners, we still believe the issues identified by the commissioners in their written submission should be addressed. I note the following statement by the commissioners in their written submission:

Transparency in decision making, including clear legislative considerations in the decision making process, contributes to open democratic government. Clear provisions requiring the consideration of safeguarding information access and privacy rights as part of their project design and as a condition for funding contributes to such transparency.

The Opposition agrees with that statement. The amendments we are proposing will ensure that this bill will contain the clear legislative provisions that the commissioners sought. We do not believe that a requirement to seek advice from the commissioners will be unnecessarily cumbersome. In fact, this requirement should merely formalise something that the Government says it will do anyway. In its submission to the inquiry into this bill the Government said:

The DRF investment process considers data and privacy aspects, as part of the funding request assessment processes. The application process includes an assessment of how each of the projects meet the data and privacy requirements during the funding process and subsequently during the delivery phase of the project.

If the Government is already assessing data and privacy issues as part of the Digital Restart Fund process, it should have no objection to supporting this amendment and formalising privacy and information protections in this bill to ensure that the arrangements reached by the current Minister and current commissioners continue after their tenures.

The purpose of amendments Nos 3 and 4 is to allow oversight and accountability of the operation of the Digital Restart Fund. Currently clause 13 of the bill requires the Minister to produce a report on the fund each year. In its current form clause 13 states that the information contained in the report will be determined by the Treasurer. Amendment No. 3 would provide a specific list of information that the annual report must contain. Amendment No. 4 is a consequential amendment that would make clear that the annual report must still also include an audit of the Auditor-General.

The purpose of these amendments are clear and simple. It is obviously desirable to have an annual report about the activities of the fund. However, the requirement to prepare and publish an annual report is meaningless if there are no legislative requirements about the content of the report. The amendments will ensure that the annual report will contain information that will allow people to understand which projects have been funded, how much funding was provided and whether the projects are meeting their objectives. Whilst the amendment would require specific information to be contained in the annual report, it would not prevent the Treasurer from determining that other information should be included as well.

One reason this amendment is necessary is because this Government has shown it cannot be trusted to honestly report on financial matters. On 11 June 2020 the Auditor-General of New South Wales handed down another scathing report into the Government's signature CBD light rail debacle. In that report the Auditor-General found that the cost of this project had blown out from \$1.6 billion to \$3.1 billion.

The Hon. Catherine Cusack: Just focus on the amendments.

The Hon. DANIEL MOOKHEY: We are. What is more, the Auditor-General found that the Government had not accurately reported details about those cost blowouts, omitting \$1.58 million from the revised cost of the project. That scandal follows the revelation that the Government knew before the last election that the CBD metro was at least \$3 billion over budget—

The Hon. Catherine Cusack: Point of order—

The CHAIR (The Hon. Trevor Khan): The point of order is that the member is straying well away from the amendments before the Committee. I uphold the point of order.

The Hon. DANIEL MOOKHEY: You can't blame us for trying.

The CHAIR (The Hon. Trevor Khan): No, I do not.

The Hon. DANIEL MOOKHEY: It is fair enough. Nevertheless, part of the reason why these amendments are necessary is because there are scant legislative provisions as to what information needs to be included in annual reports. For example, over a succession of time in the budget papers information that was once reported has been removed. Therefore, it is necessary to perhaps write that into law, given that we are about to spend \$1.6 billion. I note that while the Auditor-General will be required to audit the Digital Restart Fund, clause 13 of the bill without amendment only requires that the Auditor-General report on whether the payments from the fund may have been made in accordance with the Act and not whether the projects have merit or are achieving their objectives. That means it is essential that the Government be required to publish details about projects as specified in this amendment.

Publishing those details will allow members of Parliament, the media and the public to understand how the fund is operating. The information that will be required to be made public is not sensitive and it will not be onerous or administratively difficult to compile. In fact, it is information that should be readily available to the Minister in the normal course of operating the fund. Labor believes it is essential that every dollar invested in the Digital Restart Fund be spent wisely. Our State faces difficult economic circumstances and it is crucial that every dollar of taxpayers' money placed in the fund is used to develop projects that help our economy recover and provide lasting value for our State. If the Government is confident that the projects it is funding under the Digital Restart Fund are worthwhile, on time and on budget then the Government should have no hesitation in supporting these amendments to give taxpayers confidence that their money is being well spent. I commend the amendments to the Committee.

The Hon. CATHERINE CUSACK (16:11:36): The Government does not oppose the amendments.

The CHAIR (The Hon. Trevor Khan): The Hon. Daniel Mookhey has moved Opposition amendments Nos 1 to 4 on sheet c2020-002B. The question is that the amendments be agreed to.

Amendments agreed to.

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

Motion agreed to.

The Hon. CATHERINE CUSACK: 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. CATHERINE CUSACK: On behalf of the Hon. Damien Tudehope: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. CATHERINE CUSACK: On behalf of the Hon. Damien Tudehope: I move:

That this bill be now read a third time.

Motion agreed to.**STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2020****Second Reading Speech**

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (16:14:00): 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 State Revenue Legislation Further Amendment Bill 2020 amends the provisions of three Acts—the Duties Act 1997, the Land Tax Act 1956 and the Land Tax Management Act 1956—as part of the Government's ongoing program of keeping the tax legislation effective and up to date. This bill has three key purposes: Firstly, to avoid discretionary trusts becoming subject to surcharge purchaser duty or surcharge land tax where there is no intention that income or assets in the trust be distributed to foreign persons; secondly, to enhance the landholder duty provisions to address inequities and anomalies in their application, bring them into closer alignment with other jurisdictions and fortify them against avoidance through the use of foreign acquisition vehicles; and, thirdly, to ensure consistency between recent changes to provide for the indexation of stamp duty thresholds and stamp duty concessions provided under the First Home Buyers Assistance Scheme.

