



**New South Wales**

# **Legislative Council**

## **PARLIAMENTARY DEBATES (HANSARD)**

**Fifty-Seventh Parliament  
First Session**

**Tuesday, 20 October 2020**

Authorised by the Parliament of New South Wales



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## LEGISLATIVE COUNCIL

**Tuesday, 20 October 2020**

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

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

### *Announcements*

#### **PHOTOGRAPHER IN THE LEGISLATIVE COUNCIL**

**The PRESIDENT:** I advise honourable members that a photographer from News Limited will be present in the press gallery this afternoon to take still photographs only. I also advise honourable members that a photographer from Fairfax will be present in the press gallery during question time today to take still photographs only.

### *Bills*

#### **ROAD TRANSPORT AMENDMENT (DIGITAL LICENSING) BILL 2020**

#### **TRANSPORT ADMINISTRATION AMENDMENT (CLOSURES OF RAILWAY LINES IN NORTHERN RIVERS) BILL 2020**

#### **Assent**

**The PRESIDENT:** I report receipt of messages from the Governor notifying Her Excellency's assent to the bills.

#### **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2020**

#### **Messages**

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

### *Documents*

#### **ADVOCATE FOR CHILDREN AND YOUNG PEOPLE**

#### **Reports**

**The PRESIDENT:** According to the Advocate for Children and Young People Act 2014, I table the annual report of the Advocate for Children and Young People for the year ended 30 June 2020, received out of session and authorised to be made public on 19 October 2020.

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

That the report be printed.

**Motion agreed to.**

#### **OMBUDSMAN**

#### **Reports**

**The PRESIDENT:** According to the Ombudsman Act 1974, I table the special report of the NSW Ombudsman entitled *More than shelter – addressing legal and policy gaps in supporting homeless children: A progress report* dated 19 October 2020, received out of session and authorised to be made public on 19 October 2020.

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

That the report be printed.

**Motion agreed to.**

**INSPECTOR OF THE LAW ENFORCEMENT CONDUCT COMMISSION****Reports**

**The PRESIDENT:** According to the Law Enforcement (Controlled Operations) Act 1997, I table the report of the Inspector of the Law Enforcement Conduct Commission entitled *Annual Report 2019-2020: Law Enforcement (Controlled Operations) Act 1997*, dated 19 October 2020, received out of session and authorised to be made public on 19 October 2020.

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

That the report be printed.

**Motion agreed to.**

*Motions***BOWEL CANCER AWARENESS MONTH**

**The Hon. NATASHA MACLAREN-JONES (14:35:28):** I move:

- (1) That this House notes that:
  - (a) the month of June is Bowel Cancer Awareness Month, a time to raise awareness of Australia's second deadliest cancer; and
  - (b) every week in Australia, 103 people will lose their battle with bowel cancer and a further 300 are diagnosed with bowel cancer.
- (2) That this House notes that:
  - (a) Bowel Cancer Australia is a national charity dedicated to the prevention, early diagnosis and treatment for those affected by bowel cancer;
  - (b) to mark Bowel Cancer Awareness Month, Bowel Cancer Australia runs Red Apple Day to raise funds and awareness for bowel cancer;
  - (c) this year Red Apple Day will be on Wednesday 17 June; and
  - (d) the apple is the logo for Bowel Cancer Australia and their message that bowel cancer is treatable and beatable if detected early.

**Motion agreed to.**

**NATIONAL SKILLS WEEK**

**The Hon. NATASHA MACLAREN-JONES (14:35:51):** I move:

- (1) That this House notes that:
  - (a) National Skills Week takes place from 24 August to 30 August 2020;
  - (b) National Skills Week is dedicated to raising the profile and status of vocational training in the community;
  - (c) this year marks the tenth anniversary of National Skills Week; and
  - (d) New South Wales schools run School-based Apprenticeships and Traineeships that allow students to start an apprenticeship or complete a traineeship while at school.
- (2) That this House acknowledges the important role that vocational education and training plays in creating a strong and vibrant economy.

**Motion agreed to.**

*Documents***THE HON. DON HARWIN****Tabling of Documents Reported to be Not Privileged**

**The Hon. MARK LATHAM (14:36:23):** I move:

- (1) That, in view of the report of the Independent Legal Arbiter, the Hon. Bret Walker, SC, dated 25 September 2020, on the disputed claim of privilege on papers relating to the alleged breach of Public Health Order by the Hon. Don Harwin, MLC, 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 redactions in paragraph 2.
- (2) That according to the report of the Independent Legal Arbiter:
  - (a) document (a)/(b) 12 be redacted of information disclosing shopping locations; and



- (b) emails (a)/(b) 20, (a)/(b) 51 and (a)/(b) 53 be redacted of information disclosing specific or individual email addresses of police officers and employees.
- (3) That this House orders that the Department of Premier and Cabinet produce, within seven days of passing of this resolution, the redacted versions of the document referred to in paragraph 2.
- (4) That, on tabling, the documents are authorised to be published.

**Motion agreed to.**

## **ICARE AND STATE INSURANCE REGULATORY AUTHORITY**

### **Tabling of Documents Reported to be Not Privileged**

**The Hon. DANIEL MOOKHEY (14:36:51):** I move:

- (1) That in view of the second interim report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 24 September 2020, on the disputed claim of privilege relating to Insurance and Care NSW and the State Insurance Regulatory Authority, this House orders that the documents numbered 5, 7, 33 and 38 in Annexure E of the Arbiter's report, upon which claims of legal professional privilege were claimed and considered by the Independent Legal Arbiter not to be privileged, be laid upon the table by the Clerk.
- (2) That, on tabling, the documents are authorised to be published.

**Motion agreed to.**

### *Committees*

## **SELECTION OF BILLS COMMITTEE**

### **Reports**

**The Hon. NATASHA MACLAREN-JONES:** I table report No. 39 of the Selection of Bills Committee, dated 20 October 2020. I move:

That the report be printed.

**Motion agreed to.**

**The Hon. NATASHA MACLAREN-JONES:** According to paragraph 4 (1) of the resolution establishing the Selection of Bills Committee, I move:

- (1) That the following bills not be referred to a standing committee for inquiry and report:
  - (a) Local Land Services Amendment (Miscellaneous) Bill 2020;
  - (b) Stronger Communities Legislation Amendment (Miscellaneous) Bill 2020;
  - (c) Local Government Amendment (Pecuniary Interests Disclosures) Bill 2020;
  - (d) Marine Pollution Amendment (Review) Bill 2020; and
  - (e) Road Transport Legislation Amendment Bill 2020.

**Motion agreed to.**

### *Documents*

## **THE HON. DON HARWIN**

### **Tabling of Documents Reported to be Not Privileged**

**The CLERK:** According to paragraph (1) of the resolution of the House this day, I table documents identified as not privileged in the report of the Independent Legal Arbiter, Mr Bret Walker, SC, dated 25 September 2020, on the disputed claim of privilege on papers relating to the alleged breach of public health order by the Hon. Don Harwin. The resolution provides that some of the documents require redaction by the Department of Premier and Cabinet.

## **ICARE AND STATE INSURANCE REGULATORY AUTHORITY**

### **Tabling of Documents Reported to be Not Privileged**

**The CLERK:** According to the resolution of the House this day, I table documents Nos 5, 7, 33 and 38, considered not privileged in the second interim report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 24 September 2020, on the disputed claim of privilege on papers relating to Insurance and Care NSW and the State Insurance Regulatory Authority.

**AUDITOR-GENERAL****Reports**

**The CLERK:** According to the Public Finance and Audit Act 1983, I announce receipt of a Performance Audit report of the Auditor-General entitled *The effectiveness of the financial arrangement and management practices in four integrity agencies*, dated October 2020, received out of session and authorised to be printed on 20 October 2020.

**The Hon. MICK VEITCH (14:40:07):** I move:

That, according to sessional order, the House take note of the document.

**Debate adjourned.**

**GOVERNMENT SECTOR STRATEGIC ASSET MANAGEMENT PLANS****Return to Order**

**The CLERK:** According to resolution of the House of 23 September 2020, I table: additional documents relating to an order for papers regarding Government Asset Management Plans, received on 19 October 2020 from the General Counsel of the Department of Premier and Cabinet, together with an indexed list of documents.

**Claim of Privilege**

**The CLERK:** I table a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. I advise that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

**STRONGER COMMUNITIES FUND****Correspondence**

**The CLERK:** According to resolution of the House of 24 September 2020, I table correspondence relating to an order for papers regarding the Stronger Communities Fund—further order, received on 19 October 2020 from Mr Tim Hurst, Chief Executive Officer, Office of Local Government, advising that all documents held by the Department of Planning, Industry and Environment pertaining to the approval of grants were provided on 29 June 2020.

*Committees***LEGISLATION REVIEW COMMITTEE****Reports**

**The Hon. TREVOR KHAN:** I table the report of the Legislation Review Committee entitled *Legislation Review Digest No. 22/57*, dated 20 October 2020. I move:

That the report be printed.

**Motion agreed to.**

*Notices***PRESENTATION**

[During the giving of notices of motions]

**The PRESIDENT:** Order! I have indicated on numerous occasions—but, sadly, I am not being listened to, adhered to or followed—that members will give their notices of motions in silence and without interjections. The time to deal with a motion is during debate, when all members will be afforded an opportunity to express their views and comments, not when a notice of motion is being given. I have indicated also on numerous occasions that I am required to listen to the giving of a notice of motion as I may need to rule on aspects of it. I will call to order members who interject during the giving of notices of motion. I am not saying that Mr David Shoebridge was doing this but I want to make clear that members should not encourage interjection or be provocative when giving notice of a motion.

*Business of the House***POSTPONEMENT OF BUSINESS**

**Mr JUSTIN FIELD:** I move:

That business of the House notice of motion No. 1 be postponed until Tuesday 10 November 2020.

**Motion agreed to.**

**The Hon. ADAM SEARLE:** I move:

That business of the House notice of motion No. 2 be postponed until Thursday 22 October 2020.

*Rulings***PRODUCTION OF DOCUMENTS**

**The PRESIDENT (15:01:39):** On Thursday 15 October 2020, the Hon. John Graham moved a motion, contingent on the Government failing to table documents according to an order of the House. The Hon. Damien Tudehope took a point of order that the motion for the suspension of standing orders could not be moved as the event upon which the contingent notice relied had not occurred. A number of comments were made in debate concerning the substantive motion of contempt and suspension. I have also received written submissions from the Hon. Damien Tudehope, the Hon. John Graham and the Hon. Adam Searle. The Government argues that all documents captured by the orders of the House have been provided. The Hon. Damien Tudehope has stated in the House, both during debate on the motion for censure of the Leader of the Government on 24 September 2020 and in debate on the point of order on Thursday 15 October, that all documents legally required to be provided and falling within the scope of the order have been provided. The Hon. Damien Tudehope asserts that he should be taken at his word that all documents that exist have been provided and that his word should be accepted by the House.

As I noted during debate on the point of order, President Primrose ruled that, "It is for members to vouch for their words and for the House to accept the members' assurances." I agree with the ruling of then President Primrose and accept the word of the Hon. Damien Tudehope. The Department of Premier and Cabinet and the Department of Planning, Industry and Environment have also certified in response to the order of the House that all documents legally required to be provided and falling within the scope of the orders of the House were provided to the House. In response to assertions made by the Opposition, the Hon. Tudehope argues that the absence of certification letters from the Premier and Ministers subject to the orders for papers is appropriate "as Ministers' offices do not usually keep ministerial briefs as they are returned to the agency". The Government's argument follows that as there are no documents that can be produced, the Minister cannot be said to have failed to produce them. Therefore, the trigger for using the contingent notice has not occurred.

The Opposition notes that the Premier, Deputy Premier and Minister for Local Government were subject to the order of the House of 16 September 2020, yet no letters were received from those Ministers certifying that all documents in their possession, custody or control have been provided to the House. The Opposition argues that "it remains appropriate for us to progress an argument in the House that the Government has not complied, or sought to comply, with the request that the House has made". Put simply, the Government argues that all documents legally required to be produced have been provided and that it cannot produce documents that do not exist. Consequently, the motion for the suspension of standing orders cannot be moved on the contingent notice as the failure to comply with an order of the House has not occurred.

The Opposition argues that the documents sought have not been provided, that there is an absence of certification from the Premier, Deputy Premier and Minister for Local Government that all documents have been provided, or that no documents exist, and therefore the trigger for moving the suspension of standing orders contingent on a failure to comply has occurred. This ruling relates to the procedural motion before the House—that standing orders be suspended to allow a subsequent motion to be moved adjudging the Leader of the Government guilty of contempt and suspending him from the House. I reiterate that I take the word of the Leader of the House that all documents required to be provided have been provided. As I have ruled on previous occasions in my role as President when interpreting a rule or order "that I should preserve and strengthen the powers of the House and if I have any doubt regarding the arguments relied on in the current matter, that I should thus lean towards the motion being in order".

Further, it is an established principle that when ruling on a point of order, wherever possible the Chair should lean towards permitting rather than preventing debate. Finally, I am persuaded by the submissions of the Opposition and other members of the House that as the House has already censured the Leader of the Government for noncompliance with the order of the House of 16 September and that there has been no material change since 24 September, that the trigger for use of the contingent notice has occurred. I therefore do not uphold the point of order of the Leader of the House and allow the procedural motion to proceed when it is called on in the routine of business.

I turn now to the substantive motion as circulated in the Chamber by the Hon. John Graham on Thursday 15 October 2020, although not yet officially before the House. I indicated when I reserved my ruling that I would look at both the procedural and the substantive motions and invite submissions in respect of same. As I indicated

to the House last Thursday, a motion to suspend a member and hold them in contempt of the House is an extremely serious matter. The power of the Legislative Council to find a member in contempt should be used sparingly and only for the purposes of safeguarding the dignity and honour of the Parliament or as reasonably necessary for the proper exercise of its functions. The power must be exercised to protect and defend the House and not for punitive purposes. For this reason motions of contempt and the suspensions of honourable members are extremely rare.

As President, it is my role to not only apply the standing rules and orders of the House but also to assert and protect the powers of this House. Allowing the powers of the House to be used in a manner which may be open to criticism as unreasonable or even in danger of being overturned by a court would, in my view, be an abrogation of my responsibilities. For this reason I have already indicated this afternoon to both the Leader of the House and the Leader of the Opposition that if a point of order is taken, as foreshadowed by the Leader of the House in his submission in respect of that substantive motion as circulated last Thursday, my current intention is that I will most likely rule it out of order because of the risks that it would pose to the reading down of the powers of this House if passed in that form and subsequently challenged.

*Business of the House*

**SUSPENSION OF STANDING AND SESSIONAL ORDERS: PRODUCTION OF DOCUMENTS**

**The Hon. JOHN GRAHAM (15:09:44):** Following the failure of the Leader of the Government as the representative of the Government in this House to table documents according to orders of the House of 3 June 2020, 16 September 2020 and 24 September 2020 relating to Stronger Communities Fund tied grants, I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith adjudging the Minister guilty of a contempt of the House for failure to comply with the orders of the House.

Mr President, thank you for your earlier ruling.

**The PRESIDENT:** Is the Hon. Damien Tudehope taking a point of order?

**The Hon. Damien Tudehope:** I am just asking for an answer as to whether—

**The Hon. Mark Latham:** Mr President, you are inviting the point of order. You are prompting the point of order. How independent is that?

**The PRESIDENT:** I indicate that the Hon. John Graham has already moved the motion and has done so again. When he moved the motion on the last occasion he did not have an opportunity to speak. That opportunity is being afforded to him now. I have already ruled on the procedural motion and I have given an indication of what would occur if a new point of order is taken by the Leader of the House in relation to the substantive motion.

**The Hon. Mark Latham:** Point of order—

**The PRESIDENT:** A new point of order?

**The Hon. Mark Latham:** Yes, it is. Just moments ago you prompted the Leader of the House to take a point of order, which I submit is a misuse of your powers and is totally inappropriate for someone supposedly independent in the chair. You cannot prompt the Leader of the House and call on him to take a point of order when he did no such thing.

**The Hon. Damien Tudehope:** To the point of order: Quite frankly, it is inappropriate. The point of order was not in respect of the substantive motion, which has not yet been moved. I was going to raise an issue about the suspension of standing orders, which is the subject that—

**The PRESIDENT:** This is difficult enough without interjections, which are completely unnecessary. I am giving every member an appropriate opportunity to speak. The Leader of the House will continue.

**The Hon. Damien Tudehope:** The point that I wish to raise is that the Government opposes the suspension of standing orders in respect of the motion, which has not yet been moved.

**The PRESIDENT:** I will deal with the Hon. Mark Latham's point of order. There is no point of order. When the Leader of the House stood up I asked whether he was taking a point of order. He indicated that he was not and sat down. I object to the way the Hon. Mark Latham referred to me and how I am dealing with this matter. If the Hon. Mark Latham believes that I am not acting appropriately, standing orders provide a way for him to deal with the matter. He should not stand up during a point of order and have a go at the Chair; it is unacceptable. The member is lucky that I am not treating it as gross disorder. The Hon. John Graham will now speak on the matter. Then the Leader of the House will have his opportunity to speak and other members will have their opportunities to speak.

**The Hon. JOHN GRAHAM:** Thank you for your ruling, Mr President. I will speak to the suspension now, but the motion that I seek to bring before the House will be different in form to the motion that was circulated to members. That motion is with the Clerks and it has an eye to the very issues that the President has raised in his ruling. I seek to suspend standing orders to deal with the matter urgently because of the Opposition's concerns about the administration of the fund. It is a \$252 million Government fund. That is a quarter of a billion dollars of public money across 249 grants. Almost all of it was distributed in the months before the election, during the caretaker period between 27 June 2018 and 1 March 2019. The majority of it was authorised by the Premier.

**The PRESIDENT:** I indicate to the House that we are dealing with the urgency aspect of the motion. I refer to the previous ruling of then President Primrose in June 2007. The case for urgency is not made simply by repeating the word "urgency". Members must speak to why this matter is more urgent than any other matter but not to the substance of the matter.

**The Hon. JOHN GRAHAM:** To put it plainly, it is the scale of the maladministration of the fund that the Opposition is concerned about because 95 per cent of it went to Coalition seats. No recommendation was ever sent to the Premier by the Office of Local Government and no written, signed brief approving the grants has been presented by the Government to the House. Opposition members say that is a very serious issue that the House should deal with. We want to test the claims that the Government has made in debate in the House, as we believe the House is entitled to do. How could it be that there is no recommendation and no approval?

**The Hon. Damien Tudehope:** Point of order: We all know that this is the substantive argument that the member wants to make.

**The PRESIDENT:** I do not want to take too much of the Hon. John Graham's time. I uphold the point of order. Again, the member is required to explain why this matter is more urgent than any other matter as opposed to arguing the importance of the matter.

**The Hon. JOHN GRAHAM:** Finally, the Opposition objects to not only the scale of the maladministration but also the scale of the insult to the House. Certifications have been sought on multiple occasions by this House and the Department of Premier and Cabinet has not acted on those certifications. For those reasons, the Opposition says it is urgent.

**The PRESIDENT:** I will give the call to the Leader of the House and then to Mr David Shoebridge. Again I remind members to speak about why the matter is urgent or not.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (15:17:07):** I will be brief. Firstly, it is a Government business day. In many respects we should not be interfering with Government business when the motion can quite properly be the subject of a debate tomorrow. The urgency of the matter can be dealt with during business tomorrow. Secondly, I do not even have a copy of the motion yet. For the Government to consider its position on the subject matter, it should not be ambushed by a motion that it has not even seen. Thirdly, when did the matter become urgent?

There is a committee hearing on all these issues. They can be examined during the process of that committee, which can bring on its hearings any time it likes. Finally, the matter became urgent only last Thursday. Why was it not urgent on Tuesday or Wednesday last week, when it could have been brought on by motion on either of those days? For those reasons, the Government says that there is no demonstrable urgency that the mover of the motion can demonstrate. He should not be given the opportunity to interfere with Government business today.

**Mr DAVID SHOEBRIDGE (15:19:09):** The Greens support the contingency motion and say that the matter is urgent for two reasons. The first is the seriousness of the Government's noncompliance. The House must uphold its powers under Standing Order 52, or SO 52, and force transparency from the Government. The Leader of the House has made assertions, which, I believe, were made in good faith on the instructions given to him. The motion does not call into question the word of the Leader of the House. However, the instructions given to him are deeply troubling. If the Government's answer is that there are no documents signed by the Premier and that there are no assessments of the \$252 million program, then the Government's defence is one of gross maladministration, which, I would suggest, consistent with the evidence that the ICAC Chief Commissioner gave last week to the Public Accountability Committee, constitutes genuine corruption under ICAC Act 1988. There could not be a more serious issue than an allegation of corruption under section 80 of the ICAC Act in relation to a \$252 million pork-barrel scheme. That is the first point.

**The PRESIDENT:** I remind the member to speak to the urgency.

**Mr DAVID SHOEBRIDGE:** Secondly, the motion tests the veracity of the Government's response. The suggestion is that it is not urgent—

**The Hon. Damien Tudehope:** Point of order: Mr David Shoebridge's argument does not go to urgency.

**The PRESIDENT:** I remind Mr David Shoebridge that his contribution goes to the substantive motion rather than to the question of urgency. Why is this matter more urgent than any other matter on the *Notice Paper*?

**Mr DAVID SHOEBRIDGE:** The matter is urgent because tomorrow members on this side of the House will move a number of additional calls for papers under SO 52. Showing that the House has the resolve not only to make the order but also to enforce it when there is noncompliance is essential for tomorrow's work in this House. The Leader of the House has told the House that there are no documents containing the Premier's signature. We possess email correspondence dated 28 June 2018 from Sarah Lau from the Premier's office saying, "The Premier has signed off further funding for metro councils." That is a direct quote. We have that correspondence from the Premier's office but the Government wants us to take its word that there are no documents signed by the Premier in relation to this \$252 million swindle of public money. So of course the matter is urgent.

**The PRESIDENT:** Mr David Shoebridge, you are drifting into the substantive argument. I need to hear why the matter is more urgent than any other matter, not the argument for the substantive motion.

**Mr DAVID SHOEBRIDGE:** Without doubt, if you were to ask the people of New South Wales whether it is more urgent to deal with a \$252 million misuse of public money for partisan benefit than with a miscellaneous provisions bill, which is the Government's other business agenda item, they would say: Deal with the corruption.

**The PRESIDENT:** I remind the Hon. Damien Tudehope that he cannot simply stand. He must call "point of order" if he wants me to give him the call.

**The Hon. ADAM SEARLE (15:22:33):** The matter is urgent and the Opposition seeks to bring it on today not only because of the scale of the Government's noncompliance and the scale of the substantive issue, which I will not get into, but also because the House will deal with private members' business tomorrow. More importantly, returns on a range of calls for papers are outstanding. Today, in relation to calls for papers that, apparently, have been complied with, the Government makes further returns. That calls into question the completeness of earlier certifications and the accuracy of those assertions—not the honesty of the people doing it but the accuracy. The House has to enforce compliance with its orders regularly; otherwise, history shows that the Executive will not comply.

Members will remember the recent debate about the Powerhouse Museum business case, which went back and forth for a long time. This House had to fight very hard and diligently to secure compliance by the Executive with its orders. The Government's current noncompliance is a clear and present threat to government compliance. If it gets away with noncompliance in this instance, if it does not see that the House is resolved, that will be a green light to future noncompliance by the Government. The people working in the Government are not necessarily trying to avoid it; it is just the nature of the tension between the Executive and the House. The House wants to secure compliance with its orders and the Executive will comply only to the extent that it has to.

**The Hon. Damien Tudehope:** Point of order: I understand the substantive points that the Leader of the Opposition makes but he must return to the fundamental question: Why should this motion take precedence today rather than proceed tomorrow?

**The Hon. ADAM SEARLE:** I accept that.

**The PRESIDENT:** I cite two relevant rulings. Then President Primrose's ruling of June 2009 states:

The only comments that are in order are those that relate to why one item of business should proceed and other items should consequently be delayed. Members must confine their remarks to why their item is more urgent than other items on the Notice Paper.

His ruling of March 2009 states:

Arguing the importance of the matter is not the same as arguing its urgency.

**The Hon. ADAM SEARLE:** The motion is urgent for two reasons: First, the motion is urgent because there are a lot of outstanding calls for papers under Standing Order 52, which are at risk of not being complied with if the motion is not brought on now; secondly, the Government's noncompliance is an affront to the House. It is not just that the matter is urgent today; it was brought on last week and has not been dealt with by this House because of the actions of Government members taking a procedural point of order. That is their right but the Opposition is still pressing the matter because it has not been dealt with. It was urgent last week and it remains urgent. We seek to bring the matter on now and have the substantive debate. The House is the master of its own destiny; let us see what the will of the House is without these procedural shenanigans.

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

**The House divided.**

Ayes .....22  
 Noes .....16  
 Majority.....6

#### AYES

Banasiak	Graham	Primrose
Borsak	Houssos	Roberts
Boyd	Hurst	Searle
Buttigieg (teller)	Jackson	Secord
D'Adam (teller)	Latham	Sharpe
Donnelly	Mookhey	Shoebridge
Faehrmann	Pearson	Veitch
Field		

#### NOES

Amato	Khan	Mitchell
Fang	Maclaren-Jones (teller)	Nile
Farlow	Mallard	Taylor
Farraway (teller)	Martin	Tudehope
Franklin	Mason-Cox	Ward
Harwin		

#### PAIRS

Moriarty

Cusack

#### **Motion agreed to.**

#### *Documents*

#### **STRONGER COMMUNITIES FUND**

#### **Contempt for Failure to Table Documents**

**The Hon. JOHN GRAHAM (15:37:15):** I move:

- (1) That this House regards it as an affront to the full and effectual exercise of its important functions:
  - (a) that the Government failed to comply with the order of the House of 3 June 2020 relating to Stronger Communities Fund to produce all documents concerning the assessment and approval process for determining funding allocations, including records of who was responsible for final approval, as required by that order within 14 days;
  - (b) that the Government failed to comply with the insistence of the House in orders of 16 September 2020 and 24 September 2020 relating to Stronger Communities Fund to produce signed, written briefs approving the projects awarded funds as part of the Stronger Communities tied grants funding round as required by those orders;
  - (c) that, in response to the order of the House of 16 September 2020, the Government failed to provide certifying letters from the offices of the Premier, the Deputy Premier and the Minister for Local Government, as to whether they do, or do not, hold such a signed, written brief approving the projects awarded funds; and
  - (d) that the Government has not satisfactorily or clearly explained the reasons for non-production of documents ordered by this House.
- (2) That this House notes:
  - (a) that while evidence to the Public Accountability Committee at a hearing held on Monday 21 September 2020 was that the Premier, Deputy Premier and Minister for Local Government were decision makers for the Stronger Communities Fund, no written brief approving the grants signed by either the Premier, Deputy Premier or Minister for Local Government have been produced, or sighted by the Office of Local Government; and
  - (b) that on Tuesday 13 October 2020, the Clerk tabled correspondence from the General Counsel of the Department of Premier and Cabinet in response to the order of the House of 24 September 2020, in which the General Counsel noted an email from the Department of Planning, Industry and Environment to the Department of Premier and Cabinet which confirmed that all documents referred to in paragraph (2) (a) of the resolution of 16 September 2020 held by the Office of Local Government and DPIE, including the written and signed briefs approving the expenditure of funds, had been provided to the House and further that "[e]ach briefing note in relation to expenditure attaches an email confirming the ministerial approval relevant to the payment of that grant".
- (3) That this House adjudges the Leader of the Government as the representative of the Government in this House guilty of a contempt of the House for his failure to provide:

- (a) evidence of the documents ordered being sought from the Premier, the Deputy Premier or the Minister for Local Government;
  - (b) certification letters from the offices of the Premier, Deputy Premier and Minister for Local Government in response to the orders of the House; and
  - (c) clear explanation to the House for the non-compliance.
- (4) That this House, regarding it as necessary to obtain information on any matter affecting the public interest and in order to protect the rightful powers and privileges of the House, and to remove any obstruction to the proper performance of the important function it is intended to execute hereby suspends the Leader of the Government from the service of the House until the conclusion of the sitting on Wednesday 21 October 2020. However, the period of suspension is extinguished if within the period of suspension the Leader of the Government notifies the President that he is willing at the next sitting of the House to:
- (a) produce the signed written briefs approving successful applications; or
  - (b) confirm that the documents do not exist; or
  - (c) that the documents are not being provided as they are considered by the Government to be cabinet documents.
- (5) That this House orders the production, by 9.30 am on Thursday 22 October 2020, of the signed written briefs approving the allocation of funding from the Stronger Communities Fund, or any other document, however described, which records the actual decision to approve the allocation of funds, in the possession, custody or control of the Premier, the Department of Premier and Cabinet, the Deputy Premier or the Minister for Local Government.
- (6) That, should Leader of the Government fail to comply with paragraph (5) orders the Leader of the Government to attend in his place at the Table of the House at the commencement of the sitting of the House on Thursday 22 October 2020 to:
- (a) produce the signed written briefs approving successful applications; or
  - (b) confirm that the documents do not exist, and provide a clear explanation about the manner in which formal approval by the Premier and her Ministers was executed and recorded, to the satisfaction of the House.
- (7) That this House notes that, should the Leader of the Government fail to provide the documents or adequately satisfy this House of the manner in which formal approval by the Premier or Ministers was given for grants under the Stronger Community Fund that it is open to the House take further action in order to protect the rightful powers and privileges of the House. In speaking to the resolution, I say that the House would like to test—

**The Hon. Damien Tudehope:** Point of order: Members will accuse me of tedious repetition.

**The Hon. Walt Secord:** And trifling with the House.

**The PRESIDENT:** Order! I call the Hon. Walt Secord to order for the first time. This is a serious and complex matter. The last thing the Chair needs is interjections. The Minister has the call.