The bulk of the amendments concern the Duties Act and fall into three categories: surcharge duty for discretionary trusts, landholder duty and miscellaneous duty-related amendments. Dealing firstly with the surcharge purchaser duty and related surcharge land tax amendments, surcharge purchaser duty and surcharge land tax are imposed on foreign persons who acquire or own residential land. "Foreign person" means a person who is a foreign person within the meaning of the Commonwealth's Foreign Acquisitions and Takeovers Act 1975 and includes a trustee of a trust in which an individual not ordinarily resident in Australia, or a foreign corporation or a foreign government, holds a substantial interest.

With discretionary trusts there is a risk that trustees can unknowingly become liable for the surcharges. This is because discretionary trusts often give the trustee powers to distribute income and/or capital to a wide range of beneficiaries, including named beneficiaries, such as relatives of the settlor, and classes of beneficiary, such as charities. If any one of the potential beneficiaries is a foreign person, or if the terms of the trust deed would allow for income to be distributed to a foreign person at any time, the trustee may be deemed to be a foreign person and therefore be liable for surcharge purchaser duty and/or surcharge land tax, even though none of the beneficiaries who actually receive or are likely to receive income is a foreign person.

To address this, schedule 1 to the bill—new section 104JA and its associated transitional clause—provides for surcharge purchaser duty exemptions and refunds when the terms of a discretionary trust are amended before the end of 2019 to prevent a foreign person from being a beneficiary. The transitional provision has retrospective effect to the commencement of surcharge purchaser duty on 21 June 2016 so that trustees who may have incurred liability prior to the commencement of this bill have an opportunity to obtain relief. However, since March 2017, Revenue NSW, through revenue rulings, client education activities and engagement with the Law Society of New South Wales and other stakeholder groups, has been advising taxpayers of the potential liability for surcharge purchaser duty that can arise under discretionary trusts and the possible need to make amendments to trust deeds.

Many trust deeds have now been amended and no surcharge duty incurred as a result. With this in mind, the Government considers that the end of 2019 allows sufficient time for any remaining trustees and their advisers to make necessary changes to trust deeds. As I mentioned previously, relief from surcharge liability will be contingent on the trust deed being amended to prevent a foreign person from being a beneficiary of the trust. This requirement has two elements: First, that no potential beneficiary of the trust is a foreign person—the no foreign beneficiary requirement; and, second, that the terms of the trust are not capable of being amended so as to allow for a foreign person to be a potential beneficiary under the trust—the no amendment requirement.

The first element essentially speaks for itself. The deed must not allow for property to be distributed to a foreign person. The second element is an important anti-avoidance measure to ensure that a deed cannot simply be amended to avoid surcharge and then be re-amended for the purposes of distributing income or assets to foreign persons. The terms of the trust deed preventing a foreign person from being a beneficiary under the trust must be irrevocable. When this legislation commences, some trust deeds will meet the no foreign beneficiary requirement already and the transitional provision specifies that such deeds will not need to be amended to meet the no amendment requirement. However, from commencement, an existing trust that does have potential foreign beneficiaries, or a new trust, will need to meet both requirements to ensure that a trustee is not deemed to be foreign person.

I will now discuss briefly discretionary trusts created under a will. Discretionary testamentary trusts can give rise to the same issues that I have just outlined. However, because such trusts are established under a will, the trustee generally has no legal capacity to amend the deed after the deceased has died. The transitional clause therefore provides that where the deceased dies before, or within two years after, the commencement of the new section 104JA, and the deceased was not a foreign person at death, the trustee of a discretionary trust will not be a foreign trustee, even though the trust does not prevent a foreign person from being a beneficiary under the trust. These discretionary trust amendments to the Duties Act are reflected in and adapted, as required, to land tax surcharge as detailed in schedules 2 and 3.

I now turn to the remaining amendments, which exclusively concern the Duties Act. A landholder is a unit trust scheme, a private company or a listed company that has landholdings in New South Wales with a threshold value of \$2 million or more. Landholder duty is paid on the acquisition of a significant interest in a landholder. A significant interest is one that constitutes 50 per cent or more of the landholder. Landholder duty is intended to ensure that transactions that essentially amount to an acquisition of land do not escape duty simply because the acquisition does not involve a direct transfer of land. The threshold is currently based on unimproved land value for land held in freehold. For leasehold land, unencumbered value is used. Unencumbered value is the market value or the sale amount that the landholdings might be expected to achieve in the open market disregarding any encumbrances such as mortgages. Once the land value threshold is met, duty is calculated on the unencumbered value, regardless of how the land is held.

The current threshold provisions have proved problematic, are not consistent with other jurisdictions' landholder provisions and are not in line with this Government's efforts to make the State tax system simpler for the taxpayer to navigate. Just to highlight a few of

the problems, the current provisions can cause confusion to taxpayers because the valuation methodology used to determine whether duty is actually payable—unimproved land value for freehold land or unencumbered value for other land—is different from the one used to determine the actual amount of duty payable, being unencumbered value for all land. They can result in unfair outcomes for taxpayers. Let me illustrate that with two examples.

The first example concerns a power station whose landholdings consist of low-quality rural land. The unimproved value of the land is \$1.5 million. However, because of the substantial assets on the land, the unencumbered value is \$12 million. Despite the substantial unencumbered value, the acquisition of a significant interest in this landholder would not attract any duty because the unimproved land value falls below the threshold. By contrast, consider the situation where a farming landholder has an unimproved value of \$3.5 million and an unencumbered value of \$5 million. In this case, the acquisition of a 100 per cent interest would incur a duty of \$260,000, even though the unencumbered value of this landholder is far less than that of the power station. The second example concerns a landholder that consists of leasehold interests over land. The leasehold interests have an unimproved value of \$1.8 million and an unencumbered value of \$2.5 million. Although the unimproved value is less than \$2 million, an acquisition of a significant interest in the landholder will incur landholder duty because the land is held in leasehold and thus its unencumbered value of \$2.5 million is used.

As I have mentioned, New South Wales threshold provisions differ from those in other States and Territories, all of which use an unencumbered value threshold. This bill brings us into closer alignment with those jurisdictions. The bill therefore amends section 146, and repeals section 146A, to change the method of assessing the value of a landholder for the purposes of determining if an acquisition of an interest in a landholder is liable to duty, so that unencumbered value is used instead of unimproved value. This amendment will simplify the duty's operation and make it easier to understand for taxpayers by providing that the unencumbered value of landholdings is the basis for determining whether liability exists for the acquisition of an interest and, if it does exist, the amount of the liability to be paid. It will ensure that acquisitions of interests in landholders that have an unencumbered value of more than \$2 million are subject to equal landholder duty treatment and bring the landholder provisions into closer alignment with those applying to direct transfers of land.

Turning now to the second landholder duty amendment, which concerns how land is defined for the purposes of determining the value of landholdings, once the land value threshold is met, duty is calculated on the unencumbered value of not only the landholder's land but also the landholder's goods, subject to certain exceptions. Whether landholder possessions are assessed as land, including fixtures, or goods can determine whether duty is payable or the amount of duty. By way of illustration, under section 163G if the value of the goods of a landholding entity is 90 per cent or more of the value of all of the entity's land and goods, a concession is available under which landholder duty applies only to the value of the land, which substantially reduces the duty payable.

Determining whether items constitute land or goods, however, is often problematic, and can involve lengthy and complex deliberations on the part of taxpayers, revenue authorities and their respective legal advisers. Reliance on common law authority is required to determine whether items are fixtures, and therefore land. Under common law, items that are physically fixed to the land may not necessarily be regarded as fixtures, but instead as goods in some situations. This has created ambiguity and led to disputation. All other jurisdictions, apart from New South Wales and the Australian Capital Territory [ACT], have addressed this problem by expressly defining land to include items that are fixed to the land, regardless of whether such items would be considered fixtures at common law.

The bill therefore includes new section 147A, providing that land includes anything fixed to the land, whether or not it is a fixture at common law. The bill nonetheless makes clear that land does not include those items that are expressly defined under section 163K as not being goods, such as livestock, registered motor vehicles and goods under manufacture. The new section 147A also provides the Chief Commissioner of State Revenue with a discretion to determine that a thing fixed to land is not part of the land if the thing is not owned by the landholder or their associate and is not used in connection with the use of the land. These amendments will reduce arguments over what constitutes land and goods, thereby facilitating speedier tax assessments and reducing compliance costs.

I now come to the third and final landholder duty amendment. Landholder duty poses particular challenges for revenue authorities because payment of duty is heavily reliant on the entity that acquires the interest or the landholder bringing the transaction to the attention of the revenue authority, supported by the authority's audit activities. This challenge is compounded by the fact that many acquisitions are by foreign entities, so that even where we are able to identify a liable transaction, there is little we can do to secure the outstanding duty if the offshore entity refuses to pay and has no Australian assets. Anecdotal evidence suggests that advisers in some international jurisdictions are aware of this vulnerability in New South Wales and exploit it by transacting through foreign entities. I am sure that members would agree that this situation is unacceptable.

Consistent with legislation in Western Australia, South Australia and the Northern Territory, section 154 of the bill makes a landholder jointly liable for the landholder duty payable on the acquisition of an interest in the landholder and provides for the liability of the landholder to be a charge on the land, for which a caveat can be registered by the Chief Commissioner. A key point to note here is that, unlike a direct transfer of land where ownership of the land changes on transfer, the acquisition of an interest in a landholder does not involve any change to the legal ownership of the land itself. The land remains in the ownership of the landholder. It is therefore appropriate that a landholder entity bear joint responsibility for ensuring that outstanding duty is paid. In situations where a landholder is held liable to pay landholder duty that is not paid by the acquirer or other relevant parties, the landholder will be able to recover that duty as a debt from one or other of those parties.

I now turn to the miscellaneous amendments to the Duties Act. An assignment or a transfer of an option to purchase land in New South Wales is a dutiable transaction as if it were an agreement to transfer property. In a recent Supreme Court decision, it was held that the current provisions do not apply to a scenario under which an option holder A agrees, for valuable consideration, to relinquish an option and the owner of the property B agrees to sell the dutiable property to a third person C. In this case, A has effectively assigned the rights under the option to C. The bill therefore amends section 107 to ensure that arrangements having the same effect as an assignment of an option to purchase land are subject to duty under the Act.

Part 1 of chapter 12 contains general provisions for the stamping of instruments evidencing a dutiable transaction. However, part 5 of chapter 2A has stamping provisions specific to surcharge purchaser duty, with the effect that a transaction that is liable to both transfer duty and surcharge purchaser duty is likely to require separate stamping to indicate that both duties have been paid. Separate stamping is an unnecessary administrative impost. For avoidance of doubt, the bill amends section 104ZQ to provide flexibility around the requirement for separate stamps to indicate that both purchaser duty and surcharge purchaser duty have been paid. This will make compliance procedures simpler and more efficient for taxpayers and Revenue NSW.

Finally, I turn to the amendments in schedule 4 that are consequential to the indexation of transfer duty thresholds. Earlier this year the New South Wales Government made changes to provide for the annual indexation of transfer duty thresholds; that is, the stamp duty brackets now change each year in line with the consumer price index, beginning with 1 July 2019. Following on from this are now two consequential changes: firstly, to the Duties Act 1997 for the First Home Buyer Assistance Scheme; and, secondly, to the Aboriginal Land Rights Regulation 2014 for the community development.

I will deal first with the First Home Buyer Assistance Scheme. The scheme provides first home buyers with a duty exemption or concession, which is done through applying a separate duty scale set out in section 78A of the Duties Act 1997. While the transfer duty thresholds are being indexed annually, no similar changes have been made to section 78A. This has inadvertently created an anomaly. Because of the indexation of transfer duty, for properties valued between \$799,700 to \$800,000, first home buyers claiming the duty concession will actually be liable for more duty than a purchaser for the same property who does not claim the concession. This is the same problem with first home buyers of vacant land valued between \$449,500 and \$450,000. These properties are at the upper end of the scheme, just before the concession entirely phases out for properties valued at \$800,000 or \$450,000 for vacant land.