**The Hon. Damien Tudehope:** Mr President, you have generously given me and the Leader of the Opposition an indication of your view on a previous motion along similar lines to this one. I welcome the generosity with which that observation was made. The motion before the House is very serious because it asks the House to use its power to remove a member of the Government from the Chamber and disallow the exercise of the powers relating to debates and other business of the House that members are afforded in this place. Mr President, I strongly endorse the observations you made in your previous ruling. This is a serious matter. When a contempt application triggered by a contingency motion is made, the substantive motion and the failure to comply must be demonstrated to be so apparent that there is effectively contempt of the House.

Mr President, I made various submissions to you relating to the contingent motion, which the mover relied upon to trigger this motion being brought today. I will not go into a significant amount of the background to that material, but I will go into the substantive arguments which, I put to you, still have not been answered in the actual step now being taken in the moving of the substantive motion. I reiterate that, first of all—and Mr President, you have already identified it in your reasons in relation to the contingent motion—you have my statement to the House. I thank Mr David Shoebridge for his concession that he accepts that my statement was given honestly; I stand by that. I note that he draws no issue that I am standing here now, deliberately misleading the House. However, in saying that I am potentially wrong or information I have been given is wrong, he relies upon the potential of another document to exist because one of the documents produced pursuant to the order made under Standing Order 52 has the expression "signed off on".

He interprets that as meaning that it refers to another document. It can, in fact, mean that she has okayed it. At best, it is a colloquial expression to say that the process is being agreed to: "We are in fact signing off on it." The use of the expression "signed off", as far as I am concerned, does not in any way vitiate my previous submission to the House that no further documents exist. If you apply the Primrose principle, I should be taken on my word on that assertion. In respect to the existence of the documents, I say that the House could not be satisfied even now of any evidence to suggest that my assertion should not be accepted.



I thank the member for the submission that he has made. He has shown me the document. In the circumstances, it does not in any way detract from the fact—and the continuing assertion that I make as I stand here now—that no documents exist. The second point is that I rely on the certification that has been made to the House, which does exist. I will amplify that certification by saying a few things about it. I put this in a submission to you, Mr President. An explanation from the Department of Premier and Cabinet [DPC] to the Clerk on 23 September 2020 confirmed that DPC did not write to all of the Ministers named in the order asking for their certification of any documents. I accept that the certifications from those Ministers may not exist. This is because—and this is the explanation that I urge the Leader of the Opposition and those opposite to accept—the usual practice of the House when making a further order is to request documents from the specific agency or Minister whom the House identifies as holding the documents sought.

Accordingly DPC sought a certification from the relevant agency responsible for the grant program, which is the Department of Planning, Industry and Environment [DPIE]. That was appropriate as Ministers do not usually keep ministerial briefs in their offices. They are usually returned by the Minister to the agency. Further, the current Minister for Local Government was not the relevant decision-maker in relation to the funding grants concerned, having been sworn in as a Minister in 2018. The practice of DPC requiring Ministers and agencies to provide certification letters to DPC for return to the Clerk in response to an order under standing orders is an internal process of DPC. The important point is that it is not a requirement under Standing Order 52 and nor should it be, as it is appropriate for DPC to determine its own internal processes. Certification letters need not exist as those documents would not have formed or been part of the requirement to produce documents under Standing Order 52. The Office of Local Government outlined the process in a letter to the Clerk, dated 19 October 2020. It stated:

I am writing about the Office of Local Government's processes for the approval of grants from the Stronger Communities Fund tied grants round. A central part of the role of government is allocating public funds to projects. Ministers are able to determine funding priorities in a manner to enable achievement of Government policy priorities as determined by Cabinet. Ministers and public servants are able to expend funds under delegation and the process of decision-making, documenting decision-making and payments differs between grants programs.

In relation to the Stronger Communities Fund tied grants round, the guidelines for the program provided that funds would be expended on projects identified by the New South Wales Government. For each grant, a briefing note authorising the particular expenditure was prepared for and signed by the Minister for Local Government or me under delegated authority from the Minister for Local Government under section 12 of the Public Finance and Audit Act 1983. Confirmation of projects having been identified by the New South Wales Government, as set out in the guidelines, was attached to the respective briefing note in the form of emails from the Minister's staff. I confirm that all documents held by the Department of Planning, Industry and Environment pertaining to the approval of grants made under the Stronger Communities Fund tied grants round were provided to the Legislative Council in the return of DPIE on 29 June 2020.

In addition to the certification given by DPC, we now have a letter explaining how the process worked. My respectful submission to this House and to you, Mr President, is that in making this ruling you could not be satisfied that there is any reason to waver from the certification that was given by DPC and by me to this House in respect of this very serious motion and the consequence of it: the exclusion of a member from this House. That leads me to where we are in relation to the allegation that documents exist that have not been submitted to the House. That is the assertion relied upon by the mover of this motion, which needs to ground the decision to expel a member of the House.

The Hon. John Graham needs to somehow assert that those documents exist. The documents either exist or they do not and that is self-evident. The way to prove that is to identify the document that the members opposite say exists and has not been produced. I will come back to how that was done in respect of other matters. They need to be able to point to a document that they say exists. For example, in *Egan v Willis* the assertion was that documents existed. The Government said, "Yes, they do exist but you cannot have them because they are Cabinet-in-confidence." There was continued noncompliance because of the assertion made that they could point to the documents that existed. There was no argument whether they existed but a point was taken in relation to whether they should be produced to the House.

This is a completely different scenario. The Government asserts that the documents do not exist. That is the problem that exists for those opposite in bringing this motion. The alternative is to point to the evidence of a person who saw the document and identified it as being in existence and that the Government has not produced it. There is a complete vacuum of material in respect of this motion that is before us, which is brought for the purpose of a very serious remedy that the Opposition is asking the House to invoke.

**The Hon. Adam Searle:** To the point of order: The Minister has now strayed from the point of order to the substance of the motion. Given the nature of the motion there is a grey line in that he may need to go to the substance to make his point of order, but he is well and truly travelling over old ground now—ground so old that it was trod last Thursday.

**The Hon. Damien Tudehope:** Further to the point of order: It goes to the substance of the onus that we say exists on those who moved this motion to demonstrate that it is within the power of the House to move it. Part

of my submission is that the member moving the motion needs to be able to demonstrate that they can point to a document that has not been produced. That is what I am putting to you, Mr President.

**The PRESIDENT:** There is no point of order. The Minister is in order. It will be open to the Opposition to counter what is being said and I will allow the Opposition that opportunity. The Minister has the call.

**The Hon. Damien Tudehope:** On the last occasion when we argued the issue of contingency, the Leader of the Opposition suggested that I might prefer it if this was a court of law, that it is not really a court of law and that there is no onus on Labor to the moving of the motion. That is fundamentally wrong and, because of the seriousness of the remedy that is sought, I submit that there is a high onus to demonstrate that the motion ought to be debated today and should not be ruled out of order. I will come back to those points.

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

#### *Questions Without Notice*

### **INDEPENDENT COMMISSION AGAINST CORRUPTION**

**The Hon. ADAM SEARLE (16:00:20):** I direct my question to the Leader of the Government. Today's New South Wales Auditor-General report states:

The current approach to determining annual funding for the integrity agencies—  
including ICAC—

presents threats to their independent status.

Will the Government guarantee that the Independent Commission Against Corruption will have adequate funding to maintain its integrity and its independence?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:00:56):** In the question that the Leader of the Opposition asked, there was a comment by the Auditor-General; the second part of the question is related to funding. The Auditor-General has made certain comments. The Government is satisfied that, based on advice from the Crown Solicitor, current and past funding arrangements for the ICAC and other integrity bodies are and always have been lawful. That includes both parliamentary appropriations and any supplementation that is requested during the course of a financial year. The Government is committed to ensuring that funding arrangements for integrity agencies continue to uphold the principles of accountability, independence and transparency, as is appropriate.

However, I note that in our most recent 2019-20 budget, funding for the ICAC was \$26.6 million plus an additional \$3.5 million in supplementary funding, which is a 49.7 per cent increase on the final budget of the Opposition when it was previously in government in the 2010-11 financial year. Furthermore, the Government has provided supplementary funding to the ICAC on every occasion that it has been requested for at least the past 10 years. It is important to note that what the Auditor-General has referred to as a risk is really only a hypothetical risk because in practice every time ICAC has asked for more money to do its job it has got it. As the amount of work has increased, the funding has gone up with it, and when the hump is over, funding has returned to a more normal level. With respect, the Government's record of funding our integrity agencies is a good one. The Government has nothing to apologise for.

**The PRESIDENT:** Before I call the Hon. Lou Amato, I indicate that I counted nine interjections from members during the Hon. Don Harwin's answer. If I had called every member who had interjected to order, at least one of those members would be out of the Chamber. I can only imagine removing a member from the Chamber given what is going to be dealt with after question time. I ask that the Opposition members who interjected on nine occasions during the Hon. Don Harwin's answer to not place the Chair in a position where I am compelled to remove a member from the Chamber if they are called to order three times. That is not a fair or reasonable position to put me in.

### **COVID-19 AND HOSPITALITY INDUSTRY**

**The Hon. LOU AMATO (16:04:50):** I address my question to the Leader of the Government. Will the Minister update the House on how the New South Wales Government is opening the State in a COVID-safe way?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:05:05):** I am happy to do so. Every member of the House is vitally interested in this important matter, because New South Wales is opening again. Let there be no mistake about that. After months of very tough restrictions to keep our community safe, I am really happy to tell the House that the Government is now able to move ahead with a further easing of restrictions as we move into

summer. The Government has waited patiently and watched the daily cases of coronavirus in New South Wales carefully. While other States are still under tough restrictions, New South Wales has struck a balance, ensuring that our nation's largest international entry point has managed to prevent community spread.

I am pleased to report to the House the Premier's announcement on Monday to ease restrictions in the following ways: From this Friday, groups of 30 people will be allowed in outdoor areas, which, as honourable members would know, is up from 20 people; hospitality venues will be able to accept bookings of up to 30 people to a table, which is up from 10 people; and, additionally, from 1 December 300 guests will be able to attend weddings, subject to the four-square-metre rule. That follows the Government's previous announcements, which I am particularly happy about and which were strongly supported, that live venues are able to accept up to 50 per cent capacity and that corporate and other functions are able to accept up to 300 patrons, subject to four-square-metre rule.

The Government is focused on allowing New South Wales to reopen to help keep people in jobs and to grow our economy again. The pandemic restrictions have had a profound impact on our day-to-day lives but, most importantly, they have saved lives. As we begin to open again, we must still remain vigilant. The virus is by no means gone from our lives, but it remains at a manageable level thanks to the hard work of our medical staff and, in particular, our contact tracers. We must still practise the basics of hand hygiene and social distancing wherever possible to ensure that we remain on top of the virus. With the hard work of New South Wales residents, we are succeeding in navigating the pandemic and we are on the road back to normality.

### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. PENNY SHARPE (16:07:57):** I direct my question to the Leader of the Government, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts. Given the community controversy over the \$30 million in funding for the Riverina Conservatorium of Music, will the Minister guarantee that the Government is still committed to the project and that it will not walk away from that promise?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:08:17):** The upgrade to the Riverina Conservatorium of Music is a great project for the communities of Wagga Wagga. Stage one is the provision of a new home for the Riverina Conservatorium of Music at 1 Simmons Street, Wagga Wagga, which was committed to by the Government following a decision of the Expenditure Review Committee from 2018 for a \$10 million budget. As I have previously advised the House, stage one works are funded through Create NSW, which has engaged the Housing and Property Group within the Department of Planning, Industry and Environment as owners of the property and to deliver the project. The Public Works Advisory has been engaged to provide project management services and will work in partnership with the Riverina Conservatorium of Music.

The plans are for the building to be transformed into a purpose-built tuition and rehearsal space along with administration and meeting facilities for the Riverina Conservatorium of Music. The Government will continue to own the property and the Riverina Conservatorium of Music will use the facilities under a long-term lease. Stage one is underway and will be a great asset in Wagga Wagga. Stage two is the construction of a \$20 million purpose-built recital hall and ancillary facilities for the Riverina Conservatorium of Music, announced in August 2018. Stage two is not yet funded and is subject to the submission of the full business case, which is currently being managed by the Department of Regional NSW. Regional conservatoria are independent, not-for-profit organisations funded through the Department of Education and fall within the responsibility of the Minister for Education and Early Childhood Learning.

**The Hon. PENNY SHARPE (16:10:14):** I ask a supplementary question. Will the Minister elucidate his answer in relation to the \$20 million not currently funded, as that is not what the Minister said to the House last week?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:10:31):** I do not believe that is the case. I regret if the honourable member got that impression because that is not what I intended. The second stage, which is the recital hall, is a separate project. The funding stream for that will follow the successful outcome of a business case. It is not uncommon to commit to a project before the conclusion of the business case.

**The Hon. Penny Sharpe:** You told us it was the Regional Growth Fund at the end of last week.

**The Hon. DON HARWIN:** Stage one is coming from the Regional Growth Fund and that is what I said.

**The Hon. Penny Sharpe:** You just told us that the Expenditure Review Committee [ERC] has allocated that money.

**The Hon. DON HARWIN:** That is not what I said.

**The Hon. Damien Tudehope:** Point of order: Whilst I understand there are queries that the Opposition might want to raise, the purpose is to allow the Minister to answer the question, not to debate across the table. Mr President, I ask that you rule that arguing across the table is disorderly.

**The PRESIDENT:** I have indicated on numerous occasions to members, as did then President Primrose in a ruling in December 2007 when he said, "Members should allow Ministers to answer their questions without interruption." He also indicated earlier in June 2007:

... by tradition, the Chair tolerates interjections that are not disruptive, particularly if they facilitate the exchange of views and arguments in debate. However, the Chair will not tolerate disruptive interjections.

That ruling was given in relation to debate, not in relation to question time when a Minister is answering a question asked by a member who seems to now want to enter into an informal discussion while the Minister is answering. I uphold the point of order and ask the member to allow the Minister to answer the question.

**The Hon. DON HARWIN:** If the honourable member misunderstood, I am sorry about that but I am making it crystal clear now that when I was asked where the funds were coming from last week and I replied, "one of the regional growth funds", it was in relation to stage one. Stage two is subject to a business case. After the business case is concluded, it will go through the normal processes. There will be an investment decision about it at that time.

**The Hon. COURTNEY HOUSSOS (16:13:26):** I ask a second supplementary question. Will the Minister elucidate that part of his answer where he referred to regional conservatoria receiving funding from the Department of Education and outline how many other regional conservatoria received funding under the Regional Growth Fund?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:13:54):** There were a number of regional conservatoria funded under the Regional Cultural Fund, of which I was one of the Ministers responsible together with the Deputy Premier and regional New South Wales Minister, Mr John Barilaro. Under the funding guidelines for that fund, it was possible for regional conservatoria to be funded. Ordinarily, funding for conservatoria is dealt with by the education portfolio. I can tell the Hon. Courtney Houssos that from my recollection at least two others were funded from the Regional Cultural Fund. They were the Northern Rivers Conservatorium at Lismore and the Hume Conservatorium at Goulburn. I will have my office check during question time as to whether there were any more other than those two. However, I make it clear that the Riverina Conservatorium was not funded from the Regional Cultural Fund, it was funded from one of the other regional growth funds.

#### RISLAND AUSTRALIA

**The Hon. MARK LATHAM (16:15:21):** My question is directed to the Leader of the Government in his capacity representing the Premier. I draw the Minister's attention to the actions of a Chinese land development company called Risland Australia, formerly known as Country Garden, which flew 82 tonnes of medical supplies, including 100,000 protective coveralls and 90,000 pairs of medical gloves, back to China in late February as the coronavirus was spreading in Australia. Given that this company was integral to Daryl Maguire's plan to clear his debts and openly settle down with the Premier, why did the Premier and the Government maintain an association with Maguire for the following six months—February 2020 to August 2020—when Risland had acted in such a traitorous way to the Australian national interest and health care in New South Wales?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:16:10):** There are all sorts of assumptions in the honourable member's question that are simply wrong. In terms of the question, and since it is seeking a response from the Premier, I will refer it to her and obtain an answer.

#### HIGHER SCHOOL CERTIFICATE

**The Hon. TREVOR KHAN (16:16:40):** My question is addressed to the Minister for Education and Early Childhood Learning. Will the Minister update the House on the 2020 HSC exams?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (16:16:56):** I thank the honourable member for his good question. As all of us in this House should know, the New South Wales HSC written exams began this morning with English paper No. 1. There will be more than 73,000 sitting exams in 2020 at more than 900 schools across the State. Interestingly, one of the youngest students taking on the HSC in chemistry, mathematics extension 2 and physics is only 14 years old, which puts most of us to shame, while the oldest student is studying community and family studies and music at the age of 66.

On behalf of the House, I thank all of our New South Wales principals, teachers and exam supervision staff for their vigilance in implementing COVID-19 guidelines to ensure that students can sit their HSC without disruption. HSC students have achieved so much throughout 2020 and it is very important to recognise how far they have already come. We say it every year but it is particularly relevant this year: An entire village is behind each and every one of our students. It has been very pleasing to have seen over the past few days TV personalities, actors, musicians and athletes all getting together with the aim of letting the class of 2020 know via social media that they have got this. The stars shared their own stories of perseverance, tips and advice and reflections on their school experience and reminded students of the resilience they have shown this year.

In just a few weeks 120 written exams will be over and students will be eagerly awaiting the release of their results on 18 December. As the finish line approaches, it is very important that we keep reminding our students, their families and their friends that it is more important than ever to take care of personal wellbeing. That means when students are not sitting exams that they keep being healthy and active, are talking to the people around them and reaching out for help and support should they need it. This year has been unlike no other. The school community has gone above and beyond to support students and they will continue to do so. Not only have teachers and principals kept students safe, they have ensured teaching and learning could continue whether from home or in the classroom. They have continued to prepare students, not only for these final exams but also for life after school. We cannot thank them enough. I also thank the Catholic and independent school sectors, their leaders and their communities.

The sectors have worked together to deliver COVID-safe processes to support the wellbeing of students and communicate vital and often unprecedented messages to their schools. I believe that this year parents and caregivers have played an even more integral role in getting students to this point, knowing that supporting their children through the HSC year in the context of a global pandemic has certainly had its challenges. We wish all students the very best in their HSC exams. We know that it is an important stepping stone for their future and it is important that they do their best but they also need to know that no exam is more important than their mental wellbeing or physical health. They have come so far. There is a community behind them who believe in them and all we want is for them to do their best. [*Time expired.*]

#### COVID-19 AND RELIGIOUS CONGREGATIONS

**Reverend the Hon. FRED NILE (16:20:02):** My question without notice is directed to the Minister for Mental Health, Regional Youth and Women, representing the Minister for Health, the Hon. Brad Hazzard, MP. Will the Minister provide the House with the following information: the number of applications that have been made by groups for them to be able to congregate in numbers larger than otherwise permitted under the existing coronavirus restrictions; the number of applications granted and declined; the kinds of groups these applicants were, namely, whether they were secular or religious and for the religious ones a denominational breakdown; and the reasons given for those that were declined?

**The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (16:20:45):** I thank the honourable member for his question, which is addressed to Minister Hazzard in the other place, whom I represent in this place. The question contained quite a large amount of detail about particular groups of people and particular representations that have been made to the Minister for Health and I will need to take those parts of the question on notice. I take this opportunity to again congratulate the amazing work that our health services have done in this time of COVID. We have seen lately very small amounts of community transmission and we have seen incredible contact tracing. How fantastic is the Service NSW contact tracing app!

I commend the Parliament of New South Wales for taking on the Service NSW tracing app because it was a spectacular idea and it is fantastic not to have to re-enter our data all the time. We know how important contact tracing is. I have some recent coronavirus update data. The number of confirmed cases, including of interstate residents in New South Wales healthcare facilities, sits at 4,158, and over 2,917,454 tests have been carried out. That is a huge and phenomenal effort on behalf of the State of New South Wales by the people who are working within all aspects of the health industry in making sure that we have been able to give what is a world-class response to this virus.

It has been very good to note that some restrictions have been reduced so that we can get the economy moving and we can get people performing their jobs and doing the things that they need to do and, most importantly, people are able to interact again in a COVID-safe way. I congratulate my good friend and colleague the Hon. Sarah Mitchell because what the Department of Education has done for all of those students sitting their HSC today is tremendous and should be commended by everyone in this House. As I said, as the question contains a large amount of detail, I will take it on notice and get back to the honourable member as soon as possible.

### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. PETER PRIMROSE (16:23:38):** My question without notice is directed to the Leader of the Government, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts. Given Riverina Conservatorium of Music director Hamish Tait said on Saturday 17 October that the conservatorium was still preparing its business case and risk assessment before the funding for the recital hall is awarded, on what basis did the Minister award this funding two years ago?

**The PRESIDENT:** I call the Hon. Wes Fang to order for the first time. The same rules I apply to the Opposition apply to the Government.

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:24:27):** I note the following. First, as I said in relation to an answer to a supplementary question to a question originally asked by the Hon. Penny Sharpe, it is the case that governments frequently make commitments to projects but that a business case is prepared and subsequently an investment decision follows before money is allocated to a project by the Expenditure Review Committee. That is just good governance. That is a check to make sure that what might be committed to publicly nevertheless is good expenditure of taxpayers' money.

As to the \$2 billion of cultural infrastructure that I am currently overseeing, it is the case that for the construction of the State cultural institutions almost all the projects have been announced. A business case was still prepared afterwards to confirm that the project was value for money before an investment decision was finally made. Even great projects like the Opera House upgrade and Sydney Modern still went through the same sort of process. Sometimes announcements are made after business cases are done and sometimes they are made before. That happens right across every departmental cluster and there is nothing unusual about the approach that has been taken with the Riverina Conservatorium of Music. But I make the point that while I was due to be in Wagga Wagga to announce the project, I was not the Minister who made the decision to approve the process. It should be understood that I am not the Minister for Regional New South Wales and do not make decisions on regional growth funds, other than where I had a co-authorising role with the Deputy Premier just for the Regional Cultural Fund. As I have explained at some length before, this was not a Regional Cultural Fund project.

### MENTAL HEALTH MONTH

**The Hon. WES FANG (16:27:23):** My question is addressed to the Minister for Mental Health, Regional Youth and Women. Will the Minister update the House on Mental Health Month 2020?

**The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (16:27:45):** I thank the honourable member for his question. October is Mental Health Month and 10 October was World Mental Health Day. While these are annual events, in 2020 our mental health is more important than ever. This year we have all been affected by the most extreme bushfires New South Wales has ever seen, followed by the global COVID-19 pandemic. That is why the New South Wales Government announced an \$80 million package of initiatives to strengthen mental health services. We are supporting more virtual and telehealth services and providing more care in the community in therapeutic supports for people who need face-to-face care.

Mental Health Month is a time for us all to stop and reflect on mental health and wellbeing. This year has been a year when lives, jobs and homes have been lost and many people have experienced increased anxiety and changes to their routines. Some of the supports and activities that people turn to to support their mental health and wellbeing have changed and are being delivered differently. It certainly has not been easy. But amongst all of this upheaval so much resilience and courage has been evident. Since long before 2020 people living with mental illness have faced challenges every single day because even with all the best supports, having a mental illness is just really hard. This Mental Health Month I ask everyone to reflect on how amazing and strong people with a mental illness are. Their unseen battles may seem incomprehensible to others but they are very real. People with mental illness have incredible resilience. The theme for Mental Health Month 2020 is tune in. Tune in to how you are feeling; tune in to what is going on with your loved ones, your friends and community; tune in to the many mental health events that are being streamed online this year.

It is okay and normal for any of us to feel stressed, anxious and sad but know that you can always tune in to help. Just as you would go to a doctor for a physical health concern, you can go to your GP to discuss your mental health or you can jump on Beyond Blue's website to get some more information. So tune in this Mental Health Month and give some thought to whether you might benefit from some support. If you are doing fine take a moment to reflect on how 20 per cent of our population experience mental illness during any one year. When a person reaches out for support and works towards their recovery, they show everybody else what true courage and strength really look like. I urge honourable members to consider that over the last year when you have felt anxious or stressed—like maybe the walls are closing in and you do not want to get up in the morning—spare a thought

for someone with a mental illness, who can feel like that on the most vulnerable day and very often. Happy Mental Health Month.

#### **SUPPORTING OUR NEIGHBOURS FENCING SCHEME**

**The Hon. MARK PEARSON (16:30:54):** My question is directed to the Minister for Education and Early Childhood Learning, representing the Deputy Premier and the Minister for Regional New South Wales, Industry and Trade. There has been an increase in the number of birds, bats and other animals injured or killed after becoming entangled in the new barbed wire fences being built under the New South Wales Government's \$209 million Supporting Our Neighbours fencing scheme. Will the Minister make changes to the program so that landholders are required to use plain wire on the top two strands of the fencing, which would significantly reduce the risk of animals being injured or killed?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (16:31:38):** I thank the honourable member for his question. It is quite a detailed question about the particular types of wire used in that fencing program and its impact on certain animals, namely bats and birds. The question is asked of me representing the Deputy Premier so I will take it on notice and come back with the response.

#### **RIVERINA CONSERVATORIUM OF MUSIC**

**The Hon. JOHN GRAHAM (16:32:02):** My question is directed to the Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts. Given his previous answer and the education Minister's answer on 15 October to a question without notice when she agreed that the \$20 million funding for the Riverina Conservatorium of Music's recital hall came from the Regional Growth Fund, why did he announce the project rather than the Deputy Premier? Which Minister approved the project?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:32:42):** I was asked to announce the project because it was in relation to a performance space and I was going to be in Wagga Wagga to make another announcement about libraries. I was happy to do so—it was just a scheduling matter. A recital hall will, of course, be a place where orchestras play and orchestras—as the honourable member will be well aware—are funded by the Create NSW funding program. There are all sorts of synergies and good reasons why I would make the announcement. What was the other part of the honourable members question?

**The Hon. John Graham:** Who approved it?

**The Hon. DON HARWIN:** I will take that question on notice and get the honourable member an answer.

#### **COVID-19 AND EVENTS INDUSTRY**

**The Hon. SAM FARRAWAY (16:33:39):** My question is addressed to the Minister for Finance and Small Business. Will the Minister tell the House how the New South Wales Government is facilitating the economic recovery from COVID-19 by easing restrictions for restaurants and outdoor gatherings?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (16:34:07):** I find myself asked a question that somebody else has already answered. I thank—

**The PRESIDENT:** The Clerk will stop the clock. The Minister will resume his seat. The Minister will not encourage interjections. Just because the Minister encourages interjections, it does not mean that members have to respond. The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** I thank the member for his question. Notwithstanding the observations already made about the Government's opening up of the economy, it is worth stressing some of the important things the Government is doing. One of the real success stories about how the Government is acting in the best interests of the people of New South Wales is demonstrated by its response to COVID-19. It bears repeating because one of the things we ought to be saying is have confidence not only in our economy and how the Government is performing, but also how we are opening up this economy—unlike other States that are oppressing their citizens and businesses. You would not go to Victoria, you would not go to Queensland and you would not go to Western Australia—probably because you cannot or, alternatively, the businesses in those States are currently so appallingly pressure that the Government is acting not only—

**The Hon. Rose Jackson:** Western Australia did not even go into recession. It literally did not even go into recession.

**The Hon. Sam Faraway:** Point of order—

**The PRESIDENT:** I will give the Hon. Sam Faraway the call. I did not want him to interrupt the Hon. Rose Jackson. I will wait until she finishes interjecting.

**The Hon. Sam Farraway:** The Hon. Rose Jackson interjected three or four times while the Minister was answering a very important question, which I asked. I ask you to bring her to order.

**The PRESIDENT:** Order! I uphold the point of order. I call the Hon. Rose Jackson to order for the first time. I call her to order for only one of her interjections.

**The Hon. DAMIEN TUDEHOPE:** Let us look at what the Government is doing. Opening up bookings for up to 30 customers who can be seated together for a meal is certainly an improvement on our quality of life. Leading up to Christmas, if people cannot have as many people at home, they should support businesses outside of their home. They should make a booking for Christmas now and tell those businesses that they want them to be there. I am particularly interested in weddings because my daughter is getting married on 16 January. Every day she asks me, "When are you opening up the wedding events?" Yesterday I was able to tell that up to 300 people could now attend a wedding. But I said, "I wish it was still 30!" Anyway, it is now 300. She is now working on the wedding list. The event industry has borne much of the brunt of the restrictions. I back in everything that the Leader of the Government said earlier. It is fundamental to where we are as a State because New South Wales is the best place to work, live and raise a family.

#### THE HON. GLADYS BEREJIKLIAN

**The Hon. ROD ROBERTS (16:38:18):** My question is directed to the Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts. The Premier has recently said she has passed security clearances. Will the Minister tell the House when the Premier passed these clearances, what was the nature of these clearances and was the Maguire relationship notified as part of these security clearances?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:38:53):** It will not surprise honourable members that I do not have details available now so I will take the question on notice.

#### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. GREG DONNELLY (16:39:08):** My question without notice is directed to the Leader of the Government, Special Minister of State and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts. Who will sign off and approve the business case for the Riverina Conservatorium of Music recital hall? Who will make the announcement when the business case is approved: the Minister or the Deputy Premier?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:39:34):** I think the answers to the questions that have just been asked by the Hon. Greg Donnelly were more than adequately covered in the remarks that I made earlier. Sign-off on a business case is a concept that frankly does not have quite the precision and clarity to enable it to be easily answered. In terms of approval, investment decisions are made by the Expenditure Review Committee [ERC]. That is a fact and that is the case for every investment review decision. In terms of which Minister takes the minute to the ERC, I would suggest that is probably Cabinet-in-confidence. I will make inquiries and if there is any further information that I can give the honourable member, I will do so.

**The Hon. GREG DONNELLY (16:40:55):** I ask a supplementary question. The Minister referred to, dare I say, the woolliness around the notion of "sign-off" and "approval" as terms.

**The Hon. Don Harwin:** Just "sign-off", not "approval".

**The Hon. GREG DONNELLY:** "Sign-off". In light of that, and the Minister's comment in his answer on the ERC process, will the Minister elucidate his answer to confirm that the ERC process has been met in accordance with its strict number of steps in terms of the approval of the amount of money for the project?

**The Hon. Don Harwin:** For stage one or stage two?

**The Hon. GREG DONNELLY:** Is that the question?

**The Hon. Don Harwin:** I do not know. I am trying to be helpful. Point of order—

**The PRESIDENT:** Order! The Minister was trying to clarify, but he should have done it through the Chair and not started a discussion with the Hon. Greg Donnelly. The Minister has now compelled the Hon. Greg Donnelly to, in effect, answer the question he raised. The Minister has taken a point of order.

**The Hon. Don Harwin:** I withdraw my point of order.

**The PRESIDENT:** I call the Hon. Greg Donnelly.



**The Hon. GREG DONNELLY:** Will the Minister answer the supplementary question in terms of both stage one and stage two funding?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:43:00):** In terms of stage two, my understanding is that the process has not been concluded yet. We are awaiting its finalisation. In terms of stage one, we are at quite an advanced stage. In fact, the regional planning panel has already approved the development application, so we are well past that point.

**The Hon. Greg Donnelly:** I ask a second supplementary question.

**The PRESIDENT:** The Hon. Greg Donnelly cannot ask a second supplementary question. As I have indicated previously, the member who asked the question is permitted to ask, at my discretion, a first supplementary question. Any member who is not a Government member, other than the member who asked the question, may ask a second supplementary question.

#### **FIRST SIKH TEMPLE, WOOLGOOLGA**

**The Hon. LOU AMATO (16:44:04):** My question is addressed to the Minister responsible for heritage. Will the Minister update the House on State heritage listings celebrating Australia's multicultural and diverse background?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (16:44:13):** In our State we celebrate many cultures that have collectively worked to build our communities. The Hon. Lou Amato has certainly played his role in making sure that we have a strong community and I thank him for his question. The First Sikh Temple at Woolgoolga is a key example of the diverse heritage enriching our State. Offering a place of prayer and worship to the large Sikh population of Coffs Harbour, the First Sikh Temple is an important part of the multicultural history of New South Wales. It was my great pleasure to announce the State heritage listing of the First Sikh Temple with local member Mr Gurmeh Singh last week.

The construction of the temple in 1968 gave early Sikh migrants a sense of permanence and place in Australia for the first time, making this listing particularly significant for the Sikh community. The temple is an important symbol of the community's contribution to the development of Woolgoolga, which is a great place in the member's electorate of Coffs Harbour in regional New South Wales. Since its construction, the temple has been the living heartbeat of the Sikh community through worship, ceremony and gatherings in the Sikh tradition. The site remains part of the ongoing growth of the Sikh faith in Australia and continues its use with Australia's newest gurdwara, which was completed in 2019.

The old and the new stand side by side. Together, those places of worship reflect the humble migrant beginnings of the Sikh community and its evolution up to today. I am particularly honoured to announce the listing as it is the only site of its kind—and only the second Sikh site—to be listed on any State Heritage Register in Australia. The Sikh community is an important part of multicultural Australia and it is imperative that its story and contribution to Australia's history is recognised, celebrated and protected. I am grateful to the gurdwara and the community for sharing this place with New South Wales, and for the generous work they do in providing for the people of Woolgoolga.

#### **ICARE**

**Mr DAVID SHOEBRIDGE (16:47:03):** My question is directed to the Minister for Finance and Small Business in his capacity of overseeing Government procurement, as well as in his capacity of representing the Treasurer. What investigations has the Minister caused to be made into the now notorious fact that Vivek Bhatia, the former CEO of icare, had an undisclosed close friendship with the senior manager at Capgemini at the time that icare entered into a contract with Capgemini and Guidewire for a \$360 million IT project?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (16:47:37):** I thank the member for his question. Government agencies and departments are responsible for ensuring their own procurement measures. Although I am the Minister responsible for the part of the Public Works Act that relates to procurement, each agency is responsible for its procurement obligations, including complying with Procurement Board rulings or directions in respect of how procurement should be managed. The board and senior management of icare are responsible for managing their own contract and procurement process.

The member might have an observation about that; he might have all sorts about that. But the question that I am being asked should be addressed the board and senior management of icare, relating to the manner in which they conduct their procurement process. I am advised that, as stated on the icare website and as raised during the

2019-20 budget estimates hearing, icare has been working to ensure that appropriate disclosures of contracts comply with the Government Information (Public Access) [GIPA] Act.

By way of ancillary information, to date more than 200 contracts have been uploaded to the New South Wales Government's eTendering website. That is appropriate, and icare is continuing that process to ensure compliance. Icare's remediation program is initiated with an Audit Office review of agency compliance with the GIPA Act. Icare accepts the delay in uploading contracts, many of which have been cited in icare's annual reports through separate disclosure requirements. Icare's goal is to ensure full transparency to the community in line with the GIPA Act requirements.

A range of different procurement options are available to icare, which align with the New South Wales procurement guidelines. That is an ongoing discussion. Examples of contract arrangements that icare enters into that do not require a full and open market tender include whole-of-government pre-qualification schemes, which only require competitive tenders for contracts over \$250,000, and piggyback contracts that leverage existing whole-of-government contracts. To the extent that the member asserts that I have obligations in relation to that, I have obligations relating to guidelines but not to oversee the actual contracts. [*Time expired.*]

**Mr DAVID SHOEBRIDGE (16:50:44):** I ask a supplementary question. Noting that the Minister says that this is a matter for the board and senior management of icare and, implicitly, that it is not his role as procurement Minister, is the Minister saying that he made no inquiries about the notorious tender before opposing in this House the legislative reforms to clean up the tendering processes for icare?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (16:51:11):** I thank the member for his supplementary question. I make no such assertion. In fact I refer back to what I said in this House about that procurement process. There is an ongoing review in respect of icare. Robert McDougall, QC, was appointed by the Government to conduct that review of all those Government processes. I will be guided by the findings of Mr McDougall. If he finds inconsistencies or irregularities in the procurement process adopted by icare, that can then be the subject of its own procurement guidelines or, alternatively, potentially circumstances which give rise to the sort of legislation which the member—as I keep reiterating, the problem with the bill is that it seeks to circumvent the current inquiry into icare and Mr McDougall's obligations in relation to conducting that inquiry. Let those who want a proper process be guided by the process.

**The Hon. DANIEL MOOKHEY (16:52:49):** I ask a second supplementary question. Will the Minister elucidate that part of his answer that referred to the McDougall review of all matters, which implicitly included the Capgemini contract? Will the Minister confirm whether he or Mr McDougall is investigating why Capgemini provided four gifts to the then CEO of icare, Mr Vivek Bhatia, prior to the grant of the contract and 10 gifts after the grant of that now notorious \$360 million contract?

**The Hon. Damien Tudehope:** Point of order: The member is asking me a new question.

**The Hon. Daniel Mookhey:** To the point of order: Mr President, my question passes your three tests: first, it is clearly connected to the first question that was asked by Mr David Shoebridge about the Capgemini contract; secondly, it identifies a part of the Minister's answer to the supplementary question, specifically the McDougall review; and, thirdly, it asks for an elucidation of that aspect of his answer—namely, whether that review is examining those specific allegations.

**The Hon. Damien Tudehope:** Further to the point of order: That last part is outside the scope of the question because it identifies specific additional matters to which the member is seeking answers that do not arise in relation to either the original question or my answer.

**The PRESIDENT:** I ask Mr David Shoebridge for a copy of his original question.

**The Hon. Daniel Mookhey:** Further to the point of order: Mr President, you have never ruled that it is inappropriate for a supplementary question to seek an elucidation in the manner in which I have done—that is, to identify a specific area and ask the Minister to respond specifically to it. No procedural barrier or ruling precludes a member from putting a specific matter to the Minister, subject to it passing all three tests. I laid out clearly how my question met all three tests.

**The PRESIDENT:** The second supplementary question is in order.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (16:55:25):** The McDougall review which has been directed and authorised by the Treasurer and the Minister for Customer Service is to review and report by April 2021 a comprehensive organisational review of icare, including its procurement practices. That is the answer.

## REGIONAL CONSERVATORIUMS

**The Hon. ROSE JACKSON (16:56:06):** My question without notice is directed to the Minister for Education and Early Childhood Learning. What support is the Minister giving to struggling regional conservatoriums like the Coffs Harbour Regional Conservatorium, which is being forced to run shows online over the Christmas period?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (16:56:24):** I thank the honourable member for her question. As I said during question time last week that the Government provides support through the education department's Regional Conservatorium Grants Program, offering a wide range of music education, training, performance and engagement opportunities for school students, teachers and community members in regional, rural and remote areas. Funding agreements with regional conservatoriums last for three years. I will seek advice from the department about the support that is available to the Coffs Harbour Regional Conservatorium to which the member referred.

When I became education Minister, I obtained advice in relation to regional conservatoriums. My daughters attend toddler music classes at the conservatorium in Gunnedah. Regional conservatoriums do an excellent job. When I sought advice on potential concerns about perceived or actual conflicts of interest because of that, the advice I received was that the Secretary of the Department of Education Mark Scott should be the delegate for all matters concerning regional conservatoriums. The secretary approved that decision, which will stand until further notice. All the appropriate disclosures have been made in relation to the matter. I offer that as a preface. That is why I will seek advice from the secretary about that particular conservatorium.

**Mr David Shoebridge:** What instruments?

**The Hon. SARAH MITCHELL:** No instruments; just toddler music and singing. My seven-year-old has started singing.

## PUBLIC SCHOOL INTERNET ACCESS

**The Hon. TREVOR KHAN (16:58:24):** My question is addressed to the Minister for Education and Early Childhood Learning. Will the Minister update the House on the recent Telstra announcement about the internet upgrade to public schools in the State?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (16:58:40):** That is a great question about a very important issue. It is always good to end question time on a high note. I am excited to announce that our Government will partner with Telstra to provide a \$328 million internet upgrade to more than 2,200 public schools across New South Wales. That will allow us to provide 10 times our current internet bandwidth to students across the State. Achieving that speed over the next 18 months means we will be three years ahead of schedule.

I was pleased to visit Horsley Park Public School last week to not only welcome students back for term 4 but also make that exciting announcement with the principals, students and representatives from Telstra. It was fantastic to have a tour and chat about how the update of the internet will benefit the students. The principal, Anica Tanevski, took me to one of the classrooms where students were having their first science, technology, engineering and mathematics [STEM] class for term 4. It will be exciting to see how teachers and students can use the internet upgrade across the State to support innovative STEM teaching. I thank Anica for taking the time to show me around and talk to me about the benefit of the contract for them, particularly for staff professional development.

It is always invigorating to see students excited to learn about STEM. It is important that as a government we help children develop skills for the future no matter where they are from. As we all know, technology is developing at a rapid rate, so it is critical for us to harness that progress and develop it in the design of teaching and learning practices in our schools. We are giving a stronger learning capacity to more students around New South Wales. In fact, the State's public schools will have the best internet of any public education system in the country once the program is delivered. The contract with Telstra will hugely benefit students in rural and remote areas by providing them with the same technology experience as their counterparts in metropolitan areas and allowing us to deliver the same high-quality experience to all our students, regardless of where they live. As Minister, I think it is incredibly important that parents feel comfortable and assured that no matter where they live in the State their children will receive the best possible educational opportunities.

Having faster internet will provide a range of benefits to students, teachers and families in New South Wales. Our experience with COVID has reinforced that. We want to explore how we can put our experience from COVID into new business as usual practice. Faster and more reliable internet—which is often a big issue in regional communities—will assist student and teacher learning and skill development and enhance existing digital teaching and learning opportunities in our schools. It will allow schools in remote or regional areas

to have access to specialist staff they might not have access to locally and enable schools across the State to connect with other teachers remotely, enhancing professional development and networking. I thank Telstra for its commitment to provide stronger learning capacity with us for our students and teachers. The partnership will put us in a clear position of leadership across the nation.

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

### RIVERINA CONSERVATORIUM OF MUSIC

#### REGIONAL CONSERVATORIUMS

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (17:02:00):** A number of questions traversed issues for which this extra piece of information will be relevant. I also point out to members that when I made the announcement on 24 August 2018 about the Riverina Conservatorium of Music it was made quite clear in the media release that the \$20 million funding for the stage two recital hall will be made available subject to the full project scope and costings. I was also asked a supplementary question by the Hon. Courtney Houssos about which regional conservatoriums were being funded by the Regional Cultural Fund.

I mentioned the funding for the Northern Rivers Conservatorium project, although not the exact amount, which is \$636,172. I also mentioned the Hume Conservatorium in Goulburn, which will receive funding of \$1.3 million. I neglected to mention the excellent provision of two new grand pianos for the New England Conservatorium of Music. That is admittedly a smaller project, receiving funding of \$73,786, but it is nonetheless a good project. Those are the three from the Regional Cultural Fund but I am sure that the education Minister, the Hon. Sarah Mitchell, will not mind if I also mention that her budget is overseeing an excellent project at the Central Coast Conservatorium in a beautiful heritage building in Gosford. I am delighted about that project in particular, as I am sure the Hon. Taylor Martin is, as he and I are fellow Central Coast residents.

#### *Supplementary Questions for Written Answers*

### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. GREG DONNELLY (17:04:30):** My supplementary question for written answer relates to the question I asked in the House this afternoon. Has the Expenditure Review Committee [ERC] approved the business case for stage one and stage two of the Riverina Conservatorium of Music recital hall project? If so, what were the dates the ERC approved the business case for stage one and stage two?

### RISLAND AUSTRALIA

**The Hon. MARK LATHAM (17:04:52):** Given the Minister has referred my earlier question about Risland to the Premier, I repeat it now as a supplementary question for written answer by tomorrow morning.

**The PRESIDENT:** Can I confirm that the member's supplementary question for written answer is simply asking the same question he asked during question time?

**The Hon. MARK LATHAM:** Given that it was referred to the Premier for an answer and those answers never seem to come back to the Chamber, I am re-asking it to get an answer tomorrow.

**The Hon. Don Harwin:** Point of order—

**The PRESIDENT:** The Minister need not take a point of order. I indicate that supplementary questions for written answers are required to follow the rules that I have previously set out. In other words, as the Hon. Daniel Mookhey likes to continually repeat, they need to tick the three boxes. To ask exactly the same question because a member does not like the answer provided or is not happy with it is not a supplementary question for written answer and is out of order.

### RISLAND AUSTRALIA

**The Hon. MARK LATHAM (17:06:20):** Given the Minister has referred that matter to the Premier, will the Premier please answer in full?

**The PRESIDENT:** Again, that is not a supplementary question for written answer. I rule it out of order.

#### *Questions Without Notice: Take Note*

### TAKE NOTE OF ANSWERS TO QUESTIONS

**The Hon. PENNY SHARPE:** I move:

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

### INDEPENDENT COMMISSION AGAINST CORRUPTION

**The Hon. PENNY SHARPE (17:06:58):** I particularly take note of the Hon. Don Harwin's answer to questions of funding for the Independent Commission Against Corruption and whether there is adequate funding to maintain its integrity and independence. Like the Premier in the other place, the Minister today tried to spin his way out by stating record funding levels in relation to the Independent Commission Against Corruption. It does not meet any test of reasonableness, nor the facts of the matter. We must remember that today the Auditor-General released an important report on the funding of independent organisations.

The Auditor-General said that the funding behind closed doors was a problem, there was a lack of transparency and there were ongoing concerns that the very people who may become targets and subjects of those bodies would be making decisions in relation to it. That is an important issue that is not transparent nor independent. The Minister said that we have had record funding and that it has all been terrific. I wind members back to the parliamentary inquiry on the matter—in fact, there was a good report about it—and the submissions made by the Independent Commission Against Corruption and other bodies. They essentially said that there is not enough money. The Auditor-General's report stated:

... effective decision-making process should ensure that those who could be investigated do not determine the funding ... On numerous occasions the Independent Commission Against Corruption has been forced to take the begging bowl to the Government to get funding for its investigations. We must remember that the Government imposed a \$4.7 million cut on the Independent Commission Against Corruption, where it was forced to say to the Government that it would lose 31 staff—one-quarter—leading the agency to having the smallest number of staff that it has ever had in its 30-year history. It would have "an immediate and devastating effect on the commission's frontline services and, therefore, its ability to fight corruption." The Minister's answer today beggars belief. We look forward to ongoing discussions in the Chamber on how we resolve this matter.

### INDEPENDENT COMMISSION AGAINST CORRUPTION

**The Hon. TREVOR KHAN (17:09:43):** I take note of the question with regard to the funding of ICAC and the answer by the Minister, the Hon. Don Harwin. I served on the Public Accountability Committee inquiry that looked at the question of funding and I note that the Auditor-General's report that the Opposition now seeks to rely upon was obtained at the request of the Premier herself. It is not some document that came wistfully out of the air; it was a request by the Premier to investigate the mechanism for funding various of such independent bodies, ICAC being one of them. Let us be clear that the mechanism for funding up until today is one that has existed essentially since the establishment of ICAC—that is, an annual appropriation together with supplemental funding. I have heard it being called "grant funding", but plainly that is an expansion of the use of the word. Let us be clear that under both the Opposition and the current Government, that mechanism—whatever else we can say about it—has worked.

It has worked because governments of all persuasions have accepted that an appropriate level of annual appropriation should be made but also that when the workload of ICAC increases significantly, it is appropriate that there be a supplement. The \$4.7 million purported reduction in funding that was referred to reflect the fact that the Obeid and Macdonald inquiries, which had taken an enormous amount of work for ICAC to complete, had finished and in those circumstances it was appropriate that, if ICAC was going to embark upon another significant period of inquiry, then it would come back and get the supplemental funding. Let us be clear that for both governments each time ICAC has gone to a government, it has received supplemental funding. The outrage which various members, including the Hon. Penny Sharpe, demonstrate today is sort of a confected outrage taking into account the circumstances at the time.

### RISLAND AUSTRALIA

**The Hon. MARK LATHAM (17:12:42):** I take note of the answer given by the Leader of the Government regarding the question I asked on Risland. He undertook for the Premier to answer. That answer needs to explain why the Premier, in the most horrific of circumstances in February this year, maintained the relationship with Daryl Maguire for another six months because Risland—formerly known as Country Garden—very clearly betrayed Australia with its decision to ship 82 tonnes of medical supplies at the beginning of the pandemic to China. Maguire explained in his evidence to ICAC that the company was integral to his future and that of his partner, Gladys Berejiklian. They were relying on that company for a \$1.5 million payment at Badgerys Creek to clear his debts to allow him to leave the Parliament and set up a life together. On Sunday the Premier was saying "in love" and "in marriage". It is extraordinary. We must ask as a Parliament what it was going to take for the Premier to ditch this bloke and his wrongdoing.

In 2014 she knew of the kickback commissions. She knew of the importance of Risland to their financial future. In 2018 she knew that that member of Parliament was thoroughly disgraced and left here under investigation by ICAC. Then it came around to February this year. This company, which had a financial link to her partner, decided to betray Australia at the beginning of the pandemic and still the Premier did not say to

Maguire, "I have had enough. I have had enough of the kickbacks, the knowledge of your property deals well away from the electorate of Wagga Wagga and the decision of ICAC to investigate you and the decision of the Liberal Party and the Parliament to kick you out. This is the final straw." What it shows is that the Premier had no final straw. There was no limit to what she would tolerate from Maguire. He could betray Australia through Risland.

**The Hon. Trevor Khan:** Point of order: I have two grounds for taking a point of order. The first one is that this is truly straying from the question that was asked of the Minister. The second one is that the member is now making imputations about a member of the other place.

**The PRESIDENT:** I have made it clear on previous occasions that contributions during take-note debates under Sessional Order 28 are not the time or opportunity to make imputations or reflections on a member from either House. I believe that the member is straying. I uphold both points of order.

**The Hon. MARK LATHAM:** The answer was to seek a thorough response from the Premier. That is what we expect as a Chamber. All the matters I have listed need to be explained. The Premier had no limit with Maguire. We should be shocked as a Parliament and State that the Premier would not call off the relationship at the point where Risland betrayed us in every single way.

**The PRESIDENT:** Order! I call the Hon. Mark Latham to order for the first time. I have clearly indicated on previous occasions that imputations and reflections should not be made, except by way of substantive motion. It does not mean that a member may wait until the last three or four seconds of any matter that they are speaking on, suddenly make an imputation or reflection and then sit down. That is inappropriate. Members are well aware that giving the call is at the discretion of the Chair.

#### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. MICK VEITCH (17:16:28):** I make a brief contribution to the take-note debate around the questions and answers regarding the Riverina Conservatorium of Music. Firstly, I know Hamish Tait. He is a champion bloke. He has been involved with the regional conservatoriums for a long time. I do not think anyone should in any way deduce from the questions and answers today that there was an attack or slight on Hamish. That is not the case and should not be continued to be purveyed. The issue that the Opposition is progressing with its questions and trying to elicit responses from the Minister on is about process. It is \$30 million. There are other conservatoriums across New South Wales that would want to know what process was followed.

Why is it one conservatorium and not the other? If the process was so good for the Riverina Conservatorium of Music, maybe they can follow the same process to get their money. The issue here is the process being followed and the transparency around the process. Members will see from the questions and note from the answers from the Ministers today that Opposition members are going through quite a detailed process to determine what is the process, who actually approved it and what information was used to base the decisions upon. We will continue to do that because people want to know what was the process and who was responsible.

#### COVID-19 AND HOSPITALITY INDUSTRY

**The Hon. LOU AMATO (17:18:02):** I take note of answers to questions given by the Hon. Don Harwin. The present easing of restrictions is welcoming news. From this Friday groupings of 30 people will be allowed in outdoor areas, up from 20 previously. Hospitality venues will be able to accept bookings of up to 30 people at a table, up from the previous 10 only. Additionally from 1 December 300 guests will be able to attend weddings, subject to the four-square-metre rule. The news will certainly be welcomed by many couples planning to get married. It follows the Government's previous announcements on live venues being able to accept up to 50 per cent capacity and corporate and other functions being able to accept up to 300 patrons, again subject the four-square-metre rule. We are grateful for the efforts of our contact tracers and the people of New South Wales who have made the further easing of restrictions possible.

#### GREYHOUND RACING INDUSTRY

**Ms ABIGAIL BOYD (17:19:12):** I take note of the written answer given by the Leader of the House in the Legislative Council, representing the Minister for Better Regulation and Innovation, on 13 October regarding the statutory review of the Greyhound Racing Act 2017. The statutory review that is currently underway sought input from stakeholders and the community on all aspects of its terms of reference, notably including examining and reporting on the "appropriateness of the terms of an operating licence granted to Greyhound Racing NSW". The Act specifically requires this review into the terms of the operating licence.

In seeking to respond to the statutory review, my office and stakeholders like the Coalition for the Protection of Greyhounds and Animal Liberation tried to find publicly available information on the terms of the operating licence. When it became apparent that no such information was available, we sought information from

both the Minister's office and the Office of Racing, only to be told that we were not able to see the terms. In light of the fact that the Government is withholding key documents within the scope of the review from public access and scrutiny, on 23 September I asked the Minister how the Government can expect the statutory review to be robust and legitimate. In full, the response I received from the Minister was:

The terms of an operating licence are commercial in confidence.

What a disgraceful answer. The Minister has not even responded to the substance of my question, doing nothing to explain to the community why the Government has been asked to comment on something that they are not even allowed to see. Even the Leader of the House agreed, stating on 23 September:

If there is information that should be supplied to the inquiry then there is an obligation to make sure that some information sharing is available.

Greyhound Racing NSW's existence is enshrined in the Greyhound Racing Act. It has no commercial competition. Why is the Minister keeping the terms of the licence a secret? The same piece of legislation that reconstitutes Greyhound Racing NSW also recognises that the public has an interest in the operating licence. It is time that the Government releases the terms of that licence or admits that its statutory review into the Act is a complete farce.

## INDEPENDENT COMMISSION AGAINST CORRUPTION

### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. WALT SECORD (17:21:39):** I take note of answers involving the regional conservatoriums of music and a question to the Leader of the Government involving funding of probity bodies. It was very disappointing to see the Leader of the Government refusing to give a commitment and respond to the report this morning by the Auditor-General. It was also disappointing to see the Premier in the other Chamber give a similar response. They should be properly resourcing and ensuring the independence of the ICAC. The Deputy President made a contribution talking about the Premier commissioning a report and the recommendations from that report. We were referring to the Auditor-General's report this morning. The Premier had a chance to endorse those recommendations and say that she was going to accept them. She did not do so. The Minister in the Chamber was given a similar opportunity and he did not do so. But the Leader of the Opposition, Jodi McKay, has given a commitment that we will implement those recommendations and introduce legislation in the other Chamber. If the Premier and the Leader of the Government were genuine about fighting corruption, they would do the same.

I turn to the \$30 million grant to the Riverina Conservatorium of Music. I note the comments by the Hon. Mick Veitch involving Mr Tait, who runs the facility. During the by-election, I came across him too. He seems to be a very genuine person. I did not have a conversation with him but I did encounter him at functions. This is a \$30 million project with no paperwork and no business case, when 18 other conservatoriums of music are struggling. The arts Minister brags about \$73,000 for a piano, compared to \$30 million to a conservatorium of music. The community has a right to know the processes that it has gone through.

This is not a reflection on Mr Tait. I have done lots of research on the conservatorium of music, as members will know from my questions in this Chamber for the past two weeks. Mr Tait seems to be a diligent, hardworking person. I do not want him to in any way think that these questions are a reflection on him and on the organisation. It is very sad to see that it takes a "tickle from the top"—using the words of the disgraced former member for Wagga Wagga—to get project funding project like that. The community's anger is understandable. Eighteen other conservatoriums of music in New South Wales are fighting each other for crumbs: \$73,000 versus \$30 million. Their anger and disappointment are understandable.

### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. WES FANG (17:24:37):** I take note of answers given this day, including those around the Riverina Conservatorium of Music. I note the comments by the Hon. Mick Veitch about Mr Hamish Tait. I too know Mr Hamish Tait and have met with him a number of times around the conservatorium projects. Our kids go to school together, so I see him on a very frequent basis at pick-up. It was interesting how some of the questions that were asked cherry-picked—and I will use that word—parts of the article that was written on the weekend and an interview with Hamish around this issue. Parts that were left out included the director of the Riverina conservatorium, Hamish Tait, telling *The Daily Advertiser* that it was frustrating to have been brought into this unfolding saga.

**The Hon. Mick Veitch:** Point of order: There have been many rulings about the take-note debate and its application to questions and answers. The member has now strayed from the answers that were given today.

**The PRESIDENT:** It is the subject matter. The Hon. Wes Fang may continue.

**The Hon. WES FANG:** For those opposite who may not know the history, the Riverina conservatorium is on the Charles Sturt University's South Campus site. That South Campus site has been sold, which would have left the Riverina conservatorium without a home. The article says that Mr Tait spoke to the local member at the time and asked who they would need to speak to in Government to look at getting a new home. It talks about how this project is in two phases: the original phase is the \$10 million grant to renovate Simmons Street and the second is the \$20 million further announcement during the by-election, for which a business case is now being done.

What we are seeing from those opposite is how they disregard the arts in rural and regional communities. What they are saying is that we do not deserve a first-class conservatorium like those in city centres. This is an example of a Labor party that does not want to support arts in rural and regional communities. It is an absolute disgrace to do this. It is an absolute disgrace for those opposite to come into this Chamber and say to us that we do not deserve it. Hamish represents not only the Riverina conservatorium but conservatoriums across the State. He said that it is frustrating to have been brought into this saga. It is an absolute disgrace for members opposite to do that.

**The PRESIDENT:** Order! There were an outrageous number of interjections from members. I did not intervene because I did not want to take up the member's time. I expect that members will be heard in silence.

### RIVERINA CONSERVATORIUM OF MUSIC

**The Hon. COURTNEY HOUSSOS (17:28:23):** In question time today the Labor Opposition asked a number of very legitimate questions about the process for the \$30 million funding that was awarded to the Wagga Wagga regional conservatorium of music. After the disgraceful contribution of that last member and the accusations that he levelled towards this side of the House, let me make one thing clear. I saw the story in *The Daily Advertiser*. We are not criticising the Riverina conservatorium or its director, Mr Tait. We are certainly not disputing the right of regional New South Wales to have access to excellent cultural programs. In fact, it sounds like the Riverina conservatorium had a great idea. But we learnt in question time today that the funding was approved without a business case, with just the inside running of a grants program, and it received more money than the rest of the 18 regional conservatoria combined. That goes to the way the Government runs grants programs in this State.

What do community members expect when they hear that there is going to be a grants program? They expect that they will be notified, especially if there is only a limited number of people who are eligible to apply, and they expect a clear set of criteria, a merit-based assessment and transparent oversight on the acquittal of funds. Do not take it from me. This comes directly from the Department of Premier and Cabinet guide, which was created in 2010 and which says, "This is how a grants program should be run." I note that the last Labor Government sought to introduce the recommendations from an Australian National Audit Office report to make sure that that was the way the Government ran government grants programs. What has this Government done? We have seen a number of new reports in the past decade since those policies were updated.