While the range of properties is currently narrow, this problem will only increase over time as the transfer duty thresholds continue to be indexed annually. To address this, the bill amends the formula for calculating duty for first home buyers. This ensures that the scheme will move in line with the indexation of transfer duty thresholds each year, and that first home buyers continue to benefit from the same duty exemption or concession as they do now. That is, for properties valued up to \$650,000 or \$350,000 for vacant land, first home buyers receive a full duty exemption. For properties above that but valued up to \$800,000 or \$450,000 for vacant land, first home buyers receive a duty concession on a sliding scale.

I now turn to the amendment to the Aboriginal Land Rights Regulation 2014. The community development levy is a levy imposed under the Aboriginal Land Rights Act 1983 on dutiable transactions made by Local Aboriginal Land Councils. While these councils are exempt from duty under the Duties Act 1997, the community development levy may still apply. The levy is collected by Revenue NSW. Currently, schedule 6 of the regulation sets the levy as follows: for property valued at more than \$80,000 and up to \$1 million, the levy is 100 per cent of the duty; for property valued at more than \$1 million, the levy is 150 per cent of the duty. These brackets of \$80,000 and \$1 million are meant to align with the transfer duty thresholds in the Duties Act 1997. However, those are now \$81,000 and \$1,013,000 respectively because of indexation. The amendments to the Aboriginal Land Rights Regulation 2014 directly link the levy thresholds with the transfer duty thresholds. This ensures that the levy remains aligned with the transfer duty thresholds going forward. I commend the bill to the House.

Second Reading Debate

The Hon. DANIEL MOOKHEY (16:14:26): I lead for the Opposition in debate on the State Revenue Legislation Further Amendment Bill 2020. Labor will not oppose the bill. The bill's stated purpose is to address anomalies in revenue legislation, close tax loopholes and align the technicalities of certain New South Wales revenue legislation with the laws of other jurisdictions. The bill amends the Duties Act 1997, Land Tax Act 1956, Land Tax Management Act 1956 and Government Sector Finance Act 2018. It also makes consequential changes to the State Revenue and Other Legislation Amendment Bill 2019.

I will address the key changes in turn, starting with the surcharge purchaser duty sections of the Duties Act 1997. The bill provides exemptions from surcharge land and/or surcharge purchaser duties payable on land owned by discretionary trusts that have a foreign person as a trust beneficiary, if the discretionary trust irrevocably amends its trust deed to remove the foreign beneficiary or beneficiaries. Labor is advised in some cases refunds will be issued for those who paid the extra duty since the commencement of surcharge purchaser duty on 21 June 2016 if they make the required amendments to the terms of their trusts by a specified date. Amendments made in the Legislative Assembly extend the cut-off date to 31 December 2020, which Labor believes is sensible. Further, these provisions were grandfathered to apply to testamentary trusts executed after 31 December 2020 to protect those who may be incapable of revising their will to meet the legislative requirements.

We accept that foreign surcharge duties should only be charged to foreigners and that Australian beneficiaries of discretionary trusts were not the intended subjects of the surcharge duty. Labor's support for this provision is conditional on vigorous enforcement by Revenue NSW of the requirement for trusts to irrevocably remove foreign beneficiaries from their trust deeds. Labor laments that for three years the Berejiklian Government's failure to address this technical flaw in the duties Act has meant that some Australian residents have had to pay additional surcharges otherwise payable by foreigners.

I turn now to the landholder duty amendments. The bill adopts the same valuation method of determining liability for landholder tax for freehold and leasehold land, the unencumbered value of land method. This is the method Revenue NSW uses to assess liability for leasehold land. The unimproved value of land method is used to assess the liability for freehold land. I digress slightly to say that I thoroughly enjoyed learning the difference between "unencumbered" and "unimproved" and, incidentally, the tax economics and incentives and what turns on precisely what happens when one method is used at the expense of another. I am sure that if the Government is serious about pursuing land tax reform members are going to hear a lot about the difference between unimproved and unencumbered value of land.

The bill proposes to use the same method for determining liability for both types of land. For the purposes of valuing the land, the bill expressly defines "land" to include items that are fixed to the land, regardless of the common law determination of fixtures. Section 147A further gives the Chief Commissioner of State Revenue

discretionary powers to make a determination that land does not include fixtures if they are not owned by the landholder and are not used in connection with the use of the land. The Government advises that goods such as livestock, fixtures used in connection to the land for primary production or under manufacture and registered motor vehicles, amongst others, will not be adversely affected. Labor does not object to those changes and understands the Minister has consulted with relevant stakeholders to draft those measures. We rely on the assurances so provided.

The final landholder duty amendment is intended to deter foreign tax evasion. The bill makes Australian landholders jointly liable for duty payable on an acquisition interest. This provides Revenue NSW with the ability to pursue landholder duties owed by foreigners from Australian owners in the same unit trust scheme that owes the duties. Similar provisions exist in the revenue laws of Western Australia, the Northern Territory and South Australia. Labor will support sensible laws that deter tax evasion. We accept the advice of Revenue NSW regarding making these provisions prospective. However, we do not accept that taxation law cannot be applied retrospectively; precedent tells us otherwise.

This bill initially set out to crack down on loopholes that allow multinational companies to rob our States of the duties that are owed. While this bill is a step in the right direction, it has since been weakened with regard to tax avoidance. We appreciate that Revenue NSW is eager to have these powers and we accept that Revenue NSW hopes the existence of these powers is an inducement for people to disclose transactions that attract landholder duty. We share the enthusiasm of Revenue NSW officers when it comes to properly enforcing our revenue laws, particularly on something as complicated as landholder duty. We hope that this does help Revenue NSW achieve its mission of collecting the taxes that are owed to the people of New South Wales.