There have been two notable reports from the Australian National Audit Office. In particular, there was one around the sports rorts program that saw a National Party Minister lose her position. What has the Government done? The Government has been absolutely silent. There have been no updates or programs about how we can be doing best practice. In fact, there was a ludicrous situation in which a public servant from the Office of Local Government tried to tell an inquiry of the House that policies of the Department of Premier and Cabinet would not apply to him. I am sure that any one of the other 18 regional conservatoria would like the same opportunity as Wagga Wagga had. The Minister reported on some of the relatively small amounts of funding that were requested, including one of \$630,000 and another of \$73,000. Those were dwarfed by the \$30 million that was given to the Riverina Conservatorium of Music. [*Time expired.*]

### COVID-19 AND EVENTS INDUSTRY

**The Hon. SAM FARRAWAY (17:31:30):** I take note of answers given to questions today by the Minister for Finance and Small Business in relation to the easing of COVID-19 restrictions. The Minister for Finance and Small Business mentioned Christmas gatherings, family picnics and weddings. The finance Minister will contribute to the economy through stimulus from his own back pocket when he pays for his lovely daughter's wedding. I congratulate the Minister on his daughter's wedding and also on the stimulus that he will provide to the New South Wales economy. This year the State, especially the regions, has faced droughts, floods, bushfires and now the COVID-19 pandemic. As the important holiday season over summer approaches, many people throughout the State will have time to celebrate with family, work colleagues and social groups, particularly in the regions, whether it is on the South Coast, the mid North Coast, the North Coast or even further inland. The easing of restrictions, which was highlighted by the Minister today in question time, are very welcome. They make celebrations, events and holiday festivities feasible for businesses during the upcoming holiday season.



For small businesses in the food and beverage services industry, summer and the Christmas season are crucial not only to survive but also to flourish. In his answer, the Minister also mentioned the great work that has been done by Service NSW in helping small businesses, including restaurants, cafes and bars, to operate in accordance with the mandated COVID-19 Safety Plan. Today Minister Bronnie Taylor mentioned the simplicity of the QR code check-in process that was provided by Service NSW. That helps COVID-safe businesses, including restaurants, to operate smoothly and safely. It is easy to come into Parliament, scan the QR code and receive a temperature test. It is a credit to Service NSW. Let us all work together to stay the course so that we can all look forward to the easing of even more restrictions in accordance with the public health advice and so that we can also look forward to a fantastic economic recovery after all of the challenges that we have faced in 2020.

**The PRESIDENT:** Order! Pursuant to standing orders debate is interrupted to allow the Parliamentary Secretary to respond.

### TAKE NOTE OF ANSWERS TO QUESTIONS

**The Hon. SCOTT FARLOW (17:34:02):** I take note of the answers to questions given today by the Ministers of the Government that show they are part of a government that is focused on the job at hand. Today the HSC kicks off after an unprecedented year for all students. Members around the table would all join with the education Minister in saying that HSC students have their support in this unprecedented year. I commend the education Minister and the Department of Education for all the work that they have done to ensure that we can proceed with the HSC in a COVID-safe way, while also picking up on the particular challenges for students such as their mental health. It is an appropriate time to think of that when it comes to Mental Health Month, as the Hon. Bronnie Taylor outlined in the Chamber today.

The Government has provided \$80 million for mental health in New South Wales during the pandemic. In particular, it has provided \$6 million of funding to Lifeline to support people with mental health challenges. Mental health problems are increasing in our community in the face of the pandemic. We must think of those people in our community in particular who face challenges with mental health. The Government must make sure that services are available to them. This Mental Health Month it is particularly important to go through the messages in the Mental Health Month theme, which the Hon. Bronnie Taylor outlined in the Chamber today. It is important for all of us to tune into our own mental health and the mental health of our community and to make sure that we are all very mindful of both our physical and our mental health during the pandemic. We know that being together helps when it comes to mental health.

The Hon. Don Harwin and the Hon. Damien Tudehope both outlined the easing of restrictions in New South Wales and, as the Prime Minister said, we have set the gold standard when it comes to the pandemic. Yesterday it was announced that restrictions will be eased. That will allow gatherings to increase to 30 in outdoor settings, bookings will increase to 30 people in hospitality venues and, as the Hon. Damien Tudehope would be very happy with, gatherings of 300 people are allowed at function centres for weddings and corporate events at Christmas. I did have one point of concern with the Hon. Damien Tudehope's answer today in question time: there were no songs to accompany his answer. I was very disappointed about that. I will assist him with. With the easing of restrictions to allow 30 people to attend outdoor gatherings, there is no better song than *Saturday in the Park* by Chicago: "I've been waiting such a long time for this day".

**The PRESIDENT:** The time for debate has expired. The question is that the motion be agreed to.

**Motion agreed to.**

### *Deferred Answers*

#### BUSHFIRE RISK MITIGATION

In reply to **Mr JUSTIN FIELD** (13 October 2020).

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business)**—The Minister provided the following response:

I am advised that the NSW Fire Trail Standards are available online at:  
[https://www.rfs.nsw.gov.au/\\_data/assets/pdf\\_file/0009/69552/Fire-Trail-Standards-V1.1.pdf](https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0009/69552/Fire-Trail-Standards-V1.1.pdf)  
and that Planning for Bush Fire Protection is available online at:  
[https://www.rfs.nsw.gov.au/\\_data/assets/pdf\\_file/0005/174272/Planning-for-Bush-Fire-Protection-2019.pdf](https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0005/174272/Planning-for-Bush-Fire-Protection-2019.pdf)

### *Written Answers to Supplementary Questions*

#### DARYL MAGUIRE, FORMER MEMBER FOR WAGGA WAGGA

In reply to **the Hon. WALT SECORD** (15 October 2020).

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts)**—The Minister provided the following response:

In May 2018 I visited the Wagga Wagga electorate to attend events at the Batlow Literature Institute, Museum of the Riverina, Greens Gunyah Museum and the Riverina Conservatorium of Music.

As is the protocol for these events, the local member was invited as a courtesy.

I have had no other meetings with Mr Maguire.

**THE HON. GLADYS BEREJIKLIAN**

In reply to **the Hon. ROD ROBERTS** (15 October 2020).

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts)**—The Minister provided the following response:

An answer will be provided when the information requested has been provided to my office.

**FORESTRY CORPORATION**

In reply to **Mr JUSTIN FIELD** (15 October 2020).

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business)**—The Minister provided the following response:

These issues have not been raised formally with me as a Shareholding Minister.

From the NSW Treasury, I understand that Forestry Corporation has been working with the EPA, DRNSW and DPI since January 2020 to find a balance between additional environmental prescriptions warranted post-bushfires and an industry solution to keep timber supplies flowing to this vital regional industry.

*Bills*

**STRONGER COMMUNITIES LEGISLATION AMENDMENT (MISCELLANEOUS) BILL 2020**

**First Reading**

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

**The Hon. DAMIEN TUDEHOPE:** I move:

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

**Motion agreed to.**

**The Hon. DAMIEN TUDEHOPE:** I move:

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

**Motion agreed to.**

**SPORTING VENUES AUTHORITIES AMENDMENT (VENUES NSW) BILL 2020**

**Messages**

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

*Business of the House*

**SUSPENSION OF STANDING AND SESSIONAL ORDERS: PRODUCTION OF DOCUMENTS**

**The Hon. JOHN GRAHAM (17:40:15):** I move:

That standing and sessional orders be suspended to allow the order of the day relating to a motion of contempt of the Leader of the Government for failure to table documents to be called on forthwith.

The motion is to allow the House to return to the debate in place of debate on committee reports. It has been the subject of discussion across the Chamber over the course of question time. The Opposition is moving the motion because it is the will of the House.

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

**Motion agreed to.**

*Documents***STRONGER COMMUNITIES FUND****Contempt for Failure to Table Documents****Debate resumed from an earlier hour.**

**The PRESIDENT:** The Minister is continuing to speak in relation to the point of order.

**The Hon. Damien Tudehope:** To the point of order: Before question time I raised the issue of onus in respect of the obligations of the mover of the motion. In a motion seeking to expel a member from the House, the onus should be a high onus to establish the noncompliance. Mr President, I submit that in the absence of evidence of noncompliance before you, you should not be persuaded to entertain the motion because of the implications that flow from its serious nature. In relation to the threshold for allowing the motion, Mr Shoebridge would have you believe that it is satisfied by a credible argument. That is not the case. Mr President, I submit that you must be satisfied that there is a noncompliance within the body of the motion that you can identify and rely on to say that it is the identifiable subject matter that gives rise to the motion. A credible argument does not get it there.

It has to be on the face of the motion that there is a subject matter upon which you, Mr President, can rely for the purposes of finding the motion in order and allowing it to go to subsequent debate about whether there is a satisfactory explanation. Alternatively, there may be an argument that the remedy sought is an inappropriate remedy, but those things are the subject of debate. There is a threshold point to get to and I submit that none of this gets there. We saw a glimpse of the highest evidence, arguments and serious nature of the subject that the Opposition relies upon for the establishment of the existence of the documents in debate earlier today. It is unbelievable. In fact, on the last occasion when the matter was before this House, the Leader of the Opposition contended that axiomatically the documents had not been produced.

If one goes to the heart of the issue, that concession undermines the motion. The concession that the documents must axiomatically exist does not go to whether the Leader of the Opposition can point to the actual existence of the documents. It is that if he believes they exist, axiomatically, they must exist. The mere belief that a document exists is never sufficient for the purposes of the motion being in order. We need to be satisfied that they exist. The Hon. John Graham then goes on in the same vein, contending that no documents being submitted was almost unimaginable. The strength of the argument upon which the Hon. John Graham wants to dismiss someone from the House is that it is unimaginable that the documents do not exist. He does not point to anything to suggest that it can be certified or categorically said that there is a noncompliance by the Minister. All he says is that it is unimaginable.

As I said in an earlier reflection on the subject—and the Hon. Walt Secord complimented me on the perspicacity that I exhibited—either the document exists or does not exist is the metaphysical problem those opposite are faced with. We are not acting in the realm of making a document exist because we imagine it exists. We do not make a document exist because we believe it exists or because axiomatically it must exist. You should be satisfied of a circumstance, because of the seriousness of the motion, that these documents exist. It is fundamental to this sort of motion that the Opposition needs to be able to demonstrate that level of certainty about the existence of a document. It is in the motion itself where it falls down. That is where the President's ruling—

**The Hon. Mark Latham:** Point of order: The Minister is now debating the motion being in order rather than speaking to the point of order. After all the latitude and patience given, is this a point of order or a Castro-type speech?

**Mr David Shoebridge:** To the point of order: There are two elements to the Hon. Mark Latham's point of order. The second element of his point of order was the length of time that the Hon. Damien Tudehope's point of order has taken. It is getting to the point of being repetitious. There is one core point that the Minister makes, and he wraps it up in a variety of different guises, which is that the absence of a document is not proof of a failure to produce a document. It does not matter how many different ways that package is wrapped up, it is the one point. The Minister is getting to the point of breaching the rulings against repetitious submissions.

**The PRESIDENT:** The Minister is coming close to being repetitious. I believe the Minister is now going to refer to another matter. I indicate to the Minister that it is not necessary for him to repeat anything he has already said. I have well and truly got it—if I can use that phrase—but I think the Minister was going to point out something new.

**The Hon. Damien Tudehope:** Paragraph (4) (b) of the motion countenances that the motion is extinguished by confirming that the documents do not exist. I have done that. There is no motion. That is the fundamental point because they say that in two days' time, after we have expelled him from the House, he can come back and say exactly what I have said today, that the motion for expulsion is extinguished. Paragraph (6) of

the motion asks the Government to confirm that the documents do not exist. We have done that: end of motion. Once that certification both from the Department of Premier and Cabinet and me has been made to the House, the remedy that the Opposition is seeking falls away.

**The PRESIDENT:** Is there anything new the Minister wishes to put?

**The Hon. Damien Tudehope:** The only thing I wish to put follows from the submission that I have just made and the motion bears it out. This motion for expulsion is being used as a weapon to punish the Government for not having a particular explanation or a particular document which the Opposition says should exist. Because of the seriousness of the event, one would have to say that there should never be a circumstance where an expulsion is used as punishment. In those circumstances where there is the possibility, on all the material available from the Government, that documents do not exist, a motion that has the effect of punishing someone should not be allowed to go before the House. The authorities in relation to that are abundant. I could quote them, if my friends want me to. The secondary point I make relates to paragraph (7) of the motion, which states:

That this House notes that, should the Leader of the Government fail to provide the documents or adequately to satisfy this House of the manner in which formal approval by the Premier or Minister was given for grants under the Stronger Community Fund that it is open to the House to take further action in order to protect the rightful powers and privileges of the House.

This may well be a circumstance where the alleged breach, as perceived by those opposite, is incapable of being remedied. Those are the circumstances we have got ourselves into because once we have made the statement to the House, once we have identified that there are no documents, nothing that we do from that point forward is going to remedy the breach perceived by those opposite. For those reasons I ask, Mr President, that you rule that this motion is out of order.

**The Hon. Adam Searle:** To the point of order: I address the point of order taken by the Leader of the House that the motion should be ruled out of order and I contest the propositions advanced by the Leader of the House. The problem for the Leader of the House is that although he has worked heroically to construct the argument that somehow there is an onus on us to establish certain things to a high level of satisfaction, that might be so in a court of law, and in a persuasive sense no doubt we have to persuade the Chamber to accept any proposition for it to be carried in this place.

But to say that there is some kind of legal onus that exists or must be discharged before you as President, as gatekeeper, to allow it onto the playing field, is something that has never been held in this House and would be a new rule, a new order of proceedings and would significantly constrain the rights of members and alter and diminish those rights. If the House, in the exercise of its discretion in establishing its standing orders or any sessional order, wishes to do such a thing, that would be a matter for the House. But, in my respectful submission, it is not a matter for you as President to rule into existence new restrictions on the member's freedom to bring motions to the floor. That is the first proposition.

The second proposition the Leader of the House advances is the issue around certification. The proposition he advances is that there was no need for there to be certification from the Ministers or their officers because it is the usual practice that Minister's officers do not hold onto briefing notes and that in the ordinary course they return them to the agencies. It is very important to note that he uses the term the "usual practice" because, unless I have missed something, neither last Thursday nor tonight did he say that the practice was implemented in each of these matters. The point is that even if he seeks to correct that, even if that were true, it would be the easiest thing in the world for the Ministers or their officers to certify that they did not have anything. It is not to the point about what the usual practice is or might be or whether it applied in the instant case; it is a question of whether they have the documents or not. The House directed the motion to them and they have not certified.

That is the second problem with the Minister's proposition and it is an important matter because the certification is one of the ways in which the House and the Executive speak to each other about these matters. The problem underlying that is that even if there was full certification and there is the idea that such certification acts effectively as a bar to the House interrogating these matters, there is no warrant for the certification being taken as equivalent to a public interest immunity certificate that somehow precludes a court from interrogating matters. No document may be issued by the Executive to prevent this House testing a proposition advanced to us, and that is a very significant matter.

As we have said, there is only a partial certification. Why is that important in this matter? If we just take the Premier's own role, we have an email from an adviser to the Premier to local government essentially asking for moneys to be expended. That is not the decision. The decision was somewhere else at some anterior point. We know it exists but the point is it has not been disclosed. That is another problem for the propositions being advanced by the Leader of the House. The difficulty of saying that the Government can just make an assertion which the House cannot interrogate is highly problematic for the power of the House to call for State papers and would create a new mechanism which could be abused by Executive government in dealing with these matters.

The matters that the Government raises here are merit issues, issues that the Leader of the House says should persuade the House to not make the order in the motion. But, with respect, they are not matters upon which you as President should preclude the House from considering in the exercise of your role as the Chair of the House. The contentions of the Government go to whether the House should exercise its discretionary power, not whether it can. So we believe that the Government's propositions here are difficult. The second proposition the Leader of the House raises is one I will call the ministerial assertion doctrine, that is, he has come here and told us these documents do not exist. We understand that he advances those claims honestly and we do not say otherwise.

In relation to the Primrose ruling that has been invoked, the difficulty for the Government is that we are not questioning the honesty of the Leader of the House but these are not matters within his personal knowledge and they are also not within the personal knowledge of the Leader of the Government. The Leader of the Government is in the frame here in a representative capacity, not because of any personal defalcation. Sometimes the two are one but in this case it is in the representative capacity in his role as Leader of the Government. The issue with this House is that in most cases like this one, those opposite will not have personal knowledge of the matters that are in dispute. They are acting on instruction, not on information and belief.

**Mr David Shoebridge:** As a cipher.

**The Hon. Adam Searle:** I do not agree with that characterisation because they are all part of the Executive. The point is they are advancing honestly what they believe to be true because that is their instructions about what is true. That is the problem with the Ministerial assertion. Again, if that assertion is accepted by you as closing the door on the House being able to consider the substantive motion, you are essentially saying: Here is another way for the Government to turn off the Standing Order 52 mechanism. All it would take for there to be a complete preclusion of this House considering a matter is for the Government to certify that there are no papers and that that cannot be interrogated. If that fails, it will just trot out the Ministers hereon instructions to say there is no document.

The problem for both of those propositions is that they may or may not be accurate but this House must have the right to interrogate and test those propositions. Mr President, if you were to rule this motion or a motion like it out of order for either of those two reasons, it would cripple our ability to call for papers under this power, which would significantly diminish the role of the House and the rights and privileges of its members. I note that your foreshadowed ruling was to prevent the diminution of the role of the House. It is our contention that if the point of order raised by the Leader of the House is upheld, you will be falling into the error that you seek to avoid and we would earnestly persuade you to pull back from the precipice.

Those are the two problems. Why is the partial certification important? We know that the Premier was the decision-maker for at least \$100 million of the \$252 million at issue. We can see the email coming from her ministerial office to the Office of Local Government giving the instructions; there must be some documentation. Maybe in a tricky way the Government is trying to say that there is a document but it does not have the title that we say it has. We have seen the Government pull this stroke regarding a Standing Order 52 motion directed to the Department of Transport, not Transport for NSW. Although the body was headed up by the Secretary of Transport, because there was this enormous distinction somehow it was an excuse not to produce documents. If that is where the Government is coming from, that it has the document but it is called by a different name, then upholding the point of order would encourage that kind of mischief and that must not be the case.

The essential point raised by the Leader of the House is that there are no documents. He can say that we might think that there should be documents but wishing is not going to make it so and that the Government cannot create something that does not exist. Essentially that is the central thesis of the Leader of the House. We say that that is contrary to all reasonable and lawful practice but at some point, whether it is in a documentary form or not, we know that a decision has been made by the Premier and by the Deputy Premier. We know that those people made decisions. The issue is how was that manifested, how was it recorded and how was it disseminated? It has been the invariable practice of this Government and previous governments for there to be a document like the one referred to in the call for papers motion moved by the Hon. John Graham. If it is called something else then please tell us. The point is: There is always such a document.

Time and again we have seen many returns to order by the Government. Sometimes it says, "This is not everything; there is more to come", and there are further orders—but not always. It has often been the case in my 10 years here that there is a call for papers, there is a return and sometime later there is a further return because there are further documents. Regarding the call for papers for the community funds and grants, the Office of Local Government [OLG] returned a number of interactions in this matter between it and the Premier's office. We know this because the Office of Local Government produced those emails. There is a lot of interaction between ministerial staff in the Premier's office and in other offices. But those emails have not been produced by the Premier's office or the Department of Premier and Cabinet [DPC]. We know those documents exist because one government agency has produced them but the agency which is the respondent to the motion has failed to.

We know that the returns are not always complete, whether it is done deliberately, by mission, by mistake, by oversight or for some other reason. I am looking at a certification from Tim Reardon at DPC and Neil Harley, the Premier's Chief of Staff, certifying other things in the past but the point is that no documents have been returned and yet we know that they exist. In trying to persuade the House that there are no documents, the problem for the Government is that there have been many examples where those assertions made honestly on instructions have turned out not to be so.

If against all of this the true position is that there is no document, it is not enough for the Government to say, "There is nothing, do your worst." In fact we cannot do our worst because somehow that is a complete answer. What the Government has failed to do today or on Thursday is to explain to us why no documents exist. If it truly wants us to accept what it is advancing then it needs to disclose how and why, against decades of practice in this State by governments of all persuasions including the current Government in which this Minister serves, there is no document. That is the merit of the argument we need to debate. The Government needs to advance those arguments and persuade the House that there is no document. That is the onus that the Government bears. I accept it is not a legal onus but it is a persuasion onus.

Just as the Hon. John Graham must persuade the House to support the motion, the Government must provide facts, reasons and persuasive information to persuade us that no document exists, if that is its assertion. There is no mechanism in Standing Order 52 and there is no restriction on the common law power that underpins it. There is no ruling in *Egan v Chadwick* or any of the other cases that says that the House must have a reasonable basis. In fact, the High Court and the Court of Appeal in this State have said that it is entirely a matter for the House to decide upon the occasion and the manner in which the legal power of the House is to be exercised. It is not a matter for the courts to evaluate whether some condition precedent existed which would satisfy the onus before the power could be authorised because of the separation of powers—not that it applies in the State. But the courts felt that it was ultimately a matter for the legislatures to decide whether the trigger for the exercise of its power existed and it was not for them to interrogate.

With respect, it is not a matter for the Presiding Officer of this House to interrogate those matters either. The President is to maintain order in the House and to uphold the standing orders. You will be persuaded by this argument that you should not uphold the point of order because the first two points are spurious and without foundation. There is no conclusive proposition that certification by public service departments precludes interrogation, and in this case there is only partial certification.

The reason for that partial certification does not hold water because we know that the Premier, the Deputy Premier and other Ministers were the individual decision-makers. The third proposition is that the ministerial assertion doctrine falls away because we are not interrogating the honesty, but we are sometimes able to interrogate the accuracy and history has shown that returns are not always complete. Underpinning all of those things is that the arguments by Government go to the substance and to whether the discretion should be exercised. The Opposition says it should be, but all the points raised do not go to a point of order that the form or the content of the motion is bad and should be ruled out of order. They are simply matters of substance that should be weighed by honourable members in the substantive debate.

I conclude by saying that these are weighty matters and the stakes are very high. The Opposition accepts that and understands that the proposition being advanced is one of censure and suspension of a member of the House. The Opposition understands that it is an important matter and not one to be enterprised upon lightly, and it does not. Opposition members are very mindful of the solemnity of that proposition. But if the President were persuaded to uphold the point of order on any of the foreshadowed bases, it would create a diminution of this House's power to interrogate the Executive and the fact that the assertions of the Executive have many times been found to be incorrect. I will use that term, rather than "untrue".

No Presiding Officer would want to make a ruling that diminishes the rights or privileges of members or of the House as a whole, yet that would be the direct impact of such a ruling. The Opposition urges the President not to fall into the trap that he is being invited into by the Leader of the House. If the Government does not want the motion to pass, then rather than trying a tricky technical point it should square up to the proposition on the floor and say to the House, "We were wrong and there are documents, but it is called by a different name and you haven't used the right terminology." The Government knows what the Opposition is after. It is after documents that reflect the making of the decision. It is just not that complicated. If he is unable to do that, the Leader of the House needs to persuade us why it is that no such documents exists.

**The Hon. Damien Tudehope:** That is a bridge too far.

**The Hon. Adam Searle:** I acknowledge that interjection, but the member is telling us that we must bear some legal onus of proof before the Hon. John Ajaka, as the presidential gatekeeper, will allow us onto the floor

to even debate a matter. And yet he says—outrageously, in my submission—that the fact that the Government needs to explain to the House why there are no documents is a fanciful proposition.

**Mr David Shoebridge:** To the point of order: I will endeavour not to repeat any of the submissions of the Hon. Adam Searle, which I simply endorse. Although, if Reverend the Hon. Fred Nile encourages me, I may have to traverse over some of them.

**The PRESIDENT:** The only one who can encourage you is me.

**Mr David Shoebridge:** There are three elements in the motion that I will set out before I take the President to a number of reasons why he should not be persuaded by the point of order, which may now be a record long point of order in the House. The first part of the motion is 1 (a) and it asserts as follows:

... that the Government failed to comply with the order of the House of 3 June 2020 relating to Stronger Communities Fund to produce all documents concerning the assessment and approval process for determining funding allocations, including records of who was responsible for final approval, as required by that order within 14 days ...

Subparagraph (b) states:

... that the Government failed to comply with the insistence of the House in orders of 16 September 2020 and 24 September 2020 relating to Stronger Communities Fund to produce signed, written briefs approving the projects awarded funds as part of the Stronger Communities tied grants funding round as required by those orders ...

Paragraph 2 (a) identifies as follows:

... that while evidence to the Public Accountability Committee at a hearing held on Monday 21 September 2020 was that the Premier, Deputy Premier and Minister for Local Government were decision makers for the Stronger Communities Fund, no written brief approving the grants signed by either the Premier, Deputy Premier or Minister for Local Government have been produced, or sighted by the Office of Local Government ...

The assertion in paragraph 2 (a) is correct; that is my recollection of the evidence before the Public Accountability Committee. In budget estimates hearings in the first half of this year Mr Tim Hurst, then-acting Chief Executive Officer for the Office of Local Government, refused to provide details as to who approved the funding for the Stronger Communities round. That led to a further round of inquiries in the Public Accountability Committee on 21 September 2020.

A Standing Order 52 approved by the House sought all the relevant documents in relation to the Stronger Communities Fund. It was a Standing Order 52 that I put to the House and in relation to which compendious documents were produced. To meet the Government's argument that it can simply assert that no signed documents by the Premier exist and that we cannot go behind the assertion because the President is compelled to accept the mere assertion of a member, I say this: There are a series of documents on the public record that I will seek leave to table in the House and that I will read from now.

They not only call into question the instructions that the Leader of the House has received, but also comprehensively make it clear that there are documents that have been signed by the Premier—none of which have been produced. The first is an email from a staff member of the Premier's office, Ms Lau, from 25 June 2018. It is back to the Deputy Premier. It copies in Mr Tim Hurst of the Office of Local Government and a number of others, including representatives from the Minister for Local Government's office. It is directed to Mr Daniel Newlan at the Deputy Premier's office. It commences by stating:

The Premier has signed the updated guidelines for this funding.

In the second paragraph it refers to Mr Kevin Wilde, the Chief of Staff of the Minister for Local Government; Mr David Rodwell, who is in another ministerial office; and Mr Tim Hurst at the Office of Local Government. It states:

Kevin/ David/ Tim – Premier has signed off on almost all metro council projects – there may just be some small changes with Lane Cove and Georges River. I'll send through the list of all other approved projects shortly though so you can get started on releases and draft funding agreements.

There it is, in black and white: The Premier has signed off on almost all metro council projects. On 27 June, two days later, there was another email from Ms Lau in the Premier's office. The email went to Mr Tim Hurst and the subject is "RE: Hornsby SCF payments"—Stronger Community Fund payments. The first paragraph talks about the guidelines and how they have taken some time to get out of Minister Upton's office. The second paragraph states:

The 2018 Budget allocated \$50m to rehabilitate Hornsby Quarry and the Premier has determined to allocate \$40m for the Westleigh Recreational Area from the Stronger Communities Fund. Both of these projects will be administered by Hornsby Council and will be subject to the revised Stronger Communities Fund guidelines.

Is this sufficient?

On 28 June, a day later, there was another email from Ms Lau. The email is again to Mr Hurst, Mr Wilde and Mr Rodwell. I will read the first two paragraphs of the email. Again, I am responding to the assertion from the Government and the Leader of the House that there are no documents signed by the Premier, no approval documents before the Premier—nothing at all to produce—and we should just accept the Government's word that there is nothing. The first paragraph reads:

The Premier has signed off further funding for metro councils. Outlined below is what is been approved. Pls note this includes some changes (see highlights) to previously approved projects so the list below should be taken as final. The Georges River projects were announced this morning so the funding agreement can go out.

The second paragraph states:

A project for Hunters Hill has been included on the list on the request of Min Roberts and has been reluctantly signed off by the Premier on the basis that the facility will benefit the broader Ryde community. Previous funding for a Lane Cove playground is being funded separately.

The last document I refer to is a further email of 25 June 2018 from Ms Lau, which was forwarded on 14 December 2018 because some amendments were made. The email of 25 June 2018 from Ms Lau is headed "FW: LG merger funds". It states:

Hi,

Below are the additional metro council projects the Premier has approved.

Hoping to finalise Lane Cove, Georges River and Parramatta Council tomorrow.

Then there is a table of projects: a project for \$2.6 million for Burwood, identified as "Henley Park Upgrades"; a project for \$2.3 million for Canada Bay, identified as "Ron Routley Oval Concord"; \$2.35 million for a series of projects for Ryde in Meadowbank, ANZAC Park, Ryde Outdoor Youth Space and the like; \$2.58 million for Randwick for Coogee Surf Lifesaving Club; and \$2 million for Waverley for a series of detailed projects in Tamarama Gully and the like. The written record produced by the Government under the Standing Order 52 call for papers makes it clear that the Premier has signed off on a series of projects. It makes it clear that a series of projects were put before the Premier for approval. It makes it clear that there were representations from, at a minimum, Minister Roberts in relation to one project, which the Premier "reluctantly signed off".

We are yet to see a single document with the Premier's signature on it. We are yet to see a single recommendation or detail outlining why any of those projects should be approved. We are yet to see a single document that responds to the orders of this House. The written records, the documents from the Premier's own office, state that she "signed off" on those projects. Where is the sign off? Where is the document that allowed the Premier to sign off? Mr President, I accept your reluctance to go behind the assertion of the Leader of the House. I think that reluctance is well placed but in the circumstances where we have repeated, contemporaneous documentary evidence, produced before this matter was an issue, that contradicts fundamentally the instructions that have been given to the Leader of the House, it would be an extraordinary proposition for you to prevent this motion being debated in the House. I seek leave to table those documents.

#### **Leave granted.**

I table those documents. I would suggest that in the circumstances where contemporaneous, compelling evidence exists which contradicts a mere assertion, it would be contrary to established practice to allow this point of order to prevent the motion being debated in the House.

**The Hon. John Graham:** To the point of order: I will speak briefly to add to the discussion. Mr President, the Opposition is conscious of the ruling you made earlier. I want to explain the three ways in which the motion before the House differs from the motion that was moved earlier, on which you were preparing to rule, so that you and the House are made aware of those. First, the charge of contempt that has been levelled at the Leader of the Government has been restricted to the certification issue, as that is clear-cut. As the Government has said, we agree that certification does not exist in relation to the Minister's offices. That is not contested. The Leader of the House then says that it is not the usual practice, Minister's offices do not usually keep briefs. We are well beyond the usual practice with this grants program. The dispersion of one-quarter of \$1 billion without a signed approval moves us well beyond the usual practice. However, we say that that should be tested, given how unusual the process has been.