In regards to the miscellaneous amendments, the bill makes relinquishing options of a property to a third party dutiable, payable by the third parties effectively as a transfer of land. This stems from the Oak Brick case, decided by the Supreme Court in 2016, where the State missed out on \$299,155 plus interest on the transfer of options on a \$3.8 million property due to a loophole in the legislation. We support these reforms to close the loopholes and to enforce the original intentions of the Duties Act. We ask why it took four years after this judgement for such legislation to be brought to the Parliament.

I move now consequentially to the amendments to the State Revenue and Other Legislation Amendment Bill 2019. This includes the impact of the indexation of transfer duty to the formulation of the first home buyer scheme, noting that changes are expected to be made to the commencement date and the Community Development Fund under the Aboriginal Land Rights Act 1983. The bill provides for indexation in both schemes. These amendments should have occurred last June. We note the Government seeks to add a minor amendment to the Government Sector Finance Act 2018 to align the definition of budget aggregates with that of the current Australian accounting standards.

Members know that I am very passionate about the Australian accounting standards and I am glad that we are finally aligning the definition of budget aggregates with them. This brings them from a six-year period to a four-year period for consistency in the budget papers and State finance reports. This is an amendment that should perhaps have been made a little earlier. I make one reflection, which I am sure the Minister will appreciate. I understand this is the first substantial piece of legislation the Minister has moved as the finance Minister, which should be commemorated. I congratulate the Minister on moving his first piece of legislation through both Houses. I thank his office for the professional courtesy they extended to the Opposition by providing members with multiple briefings on the bill. I am glad that we were able to resolve issues in the spirit of bipartisanship to ensure that our revenue laws are effective and to ensure we are indeed collecting the taxes that are owed. Again I will not do this often, but I congratulate the Minister on passing his first piece of law.

The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (16:22:42): In reply: I thank the shadow Minister for his congratulations. I will put a copy of this legislation on my wall and a copy of the shadow Minister's warm acknowledgment in *Hansard* alongside it. I often say that revenue legislation is like watching paint dry. But in the circumstances I acknowledge the shadow Minister does a significant amount of homework in this regard, which makes it easier to come to agreement on legislation. Without further reflection, I commend the bill to the House.

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

Motion agreed to.

Third Reading

The Hon. DAMIEN TUDEHOPE: I move:

That this bill be now read a third time.

Motion agreed to.

Adjournment Debate

ADJOURNMENT

The Hon. DAMIEN TUDEHOPE: I move:

That this House do now adjourn.

COVID-19 AND WORKING FROM HOME

The Hon. ADAM SEARLE (16:24:48): In New South Wales to combat the risks associated with the coronavirus pandemic we have been making the necessary adjustments to our daily lives, one of which has included working from home essentially on a permanent basis. However, not all workplace changes should be made permanent. The Australian Bureau of Statistics [ABS] reported that 46 per cent, almost half, of all Australians who are employed were working from home in late April to early May. Working from home has been an important measure in the fight against COVID-19. However, it may unintentionally lead to a fundamental transformation in the way we work, which is not necessarily a favourable outcome for workers once the pandemic is behind us. There are certain advantages to working from home, such as reducing the stresses and costs of commuting. It also lightens the load on public transport and reduces the congestion on our roads, which in turn reduces our carbon footprint.

However, a move by some employers to impose permanent working-from-home arrangements when the crisis is alleviated, rather than taking a flexible and balanced approach, will see many workers disenfranchised and their quality of working life reduced. Working from home enables individuals to work longer hours and more often than not those hours are unpaid. The United Nations International Labour Organization published findings which demonstrated that working outside the office often leads to greater work hours and intensity without additional pay. In the late 1990s the Australian Centre for Industrial Relations Research and Teaching also found that Australia, contrary to its self-image as a lackadaisical nation, in fact worked more unpaid hours than any other nation in the Organisation for Economic Co-operation and Development.

It is not surprising that COVID-19 has seen workers increase their hours while working from home. In late April and early May one in six workers, which is 17 per cent of workers, were reported by the ABS to have increased the amount of hours worked since COVID-19 began. An intensification in working hours and heightened expectations from employers only increases when people are working from home. Whilst advancements in technology have improved our lives in a variety of ways, employees are now more accessible to their employers than ever before. There is often the unstated expectation to continually check and respond to emails, even late into the night, and individuals working from home often experience an increase in call volumes.

The absence of a clear line between home and working life means many employers expect their personnel to extend their work day without further remuneration. Workers feel the pressure to do this. With increasing work insecurity, workers face heightened pressure to conform to these often unstated demands. For example, *The Australian Financial Review* reported that in March Deloitte had cautioned staff to be "as productive as possible" during their time working from home or risk redundancy. Even prior to the COVID-19 crisis workers have faced mounting productivity pressure from employers.

Working unpaid hours has become a common trait in our workforce. A report in November 2019 from the Australia Institute's Centre for Future Work demonstrated that Australians were working almost five hours of unpaid work a week, which for a worker is more than six weeks of unpaid work a year. The report estimated that in 2019 some 2.4 billion hours of unpaid overtime was worked—worth a total of \$81.5 billion. This is a massive productivity dividend to employers no matter which way one looks at it. Major technology and financial firms such as Optus are now making work-from-home arrangements a more permanent fixture, as it had intended to do. Retail and hospitality workers in business districts lose out, as they depend upon this revenue, which is lost when workforces in office buildings reduce.

As we have seen in the public sector, there has been a move to not only relocate to cheaper accommodation but to have less accommodation. I think the New South Wales public sector proceeds on the premise that only around 70 per cent to 80 per cent of people can be accommodated in the workplace at any one time. We see private sector employers have followed suit. In the middle of the pandemic the reports about the potential crash in CBD commercial real estate is expected to occur. This will have a knock-on effect on hospitality workers in those business districts as foot traffic is reduced. Research from Stanford demonstrates that face-to-face engagements for workers are fundamental for motivating employees and developing new concepts, which in turn impacts the long-term growth of many businesses.

Humans are essentially pack animals; they want to socialise. The quality of interpersonal interaction is vital to job satisfaction. As members all know, in Zoom meetings we often do not pick up on non-verbal communication, particularly if we are interacting with people we do not know. We are also unable to tap into the informal power structures in workplaces. All workplaces have a formal hierarchy. They also have a formal way of working, as well as informal ways of working. Working from home permanently would deprive workers from promotional opportunities and an opportunity to be fully engaged with the world of work. As we emerge from the pandemic we should make sure that there is real choice for workers and ensure that working from home is properly resourced.

REVEREND THE HON. FRED NILE

Reverend the Hon. FRED NILE (16:29:53): I wish to speak briefly about some of the background to my life here in the New South Wales Parliament and also in the community. Some members may be surprised to know that I was born in Kings Cross and lived in Darlinghurst Road. I was born in 1934. My father was a taxi driver and my mother was a waitress in Kings Cross. They met, fell in love and got married at the Anglican Church in Kings Cross. I was their first son. My father came from England. He was an orphan. His mother and father had both died. He was brought up in what was called "the porpoise orphanage" and had a very difficult time. He came out to Australia when he was a young man, with some other young men he had made friends with. When he first arrived from the United Kingdom he went to work on a farm at The Rock. He worked there for a number of years until he saved his money and bought a red-and-black taxi cab, which he operated in the Kings Cross area.

Some members may be surprised to know I was not brought up in a Christian family or involved with church activity as a young person. I only became a Christian as a young man and I thank God for that. I have had a range of experiences. One of those was influenced by my father's experience in the British Army. He joined the British Army when he was 17 years old. He talked to me a lot about his time at war in France against the Germans. He was wounded and sent back to England, patched up from the effects of German machine-gun fire, and then, as used to happen in those days, sent back to France again, so the Germans had two goes to get him. I thank God they did not succeed otherwise I would not be here.

Hearing about my father's experience gave me an interest in the army. When I was 17 years old in Australia they started what was called National Service, where young men were called up at the age of 18 years. I went down to the army headquarters and said, "I'm 17. I'd like to volunteer for National Service." They said, "We're very happy to accept you," and I went straight into the National Service when I was 17 years old and was transferred to the 13th National Service Training Battalion Ingleburn. I continued that volunteer activity in the army reserve right up until 1972 when I retired. During those years I was able to study, to pass exams, to eventually become promoted to the rank of captain and then to qualify as a major and be appointed as a company commander in the 4th Battalion, Royal New South Wales Regiment. I enjoyed the army experience.

I also obviously had a lot of church experience. After I became a Christian I volunteered to become a minister and started ministerial training in the Congregational Theological College, the Melbourne College of Divinity, the United Faculty of Theology, as well as at the University of Sydney and the University of New England. I appreciated my time studying. I also studied politics at Macquarie University, although I had no involvement in any political party. I was very anxious to serve the community. From 1964, these were all positions where I was paid a small salary. Between 1964 and 1967 I was the national director of the Australian Christian Endeavour Movement. That was a major Protestant youth movement in Australia, with 50,000 members. I enjoyed the experience of travelling all over Australia conducting seminars and meetings. I thank God for those opportunities. [*Time expired.*]

TRIBUTE TO DR JESSE BLACKADDER

The Hon. BEN FRANKLIN (16:35:06): Dr Jesse Blackadder was an extraordinary woman: a writer, a teacher, a mentor, a friend. Her authenticity was effortless, her stories sublime. She died a week ago last Wednesday from pancreatic cancer, and the world for so many in her orbit will never be the same. Jesse had always been a writer—as an advocate, a journalist, a screenwriter, an editor, a children's author and finally an extraordinary writer of fiction. Her first novel *After the Party*, which was published in 2005 and is regarded by many as the quintessential novel about Byron Bay. I read it in 2017 and as soon as I finished I immediately sent her a text, which said:

Oh Jesse, I have just finished reading *After the Party*. It was magnificent. Evocative, moving, beautiful. Thank you for painting such a real and visceral picture of Byron and for introducing me to such extraordinary characters. I loved it.

Her passion for historical fiction gave rise to Jesse's second novel *The Raven's Heart*, which was, as she described it to me, a Scottish sixteenth century bodice-ripping romp. Inspired by the real Blackadder clan of Scotland, *The Raven's Heart* was a tour de force and won multiple awards. Jesse was an intrepid traveller—to Alaska, Scotland, New Zealand, Norway, Japan and especially Antarctica. She made three research trips to the Antarctic

and is the only person to have twice received the sought-after Australian Antarctic Arts Fellowship to summer at an Australian Antarctic base. She was swept away by the awe and power of that landscape and in 2010 she published her beautiful novel *Chasing the Light*, which reimagines the stories of the first women to land on Antarctica in the 1930s.

Her most recent published novel was the devastating and haunting *Sixty Seconds*, one of the most powerful books I have ever read. But the fact that Jesse had been blessed with such a gift was not enough for her. She needed to pass it on; so the StoryBoard project was born. StoryBoard is a free program attached to the Byron Writers Festival that takes children's authors into schools across the Northern Rivers to run creative writing workshops and inspire a love of language and storytelling. This was Jesse's brainchild and to date it has impacted over 20,000 children. It is run from a magical travelling bus filled with teepees, mats and books. Its impact has been profound.

As her health started to decline, Jesse and her close friend Sarah Armstrong established a Facebook page called "How's Jesse?" to provide her many friends with updates about her condition. As the months passed it started to take on a second role: To provide a place for people to post a tribute to Jesse and highlight the deep impact she has made on their lives. I will quote two of the contributions that show just how influential she was in the lives of young people throughout the region. On 4 June Helen Lynne wrote:

Jesse was the one who helped my son, Carson, start to put his world of characters into words and onto paper for the very first time. I will be forever grateful.