That is particularly the case given that under the State Records Act there are very strict obligations to keep these records. They are strict for Minister's offices and even more strict for the Premier's office. Not only are they to be retained for administrative purposes but also this sort of document, this sort of brief or approval is to be retained for State archives. So it is a very serious matter if they do not exist or if they are destroyed or if they are not retained in the appropriate way. That is the first matter; we have restricted contempt to the certification. Secondly, we are very conscious of the need to act in a protective and not a punitive way. For that reason, as the



Leader of the House has correctly observed, there are a number of escape clauses in the motion for the Leader of the Government.

The principal one of those, about which there has been some discussion, is that we are seeking that either the Government provides the approval—something it is struggling with—or gives a clear reason why it has not been provided. That is what we want. That is the second option for the Government: that it confirms the documents do not exist and provides a clear explanation about the manner in which the formal approval by the Premier and her Ministers was executed and recorded to the satisfaction of the House. That has not occurred at any point when this matter has been discussed. If that is the view of the Government, it should explain how that occurred. How was the decision executed? How was it conveyed? How was it recorded? That has not occurred. There is a massive escape clause for the Leader of the Government and the Leader of the House would not have to be Harry Houdini to go through it.

Thirdly, we have broadened the motion to provide a wider description of the document that we seek. In order to avoid confusion—as has sometimes happened with the Government when it says, "You asked for this document; we did not have exactly that"—we have broadened the description slightly to say that we are seeking "the written briefs approving allocation funding from the Stronger Communities Fund or any other document, however described, which records the actual decision to approve the allocation of funds in the possession, custody or control" and so on. We are conscious of the ruling made.

Accordingly, we have adjusted the motion in those three ways so that it is as appropriate as it can be. But the Leader of the House almost invited you, as President, to certify whether the documents exist. The Opposition says that is the role of the Secretary of the Department of Premier and Cabinet. The secretary has not done that. The House has insisted. It is the secretary's job and I do not understand why the secretary has not done it. The secretary should do it and this House is entitled to insist that the secretary does their job and asks the Minister's offices whether the documents are there if the usual practice was not followed. That has not happened.

**The Hon. Mark Latham:** To the point of order: The One Nation submission can be put in less than 60 seconds. We love the Legislative Council but sometimes it can deteriorate into a Chamber of frustrated lawyers and legalese. The hard, cold public administration reality is that if the motion is ruled out of order it will set a dreadful precedent that will encourage and give the green light to governments to go further down the pathway of no document grants schemes. That would be disastrous for the State. The only thing standing against that very undesirable, secretive, sometimes corrupted process of public administration in New South Wales is the Legislative Council and the motion. On that basis alone, I strongly urge the motion be ruled in order so that that precedent is not set.

**The PRESIDENT:** I indicate that I will not rule immediately. Enough has been said that I must reconsider and maybe point out a few things to honourable members. The Leader of the House has indicated he wishes to speak. It is up to him whether he makes a contribution now but I am well aware of Hansard and that I have been in the chair for four straight hours.

**The Hon. Mark Latham:** Point of order: Is there a right of reply on a point of order? It is being taken as a right of reply, which surely is tedious repetition.

**The PRESIDENT:** There is no limit. Mr Latham can again seek the call if he wishes. There is no restriction. The Leader of the House has the call.

**The Hon. Damien Tudehope:** To the point of order: I need to address some issues that have been put. It has been asserted that if the motion is ruled out of order that will in some way limit the ability of the House to interrogate the issue. That is without foundation. On Friday an upper House committee will examine the scheme and the ability to interrogate the scheme is before that committee. In fact, in answer to Mr David Shoebridge's point about emails and his interpretation of those emails, he has the ability to interrogate the witness. As I understand it, Ms Sarah Lau has been called as a witness. I urge the President to consider that the motion is without foundation and does not limit the ability of the House to interrogate the process. In many respects, it enlivens the House to ask the writer of those emails what she meant in the committee hearing. In circumstances where she indicates that a document exists, that is when the mover of the motion should be back to move the motion because they would have laid the foundation for the existence of the documents.

No foundation for the existence of the documents has been laid in the House other than the belief that they exist and usual practice. The assertion before the House relies on a certification and my submission to the House. In those circumstances, I point out one thing: The ruling has serious ramifications for a member not being present in the Parliament. The President was present earlier during the giving of notices of motions, one of which was a no confidence motion in the Premier. To potentially exclude the Leader of the Government from consideration of that motion exemplifies for me and should exemplify for the President the serious nature of the remedy that

potentially emanates from the motion. No member who has spoken to the point of order has raised anything that would demonstrate that the documents exist. Submissions have been made in relation to the ramifications but nothing that would convince me of the existence of the documents. In those circumstances, my submission should be relied on to rule the motion out of order.

**The PRESIDENT:** I indicate to members that I will consider this matter. I believe it is in fairness to all members that I indicate my concerns and invite the Leader of the Opposition, the Hon. John Graham or the Leader of the House to alleviate those concerns by coming to see me if they wish. My concern in particular with the matters raised last and on a number of occasions by the Leader of the House is paragraph (4) of the motion. If paragraph (4)—in other words, excluding the Leader of the House and a Minister from the Chamber—did not exist, it would be a very different situation. Paragraph (4) gives me the greatest concern and is the main reason for my earlier indication. Members are aware that the Chair has the power to exclude part of the motion if they believe it is out of order, so that is a consideration for me.

I note that paragraphs (3), (5), (6) and (7) create a way forward if paragraph (4) did not exist. It is not a situation where, if you exclude paragraph (4), it takes away the substance of the motion and in effect leaves it useless, if I could use those terms. These are the matters I am really contemplating. I intend to confer. I am happy to meet with the Leader of the Opposition and the Leader of the Government. I invite the Leader of the Opposition and the Leader of the House to think about what I have just raised because, if they come to me with something that they have agreed to, that may eliminate all of what we are doing and we can move forward.

**The Hon. Penny Sharpe:** My comment is very short and goes directly to your issue. You have raised your concern about removing a member from the House. None of us takes that lightly. The point that I place on the record and the reason why we have gone down this path which has not been canvassed in the debate so far is that this side of the House believes that, if we do not resolve this issue, this is the most serious sanction that we can make against a representative of the Government—not as an individual but as a representative of the Government. It relates to how seriously we take the exercise of our role and our willingness to implement the very important responsibilities and privileges we have.

The sanction is not a trifling matter. It is something that we have gone through in a methodical way. I do not seek to canvass the entire debate again, but I did want to respond directly to the point around the removal of the Leader of the Government because that is the most serious sanction that we can make. It is because we believe that what is being debated and decided here is, firstly, a matter for the House and, secondly, a matter that will set an incredible precedent for the future that needs to be dealt with in that way. I appreciate you taking those comments on board.

**The PRESIDENT:** It is important I say this. The reason I said what I said about the removal and paragraph (4) is this: I want you to assume that the Leader of the Government is removed from the House, whether today or tomorrow—but your paragraphs (6) and (7) still stand. If you come back days later and paragraphs (6) and (7) are satisfied, then the removal of the Minister again is what gives me great concern. If you come back again and paragraph (6) is not satisfied in any way, there is nothing to prevent any honourable member proceeding because you have made it clear in paragraph (7) that that is exactly what you are going to do.

I will now leave the chair. The House will resume at 8.15 p.m.

#### *Rulings*

#### **MOTION OF CONTEMPT**

**The PRESIDENT (20:17:28):** As I indicated to the House last Thursday and again earlier this afternoon, a motion to suspend a member and hold them in contempt of the House is an extremely serious matter. The power of the Legislative Council to find a member in contempt should be used sparingly and only for the purposes of safeguarding the dignity and honour of the Parliament or as reasonably necessary for the proper exercise of its functions. The power must be exercised to protect and defend the House and not for punitive purposes. For this reason, motions of contempt and the suspensions of honourable members are extremely rare. As President, it is my role to not only apply the standing rules and orders of the House but also to assert and protect the powers of this House. Allowing those powers to be used in a manner that may be open to criticism as unreasonable—or even in danger of being overturned by a court—would in my view be an abrogation of my responsibilities.

For this reason, I had already indicated this afternoon to both the Leader of the House and the Leader of the Opposition and also advised the House of my current intention that if a point of order is taken—as foreshadowed by the Leader of the House in his submission in respect of the substantive motion circulated last Thursday—that I would most likely rule it out of order because of the risks that it would pose to the reading down of the powers of this House if passed in that form and subsequently challenged. I note that the motion as moved by the Hon. John Graham this afternoon is in a different form to the motion circulated last Thursday.

The Hon. John Graham pointed out a number of distinctions: the inclusion of what is effectively a new order for the production of documents in new terms in paragraph (5) and the inclusion in paragraph (4) of a ready means for the Leader of the Government to distinguish a period of suspension. However, as indicated to the House I remain troubled by paragraph (4). It retains the provision for the suspension of the Leader of the Government from the service of the House. I have listened carefully to the arguments on the point of order raised by all honourable members. I note the concerns raised by the Leader of the House, who reminded me that the Minister needs to be taken at his word in asserting that no further documents that are required to be produced exist and that there is therefore no basis on which the House can reasonably find the Leader of the Government in contempt.

On the other hand, I also take very seriously the points made by the Leader of the Opposition and other non-Government speakers. I am extremely reluctant to become a gatekeeper, beyond what is required in ensuring compliance with the standing orders, and to in any way unreasonably restrict a member's freedom to bring motions to the House. I also note his observation that the High Court and Court of Appeal, in confirming the power of the House to order the production of documents and to take self-protective action to ensure compliance with those orders, made clear that the exercise of that power is a matter for the judgment of the House.

Whilst I have counselled members in my earlier ruling, and again in this ruling, to use sparingly the powers of the House to find a member in contempt, and only to protect and defend the House and not for punitive purposes, ultimately the exercise of that power is a matter for the good sense of members and not for me to constrain. I am therefore extremely reluctant to rule the motion out of order. Before the dinner adjournment I invited the Leader of the House and the Leader of the Opposition to confer with me in my office and specifically requested consideration of paragraph (4). Despite the best efforts of all parties, unfortunately agreement could not be reached. Therefore, as I indicated before the dinner adjournment, I do instruct the Clerk to amend paragraph (4) of the motion by omitting all words after "function" and by omitting "regarding" and inserting instead "regards." The motion, with that amendment, can proceed. I do not uphold the point of order other than in relation to that amendment.

#### *Announcements*

### **PHOTOGRAPHER IN THE LEGISLATIVE COUNCIL**

**The PRESIDENT:** I indicate to members that a media photographer is in the press gallery.

#### *Presiding Officers*

### **PRESIDENT OF THE LEGISLATIVE COUNCIL**

#### **Dissent**

**The Hon. ADAM SEARLE (20:21:07):** Under Standing Order 96, I move:

That the House dissent from the ruling of the President.

I move that way and I seek to address that motion.

**The PRESIDENT:** I indicate to honourable members that page 318 of *Annotated Standing Orders of the New South Wales Legislative Council* states:

#### 96. DISSENT FROM PRESIDENT'S RULING

- (1) Any member may dissent from a ruling of the President by motion moved immediately "That the House dissent from the ruling of the President".
- (2) Debate on the motion may be adjourned on motion, without amendment, until a later hour of the sitting or to the next sitting day.

The Leader of the Opposition has moved his motion in accordance with Standing Order 96.

**The Hon. ADAM SEARLE:** Thank you, Mr President. I move the motion of dissent in the ruling just made. Unsurprisingly, I do so for the reasons that I outlined during the very lengthy point of order debate. The Opposition does not do so lightly, and we do not do so with any sense of animus towards the office of the President. We do not do so with any sense of hostility to the Chair himself. This is indeed a measure to protect the powers of the House for the reasons that we have outlined.

The difficulty with the amendment that the President has made is it does not resolve the principal issue that has been debated on the point of order; it simply defers the problem again until Thursday. If we assume that the amendment to the motion that the President has directed the Clerk to make proceeds, there is no suspension—although there may be a debate on censure—and the rest of the motion, assuming it is carried, then leads to a situation where unless something changes by Thursday we do not have any documents produced and we do not have any explanation. We will have a situation where the Minister appears in his place and gives his explanation.

However, that explanation may be no more than "there are no documents" and will perhaps fail to give the explanation required by paragraph (6) (b) of the motion as it currently stands, which I understand is also antithetical to the Government.

Assuming the House remains unsatisfied in relation to the production issue and the explanation issue, the difficulty we then have is that we are in the position of either the House accepting the action or inaction of the Executive or having a motion moved to suspend the Leader of the Government from the service of the House for a period arising from the noncompliance. As all honourable members know, we can pass censure motion after censure motion, we can engage in moral suasion and we can castigate the Government in colourful terms. But ultimately if the Government is unpersuaded to comply, the only mechanism available to the House, as was the case in the Egan matter—leaving aside the factual differences, for the present moment—is potentially to suspend the Leader of the Government from the service of the House, at least for a period, to persuade the Government to comply with the orders of the House. That is the only mechanism that is available to the House.

If we do not bite the bullet today and if we defer the issue until Thursday, when the Hon. John Graham, I or another member of the Opposition move that the Leader of the Government be suspended on the basis of the issue of noncompliance, he will be in the same position unless he says something different, though I am not critical of him for that. If the motion to suspend is bad in the eyes of the Government for the reasons the Minister has outlined, it will be as bad on Thursday as it was today. If paragraph (6) (b) of the motion is as unacceptable to the Government as it is today, it will be in the same position on Thursday. On Thursday we will face a very lengthy debate on technical points of order about whether the motion can be brought to the floor of the House.

The ruling of the President does not resolve the present dispute; it defers it until Thursday unless there is a realistic chance that the Government will change its position. As I have said, that is why the Opposition moved the dissent motion on the ruling of the President. It was not because Labor is unhappy with the result, it was not to try to disrupt the House and it was not to secure Labor's objective, although the objective is to secure compliance from the Government with the order of the House. It was because the President's ruling does not solve the problem. If we are going to have the dispute again on Thursday after hours and hours of technical debate on points of order, we have already had that today.

It is time to discover the will of the House on the substantive motion. Labor moves the dissent in order to enable the House to consider the substance of the motion and to hear the explanation from members of the Government, although I assume most of their good material has already been deployed. Hopefully any substantive debate, if it arises, can be dealt with in shorter compass than we have to date. I will not go over old ground. The reasons for dissent are simply that the ruling does not resolve the problems that have been raised by the Leader of the House. It does not resolve the issue for the House. It defers the issues until Thursday when we will simply have a re-run of the same debate that we have had today and, I apprehend, though I do not mean to be critical, the Government will raise the same technical points and the House will not be able to deal with the substantive motion.

Labor has maintained all along that all of the arguments that were raised by the Government were not of technical import. It is not the role of the President to be the gatekeeper in the way the Leader of the House has sought to make the President the gatekeeper. Those matters go entirely to whether or not the House should exercise its discretion and the only power it has to secure compliance with its standing orders and with the call for papers. My point will not get better for repetition. In a nutshell, Labor has moved the dissent motion to preserve the integrity of the House and the extent of its powers in relation to the production of State papers, which it has asserted a number of times.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (20:28:12):** I did not anticipate that we would be in this position. I ask that the President leave the chair for a time so that I can have discussions with a view to resolve the issue. Given that this is a dissent motion on a ruling that the President has made—which I do not have a copy of, though I understand its import—I need time for further discussions with the Leader of the Government and with the mover of the motion, the Hon. Adam Searle.

**The PRESIDENT:** The Leader of the Opposition has indicated he does not object. There must be a time limit if I allow such discussions.

**The Hon. Adam Searle:** It is always a matter for the Government to suggest that the President leave the chair.

**The Hon. DAMIEN TUDEHOPE:** Thirty minutes.

**The PRESIDENT:** I will now leave the chair until the ringing of the long bell.

*[The President left the chair at 20:30. The House resumed at 20:55.]*

**The Hon. ADAM SEARLE:** Having reflected during the preceding short period and having discussed matters with the Leader of the Government and others, I seek the leave of the House to withdraw my motion to dissent from your ruling.

**Dissent motion withdrawn.**

*Rulings*

**MOTION OF CONTEMPT**

**The PRESIDENT (20:56:17):** I indicate to members that I revoke my earlier ruling given at 8.17 p.m. this day, which gave instructions to the Clerk to amend paragraph (4) of the motion. On the basis that that no longer stands and no amendment is being made to paragraph (4), my ruling in relation to the point of order stands: that is, there is no point of order and the motion can proceed without that amendment.

*Documents*

**STRONGER COMMUNITIES FUND**

**Contempt for Failure to Table Documents**

**The Hon. ADAM SEARLE (20:56:53):** I move:

That the question be amended by omitting in paragraph (4) "Wednesday 21 October 2020" and inserting instead "Tuesday 20 October 2020".

**The PRESIDENT:** I will not put the question on the amendment until debate on the motion concludes. Is any other member seeking the call?

**The Hon. John Graham:** Mr President—

**The Hon. Don Harwin:** I think the Hon. Adam Searle will have to withdraw his amendment.

**The Hon. ADAM SEARLE:** I withdraw my amendment.

**Amendment withdrawn.**

**The PRESIDENT:** The Hon. John Graham has the call. When the Hon. John Graham completes his initial speech I will call any member who seeks the call. The Leader of Opposition can then move his amendment.

**The Hon. JOHN GRAHAM (20:58:29):** As I was saying—

**The Hon. Don Harwin:** As I was saying before I was so rudely interrupted!

**The Hon. JOHN GRAHAM:** I acknowledge that interjection.

**The Hon. Don Harwin:** I withdraw it.

**The Hon. JOHN GRAHAM:** I acknowledge that interjection. The Opposition has moved the motion because we believe it is a serious matter of public administration. As I have indicated by some basic facts about the scheme, \$252 million was in a grants fund, there were 249 grants and almost all of it was distributed between 27 June 2018 and 1 March 2019—that is the caretaker period immediately before the election—and the majority of those funds were approved by the Premier.

The Premier was the decision-maker for the majority of the funds allocated under this grant fund and 95 per cent of it went to Coalition electorates in the months before the election. We heard in the procedural debate that there was no recommendation at any point. The Office of Local Government at no point has seen a recommendation that sat in front of the Premier to say, "As the decision-maker for the fund, choose these projects". Unbelievably, no written and signed brief or approval has yet been presented to the House. This is what the Opposition has honed in on. For every grant scheme there must be a decision-maker and a point of decision, and that is usually signalled by a signature and a date on a piece of paper. That goes for the smallest decisions in government, as it should for the quarter of a billion dollars of public funds that were distributed.

The Opposition is having an issue understanding the position of the Government. We would like the House to test the answers of the Leader of the Government now and perhaps later as to how it could be that the Government is unable to present this paper. How else could it have been done? If it is not a matter for a signature and a date, is it done on a whiteboard or a set of Post-it notes? Is there an electronic record of decisions either intact or not intact? These are some of our concerns. Members of the House have referred to the multiple emails and Mr David Shoebridge read many out. Are those emails from the Premier's senior policy advisor dictated by the Premier standing nearby. Are these instructions transmitted from the Premier's office to the Office of Local Government, which is then distributing the funds. In some cases, up to \$90 million was distributed to a single

council under this fund. Unbelievably, that agreement was struck on the very day the guidelines were signed. That is what the Opposition seeks to test when the House deals with this fund.

There are concerns about the administration of the Stronger Communities Fund tied grants round. The Legislative Council first called for papers relating to the fund on 3 June 2020. The order called on the Government to produce all documents concerning the assessment and approval processes for determining funding allocations, including records of who was responsible for final approval. The Government did produce these papers. However, there was no written and signed brief approving the projects awarded funds contained in that return to order, which sparked the interest of the House. Accordingly, on 16 September 2020 and 24 September 2020 the House requested the production of the written and signed brief approving which projects were selected.

In speaking to this motion, I make it clear that the Opposition is grateful to the Leader of the House for the role he has played in assisting the House with this matter. I concur with comments made by the Leader of the Opposition about his role and I thank him. However, I also place on record that we continue to have real concerns about the position he has been advised to take by the Department of Premier and Cabinet. The Government has claimed three things: First, that these documents have been properly sought; secondly, that they have been provided; and, thirdly, that to the extent the Opposition is requesting further documents, they do not exist.

In relation to whether these documents have been properly sought, as the Opposition has said, there are real concerns about the extent of the certification provided to the Leader of the House. In seeking the approvals, the House has requested these documents from the Department of Planning, Industry and Environment [DPIE], the Department of Premier and Cabinet [DPC], the Premier's office, the Deputy Premier's office, and the Office of Local Government. The certifications returned on multiple occasions by the Secretary of DPC only relate to one of those five entities—DPIE. There is simply no assurance provided that the documents are not held by the Department of Premier and Cabinet, the Premier's office or either of her two Ministers offices. This is confirmed in the correspondence presented in the House from the Secretary of the Department of Premier and Cabinet. The correspondence indicated that DPC had not written to the three ministerial offices inquiring whether they held the brief sought by the House.

I want to read that into *Hansard* because it is a crucial question when it comes to the House's will. I quote from the communication from Kate Boyd, general counsel, "DPC did not write to all of the Ministers named in the order asking for their certifications and any documents held." That is the situation we are deeply concerned about where the House has twice insisted that the Secretary of the Department of Premier and Cabinet conduct a search for these papers and he simply has refused to do so. We regard that as a grave insult to the House. It is a limited request for a small number of papers tied to the distribution of \$252 million of public funds. We are concerned that the advice provided to the Leader of the House, on the face of it, is deficient and does not allow him to provide the assurances that the House has sought. That is our concern.

As I said in earlier discussions, the Department of Premier and Cabinet has advised the Leader of the House to come in here and say, "We will conduct those searches in the manner in which we seek to do so. That is our business. We will conduct those searches in the way in which we regard is most appropriate." The Opposition rejects that view. Our view is that it is the place of the House, in unusual circumstances, to direct the secretary for further assurance, given what we know through our own inquiries and the inquiries of the committees of the House in this instance. That is what we seek. The Opposition submits that while the certification remains inadequate, it is appropriate to move this motion and to charge the Leader of the Government with contempt. That is the view that we put plainly in front of the House today.

In relation to the Government's second argument, that the documents have been provided, there has been some confusion. The Leader of the House, in fairly putting the advice he has been given, has created some confusion. Members have been interested to know what documents have been provided. The documents that have been provided are extensive but do not extend to the written signed brief selecting the recipients of the grant, what we would call the approval. That is the specific document requested by the House. The advice provided to the Leader of the House has included pointing specifically to a number of documents in the index in the return to order, suggesting these are the documents sought.

The Leader of the House has run through the index and set out the numbers. That is the point that I will directly address. Those documents referred to by the Leader of the House, on advice from the DPC, are not the approval. They are the financial instruments disbursing the funds. These are issues following an earlier decision about which councils will receive the grants and what quantum of funds each council will receive. That is the paperwork we are seeking relating to that approval. These financial instruments, the documents that have been provided, are signed by the senior executive from the Office of Local Government and are approved under delegation using section 12 of the Public Finance and Audit Act. The Office of Local Government has given evidence to the Public Accountability Committee. To make it clear, it had no role in choosing the councils or choosing quantum.

These documents could not be the brief approving the grants. It was not the decision-maker for this grant fund. Those decision-makers were respectively the Premier, the Deputy Premier and the Minister for Local Government. It is the written signed approval brief from these decision-makers which the House seeks. The Opposition view is that while it remains the case that an approval brief is yet to be provided, it is open to the House to continue to pursue an argument that the Government has not complied with this request. In relation to the Government's third argument that the documents sought do not exist, the Opposition remains concerned about the advice provided to the Leader of the House. It is this matter that we traversed extensively earlier.

The Leader of the House has said it in debate and he alluded to it again today: "The Government says, and I categorically say it now, all documents that the Government has to produce—that is, what I am instructed, pursuant to the standing order—have been produced." He also said, "Again, if there are no more documents to produce and if the Government has complied, then the censure motion should fall away." The Opposition draws the attention of the House to the wording used by the Leader of the House "upon advice" in previous debates. Those are indications that all the documents that the Government has to produce have been produced. I note that in previous instances, the Government has made that argument to the House and then later documents have been produced. That underlines one of the reasons the Opposition remains concerned.

We believe the House should be entitled to make a judgement about the strength of the Government's argument. We remain concerned that the certifications from one of five agencies the House has looked for that were provided by the Leader of the House do not support those statements. We remain concerned about the partial returns submitted by the Department of Premier and Cabinet in those returns to order, including in this matter—and the Leader of the Opposition referred to this—where a number of emails from the Premier's office have been returned in one part of the return—the return from the Office of Local Government—but zero in the return from the office of the Premier. So that again heightens our concern about the advice being provided to the Leader of the House, and we remain concerned about the implications for this quarter-of-a-billion-dollar fund if the Government's argument is true.

If there is no signed written brief approving those funds, it represents a gross maladministration of the fund—there is no other way about it. If there was no signed written brief approving those grants how is the House to understand approval was granted and recorded? The Opposition argues that the House is entitled to test the arguments of the Government in debate on this question. The question of recording is important because the records are all subject to the State Records Act. There is a test that applies to Ministers' offices and there is a higher test that applies to the Premier's office. The guidance given in the State Archives and Records Ministers' Office records (GDA 13) sets out the requirements for maintaining certain types of papers. There are two classes of papers: first, papers that have to be retained for administrative decisions for a certain period and, secondly, papers that are so important that they should not only be retained for the purposes of administration and audit—and papers we are referring to would clearly fall within that category—but they are also required to be retained as State archives. In the general retention and disposal authority [GDA], No. 1.7 the table of disposal action states that briefing notes or papers maintained in the Premier's office are required as State archives.

If the papers existed or if papers material to the decision-making process existed, they should not only be kept in the short term for administration and audit, but they should also be kept and retained as State archives in the long term. That is the level at which the expectation is in the Premier's office about the decision-making and the recording of decision-making. We are a long way from that and that is the concern of the Opposition. Finally, the Opposition is conscious that any action it brings before the House should be protective rather than punitive. Accordingly, the resolution we seek from the House gives the Leader of the Government a couple of options: either to produce the signed written briefs as requested or confirm that the documents do not exist and provide a clear explanation as to how it was that those grants were approved—that is, what is the manner in which formal approval was given by the Premier and by her Ministers? How was it granted? How was it executed? How was it recorded in order to satisfy their significant obligations in relation to the public administration of this fund?

At any point, therefore, it is open to the Government to state clearly to the House an unambiguous confirmation—to put aside the careful legal words from the Department of Premier and Cabinet and just say that there was no brief, that it was all done verbally, or whatever the answer is. It is open to the Government to give a clear explanation to the House about the way in which the approval occurred, how it was communicated, executed and recorded. That is yet to occur. Should it occur, the Opposition would have to concede that the ability of the House to seek information and take protective action is starting to run up against its limits. That explanation has not been given. There is no commonsense explanation for exactly how this situation has occurred. That is of great concern to the Opposition.

This is a massive fund. To give some sense of the perspective, this single round of this single grants fund—and we are investigating many others in the Public Accountability Committee—is two and a half times the size of the Federal sports rorts fund that saw a Federal Minister resign. In that case, there was an approval. There was

paperwork. Many of those things were there. The scale of this is remarkable. The potential maladministration is remarkable. Those are the reasons that we bring this matter before the House. We do so seriously. I commend the motion to the House.

**The Hon. ADAM SEARLE (21:17:00):** I move:

That the question be amended by omitting in paragraph (4) "Wednesday 21 October 2020" and inserting instead "Tuesday 20 October 2020".

I endorse everything my colleague the Hon. John Graham has said. This is an extremely important matter. It involves the proper decision-making in dispersing more than a quarter of a billion dollars of taxpayer money in this State. The notion that there would be simply no documentation of the decisions about how that money should be applied and the individual projects to which they would be applied is extraordinary. I know the Leader of the House has given that assertion on instructions many times—today, last Thursday and each time this matter has come up. But it is not just extraordinary. It is our contention that at the very least it is maladministration, possibly corruption, and all of this would be laid not just at the feet of the Government but at the feet of the relevant Ministers who made those decisions—the local government Minister, the Deputy Premier and the Premier of this State.

They are weighty matters and I can understand why the Government has fought this motion so hard; debating every point on Thursday and today. I thank the Leader of the House for the way in which he has engaged in this process in good faith. It is important that this House get to debate the substance of this matter rather than it rising or falling on a technicality. The reasons behind the amendment that I have moved are to slightly shorten the proposed period for which the Leader of the Government would be suspended from the service of the House from the currently foreshadowed Tuesday and Wednesday to only the balance of today. That is for a number of reasons.

It would bring this motion into consistency with the original motion to suspend Michael Egan, the Leader of the Government in the 1990s. It would maintain a consistent practice between what we are proposing tonight and the matters that started this House's greater assertion of its rights to compel the production of State papers. Consistency of practice for the House is important not just for the practice of the House and the way in which the House in its discretion exercises its profound powers but also, should the courts of the land be called to adjudicate on these matters, we will be able to point to greater consistency. This is because, contrary to assertions that have been made, this is not a punitive measure. This power is protective of the rights and privileges of the House and its members to secure compliance by the Executive with the orders made by the House.

Ultimately, apart from repeat censure motions, the proposal to suspend the Leader of the Government of the day is the only mechanism we have to secure that compliance and it must be exercised sparingly and in clear cases. But it not only relates to the non-production of documents. As we have heard, the Leader of the House says there are no documents, there can be no documents, there will be no documents and we are not going to forge any documents because if they do not exist they cannot be manufactured. That is why there is a new element in the motion which, apart from giving a further opportunity to produce, requires on non-production that the Leader of the Government appear in his place and give an explanation not just of the fact that there are no documents but also as to why there are no documents.