A week later Catie Corcoran, a final year high school student who had been part of Jesse's writing masterclass since year 7, wrote that she just wanted to say thank you to Jesse:

... for spending so much of your time to help all of us. You created a space where we could write without judgement and have fun.

That comment sums up Jesse to a tee: brilliant, generous, non-judgemental and all underpinned by a rich vein of celebration, laughter and fun. These traits were not just embedded in her professional life; they were stitched into everything she did—into her many friendships, into her treasured time with her family and, most importantly, into her relationship with her beloved partner, Andi Davey. Jesse's and Andi's was a partnership for the ages. From their ballroom dancing, to their charity walk in Scotland, to their StoryBoard adventures, their love was deep, raw and profound. I have never met anyone who could inspire such love from others as Jesse Blackadder. That deep, special love was so evident on Tuesday at her funeral service and afterwards at Jesse and Andi's beautiful nature-filled home. I am one of those who loved her deeply. Jesse Blackadder will be a resonating presence in my soul for the rest of my life. I will conclude with Jesse's own words—a passage from *The Raven's Heart*:

The Hume Clan will live and die, babies will be born, men will grow old, women will dance and plough fields, the stars turn in the sky, the rocks crumble and fall and still that river will run, no matter who claims it.

Black running water, water with no history, water that does not know its name. I turn my face away from Scotland and into the wind.

COGNITIVE IMPAIRMENT DIVERSION PROGRAM

The Hon. PENNY SHARPE (16:40:16): I congratulate the New South Wales Government on funding the pilot Cognitive Impairment Diversion Program [CIDP] and call on the Government to continue the funding for this program, which is due to run out at the end of June. The CIDP was established in 2018 and provided funding of around \$960,000 per year for two years. The aims of the program are to divert people with intellectual disability and other cognitive impairment from jail and to provide support for people to navigate the NDIS to get the additional support that they are entitled to. The CIDP funds the Intellectual Disability Rights Service in partnership with the Council for Intellectual Disability to provide intensive case management and support to divert people from jail. The program operates out of Penrith and Gosford local courts and has shown effective results that have changed lives.

In the past two years the program has diverted 66 per cent of participants from jail. In fact, only 8 per cent of participants have ended up in custody. The program has made an important contribution to keeping First Nations people out of jail, with 26 per cent of participants being Aboriginal or Torres Strait Islander. For a very modest government investment, this program has saved money and, perhaps more importantly, turned participants' lives around. The CIDP has helped some of the most vulnerable people in our community get the support they need, often for the first time. Participants in the program have been able to work through the NDIS to get proper diagnoses and have been assisted to develop appropriate support plans. Those with NDIS plans have had their plans reviewed to improve the supports they need to live within the community. The program has been so successful that participants have been able to get an additional \$2.5 million of NDIS support.

To put it in more practical terms, people with intellectual disability or cognitive impairment have been able to secure housing, study for the first time, get a job and be able to stay with their families, rather than ending up in jail. That is the whole point. Jail is a terrible place for anyone, but particularly for people with intellectual

disability who have been through a court system that they may not have understood, who may not have understood directions from police and who may have found the justice system bewildering at best. Research shows people with intellectual disability or cognitive impairment are three to four times more likely to be imprisoned in New South Wales. They are also less likely to be bailed or paroled because they often do not have suitable accommodation to go to. A lack of proactive early planning and gaps in appropriate supports mean people with intellectual disability struggle to comply with conditions on release and often end up back in jail, stuck in a horrible cycle that is very difficult for them to break free from.

The CIDP is not expensive. It costs around \$960,000 to run per year. The program has widespread support across the legal community. Participants say this program has turned their lives around for the better and, in some cases, even saved their lives. It is interesting to compare this program with the whopping \$2.6 billion being spent to run Australia's largest and most expensive prison in Grafton. Surely the New South Wales Government understands that more funding for diversion programs is better than funding for more and more prisons. Surely the Government can listen to experts and advocates who can demonstrate why programs like this meet the Government's stated aims for a more just New South Wales. Surely the Government can hear the stories of those who have been part of the program.

Mark is a young Aboriginal man who has post-traumatic stress syndrome and attention deficit hyperactivity disorder. Mark was homeless, had substance abuse problems and no form of income. He did not receive any Centrelink support. He was in foster care for most of his childhood and experienced severe sexual, physical and psychological abuse from a number of the adults in his life. After being severely let down by the foster care system, Mark had no trust in the services available to help him. Not surprising, Mark got into trouble with the law and was linked up with the Cognitive Impairment Diversion Program.

The CIDP provided a neuropsychiatrist who finally got Mark the diagnosis he needed. Workers at the CIDP built trust with Mark for the first time and he was able to work with them to establish Centrelink benefits, find suitable housing and develop a NDIS plan with an Aboriginal Service provider. Instead of being in jail, Mark now has a place to live, a regular income and the support he needs to reach the goals he has set to develop his independence, explore employment opportunities and have positivity in his life for the first time in a very long time. These programs are important. They should not be only pilots: they should be expanded. The Government should continue funding the important Cognitive Impairment Diversion Program.

ROAD WORLD CHAMPIONSHIPS

The Hon. ROD ROBERTS (16:45:16): For a change, I am going to tell the House a good news story. We have had months of drought, bushfires and COVID stories. Like everyone else, I have spoken about those issues. But tonight I will tell a good news story for this State. In light of the extraordinary uptake in cycling we have witnessed in New South Wales, across Australia and indeed throughout the world, I speak about the road cycling Road World Championships scheduled to be held in Wollongong in 2022. The UCI Road World Championships are the world cup of cycling. Only once before have they been held in Australia. Wollongong 2022 will be the first time New South Wales has had the privilege of hosting the championships. The event will bring approximately 1,400 of the world's best male and female cyclists to our shores, representing some 90 nations. Accompanying the athletes will be hundreds of thousands more in the form of support staff, officials, event staff, media personnel and fans.