This is the missing piece of the puzzle. If the Government has made a decision as to how \$250 million of taxpayers' money should be spent and it has done so without a paper trail reflecting the approval process and without documentation about the timing and the basis of a decision to spend that money, that is a crucial matter that this House and, through this House, the wider community need to understand. We can then debate whether what was done was lawful and proper, whether it was maladministration or, worse, corrupt and illegal. These are not matters raised lightly and they go to the very highest office in this State.

It makes what unfolded at the Independent Commission against Corruption [ICAC] last week pale in comparison. Those matters are very weighty and important but, unless I have miscalculated, they did not involve \$250 million. We support a shorter period of suspension. If there is no production of documents and there is no proper explanation that satisfies the House about why decisions on this money by the Premier, the Deputy Premier and the local government Minister were not documented so that we do not know the basis on which decisions were made—whether they were arbitrary, capricious, unlawful or entirely proper—these matters need to be interrogated. These matters need to be evaluated and there needs to be public discussion because we simply do not know.

If the Government or any member of the Government, including the Premier of this State, is found wanting in that exercise, the Government can be held to account through public dialogue. Members of this House or the other place can then determine what course of action should be taken to secure the accountability of Executive government to the community through the Parliament. If we are not satisfied on Thursday, we reserve the right to move a further suspension motion in relation to the Leader of the Government to secure the compliance of the



Executive. Should that happen—with a couple of caveats—we understand that the Government will meet us in the Chamber in debate rather than repeat the technical arguments we have gone through last Thursday and today.

We understand that the Public Accountability Committee will be meeting on Friday to hear evidence from people, including a then staffer from the Premier's office who authored the email to the Office of Local Government, about the very issues that we have been canvassing here. New light may be shed upon these matters. The darkness may be peeled away and all may be revealed. And yet, it may not be. For more abundant caution, any further debate on a motion to suspend the Leader of the Government in the Legislative Council should await the outcome of the evidence being heard on Friday. We would move that motion on the Thursday to make sure that the Government understands the full resolve of not only the Opposition but all members of this Chamber—because this should not be a partisan dispute—to secure compliance with the legitimate exercise of the House's undoubted powers.

**Mr DAVID SHOEBRIDGE (21:25:54):** The Greens support the motion as amended. We do not do this lightly. We acknowledge that this is a reserve power that should only be used sparingly to vindicate the powers of the House in the most extreme circumstances. The Greens members appreciate and support the amendment to reduce the period of suspension for that purpose. We also appreciate that discussions held between various parties that have seen this matter are dealt with without moving dissent to your ruling. Whilst my party may well have supported the dissent, at no point have we considered your rulings to be partisan. We have always acknowledged that they come from a position that seeks to do the best by the House.

On the substantive motion, I will not repeat the matters that were dealt with on the point of order. That was the longest point of order that I can recall, and it largely dealt with all of the arguments that the various parties will put. But the Government simply says that we should rely upon its word and only its word, and there are no documents to produce. This matter came to the attention of my office very early this year before the budget estimates cycles because a resident from Hunter's Hill Council contacted my office to say, "Our council has received a very large amount of money to upgrade a park. Our council never applied for it and we do not know where it came from. Can you please determine from where this \$1 million to Hunter's Hill Council came?" I said, "Absolutely, that is the kind of thing that you do in budget estimates."

So my staff and I did some research. We scoured both the council and the Office of Local Government websites, and searched elsewhere on the internet, but there was no record of the \$1 million grant for this particular project. During budget estimates we asked the CEO of the Office of Local Government Mr Tim Hurst if he could please identify from which fund the \$1 million that went to Hunter's Hill Council for this particular project came. In reply we received ducking, weaving, prevarication and—I will be quite frank—dissembling. He utterly avoided the question. We could not get a straight answer on the circumstances under which the funding was approved. We found out that it had come from the Stronger Communities Fund so we broadened the questioning to ask who approved the funds and how much money was allocated, because we had found no statement anywhere on the public record detailing the scale of the project.

After a series of unanswered questions Mr Hurst said, "I can only advise that the Office of Local Government was told of the councils to pay and the projects. The office prepared the agreements, sent them to the councils, executed them and then paid the funds." I pressed, "Who told you who to pay?" He said that he could not answer and he would take it on notice. It turned out that only months before Mr Hurst gave that answer, he had personally been getting a barrage of emails from the Deputy Premier's office and the Premier's office telling him that the Deputy Premier and the Premier had been approving all of those projects. Yet the evidence he gave to the budget estimates hearing was that he did not know, he could not assist and he would have to take it on notice. As indicated, we then sought the answers on notice. We got a very ambiguous answer on notice, which read as follows:

OLG allocated funds based on the Stronger Communities Fund grants guidelines, approved by the former Minister for Local Government in 2018.

We never had any mention of the Premier from the Government or from Mr Hurst, and we never had any mention of the Deputy Premier. We had prevarication and then a non-answer on notice that the Office of Local Government allocated funds based on the Stronger Communities Fund grants guidelines approved by the former Minister for Local Government in 2018. We have since found out that answer was false. That answer was signed off by the Minister after a draft was provided by the Office of Local Government. We now know that the guidelines were signed off by the Minister for Local Government, the Deputy Premier and the Premier.

But worse was to come. Under the Standing Order 52 motion that we moved, which asked for all the relevant documents, we found that a draft answer had been provided by the Office of Local Government to the Minister that gave a much more accurate and honest answer, but was amended to the answer that I just read onto the record. The draft answer that was provided was, "OLG was advised that the Premier approved the allocation

of funds and the nominated projects under the Stronger Communities Fund tied grants round to Hunters Hill Council." Any reference to the Premier was struck out between the draft provided by the Office of Local Government and the final answer that came to us through the Minister's office in the budget estimates process. The Government has been hiding, prevaricating and lying to the House through its Executive and its Ministers in answers to budget estimates for the entire year.

I asked questions in budget estimates and said to Mr Hurst, "If you can't tell us how much money was funded under the Stronger Communities tied grants round, provide to us all the documents for funding agreements and tell us the total." The Government did not give us the total and Mr Hurst did not give us the total, but we eventually got all the documents. My office went through the documents, which were produced in very unhelpful, hard to read PDFs. Only when my office totalled up the figures in the PDFs did we realise the final answer was that in the nine months leading up to the State election—without any comprehensive records, public reporting, applications being received from councils, or notice other than local media and local rags promoting the Government in the lead-up to the election—\$252 million had been pork-barrelled through the Stronger Communities scheme.

No-one had heard anything about it. The Government had not put it up on a website. It had never been publicly acknowledged. We found out only recently, in answers to questions on notice from the most recent round of hearings in the Public Accountability Committee, that the Local Government Association—the peak body in New South Wales that normally distributes information to councils about funding—had never been told about the tied grants round. It never had the slightest notice about it—and it was the association's members that technically could have it. I will not go on and deal in more detail about Mr Hurst's creative answers in the most recent Public Accountability Committee hearing, where we got the most extraordinarily tortured explanation of why none of the councils that were technically eligible for funding, being councils that were the subject of a merger proposal, were ever told about the existence of the \$252 million fund.

Mr Hurst said they were not told because they were not eligible for funding until the Government had identified and funded a project in their council area. It was only once the Government had identified a project and agreed to fund it that they would become eligible. That is some sort of bizarre illogic but that is what Mr Hurst's position was: It was only once a council had been given funding that they were eligible for funding. Until you were given funding, you were not eligible for funding. Therefore, you could not find out to ask for funding because by definition you became eligible only once the Government gave you money. It was like some sort of alternate universe in the Public Accountability Committee hearing.

Each time we have tried to find out how this \$252 million was allocated. Who decided on which projects? On what possible basis did Ryde Council get over \$2 million, or Randwick Council get over \$2 million, or Dubbo Council get tens of millions of dollars, or Hornsby Council get \$90 million? And this Government continues to hide the truth. Members opposite have form. They have been hiding the truth of the issue from the moment they were pork-barrelling a quarter of a billion dollars in the lead-up to the last election. And do you know why they are hiding it? Because they know it is wrong.

I want to be clear: The Greens view that behaviour as corrupt. That is corruption at the core of the Government, with the Premier's and the Deputy Premier's fingerprints all over it. They were handing out a quarter of a billion dollars of public money to promote their electoral interests with, on the Government's version, no paperwork to support it and, on the version of this side of the House, hiding the paperwork and hiding the reasons. I am certain when we find out what the reasons are, they will be very clear as to why those projects were funded, why council A and council B got funded and why council C did not get a look-in. It was because it was all about electoral advantage. The Government has been using public money to bankroll its election campaign. It is a disgrace and that is why The Greens support the motion.

**The Hon. MARK LATHAM (21:36:49):** One Nation supports the motion as amended. I start by paying supreme tribute to the work of the Hon. John Graham, the Leader of the Opposition and also Mr David Shoebridge in acting in the best traditions of parliamentary scrutiny. The taxpayers of New South Wales thank them for what they have done because we have heard a lot of talk about the money that has gone out. I am always mindful of how the money ever comes in—the battlers, the manual workers, the hospitality workers, the low-income workers, the retail workers, the people in western Sydney who drive to work in the morning squinting into the sun, drive home squinting into the sun and in the winter never see their house in daylight hours.

They are the battlers out there who pay those funds, the extraordinary amount of \$252 million that has not been allocated on the basis of need, with no due diligence and not even any documents. In one respect, expelling the Leader of the Government is a sad moment for the Parliament, but it is also a mighty moment for the Parliament in acting in the best traditions of an upper House—of scrutiny, of transparency and of defending the interests of the taxpayers who work very hard for a lot less income than we earn and do not expect their money to be spent

that way. At the end of the day it is their money. To use it in this fashion highlights an arrogance of power that is completely unacceptable.

I know the Leader of the House has used the self-defeating circular argument that if there is a scheme with no documents and they cannot produce any documents, there should be no sanction against the Government. I think the sanction should be tougher, because the arrogance of power to devise a scheme like this is quite amazing. Because when you drill into the scheme, it is not even on the basis of marginal seat politics. It was not a scheme that was pouring money into Penrith, East Hills, Holsworthy and country electorates. The great bulk of it has gone to the \$90 million project in Hornsby, a safe Government seat, where the local member is a protégé of the Premier and the local mayor is the President of the NSW Liberal Party. They have filled in a quarry to make a park—surely the most expensive municipal park in the history of the country. The amount of \$90 million is bigger than the budget of many local government areas in New South Wales. It is an extraordinary amount of money.

One gets the impression that they did it because they could, with no documentation, no publicity and no restraint on their arrogance of power. Some members have called it corrupt conduct. I would describe it as the mother of all rorts. It is completely unbelievable that Government members could do this with other people's money and consider themselves custodians and worthy of ministerial office in this State. It is way off the radar. It is unlike anything we have ever seen or heard of. Again I congratulate the members who have exposed this on their forensic work, their attention to detail and their perseverance in following the matter through to the point of moving the motion in this House. The Government is in trouble on many fronts because of secrecy, lack of disclosure and lack of basic honesty. If this is how things are done behind the scenes, not in marginal seats because of some clever marginal seat strategy to get back in the game but because the arrogance of power said the member for Hornsby could do it, then this Government has completely lost its moral compass.

It is a government that must question its own reasons for existence. If this is what Government members do in public life, why are they here? I reflect on a project in south-west Sydney. For 24 years we have dreamt of a portion of \$90 million to go to the redevelopment of the Claymore and Airds public housing estates. That project was blocked when John Fahey abolished the Building Better Cities Program in 1996, was resurrected by Craig Knowles under the Carr Government and was blocked and abolished again by Barry O'Farrell in 2011. How they would dream in all fairness, equity and social justice of having a small slice of that money to live beyond conditions that you would not consign your worst enemy to and to have a decent place to raise their kids! That is the true, real-life impact of this abuse of other people's money.

At one level I am simply dumbfounded that the Government has come to this. There has been a debate about the punishment fitting the crime. There must be a sanction on the Government. If this is how the Government is doing things now, it must take a good look at itself and ask why it is even contemplating the administration of New South Wales and the use of public money. It is completely appalling. Paragraphs (3) and (6) of the motion make clear that the way out for the Government is to come clean. It must end the arrogance of power and the notion of allocating money simply because it can. It must come clean as to why and how it did it.

One imagines that there are private emails, WhatsApp messages, text messages or notes between the Premier and the member for Hornsby, in particular, that give up the gig and blow the whistle on what has gone on. We will not be taken for fools. Most people in this place have been around politics long enough to know that the only valid explanation for this is some relationship behind the scenes between the Premier and her protégé the member for Hornsby, in particular. They thought they would do it because they could. They need to come clean on how and why it has happened. They must be honest and pledge to the people of New South Wales that something as shameful and disgusting as this will never happen again.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (21:43:09):** I am loath to repeat what I have already said. I admire the rhetoric of the Hon. Mark Latham and the outrage that he expresses. However, that is not the matter that the House is being asked to consider, which is noncompliance with a call for papers made by this House under Standing Order 52. It is for others, and potentially members of this House, to draw a conclusion as to the existence or non-existence of documents. The motion starts and finishes with noncompliance with an order of this House.

I have said ad nauseam that the problem I have with this is that if documents do not exist and the House punishes someone for not producing a document that does not exist, then that is an abuse of the powers of the House. It is an abuse of the powers of the House to assert a punishment on someone who cannot possibly have a remedy to the noncompliance being asserted. It goes further than that because the additional requirement contained in the motion before the House is that an explanation must be given. There is no opportunity to know whether the explanation will be acceptable. Assuming that the motion is successful tonight, an explanation can be given on Thursday. If there are no more documents, it will be asserted again that there are no documents to produce.

Potentially an explanation will be given as to what steps were taken to find out whether documents existed and what steps were taken to make sure that everyone was asked about whether there are documents.

At the end of the day I will give an explanation to the House. The arbitrary nature of this process is that if members opposite are not satisfied with that explanation, they can again use the power of this House under a Standing Order 52 application, which deals with production of documents, to punish the Leader of the House for not giving an adequate explanation. This is an expansion of the Standing Order 52 remedies that the House is being asked to adopt. If the Opposition is not satisfied with the non-production it will require an explanation and if it is not happy with that explanation, it will punish the Minister. I have said on numerous occasions that if there are no documents to produce, this punishment will potentially be meted out again on Thursday.

**The PRESIDENT:** I think the Leader of the Opposition indicated.

**The Hon. DAMIEN TUDEHOPE:** A motion can be passed again and, subject to what occurs in the interim, a further suspension may occur where the noncompliance is incapable of being remedied. It must fall into the category of a punishment because the way that the Opposition has drafted this motion is that it will keep suspending a member until it is happy with the explanation. I wonder where this process begins and ends. I can understand a suspension that exists. I go back to *Egan v Willis* and make some observations about what was said in that case. This is a 1998 case and the Leader of the Opposition is right in saying that this power has not been used since 1998. The majority in *Egan v Willis* noted the submission that:

... the House may not punish the member concerned but may coerce or induce compliance with its wish. To distinguish between punishing and merely inducing compliance may very well be difficult.

The plurality in *Egan v Willis* also quoted the following passage from *Barton v Taylor* where the Privy Council said this:

... it may very well be, that the same doctrine of reasonable necessity would authorize a suspension until submission or apology by the offending member; which, if he were refractory, might cause it to be prolonged (not by the arbitrary discretion of the Assembly, but by his own willful default) for some further time. It said earlier:

The facts pleaded in this case do not raise the question whether that would be ultra vires or not. If these are the limits of the inherent or implied power, reasonably deducible from the principle of general necessity, they have the advantage of drawing a simple practical line between defensive and punitive action on the part of the Assembly. A power of unconditional suspension, for an indefinite time, or for a definite time depending only on the irresponsible discretion of the Assembly itself, is more than the necessity of self-defence seems to require, and is dangerously liable, in possible cases, to excess or abuse.

Notwithstanding the outrage of the Hon. Mark Latham, he bells the cat. He would make the suspension longer because he wants to punish the Government for what he perceives as its outrageous behaviour, or what Mr David Shoebridge and the Leader of the Opposition identify—

**The PRESIDENT:** Order! Honourable members have had their opportunity to contribute to the debate without interruption and I would not have permitted any interruption. The Leader of the House has the same right and will be given the same courtesy.

**The Hon. DAMIEN TUDEHOPE:** It is all very well to say that we do not like the fact that the documents do not exist, but what is emerging is that we also might not like the explanation and that might be the reason we exercise our power to suspend. By any view of it that is an extension of the power of the House to defend itself in relation to the noncompliance of an order. We ought to be cautious about going down that route—which we are currently doing—of introducing things into the notion of the contempt power being used arising from the motion. It introduces a further requirement of the Government to give an explanation that none of us is able to know will be acceptable or not because that will be decided by someone else at a later date, and then potentially used for the purposes of expelling the member again. How will that be cured? It will not be cured until such time as we come back with an explanation that they like. Really? Is that the way in which we will expel members from the Chamber—until they tell us what we want to hear? They want an explanation that suits their narrative rather than a narrative that may not necessarily be agreeable to them. That is an appalling place to exercise a discretion to—

**Mr David Shoebridge:** Point of order: I have allowed the Minister to speak for some time, but he has repeatedly speculated about future motions, what may happen after and the fact that there may be future suspensions. He is straying from the motion before the House, which is a suspension for the balance of today.

**The PRESIDENT:** In fairness, the Minister is clearly speaking in relation to paragraphs (4), (5), (6) and, probably most importantly, (7). The Minister is speaking to the motion and is therefore in order.

**The Hon. DAMIEN TUDEHOPE:** I will not be much longer. I know that members have been debating the motion long and hard—we debated it last Thursday and we are debating it again today. To the extent that the explanation potentially given on Thursday is some further explanation about the documents, in one sense that ought to be the end of it. I finish by thanking the members for potential concessions. During the debate on the

point of order, I made the point that the appropriate place to flesh out whether, in fact, documents existed or not would be in the Public Accountability Committee hearing. I conceded that in the event that evidence came out before that committee that documents existed which had not been produced, this motion would then be hard to resist. The appropriate place to have the debate about the existence or non-existence of the documents, in the face of assertions made in this Chamber, is in that committee.

If those inquiries and the very incisive interrogation of Mr David Shoebridge are brought to bear upon witnesses before that committee, it might bring out the existence of documents that would found this motion. That would have been the appropriate way to conduct this motion, rather than the way it is currently being conducted. The Government cannot support the remedy being sought and will oppose it. However, I thank those members who have made concessions in relation to amending it. I also acknowledge the concession to take no further action against the Leader of the Government until the first sitting day in November. I think that is appropriate. I will not again canvass all the things that I have said about the non-existence of a document and about the motion being ill-founded. However, for the purpose of the record I adopt all the things I have previously said about the non-existence of those documents.

**The Hon. PENNY SHARPE (21:56:44):** I do not plan to speak for a long time. It has been a very long debate over many days. I make the following points: Why should people in New South Wales care about this motion and why should we in this House care about it? Not only should we care about this; we have to care, because the \$252 million that was distributed in the lead-up to the last election, 95 per cent of which went to Liberal Party and National Party seats, was not the Liberal Party's or the National Party's money. It was taxpayers' money. That is a huge amount of money: a quarter of a billion dollars. I will give some perspective on how large a sum of money it is. Their Futures Matter, the Government's signature reform to protect vulnerable and neglected children, was \$190 million over four years. The disability advocacy funding that the Government has not committed to is a paltry \$13 million a year, so \$250 million is an enormous amount of money.

As my colleague the Hon. John Graham said, this is more than what Bridget McKenzie was doing in Canberra, and at least she had a spreadsheet. It makes whiteboards and spreadsheets look like upholding the standard of accountability and transparency in relation to taxpayers' money. We cannot allow that to stand. We have to remember that there are rules—or there are supposed to be rules. There are supposed to be guidelines. There are supposed to be policies. There are even legal requirements about the way in which grants programs are administered and distributed. Through all the debate on this motion, the Government has said, "That doesn't matter. We didn't provide documents for our grants program."

Somehow, the Premier and the Deputy Premier—God knows what the Minister for Local Government was doing—just pulled a bunch of programs out of the air that councils did not know they could apply for, did not have applications for and did not ask for. But it is perfectly okay for the Premier, the Deputy Premier and maybe the Minister for Local Government—again, I have some worries about that—to approve of that money going out the door. That is absolutely unacceptable and we cannot allow that to stand. But to go to the matters that were raised by the Leader of the House, I will talk about this idea of remedy and inability to comply. He should not put that on this House. That is on the Government and what it chooses to do next. The Government has the opportunity to explain how the application process works and how it was signed off.

**The DEPUTY PRESIDENT (The Hon. Trevor Khan):** According to sessional orders, proceedings are interrupted to permit the Minister to move the adjournment motion if desired.

**The House continued to sit.**

**The Hon. PENNY SHARPE:** This is what this point about arbitrary remedy and "can't comply" comes down to: The idea that there are no documents—and I again say that it is not that I believe that the Hon. Damien Tudehope is not telling the truth about this—is such a shocking revelation that it is something that we continue to refuse to accept because we do not believe it is possible. I know that, hand on heart, the Hon. Damien Tudehope has argued uphill and down dale that this is the case, but that is completely unacceptable if it is. We have given the Government one more chance to really make sure that there are not any documents. The other part of this motion, which is also incredibly important, actually goes to the heart of what our role is here in holding the Government to account and working within the standing orders to get the explanations, documents, transparency, accountability and good government that New South Wales not just expects but demands. That is about getting an explanation. How can the Government distribute \$252 million when councils do not know about it?

How can it change guidelines in the middle of it without anyone knowing? How can the two largest amalgamated councils dealing with over 500,000 people living in them not know that they could apply for funding when the stated aim of this grant program was to help amalgamated councils? The ability for the Government to comply into the future and the decisions that this House makes into the future is about us. I do not think we should pre-empt where that goes, but it is absolutely the Government's choice on Thursday how it chooses to explain this

outrageous sort and unbelievable turn of events. If the Government is not able to give that explanation and those of us in this House do not take that seriously, we are opening the door for future governments to put out money willy-nilly in a way that is corrupt, wrong, that should not be allowed to stand, and that goes against absolutely everything in the public interest and is about transparency and good government in this State.

The Leader of the House has put a very strong case, but what happens on Thursday is on the Government. It has the opportunity to provide and in fact we demand that it provides an explanation for how this has been able to happen. We will decide and continue to decide how we prosecute and use the very important powers of this House to make sure that the people of New South Wales get the explanation that they must get, because any other suggestion is frankly unacceptable and beyond what has ever even been contemplated in the wild and wonderful world of New South Wales governments.

**The Hon. JOHN GRAHAM (22:03:58):** In reply: I thank the House for the time it has taken to discuss this important matter, both the motion itself and the procedural debate, which has raged for days. I thank the speakers in this debate: the Leader of the Opposition, Mr David Shoebridge, the Hon. Mark Latham, the Leader of the House and the Hon. Penny Sharpe. I welcome this amendment of the Leader of the Opposition. I make clear that we seek to protect the powers of the House and send a strong message to the Government but we do not want to overextend the House. The Opposition and I thank Mr David Shoebridge, whose role we recognise. He described quite precisely how this matter kicked off and I endorse that detailed description. It was the work very early on of his office that kicked off these inquiries and he has continued to follow the matter.

It is true that the initial evasive answers given by a public servant, whom I will not name, in many ways kicked off Mr David Shoebridge's pursuit of this inquiry. I say to the many other good public servants, many of whom I have worked with previously, that we have no problem with the way they do their job but we expect them to serve both the Government of the day and the Parliament of New South Wales in the way programs are administered. That did not happen in this instance. I again thank Mr David Shoebridge for his role and contribution in relation to the matter.

Mr David Shoebridge reminded us that in many ways this scheme worked backwards. Hornsby Council was the best example. When its general manager gave evidence to the inquiry, he told the committee exactly what had happened and how this scheme worked. On 27 June 2018 the guidelines were amended and signed off by the Premier, the Deputy Premier and the Minister for Local Government. At 5.00 p.m. that day, with fresh ink on the guidelines, Hornsby Council was contacted and told it had won the \$90 million. All it had to do was to apply for the money, which it did the next day. By about 3.00 p.m. the council was sent an email that said, "Thanks"—

**Mr David Shoebridge:** They signed the application form provided by the Office of Local Government.

**The Hon. JOHN GRAHAM:** Correct. I acknowledge that interjection. By about 3.00 p.m. and within 24 hours of the guidelines having been signed the email stated, "Thanks, we'll transfer the funds", and that money was rushed out the door. It was the biggest grant under this scheme. It beggars belief. I thank members for raising many questions in this Chamber. In particular, how did these recommendations ever occur? Who put these projects, ranging from a \$90 million Hornsby quarry down to a \$50,000 off-leash dog park in suburban Sydney, in front of the Premier? How did the Premier know which project to choose? An agency did not put that recommendation in front of her. That is one of the unanswered questions which we will not pursue today in debate on this motion but we will certainly pursue elsewhere. I put the Government on notice about that matter because that is another massive unanswered question.

The Hon. Mark Latham asked what else could have been done with this money? I do not think anyone could have put it better than the Hon. Penny Sharpe. There are so many better things for which this money could be used, for example, to protect children or to help people desperately in need. Who else could have been funded? Two of the biggest merged councils and half a million residents were not told that this fund existed. Worse than that, one of them, Canterbury, wrote to say it was struggling with the merger and it needed funds. It asked if funds were available and was told there was not. That was around the time that the guidelines were being signed off and the funds went out the door. No mention was made of this fund. Who else could have been funded? Many of the residents in these merged councils should have been the target of this fund.

I congratulate the Hon. Damien Tudehope, whom I cannot help but like a lot of the time. He has proven his wisdom tonight because in speaking to the substantive motion he stuck strictly to legal matters and responded to none of the charges that have been made against the administration of these funds. That was a very wise decision because this matter is not heading in a good direction. He has done himself a whole lot of favours in that narrow legal response. I appreciate the strength of belief with which the Leader of the House has put it. He has made a very good choice. The one part on which I disagree with him is when he says that the Opposition wants an explanation that suits its narrative. The Opposition wants any explanation about how it could have occurred and none has been provided. It should happen on Thursday. Finally, I simply repeat my view that this is 2½ times as

big as the Federal sports rorts affair. A Federal Minister resigned over that affair. That was the consequence federally. This fund—this maladministration—is sitting at the office of the Premier. It is sitting with the Premier.

A whole lot of issues here and a whole lot of questions are yet to be answered. We do our job tonight in calling the Leader of the Government to account. On Friday the Public Accountability Committee will seek further answers. As other members have said, it will do its job. The worry for the Premier is that there are other agencies as well. The Auditor-General is one of them. When they do their jobs, if what the Government has put today and last week on the fund and this funding round is true, then the Premier is in all sorts of trouble. It will come undone. We are doing our job tonight. As those other agencies do their jobs, the Government and the Premier are in a world of pain.

**The PRESIDENT:** The Hon. John Graham has moved a motion, to which the Hon. Adam Searle has moved an amendment. The question is that the amendment be agreed to.

**Amendment agreed to.**

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

**The House divided.**

Ayes .....23  
Noes .....15  
Majority.....8

#### AYES

Banasiak	Graham	Pearson
Borsak	Houssos	Primrose
Boyd	Hurst	Roberts
Buttigieg (teller)	Jackson	Searle
D'Adam (teller)	Latham	Sharpe
Donnelly	Mookhey	Shoebridge
Faehrmann	Moriarty	Veitch
Field	Nile	

#### NOES

Amato	Harwin	Mason-Cox
Fang	Khan	Mitchell
Farlow	Maclaren-Jones (teller)	Taylor
Farraway (teller)	Mallard	Tudehope
Franklin	Martin	Ward

#### PAIRS

Secord

Cusack

**Motion as amended agreed to.**

**The PRESIDENT:** In accordance with Standing Order 191 and the resolution of the House, the Hon. Don Harwin is suspended from the services of the House until the conclusion of the sitting on Tuesday, 20 October 2020. I direct the Usher of the Black Rod to remove the member from the Chamber.

*[Pursuant to standing order the Hon. Don Harwin left the Chamber, accompanied by the Usher of the Black Rod.]*

#### *Business of the House*

#### **POSTPONEMENT OF BUSINESS**

**The Hon. DAMIEN TUDEHOPE:** I move:

That Government business notices of motion Nos 1 to 5 be postponed until a later hour.

**Motion agreed to.**

*Documents***WAGES POLICY TASKFORCE****Return to Order**

**The CLERK:** According to the resolution of the House of 16 September 2020, I table additional documents relating to an order for papers regarding the Wages Policy Taskforce received this day from the Secretary of the Department of Premier and Cabinet, together with an indexed list of documents.

**Claim of Privilege**

**The CLERK:** I table a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. I advise that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

*Bills***HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2020****Second Reading Speech**

**The Hon. NATASHA MACLAREN-JONES (22:23:37):** On behalf of the Hon. Bronnie Taylor: I move:

That this bill be now read a second time.

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

**Leave granted.**

I am pleased to bring before the House the Health Legislation (Miscellaneous Amendments) Bill 2020. The bill implements recommendations from the report into the processes of the Medical Council with respect to Mr Emil Gayed by Ms Gail Furness, SC, and the report of the Joint Parliamentary Committee into Cosmetic Health Service Complaints in NSW, as well as making a number of other amendments to health related legislation to ensure that it remains up to date.

I turn first to the amendments that follow on from the report by Ms Gail Furness, SC, into the processes of the Medical Council with respect to Mr Emil Gayed (Furness review).

Mr Gayed was an obstetrician and gynaecologist prior to the Civil and Administrative Tribunal of NSW disqualifying him as a medical practitioner in June 2018. Mr Gayed was disqualified as a medical practitioner following the substantiation of a number of serious complaints concerning his performance.

Following the disqualification of Mr Gayed, the Furness review was undertaken which looked at the processes of the Medical Council under the Health Practitioner Regulation National Law (NSW).

The Health Practitioner Regulation National Law (NSW) regulates registered health practitioners, such as medical practitioners and nurses.

The Health Practitioner Regulation National Law (NSW) is an applied law scheme. New South Wales applies, via the Health Practitioner Regulation (Adoption of National Law) Act 2009, the Schedule to the Queensland Health Practitioner Regulation National Law. Under the Health Practitioner Regulation National Law, there are 15 national boards that register practitioners and, in jurisdictions other than New South Wales, deal with complaints against practitioners.

New South Wales is a co-regulatory jurisdiction and does not apply the complaints part of the Queensland National Law. Rather, New South Wales retains its own complaints processes, utilising the Health Care Complaints Commission and the Health Professional Councils, such as the Medical Council of NSW. The combined law of the Queensland Health Practitioner Regulation National Law and the New South Wales specific provisions is known as the Health Practitioner Regulation National Law (NSW).

The Furness review made a number of legislative recommendations aimed at increasing the level of information the Medical Council makes available to employers and strengthening the obligations on practitioners to notify employers of adverse professional findings. The review also recommended amendments to ensure that the Medical Council properly considers all relevant matters when dealing with a complaint.

The bill will implement most of the legislative amendments of the Furness review. The bill will amend the Health Practitioner Regulation National Law (NSW) to:

- Require a health professional Council to notify employers when the Council suspends a practitioner. While the Councils do routinely notify employers, it is not a requirement to do so;
- Allow a health professional Council to notify an employer if a practitioner is not complying with conditions on their registration. Such a notification will allow employers to decide if they need to take any action in the workplace to protect patients; and
- Require the Councils to consider the matters in section 410, such as a practitioner's complaints history, in all decision making in relation to complaints.

In line with the Furness recommendations, the bill will also amend the Private Health Facilities Act 2007 to require a registered health practitioner engaged by a private health facility to notify the licensee if the practitioner has been charged with, or convicted of, a serious sex or violence offence or if a finding of unsatisfactory professional conduct or professional misconduct has been made against the practitioner. This change will bring private health facilities into line with the requirements applying in the public sector



under the Health Services Act 1997 (NSW) and will allow an employer to decide if they need to take any necessary action to protect patients and the public.

Two legislative recommendations of the Furness review are not being implemented in the bill. One recommendation relates to a Council providing a copy of a performance report to any person and the second recommendation relates to employers reporting the withdrawal of clinical privileges. In relation to the former, the performance program is being more broadly reviewed by the Medical Council and the recommendation will be considered further in that context. In relation to the latter, on 1 November 2019 the COAG Health Council approved a range of amendments to the Queensland Health Practitioner Regulation National Law, including in relation to clarifying an employer's obligation to report withdrawal of clinical privileges under the Queensland National Law, which is in the process of being implemented nationally.

The bill also makes a range of amendments to the Health Practitioner Regulation National Law (NSW), the Health Care Complaints Act 1993, and the Public Health Act 2010 following the 2018 Report into Cosmetic Health Service Complaints in NSW by the Joint Parliamentary Committee on the Health Care Complaints Commission [JPC Report].

The JPC Report followed the Committee's inquiry into cosmetic health service complaints and stemmed from increasing community concerns about the safety of cosmetic health procedures. One of the recommendations of the JPC Report was that the Minister for Health and Medical Research review the powers and functions of the Health Care Complaints Commission [HCCC] to ensure that the HCCC can sufficiently protect patients using health services. In particular, the JPC Report recommended that:

- the HCCC have the power to issue public warnings about specific health service providers and health organisations;
- the HCCC have the power to issue prohibition orders in relation to specific health organisations; and
- the HCCC's search and entry powers apply to all complaints and that authorised persons have the power to enter premises if the premises is a public place and the entry is made when the place is open to the public.

The bill implements these recommendations. The bill amends section 94A of the Health Care Complaints Act 1993 to extend the HCCC's existing power to issue public warnings against treatments or health services to specific health practitioners and health service organisations.

The bill amends the Health Care Complaints Act 1993 and the Public Health Act 2010 to extend the existing framework relating to prohibition orders against individual non-registered health practitioner to relevant health organisations.

Under the framework, the Public Health Regulation 2012 will be able set out a code of conduct for relevant health organisation. The code will be made following passage of this bill and consultation will occur in relation to the proposed code.

The bill makes amendments to the Health Care Complaints Act 1993 to give the HCCC the power to receive, assess and investigate complaints against an organisation which is alleged to have breached the code. If the HCCC finds that the organisation has breached the code and is a risk to the public, the bill allows the HCCC to issue a prohibition order against the organisation. A prohibition order will prohibit an organisation from providing a health service or impose conditions relating to the provision of health services. As with the framework for individual non-registered health practitioners, there will be a power to issue interim prohibition orders and the organisation the subject of such an order will have a right of review in the Civil and Administrative Tribunal of NSW.

As is currently the case with individuals, it will be an offence under the Public Health Act 2010 to breach of a prohibition order. Under the bill, the maximum penalty for a breach of a prohibition order against an individual and an organisation has been increased to 550 penalty units (\$60,500) and/or three years imprisonment for an individual or 1,100 penalty units (\$121,000) for a corporation. The increased maximum penalty follows a COAG Health Council decision to increase the maximum penalty for breaching a prohibition order under the Queensland Health Practitioner Regulation National Law. However, in New South Wales the offence relating to a breach of a prohibition order is in the Public Health Act 2010 rather than the National Law.

These important changes will ensure that the HCCC has the power to take strong and effective action against health organisations that breach accepted standards and pose a risk to the public.

The bill also amends the Health Care Complaints Act 1993 to update the HCCC's powers. The HCCC's powers of entry in section 33 will no longer require the HCCC to seek a warrant to enter non-residential premises. A warrant will only be required to enter residential premises where the occupier does not consent.

The Ministry of Health, in consultation with the HCCC, and following the JPC Report, also considered whether other changes are needed in respect of the HCCC's powers. A number of changes were identified which the bill seeks to implement. These are:

- Increasing the maximum penalty for a number of offences in the Health Care Complaints Act 1993 to 200 penalty units (\$22,000). The current low penalties of generally 20 penalty units (\$2,200) do not appropriately reflect the seriousness of the offences.
- Including a new Part 3A in the Health Care Complaints Act 1993 to give the HCCC powers of entry and the power to require the production of documents and answer questions when the HCCC is assessing compliance with prohibition orders and recommendations made by the HCCC. Currently, the HCCC can only exercise its functions when there is a complaint. The new Part 3A will ensure that the HCCC is able to proactively ensure compliance with orders and recommendations.
- Amendments to section 26 of the Health Care Complaints Act 1993 to allow the HCCC, following an assessment of a complaint, to refer the complaint to a private health facility for local resolution.
- Amendments to the Health Practitioner Regulation National Law (NSW) to provide that a breach of section 21A or 63G of the Health Care Complaints Act 1993 is unsatisfactory professional conduct. Section 21A and the new section 63G allows the HCCC to require the production of information and documents for the purpose of assessing a complaint or determining compliance. It is an offence to not comply. Sections 21A and 63G are similar to the power of the HCCC when investigating a complaint under section 34A. Currently, only a breach of section 34A is considered to constitute unsatisfactory professional conduct. The bill will ensure that similar failure to provide information under section 21A or the new section 63G are also considered unsatisfactory professional conduct.

The bill also amends section 99A of the Health Care Complaints Act 1993 to extend the existing privilege that applies to information held by the HCCC to information that is held by the Health Professional Councils where that information has been shared between the HCCC and the Councils. The HCCC and the Councils routinely share information about complaints. However, there is a lack of clarity about whether section 99A extends to information held by the Council that has been given to it by the HCCC.

The bill will also make a range of amendments to the Health Practitioner Regulation National Law (NSW) to improve the regulation of health practitioners:

- An amendment to section 1391 to require a national board to notify the relevant health professional Council when the board receives notice of a "relevant event". Under the National Law, a registered health practitioner is required to notify the national board of certain events, such as charges and convictions, if the practitioner's clinical privileges are withdrawn or restricted or the practitioner no longer has insurance. While the national boards would be expected to notify the Councils, which are responsible for complaints in New South Wales, of such events, there is no current requirement to do so. The bill will rectify this.
- A new section 41DA will provide that the health professional Councils are subject to the direction and control of the Minister except in relation to their complaints handling functions. This will align the Councils with the HCCC.
- An amendment to Schedule 5F to allow fees to be set by regulation in relation to a pharmacy owners' annual financial declaration.

Other changes in the bill also relate to the health system. The bill makes amendments to the Health Services Act 1997 to allow the Health Secretary to remove a member of the Ambulance Service Advisory board from office. This will bring the Ambulance Service Advisory into line with other boards under the Health Services Act 1997.

The bill will also create a new section 126AA in the Health Services Act 1997 to create a privilege for information obtained or created for the purpose of an inquiry established by the Health Secretary. The Health Secretary's inquiry power is generally used when there are indications of serious systemic issues in the public health system and generally follow particularly serious clinical incidents that have the potential to impact a number of patients. For individual incidents, a root cause analysis [RCA] is undertaken under the Health Administration Act 1982. There is a privilege applying to RCA teams which encourage practitioners to participate in the process and protects sensitive patient records. A similar privilege should apply to inquiries of the Health Secretary to encourage practitioners to participate in the process and protect patients' health information. Consequential changes are also made to the Government Information (Public Access) (GIPA) Act 2009 to ensure that any working papers of a Secretary's inquiry cannot be released under GIPA. However, any final report itself will be subject to GIPA.

I turn next to the changes in the bill to the Public Health Act 2010 and the Public Health (Tobacco) Act 2008 to help better protect the public:

- The bill amends section 61 of the Public Health Act 2010 to allow the Health Secretary to order a person with a category 4 or 5 condition (such as HIV, tuberculosis or COVID-19) to undergo a medical examination and tests to determine their risk to the public. This will assist in determining whether a public health order is necessary.
- The bill amends the Public Health (Tobacco) Act 2008 to include e-cigarette liquids in the definition of e-cigarettes, meaning that all the provisions in the Public Health (Tobacco) Act 2008 relating to e-cigarettes will apply to the e-cigarette liquids.
- A new provision will be included in the Public Health (Tobacco) Act 2008 to create a rebuttable presumption that any illegal tobacco, being tobacco products designed for consumption otherwise than by smoking (such as "snuff" or chewing tobacco), found on retail premises will be deemed to be for sale. In addition, such products will be able to be seized and destroyed unless the Health Secretary is satisfied that the products were for the person's personal use. Schedule 4 of the bill makes changes to the Human Tissue Act 1983 following the 2018 Report on the Statutory Review of the Human Tissue Act 1983. These changes will allow regulations to be made to include or exclude certain matter from the definition of human tissue. In addition, the changes to section 25 will allow a Coroner to give consent to the donation of organs either before or after a death, allowing organ donation to proceed after death. Currently, when a death is reportable to the Coroner, the Coroner needs to give consent to the removal of organs for donation. This consent can only occur after death. There is a limited timeframe for donation to occur following a circulatory death which means there is only a short window to seek the Coroner's consent. The Report on the Statutory Review recommended changes to section 25 to allow the Coroner to consent before death, with the consent only taking effect after death. This change will bring New South Wales into line with other jurisdictions and help improve organ donation procedures.

The final changes in the bill relate to the Saint Vincent's Hospital Act 1912, which establishes a trust to run Saint Vincent's Hospital. The Act is now over 100 years old and the bill will make amendments to update the legislation. The bill will:

- Update the trustees and allow the trustees to delegate their functions,
- Allow the trustees to grant a lease over the land the subject of the trust for up to 40 years, and
- Allows the trustees not to charge market rent if a lease is being given to a public or local authority, a university or charity.

These changes have been requested by St Vincent's Health Australia who have been consulted during the drafting of the provisions.

The amendments in the bill are important changes that will assist in improving the regulation of health practitioners and health service organisations, better protect public health, and ensure the legislation in the Health portfolio remains up to date and relevant. I commend the bill to the House.

### Second Reading Debate

**The Hon. WALT SECORD (22:24:02):** On behalf of Labor I contribute to debate on the Health Legislation (Miscellaneous Amendments) Bill 2020. I note that the matter has been canvassed extensively in the Legislative Assembly. I point to the contribution from the member for Keira and shadow Minister for Health, Mr Ryan Park. He spoke at length about the bill so I do not plan to restate his position. The shadow Minister also

indicated that he has consulted with the Health Services Union New South Wales branch, the NSW Nurses and Midwives' Association and the Australian Salaried Medical Officers' Federation led by Mr Gerard Hayes, Mr Brett Holmes and Dr Anthony Sara respectively.

Members would be well aware that I served for almost five years as the shadow health Minister and I still serve on the Committee on the Health Care Complaints Commission, so I continue to have a strong interest in this policy area. This bill makes a range of amendments to nine separate Acts: the Health Care Complaints Act 1993, the Health Practitioner Regulation (Adoption of National Law) Act 2009, the Health Services Act 1997, the Government Information (Public Access) Act 2009, the Human Tissue Act 1983, the Private Health Facilities Act 2007, the Public Health Act 2010, the Public Health (Tobacco) Act 2008 and the Saint Vincent's Hospital Act 1912. I also note that amendments will be moved. Given that the Labor Whip, the Hon. Mark Buttigieg, has maintained a long-term interest in this matter and spent considerable time in this public policy area, he will move the Labor amendments.

I note that this is something of an omnibus bill and picks up on a range of different pieces of legislation from across the health sector. The more significant changes relate to the Health Care Complaints Act 1993. They have been formulated in response to the devastating evidence given to the joint parliamentary Committee on the Health Care Complaints Commission's report on cosmetic health service complaints and the report by Gail Furness, SC, into the Medical Council's processes following the Emil Shawky Gayed matter. Firstly, I am very pleased that there have been further moves to tighten up the cosmetic health sector. I still remember the horror that my former staff member, Mr Luke Maxfield, and I confronted when we spoke to victims of the greedy and uncaring cosmetic surgery sector, particularly a private practice in Bondi Junction I vividly remember and a practice in Parramatta. Mr Maxfield, who was a hardworking and diligent person, did some fantastic work in that regard.

Today many of the changes in this legislation are a tribute to his hard work. As for the Gayed matter, Gayed was an absolute monster. He was a completely disgraced gynaecologist, who over the past two decades left more than 50 women's lives destroyed with shocking surgeries on their reproductive organs. It was also found that he contributed to the death of a baby boy. Members will note in my speech that I will not refer to him as Dr or Mr. He will be Gayed. His worst atrocities were in the Taree and Cooma hospitals and in private practice. As well as southern New South Wales, he worked in Grafton, Kempsey and Mona Vale. Between 1996 and 1999 he worked at the Cooma hospital, where there were many complaints about his conduct. As background, he graduated with a medical degree in Egypt in 1976 and in 1993 he became a fellow of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. A year later, he was registered in New South Wales as a medical practitioner.

Out of respect for the women I encountered who had been butchered by him, I will not go into details, but put simply, he destroyed their lives and their families' lives. He was allowed to continue to practise despite a lengthy record of medical complaints. His victims were forced to speak out, but they were ignored. Sadly, he simply moved from one hospital to another. Without reservation, I would say that he was one of the worst medical practitioners I came across when I was shadow Minister. The Health Care Complaints Commission [HCCC] found Gayed guilty of professional misconduct in all seven cases and determined that, were he still a registered medical practitioner, the tribunal would have cancelled his registration. The tribunal disqualified him from being registered as a medical practitioner for three years. When I was shadow health Minister, I addressed a number of questions to the HCCC parliamentary committee and to the Minister, as well as health officials, about this barbarian.

I vividly remember the matter in 2018 when the Government could no longer ignore the pleas of his victims. Sadly, it took too long to take action on him. The first complaint against him occurred in 1998 and he was not restricted until June 2018. I acknowledge that health Minister Brad Hazzard was the first health Minister to take real action on Gayed. However, I say to the absolute shame of the local member, the member for Myall Lakes Stephen Bromhead, he did nothing about Gayed. He received repeated representations about the activity and remained silent. It took the victims of Gayed to come forward to the national media. The member for Myall Lakes should hang his head in shame and beg for forgiveness from the women who were butchered.

**The Hon. Bronnie Taylor:** Point of order: The Hon. Walt Secord is casting aspersions on a member of the other place, which is unparliamentary. I ask that he be called to order and asked to withdraw.

**The Hon. WALT SECORD:** To the point of order: This is central to the legislation and relates to the activity of a disgraced surgeon in Taree.

**The DEPUTY PRESIDENT (The Hon. Shayne Mallard):** The Hon. Walt Secord was casting aspersions on the member for Myall Lakes. I ask him to proceed without such behaviour.

**The Hon. WALT SECORD:** He failed as a parliamentarian and as a human being.

**The Hon. Bronnie Taylor:** Point of order: The Hon. Walt Secord is now absolutely flouting the previous ruling about casting aspersions on members of the other place. I ask that he be called to order and asked to withdraw.

**The DEPUTY PRESIDENT (The Hon. Shayne Mallard):** I remind the Hon. Walt Secord that he has already been called to order for the first time. I will call him to order again if he continues along similar lines of attack.

**The Hon. WALT SECORD:** Following the disqualification of Emil Gayed, the Furness review was undertaken at the request of Minister Hazzard. The Furness review made a number of legislative recommendations aimed at increasing the level of information that the Medical Council makes available to employers and strengthening the obligations on practitioners to notify employers of adverse medical findings. The review also recommended amendments to ensure that the Medical Council properly considers all relevant matters when dealing with a complaint. The bill will implement most of the legislative amendments of the Furness review.

I turn now to the specifics of the bill. The amendments to the Health Care Complaints Act will give the HCCC the power to issue public warnings about specific health service providers and health organisations. They will also allow the HCCC to issue prohibition orders against a medical organisation if the organisation breaches the code of conduct for health organisations and poses a risk to the public. It updates the HCCC's powers to allow entry without a warrant to premises that are open to the public and increases penalties in the Act generally from around \$2,200 to up to \$22,000. The amendments extend the HCCC's power of search and entry to ascertain compliance with a prohibition order or an HCCC recommendation in the absence of a complaint. Finally, it allows the HCCC to refer a complaint to a private health facility for a local resolution and amends section 99A to extend the privilege that currently applies to information held by the HCCC to information that is shared between the HCCC and health professional councils.

The changes relating to Health Practitioner Regulation National Law (NSW) will be made as a result of the joint parliamentary inquiry as to whether it had adequate powers to deal with concerns about the safety of cosmetic health procedures. Under the changes in the legislation, health professional councils will be required to notify employers of suspension and cancellation decisions. It will allow the councils to notify employers when a registered health practitioner fails to comply with conditions on their registration; require health professional councils to consider the matters listed in section 410, such as the practitioner's complaints history in making decisions about complaints; require the national board to notify the council when the national board receives notice of a relevant event in relation to a practitioner or a student; provide that the councils are subject to the direction and control of the Minister, except in respect of complaints handling or the contents of any report; and allow regulations to be made to setting fees in relation to the annual renewal declaration made by a person who holds a financial interest in a pharmacy business.

The Health Services Act 1997 and the Government Information (Public Access) Act amendments relate to establishing privilege in relation to inquiries conducted by the Health Secretary Health Services Act 1997. Consequential changes are made to the Government Information (Public Access) Act 2009 to provide for a conclusive presumption against disclosure of such information, except for the final report, and allow the Secretary of NSW Health to remove a member from the Ambulance Service Advisory Board. There are also changes to the Human Tissue Act 1983, the Private Health Facilities Act 2007 and the Public Health Act 2010, including increasing the penalty for the offence of breaching a prohibition order to \$60,500 or three years imprisonment, or both, for an individual or \$121,000 for a corporation. It allows the Secretary of NSW Health to order a person with a category 4 or 5 condition to undergo a medical examination and tests, including blood tests, to ascertain their risk to the public.

There are changes to the Saint Vincent's Hospital Act 1912, which update the trustees of the Saint Vincent's Hospital to allow the trustees to delegate their powers, allow the trustees to grant a lease over the land subject to the trust for a period not exceeding 40 years and allow the trustees to charge less than market rent to a university or a charity. Finally, there are amendments to the Public Health (Tobacco) Act 2008. I have a particular interest as the shadow health Minister in the area of e-cigarettes. The bill changes the current definition of e-cigarette fluids. I indicate that the Labor Opposition will move amendments to the bill. The amendments will be moved by the Hon. Mark Buttigieg as they involve an area of public policy in which he has a deep and personal interest. I commend the bill to the House.

**Ms CATE FAEHRMANN (22:36:20):** On behalf of The Greens, I support the Health Legislation (Miscellaneous Amendments) Bill 2020, which makes a variety of amendments to different legislations, largely resulting from two inquiries. The first is the review into the processes of the Medical Council of New South Wales with respect to former Dr Emil Gayed and the second is the report by the joint parliamentary Committee on the Health Care Complaints Commission resulting from the inquiry into Cosmetic Health Service Complaints in NSW. The first relates to a review into the processes of the Medical Council of New South Wales that was

launched following a *Guardian* investigation, which revealed Mr Gayed had needlessly removed women's reproductive organs and performed unnecessary surgeries on his patients. As a result of those revelations, the Government ordered an independent inquiry into Gayed, the hospitals where he worked and the way complaints against him were managed. The inquiry was led by Gail Furness, SC, and reported in February last year. The report described catastrophic failures that enabled Gayed to use his position as a gynaecologist to abuse and mutilate women over two decades despite concerns being raised about his behaviour on a yearly basis.

More than 250 women called in to dedicated hotlines to report their concerns about Gayed. The report revealed that Manning Rural Referral Hospital failed to carry out checks of Gayed's registration status or perform background checks with the medical board or the Health Care Complaints Commission. Further inspection would have revealed a number of complaints made against him at Mona Vale and Cooma hospitals. The Furness inquiry has resulted in more than 50 women whose treatments at Manning hospital were referred to the Health Care Complaints Commission for additional investigation. The inquiry found that Gayed's behaviour was so persistently awful that staff had become "desensitised to his poor performance". The Furness inquiry found:

Of most concern is that a repeated theme has been the unnecessary removal of organs, unnecessary or wrong procedures, perforations of organs and reluctance to transfer to tertiary facilities ... The health system failed each of these women.

Ms Furness recommended various health system reforms to ensure greater oversight of doctors, especially in rural and regional areas. The Furness review made a number of legislative recommendations that are aimed at increasing the level of information that the Medical Council makes available to employees and strengthening the obligations on practitioners to notify employees of adverse professional findings. The second issue that the bill addresses was raised by the joint parliamentary Committee on the Health Care Complaints Commission in its inquiry into Cosmetic Health Service Complaints in NSW, which was undertaken in response to a number of concerning incidents within the industry that have been spoken about tonight.

The inquiry made a series of recommendations to ensure that the public is better protected from potential harm and is made aware of the risks in the cosmetic health services industry, and to expand the powers and functions of the Health Care Complaints Commission so that it can adequately address issues within the cosmetic health services industry. The bill goes far in addressing the majority of recommendations made by those two inquiries. On behalf of The Greens I commend the efforts of the joint parliamentary Committee on the Health Care Complaints Commission and the response of the Minister for Health to address threats to public safety and health. I note that The Greens support many of the other miscellaneous amendments in the bill that have been mentioned tonight. I also note that my colleague Mr David Shoebridge will speak to the amendments that the Hon. Mark Buttigieg will be moving in Committee on behalf of Labor in relation to the Medical Gas Bill. I commend the bill to the House.

**The Hon. NATASHA MACLAREN-JONES (22:40:16):** On behalf of the Hon. Bronnie Taylor: In reply: I acknowledge the contributions of the Hon. Walt Secord and the Hon. Cate Faehrmann. The bill is part of the Government's regular review of legislation to ensure it remains up to date and relevant. As we have heard this evening, the bill also implements the recommendations from the 2018 review of processes undertaken by the Medical Council of New South Wales pursuant to part 8 of the Health Practitioner Regulation National Law (NSW) with respect to Dr Emil Gayed conducted by Gail Furness, SC, and from the 2018 report on the inquiry into cosmetic health service complaints in New South Wales conducted by the joint parliamentary Committee on the Health Care Complaints Commission.

The bill implements recommendations from those reviews by amending the Health Practitioner Regulation National Law (NSW), the Health Care Complaints Act 1993, the Private Health Facilities Act 2007 and the Public Health Act 2010. Those changes will strengthen the regulation of health practitioners and health organisations in order to protect the public health. The Government also thanks Ms Furness, SC, and the joint parliamentary committee for their work in this area. I particularly acknowledge the former chair of that committee, Adam Crouch, from the other place and members of this Chamber who served on the inquiry that looked at cosmetic health issues: the Hon. Walt Secord, the Hon. Lou Amato and the Hon. Mark Pearson.

The bill also implements recommendations from the statutory review into sections of the Human Tissue Act 1983, which will assist in ensuring the appropriate regulation of human tissue and in improving processes for organ donation. The bill makes a range of other amendments to support the continued operation of health legislation, which have been outlined in the debate this evening. It has been indicated that there will be amendments moved in the Committee of the Whole, and I will speak to those in detail at that stage. I thank those who contributed to the debate as well as the Minister for Health, his office and the department. I commend the bill to the House.

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

**Motion agreed to.****Instruction to Committee of the Whole**

**The Hon. ROBERT BORSAK (22:43:04):** I move:

That it be an instruction to the Committee of the Whole that they have power to consider amendments to definitions in the Gas and Electricity (Consumer Safety) Act 2017.

**Motion agreed to.**

**The Hon. MARK BUTTIGIEG (22:44:24):** I move:

That it be an instruction to the Committee of the Whole that they have power to consider amendments to the Home Building Act 1989 relating to unqualified or licensed mechanical services and medical gas work, unqualified or licensed medical gasfitting work, and unqualified or licensed medical gas technician work.

**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.

**Mr DAVID SHOEBRIDGE (22:47:09):** I indicate that The Greens will not be pressing our amendments given that the Shooters, Fishers and Farmers Party amendments cover the same ground.

**The Hon. ROBERT BORSAK (22:47:27):** By leave: I move Shooters, Fishers and Farmers Party amendments Nos 1 and 2 on sheet c2020-183B in globo:

**No. 1 Medical gas pipelines—medical facilities**

Page 2, clause 2. Insert after line 9—

(4) Schedule 9.1A commences, or is taken to have commenced, on 1 November 2020.

**No. 2 Medical gas pipelines—medical facilities**

Page 25, Schedule 9. Insert after line 6—

**9.1A Gas and Electricity (Consumer Safety) Act 2017 No 15**

**[1] Section 4 Definitions**

Omit paragraph (c) from the definition of *medical facility* in section 4(1).

**[2] Section 4(1), definition of "medical gas installation"**

Insert "in a medical facility" after "lines".

Amendment No. 1 simply gives effect to amendment No. 2 and is taken to have commenced on 1 November 2020. It was never the intention to include veterinary hospitals in the definition of "medical facility" in the Gas Legislation Amendment (Medical Gas Systems) Act 2020, thereby bringing veterinary hospitals within the same regime as medical facilities, including hospitals, day surgery centres and aged-care facilities in relation to the regulation of the installation and maintenance of medical gases under that bill.

Amendment No. 2 amends schedule 9.1A [1] to omit veterinary hospitals and facilities from the definition. I am advised that the New South Wales Government has done extensive consultation with a wide range of stakeholders, including gasfitters, industry bodies and leading consultants in the veterinary industry, and their inclusion in this legislation is not appropriate. Under the legislation, medical gas work must be done under Australian Standard AS 2896. While this is wholly appropriate for those facilities serving medical care to humans, the standard does not cover the service of medical gases to animals—especially horses. I am advised that there is no appropriate Australian standard that could be prescribed to remedy this oversight. Furthermore, I have spoken to many vets since the passing of this legislation and I am told the majority of small veterinarians use bottled medical gases in their practices and they would therefore not come within the legislation.

I am also advised that a considerable biosecurity risk of cross-contamination would exist if veterinary hospitals were included under the legislation as it stands. This would be particularly so if the same licensee were to work on facilities in both hospitals and then in a veterinary hospital. I am further advised by the veterinary industry that such an unnecessary regulatory burden being placed on veterinary hospitals to make them comply with human hospital standards, inspection and certification requirements would seriously compromise their economic viability, which could have adverse and unintended consequences on veterinary practices reverting to using bottled gas.

This has inherent work health and safety risks and is a substandard level of care for animals. The vast majority of veterinary hospitals would not be capable of complying with the requirement for active waste anaesthetic gas scavenging when the legislation is enacted by 1 November 2020. If unable to finance a retrofit within the next three weeks, non-compliant veterinary hospitals will be forced to close. This amendment addresses this issue by removing veterinary hospitals from the ambit of the Act to ensure that we can remove biosecurity risks as well as ambiguity about which standards apply. Amendment No. 2, item [2] amends the definition of medical gas installation to clarify that medical gas installation must be situated in a medical gas facility as defined in the Gas Legislation Amendment (Medical Gas Systems) Act 2020, which I referred to as the amendment Act. This rectifies an omission in the amendment Act as amended by Parliament.

**The Hon. NATASHA MACLAREN-JONES (22:51:23):** The Government supports these amendments, which seek to amend provisions of the Gas and Electricity (Consumer Safety) Act 2017 inserted by the Gas Legislation Amendment (Medical Gas Systems) Act 2020 to ensure that veterinary hospitals are not subject to those reforms. The Gas Legislation Amendment (Medical Gas Systems) Act 2020 contains reforms designed to address deficiencies with the licensing regulatory system in relation to persons who carry out medical gas work. The Gas Legislation Amendment (Medical Gas Systems) Bill 2020 as introduced by the Minister for Better Regulation and Innovation did not involve veterinary hospitals.

They were included by Labor amendments to the bill. Concerns were raised regarding the amendments during consultation with Labor, but these were ignored and the Government ended up supporting amendments during the debate because it was the only means by which the broader reforms could have passed the Parliament. It has since become clear that the inclusion of veterinary hospitals was not appropriate and that is why the Government supports this amendment, which removes them from the application of the Act entirely. Following the passage of the Gas Legislation Amendment (Medical Gas Systems) Bill 2020 through the New South Wales Parliament, the Government has undertaken extensive further consultation with the veterinary sector.