Given the catastrophic impact that recent events have had on our tourism sector—from bushfires to floods and the global pandemic—major events such as these world championships promise a much-needed injection into the New South Wales economy. Beyond the one-off surge in tourism, the world championships will provide an unrivalled platform for showcasing our State to the world. As they watch the racing live on their screens, millions of cycling fans across the globe will see the beautiful beaches, coastlines, hills and trails of the Illawarra region. They may even get up into the stomping grounds of the Hon. Natasha Maclaren-Jones in Robertson.

The Hon. Natasha Maclaren-Jones: It's a good spot.

The Hon. ROD ROBERTS: It is a lovely spot. For reference, last year's world championships in Yorkshire were watched by more than 320 million people in 124 countries. The championships will position our State as a premier cycling holiday destination. Given the global uptake in bicycle use I mentioned previously, there is no doubt cycle tourism will be a significant market going forward. This is a rare opportunity for New South Wales. Despite having a passionate grassroots bike racing community here, fostered by peak body Cycling NSW, our State has not hosted an international race since the Sydney 2000 Olympic Games. I acknowledge Cycle NSW CEO Graham Seers, as well as his media and marketing manager Ryan Miu. They are doing a tremendous job in supporting cycle racing in New South Wales. Local residents will have the once-in-a-lifetime chance to see the world's best athletes riding right past their front door. It will be a celebration of health, fitness and the great outdoors. The event will inspire many to try riding a bike for the first time or to ride further or more often.

This is good news for New South Wales. The physical health benefits of cycling are well documented. Increasingly, we are also beginning to understand its benefits for mental health. As an alternative to the car, the bicycle is an efficient and enjoyable form of transport. The more that is done to encourage the activity of cycling in New South Wales the better it will be for our whole society. And who knows? There is every chance that we will see a homegrown cyclist crowned as world champion, with Caleb Ewan from the Southern Highlands and Amanda Spratt from the Blue Mountains currently among the top athletes in the sport in the world. I eagerly look forward to welcoming the cycling world to New South Wales in 2022.

PROFESSIONAL ACTIVISTS

The Hon. NATASHA MACLAREN-JONES (16:49:34): Today I speak on what I consider to be a very worrying trend and a new culture being created by some elements of the Australian community: Those whom I call the permanently outraged professional activists. It does not matter what the issue is, this group of individuals has become professional at being offended on behalf of others and has morphed into professional protesters and angry activists. This group of people attempt to create civil unrest no matter what the issue in order to proclaim their supposed superiority amongst and above decent Australians who go about their own business and private lives, work hard to earn a living, pay taxes and support their families. In recent times we have seen these decent hardworking Australians become the target of the permanently outraged professional activists, who will stop at nothing and use whatever tool and resource they have at their disposal against their fellow citizens.

I speak today looking at how the permanently outraged professional activists have weaponised arms of government against citizens. They do this in order to intimidate and threaten, and in some cases financially victimise, people who dare to have a different point of view to theirs. For a start, let us look at the Australian Human Rights Commission. The commission was established as a statutory agency in 1986 with the purpose of pursuing discrimination injustice. The problem now is that in some instances it is being used as a weapon of choice against Australia's own citizens, many of whom have a different point of view from the permanently outraged activist. Furthermore, as the commission is a statutory office, with its commissioners statutory office holders having security of tenure, there is little accountability of their work and the direction of the commission. I believe this lack of oversight and accountability has allowed a number of government agencies to be used against their own citizens.

In recent times we have seen the permanently outraged turn on Channel 7 and comments that were made on one of its morning programs during a debate by panellists who dared to debate the issues of the day. Such was the case with Sam Armytage, Prue MacSween and Ben Davis. According to the professional angry activists, panellists may only debate when they have the same view as theirs, otherwise they face the wrath of a deliberate and orchestrated campaign against them, a campaign that often ends in large financial and legal costs to the alleged offending person with a different point of view.

We have a proud history in this country and our communities are rightly full of plaques, monuments and statues acknowledging people who have made a significant contribution. We must remember that so many Australians lost their lives fighting in wars and conflicts to ensure that we remain a free nation with a free voice and freedom of association—the same freedoms that allow those permanently outraged professional activists to protest, march and push their minority view. It is unconscionable for a country like Australia to allow agencies inside government to be turned into a weapon to be used to silence its citizens, with the ultimate aim to discourage and stifle free thought, opinion and speech just because it is not consistent with the permanently outraged person's point of view.

In most cases these government agencies were created in good faith. They were established to protect all Australians against real discrimination. Frankly, there is no place for discrimination in a civil society. However, what we have seen in recent years is the permanently outraged professional activist riding roughshod over the majority of Australians, using our own agencies as a guise for discrimination. What we now have is a situation where these government agencies are being used as a tool by extreme left-wing groups to make vexatious claims, with the aim to intimidate and harass their intended victim. Out of fear, everyday Australians are being browbeaten into concealing their opinions. I call on agencies such as the Australia Human Rights Commission and others that are littered throughout our States to go back to the work that they were established to do. Leave the quiet majority of Australians alone, those who work hard and pay taxes for these kangaroo courts.

TRIBUTE TO DR JESSE BLACKADDER

The Hon. DON HARWIN (16:54:15): I congratulate the Hon. Ben Franklin on his very fine tribute to Dr Jesse Blackadder, a person whom he introduced me to as well. She was an outstanding writer who won seven awards. It was my great pleasure to appoint her to the literature Artform Advisory Board, where she was starting to make a very distinguished contribution. I feel heartbroken that she is no longer with us. I could not possibly give a greater tribute than the Hon. Ben Franklin has already given. I know how much Jesse touched his life.

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

Motion agreed to.

The House adjourned at 16:55 until Tuesday 4 August 2020 at 14:30.