A series of roundtables were conducted and then further targeted consultation with the veterinary and anaesthetics sectors occurred. This included consultation with Advanced Anaesthesia Specialists, the Australian Veterinary Association and the Australian and New Zealand College of Veterinary Scientists anaesthesia chapter past President. It became abundantly clear that the inclusion of the veterinary sector in the reforms was unnecessary and would have adverse consequences for both the industry and the welfare of animals. Firstly, there is no appropriate Australian standard to cover the medical gas fitting or medical gas technician work that would be done in relation to these premises. As such, licensed practitioners would have no standard to comply with. The standards need to be tailored to the veterinary sector because the needs of humans are naturally different to those of animals.

Secondly, the increased requirements will seriously impact the economic viability of veterinary businesses. The cost of compliance to unnecessarily install piped oxygen will be expensive and may have the unintended consequence of forcing veterinary hospitals to revert to the use of bottled gas. Thirdly, the use of bottled gas will result in a lower standard of care for the animal, and comes with increased workplace health and safety risks for humans. There are associated biosecurity risks due to cross-contamination between human and veterinary hospitals by the movement of mechanical and certifying technicians and associated equipment. In the absence of stringent biosecurity protocols, there is the potential for movement of species-specific viruses and bacteria between human and animal hospitals, primarily related to people movement associated with pipeline installation work, inspection and certification.

Given these deficiencies, it is appropriate to remove the veterinary sector from the application of the relevant reforms. Another amendment provides that these changes commenced on 1 November 2020 to coincide with the existing commencement date of the Gas Legislation Amendment (Medical Gas Systems) Bill 2020. A further amendment clarifies that a medical gas installation is found in a medical facility. These are all sensible amendments. I acknowledge the work of the Hon. Robert Borsak in recognising these issues, and for proposing the amendments. The Government supports the amendments.

**Mr DAVID SHOEBRIDGE (22:55:02):** The Greens support the amendments. We received representations from the peak body of veterinarians in New South Wales, as well as from a number of highly qualified experts in the field, particularly with regard to anaesthesia in animals. We were persuaded that maintaining the veterinary clinics within the substantive bill would harm animal welfare. The Australian standards in the bill are essential for the proper care of human beings. They make sure that medical gas is provided safely and securely so that the appalling tragedies that led to the passage of the bill are not repeated. Those same Australian standards would be inappropriate for the treatment of most animals in a veterinary clinic. I think that I heard the Hon. Robert Borsak indicate that the Australian standard for providing certain concentrations of gas to a human is quite distinct when compared to what would be appropriate for a Clydesdale. I think that we can all see that as a matter of common sense. These matters were not fully fleshed out when the bill was being passed

because of the degree of urgency that existed to ensure that no child would ever suffer the same tragedy as the two children whose deaths resulted in the introduction of the bill.

We heard from veterinarians and accepted the arguments that said that this would not result in the right outcome for the welfare of animals. We also accepted the economic arguments that overwhelmingly said that veterinarians provide only oxygen, and that all the checks and balances in the bill for medical gases more broadly would be a hugely expensive, onerous and unnecessary regime when the only gas being provided is oxygen. For those reasons, The Greens initially proposed a 12-month delay for veterinary clinics to implement the measures to allow for the matter to be fully explored. Since putting forward those amendments we have had further discussions with vets and colleagues. We proposed a series of amendments in line with those put forward by the Shooters. It is not about who jumps first. The Greens support the amendments because we think that they do substantive good.

**The Hon. MARK BUTTIGIEG (22:57:53):** I thank the Hon. Walt Secord for giving me the opportunity to lead for Labor on this. He would normally lead for us. Labor supports the amendments proposed by the Shooters, Fishers and Farmers Party. We also support the comments from Mr David Shoebridge. I thank the Government for bringing this issue to our attention, because only it was initially an oversight. Intuitively, you would never let the end use of an installation—whether it be electrical, plumbing or medical gas—define the qualifications. It is either an installation or it is not. But obviously in this case, medical gas installations in veterinary surgeries do not satisfy the definitions contained in the Act. The way that it was explained to me when speaking to experts in the industry is first an oxygen pipe is fed into the veterinary surgeries. A machine is then plugged into that oxygen pipe, which delivers a range of medical gases to the animal.

Because of the way that is administered there is no way they could have possibly complied. It has different flow rates and different administration techniques to what the standards specify in this Act. The exemption for veterinary surgeons makes sense; at the end of the day there is no great danger because it is only oxygen. Even if the oxygen pipes were to be installed defectively—if there was a puncture to the oxygen pipe, for example—it is not the end of the world. It is probably something the House should look at down the track because technically if someone is installing an oxygen pipe in a veterinary surgery they can do it unqualified, but it is not of sufficient urgency to deal with here and it certainly cannot be dealt with in this Act.

The other Shooters, Fishers and Farmers Party amendment which the Opposition supports is inserting the words "in a medical facility" into the definitions. That means that a medical gas installation, which is defined in the Act, can only be within medical facilities, defined in the Public Health Act as being a hospital or an aged-care facility. That ties it back into the Act. I thank my crossbench colleagues for the discussions and the collegial approach, and I thank the Government for bringing it to our attention. The Opposition will support the amendments.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Robert Borsak has moved Shooters, Fishers and Farmers Party amendments Nos 1 and 2 on sheet c2020-183B. The question is that the amendments be agreed to.

**Amendments agreed to.**

**The CHAIR (The Hon. Trevor Khan):** We will now move to Opposition amendments on sheet c2020-182C.

**The Hon. MARK BUTTIGIEG (23:01:30):** By leave: I move Opposition amendments Nos 1 and 2 on sheet c2020-182C in globo:

**No. 1 Medical gas pipelines**

Page 2, clause 2. Insert after line 9—

(4) Schedule 9.2A commences, or is taken to have commenced, on 1 November 2020.

**No. 2 Medical gas pipelines**

Page 25, Schedule 9. Insert after line 12—

**9.2A Home Building Act 1989 No 147**

**[1] Section 15A Unqualified mechanical services and medical gas work**

Insert after section 15A(6)—

(6A) This section does not apply to a person who is a registered medical practitioner or a registered nurse who is commissioning, testing, verifying or witnessing a medical gas installation in the course of carrying out the person's functions as a registered medical practitioner or a registered nurse.

**[2] Section 15B Unqualified medical gasfitting work Insert after section 15B(6)—**



- (6A) This section does not apply to a person who is a registered medical practitioner or a registered nurse who is commissioning, testing, verifying or witnessing a medical gas installation in the course of carrying out the person's functions as a registered medical practitioner or a registered nurse.

[3] **Section 15C Unqualified medical gas technician work** Insert after section 15C(5)—

- (5A) This section does not apply to a person who is a registered medical practitioner or a registered nurse who is commissioning, testing, verifying or witnessing a medical gas installation in the course of carrying out the person's functions as a registered medical practitioner or a registered nurse.

[4] **Section 33E Additional requirements for obtaining endorsed contractor licenses and supervisor and tradesperson certificates relating to mechanical services and medical gas work**

Omit "A supervisor or tradesperson certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate," from section 33E(1).

Insert instead "A tradesperson certificate must not be issued".

[5] **Section 33E(1A)**

Insert after section 33E(1)—

- (1A) A supervisor certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate, that authorises its holder to do (and to supervise) mechanical services and medical gas work unless the Secretary is satisfied that the applicant—
- (a) has successfully completed the VET qualification Certificate IV in Plumbing, and
  - (b) has successfully completed the following units of competency in the Construction, Plumbing and Services Training Package—
    - (i) Install medical gas pipeline systems,
    - (ii) Carry out WHS requirements, and
  - (c) has not less than 2 years of experience in mechanical services and medical gas work after the completion of that qualification.

[6] **Section 33F Additional requirements for obtaining endorsed contractor licenses and supervisor and tradesperson certificates relating to medical gasfitting work**

Omit "A supervisor or tradesperson certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate," from section 33F(1).

Insert instead "A tradesperson certificate must not be issued".

[7] **Section 33F(1A)**

Insert after section 33F(1)—

- (1A) A supervisor certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate, that authorises its holder to do (and to supervise) medical gasfitting work unless the Secretary is satisfied that the applicant—
- (a) has successfully completed one of the following VET qualifications—
    - (i) Certificate IV in Plumbing,
    - (ii) Certificate IV in Gas Fitting, and
  - (b) has successfully completed the following units of competency in the Construction, Plumbing and Services Training Package—
    - (i) Install medical gas pipeline systems,
    - (ii) Carry out WHS requirements, and
  - (c) has not less than 2 years of experience in medical gasfitting work after the completion of that qualification.

[8] **Section 33G Additional requirements for obtaining endorsed contractor licenses and supervisor and tradesperson certificates relating to medical gas technician work**

Omit "A supervisor or tradesperson certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate," from section 33G(1).

Insert instead "A tradesperson certificate must not be issued".

[9] **Section 33G(1A)**

Insert after section 33G(1)—

- (1A) A supervisor certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate, that authorises its holder to do (and to supervise) medical gas technician work unless the Secretary is satisfied that the applicant—
- (a) has successfully completed one of the following VET qualifications—
    - (i) Certificate IV in Plumbing,
    - (ii) Certificate IV in Gas Fitting,
    - (iii) Certificate IV in Engineering, and
  - (b) has successfully completed the following units of competency in the Construction, Plumbing and Services Training Package—
    - (i) Install medical gas pipeline systems,
    - (ii) Carry out WHS requirements, and
  - (c) has not less than 2 years of experience in medical gas technician work after the completion of that qualification.

The first amendment is in regard to the date that the amendments would take effect. Because they are amendments to health legislation which could conceivably be assented to prior to the effective date of the medical gas bill, which is 1 November 2020, it is necessary to move the amendment to make sure that subsequent amendments apply on or after that date. Amendment No. 2 subsections (1), (2) and (3) deal with a view from the Government—which we did not really accept was a problem—that anaesthetists would get caught up in requiring the qualification because on a superficial reading of the Act it could be implied that because they are administering medical gases, and therefore getting involved in commissioning and testing, they may have to be qualified.

The Opposition does not believe that is the case, because the installation was defined as "up to the wall"; anything beyond that plug-and-play did not fall under the Act. But in order to provide abundant clarity and give those practitioners the comfort of knowing that they do not have to have the medical gas technician qualification, the Opposition has agreed to the amendment. It makes it clear that in the course of their normal duties of testing and administering medical gases, anaesthetists, doctors and nurses will not get caught up in requiring the qualification. The wording is also structured so that they are unable to do work behind the wall. In the situation where we were to give them a blanket exemption, it could be implied that the doctor can crawl behind the wall and start mucking around with medical gas pipes, which we obviously do not want. That is the outcome of amendment No. 2 subsections (1), (2) and (3).

Amendment No. 2 subsections [4], [6] and [8] simply deal with some drafting issues in the final bill that attributed a certificate III qualification to be able to supervise and contract, which was obviously not the intent because normally only someone with a certificate IV qualification would be able to do that. Subsections [4], [6] and [8] fix that up so that someone with a certificate III qualification is not entitled to supervise or contract but can do the medical gas work. Finally, subsections [5], [7] and [9] of the second amendment are because as previously drafted someone with a certificate IV qualification would not have been able to gain a supervisor and a contractor licence. Under the amendments someone with a certificate IV qualification will be able to gain supervisory and contracting licence provisions, which was the original intent. I commend the amendments to the House.

**The Hon. NATASHA MACLAREN-JONES (23:05:16):** The Government supports the amendments to various provisions of the Home Building Act 1989 inserted by the Gas Legislation Amendment (Medical Gas Systems) Act 2020, known as the medical gas legislation. The Government wishes to make it clear that when Labor proposed amendments to the Gas Legislation Amendment (Medical Gas Systems) Bill 2020, concerns about these amendments were raised during consultation. I note the comments made by the Hon. Mark Buttigieg at the time that the concerns were not necessarily considered. However, the Government ended up supporting the amendments during the debate due to the fact it was the only means by which the broader reforms could have passed the Parliament.

The first aspect of the amendments currently before us would specifically exclude persons who are registered medical practitioners and registered nurses from the application of uncommenced sections of the Home Building Act 1989 inserted by the Gas Legislation Amendment (Medical Gas Systems) Act 2020, the medical gas legislation. These include sections 15A, 15B and 15C of the Home Building Act 1989. Without the amendments as proposed, medical practitioners and registered nurses could be inadvertently caught by the medical gas legislation and then be required to be licensed under the Home Building Act 1989 to carry out functions they provide as part of their profession.

Medical practitioners, and in particular anaesthetists, and registered nurses have traditionally played an important part in physically witnessing the testing procedures for medical gas installations in medical facilities as

set out in the Australian Standard AS 2896. This involvement needs to continue. However, this can occur without licensing medical practitioners or nurses. Medical practitioners and registered nurses are already subject to extensive obligations regarding the use of medical gases and would not be required to participate in a medical gas installation, other than involvement in commissioning and witnessing testing once the installation is almost complete.

The proposed amendments to the Home Building Act 1989 allow medical professionals to get on with their work of helping people and ensure that they are not subject to inappropriate requirements. The testing and oversight actions of medical practitioners and registered nurses will still be governed by an Australian standard and consequently workplace health and safety legislation. However, it would be inappropriate for anaesthetists and registered nurses to have to obtain additional qualifications as a plumber or gasfitter in order to do the oversight and checking role in relation to work that will be already adequately oversighted by persons licensed under the medical gas legislation.

The second aspect of the amendments involves a number of changes in relation to relevant qualifications. Amendments are proposed to sections 33E, 33F and 33G of the Home Building Act 1989. The amendments will provide that additional qualifications are required for those persons who wish to obtain an endorsed contractor licence or certificate to enable them to do unsupervised work and to supervise the work of others. If the amendments are not made, it would mean that a person would only require certificate III level qualifications to be able to work unsupervised or to supervise others, rather than certificate IV level qualifications, which is the requirement for all other specialist occupations under the Home Building Act 1989. The Government supports the amendments.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Mark Buttigieg has moved Opposition amendments Nos 1 and 2 on sheet c2020-182C. 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. NATASHA MACLAREN-JONES:** 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. NATASHA MACLAREN-JONES:** On behalf of the Hon. Bronnie Taylor: I move:

That the report be adopted.

**Motion agreed to.**

### **Third Reading**

**The Hon. NATASHA MACLAREN-JONES:** On behalf of the Hon. Bronnie Taylor: I move:

That this bill be now read a third time.

**Motion agreed to.**

## **STRONGER COMMUNITIES LEGISLATION AMENDMENT (MISCELLANEOUS) BILL 2020**

### **Second Reading Speech**

**The Hon. NATALIE WARD (23:10:42):** On behalf of the Hon. Sarah Mitchell: 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 Stronger Communities Legislation Amendment (Miscellaneous) Bill 2020 introduces a number of amendments to address developments in case law, to support procedural improvements and to close gaps in the law that have become apparent. Most of the amendments proposed by this bill relate to improving criminal procedure. However, the bill also proposes:

1. Amendments to extend the sunset of two COVID-19 emergency provisions to 26 March 2021, to align with the sunset of other COVID-19 provisions;
2. One amendment to confirm the procedures relating to the Commissioner of Victims Rights; and

3. Amendments to facilitate the transfer provisions relating to the functions of the Children's Guardian in other regulations to a new, consolidated Children's Guardian Regulation.

These amendments will strengthen our community by:

1. Improving court processes and case management practices,
2. Improving criminal procedure, and
3. Providing greater protections for vulnerable people within the criminal justice system and the community.

The bill introduces two important amendments to the Criminal Procedure Act 1986 to complement the Evidence Amendment (Tendency and Coincidence) Act 2020, which was passed by Parliament in June 2020 and commenced on 1 July 2020. The amendments represent another significant reform by the New South Wales Government in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Miscellaneous amendment bills are typically introduced into Parliament each session as part of the Government's regular legislative review and monitoring program.

However this year, owing to the delays and disruption caused by the COVID-19 pandemic, a miscellaneous amendment bill was not able to be introduced in the first session of Parliament.

Instead, four separate miscellaneous bills are being introduced in this session. The division of the proposals into four bills is necessary due to the large number of reform proposals. The four bills have been organised thematically, which will assist Parliamentary consideration.

I now turn to the detail of the bill.

#### **Tendency & Coincidence Supplementary Amendments to the Criminal Procedure Act**

I am very pleased to introduce two amendments to the Criminal Procedure Act 1986 to support the reforms implemented earlier this year through the Evidence Amendment (Tendency and Coincidence) Act 2020, which ensure greater admissibility of tendency and coincidence evidence in child sexual offence proceedings.

The amendments are contained in Schedule 1.8 [1] and [3], and 1.8[8] of the bill.

In late 2017, a New South Wales -led Working Group was established by the Council of Attorneys -General, or CAG, to develop reform proposals in response to the Royal Commission's objective of facilitating greater admissibility of tendency and coincidence evidence and more joint trials in child sexual assault proceedings.

Both Uniform Evidence Law [UEL] and non-UEL jurisdictions participated in the development of reforms, in consultation with legal and academic stakeholders.

Comprehensive reform proposals were developed by the Working Group and were agreed by UEL CAG members in June 2019. In November 2019 UEL CAG members agreed to a Model Bill amending the UEL. UEL CAG members also agreed to implement two additional supplementary reforms falling outside the Evidence Act.

The two supplementary amendments to the Criminal Procedure Act contained in this bill will complete the implementation of these reforms. These amendments will improve how proceedings are conducted to allow for a complete picture of an accused's alleged criminality to be presented and appropriately considered by a tribunal of fact.

#### **Joint Trials presumption**

The first amendment, in Schedule 1.8[1] and [3] of the bill, creates a legislative presumption in favour of joint trials where a defendant has been accused of multiple offences which the prosecution is seeking to rely on as tendency or coincidence evidence. The presumption applies regardless of whether the court has allowed the prosecution to rely on the evidence as tendency or coincidence evidence.

While this reform was not recommended by the Royal Commission, the Royal Commission did explain at p 649 of the Criminal Justice Report that it "strongly agree[s] with the sentiment that there should be more joint trials".

Despite the Royal Commission's decision not to recommend legislative reform, this amendment is important as it reflects the community expectation that a jury should be appraised of all of the circumstances of an accused's alleged actions, whilst balances the right to a fair trial.

The Royal Commission expressed concern that a presumption in favour of joint trials would not be used by the prosecution because of the risk that resulting convictions would be overturned on appeal. To address this concern, s 29A has been drafted to ensure that Courts retain ample discretion to ensure that where there is a chance that an accused person will not receive a fair trial, counts on an indictment can still be separated.

It is possible, through this reform, to create a meaningful presumption without impacting on the integrity of resulting convictions. The Royal Commission set out important reasons why joint trials were ordinarily desirable. At p 629 of the Criminal Justice Report, the Royal Commission expressed agreement with Counsel Assisting's observation that:

In circumstances where an accused has occupied a position of authority in an institutional setting and where there are a number of separate allegations of sexual abuse, a decision that a separate jury should hear each complainant's account can often distort the true picture and be quite misleading.

The Royal Commission said at p 634:

There are other reasons for advocating reform in relation to the admissibility of tendency and coincidence evidence and joint trials. For example, a reason to support reform to encourage joint trials is that joint trials generally will be less traumatising for complainants in that they will know they are not alone and they can feel supported by the other complainants; there may also be less delay in finalising the prosecution.

This reform will benefit of victims of crime and the community, without impacting the fundamental right to a fair trial.

It is also consistent with the approach taken in other states for sexual offences, including the Northern Territory, Tasmania, Victoria and Western Australia.

The presumption will apply to all criminal proceedings, not just those involving child sexual offences. This is to ensure consistency across the board, and to avoid uncertainty when an accused is charged with different types of offences on the same indictment.

However, it is anticipated that the reform will have the most significant impact on child sexual assault prosecutions. Child sexual assault trials often involve multiple complainants alleging unrelated offences. Whilst the Government's earlier amendments will likely lead to greater admissibility of tendency evidence in these cases, there will remain cases where it is appropriate for multiple charges to be heard by the same jury, even where the prosecution is not permitted to rely on the evidence of each complainant as tendency or coincidence evidence.

However, it is not intended that there will always be joint trials regardless of the cross-admissibility of evidence or any unfair prejudice that may be caused to an accused. To this end, the presumption is a rebuttable presumption. This will ensure the right to a fair trial is not compromised and that trials can be severed where necessary.

To give effect to these principles, the presumption remains subject to s 21(2) of the Criminal Procedure Act. That provides that counts on an indictment may still be severed:

- if the court is of the opinion that an accused person may be prejudiced or embarrassed in their defence, or
- if, for any other reason, it is desirable to direct that an accused person be tried separately for any one or more offences charged on the indictment.

It will be a matter for courts to balance these key interests, noting the purpose of this amendment, namely to ensure that the tribunal of fact in a criminal trial has access to all of the evidence it needs to carry out its task and to secure just outcomes for victims, defendants and the community.

#### Standard of Proof amendment

The second supplementary amendment to the Criminal Procedure Act is in Schedule 1.8[8] of the bill. It clarifies that a jury should not be directed as to the standard of proof required in relation to tendency and coincidence evidence.

This implements Recommendation 48 of the Royal Commission. This recommendation was that "*tendency or coincidence evidence about a defendant in a child sexual offence prosecution should not be required to be proved beyond reasonable doubt.*"

This recommendation is largely consistent with provisions in Victorian legislation, supported by the Royal Commission, which makes it clear that a judge may not direct a jury that any matters other than the elements of the charged offence need to be proved beyond reasonable doubt.

The Royal Commission explained at p 73 of the Criminal Justice Report that recommendation 48 was in response to a determination by the New South Wales Court of Criminal Appeal that tendency evidence should be required to be proved beyond reasonable doubt.

The Criminal Justice Report was published in August 2017, before the September 2018 High Court decision of *The Queen v Dennis Bauer (a pseudonym)* [2018] HCA 40. The High Court unanimously found at [86] that:

Contrary to the practice which has operated for some time in New South Wales, trial judges in that State should not ordinarily direct a jury that, before they may act on evidence of uncharged acts, they must be satisfied of the proof of the uncharged acts beyond reasonable doubt.

However, the judgment was silent on the topic of evidence that is adduced to establish a dual purpose — a tendency or coincidence on behalf of an accused, and an element (or elements) of an offence. This has resulted in confusion and inconsistent directions in New South Wales. Some stakeholders have advised that judges are still directing that juries need to be satisfied of such evidence beyond a reasonable doubt, before it can be used for tendency and coincidence purposes. This amendment will make clear that this direction is not required for tendency and coincidence reasoning.

The provision however is not intended to interfere with the fundamental requirement for courts to direct juries that the elements of any charged offences must be proven beyond a reasonable doubt.

The proposed s 161A(2) ensures that, consistent with the fundamental principles of criminal law, nothing in s 161A(1) interferes with the requirement to direct a jury that all elements of a criminal offence need to be proved beyond a reasonable doubt before they can convict the accused.

In order to address some New South Wales stakeholder concerns and provide clarity, proposed s 161A(3) allows a judge to direct a jury as to the standard of proof that they are required to apply to tendency or coincidence evidence when there is a significant possibility that the jury will rely that evidence as being essential to its reasoning in reaching a finding of guilt. The proposed s 161A(3) seeks to ensure that, in appropriate cases, a court can give still give a jury the *Shepherd* direction (following *Shepherd v The Queen* (1990) 170 CLR 573; affirmed in *The Queen v Dennis Bauer (a pseudonym)* [2018] HCA 40 at [86]), and to clarify that the reform is not intended to abrogate the *Shepherd* direction.

As with the first amendment, this amendment is not limited to trials for child sexual offences. This is consistent with the common law position and will ensure that directions as to the standard of proof for tendency and coincidence evidence are approached uniformly in all criminal trials.

I now turn to the proposed commencement and transitional provisions in the bill for the supplementary tendency and coincidence reforms. The bill provides that the joint trial provision as contained in Schedule 1.8[1] and [3], if passed, will commence on assent but is subject to a transitional provision. Schedule 1.8 [15] of the bill provides that the reform will not "apply to proceedings the hearing of which began before the commencement of that section."

The current practices with respect to separate trial considerations will continue to govern those proceedings. The passage of the bill also would not affect the validity of any severance notice given by defence in proceedings, the hearing of which, have commenced.

The transitional provision largely replicates the transitional provisions that were used in the Evidence (Tendency and Coincidence) Amendment Act 2020.

The intent of the transitional provision is:

1. First, in the case of a summary proceeding, the reforms will not apply to matters in which a court attendance notice was filed prior to the commencement of the reform; and
2. Second, in the case of a trial heard on indictment, the reform will not apply to matters in which an indictment has been presented and the accused person has been arraigned prior to the commencement of the reform.

The reforms will apply in circumstances where a court attendance notice has been filed in respect of an offence that will be heard on indictment but where the indictment has not yet been presented and the accused person has not been arraigned.

I note that this intent is consistent with the decision of the Court of Criminal Appeal in *GG v Regina* [2010] NSWCCA 230. In that case, which considered similar transition provisions used in the Evidence Amendment Act 2007, the Court of Criminal Appeal held that:

There is no doubt that the presentment of the indictment and arraignment of the accused person marks the commencement of the trial.

The purpose of the transitional provision is to prevent the reforms impacting a proceeding, where the hearing has already commenced.

I now turn to the commencement of the proposed s 161A of the Criminal Procedure Act, which clarifies that a jury should not be directed as to the standard of proof required in relation to tendency and coincidence evidence.

The bill provides that the new provision, if passed, will commence on 1 March 2021. The commencement date is at the request of the Judicial Commission to ensure there is sufficient time to provide time for education about the reforms and to make necessary updates to the relevant Court Bench Books.

These amendments signify the completion of important reforms to New South Wales legislation to improve the admissibility of tendency and coincidence evidence, particularly in child sexual offences matters, as recommended by the Royal Commission.

I thank stakeholders for their ongoing consultation, feedback and assistance throughout this process.

#### **Amendments to improve court processes and case management practices**

I now turn to amendments in the bill that would improve court processes and case management practices.

Schedule 1.8 [4] — [7] to the bill will make three discrete amendments to the Criminal Procedure Act to assist the court in relation to case management of criminal trial matters, ensuring efficiency, transparency and accountability. These amendments will give effect to a number of findings from the review of case management in higher courts conducted by the Chief Judge of the District Court, the Honourable Justice Derek Price, AM.

Schedule 1.8 [5] and [6] will amend section 149 of the Criminal Procedure Act to require all pre-trial disclosure notices to be filed with the court in accordance with a timetable set by the court. Pre-trial disclosure notices are required to be prepared and served by both the prosecution and defence in a criminal trial under Part 3, Division 3 of the Criminal Procedure Act. The prosecution are required to outline all evidence they seek to rely on to establish the offences charged. The defence are required to raise any relevant defence they may be seeking to rely on.

Currently, section 141 of the Criminal Procedure Act requires mandatory pre-trial prosecution and defence disclosure notices to be served, after the presentation or filing of an indictment. These notices outline each party's case, with a view of disclosing all evidence sought to be relied on as well as any pre-trial evidentiary applications. Sections 142, 143, and 144 of the Criminal Procedure Act set out the requirements in relation to these notices. Section 149(5) of the Criminal Procedure Act requires that those notices be filed with the Court "as soon as practicable after giving it, or as otherwise required by the court".

The timeframes for the service and filing of these notices is governed by the District Court and Supreme Court Practice Notes.

This amendment to section 149(5) makes clear that notices must be filed in accordance with the timetable set by the court in the relevant Practice Note, or as otherwise determined by the Court. This will ensure there is adequate oversight by judges in relation to the progress of a matter through the courts, and will assist with case management of trial matters.

Schedule 1.8[7] will amend section 150 of the Criminal Procedure Act to change the timeframe for service of alibi notices from 42 days prior to trial to 56 days prior to trial.

In order to manage trials more effectively, the District Court now schedules readiness hearings in all trial matters, 8 weeks prior to trial—being 56 days. This amendment will mean that alibi notices must be filed by the date of the readiness hearing to ensure the court will be able to case manage matters in a meaningful way, with more transparency. This will ensure adequate trial estimates will be set, assisting with listing practices.

The amendment also gives legislative support to District Court Practice Note 18, providing for consistency between legislation and practice.

Schedule 1.8[4] amends section 140 of the Criminal Procedure Act to broaden the purposes of a pre-trial conferences.

Section 140 enables a court to order a pre-trial conference between the prosecution and defence in matters proceeding to trial. However, it currently identifies one purpose for the conference — namely, to determine whether an accused person and the prosecutor are able to reach agreement regarding the evidence to be admitted at trial.

This amendment will expand the prescribed purposes of a pre-trial conference to include the identification of:

- the key issues in dispute,
- any issues that require resolution before the trial begins, and

- any other matters as directed by the court.

The express inclusion of these important purposes in the provision will ensure that pre-trial conferences can be better utilised to identify the key issues in trial matters and facilitate their earlier resolution.

This bill also amends the Criminal Procedure Act to extend case management provisions so that they apply to Work Health and Safety Act prosecutions in the District Court and to provide an additional means of providing a witness' evidence, being evidence obtained under the powers of the regulator to compel evidence under the Work Health and Safety Act.

Currently, Work Health and Safety Act prosecutions in the District Court are not subject to case management provisions under the Criminal Procedure Act. Despite this, District Court Criminal Jurisdiction Practice Note 16 requires defendants in these matters to make certain pre-trial disclosures, similar to those required in other summary prosecutions and indictable prosecutions.

However, without a legislative basis, such disclosures may be beyond power of the District Court.

The case management provisions outlined in Part 2A of the Criminal Procedure Act require the prosecution to provide a copy of the affidavit or statement of each witness whose evidence will be adduced at the hearing.

In practice, the Work Health and Safety Act provides the regulator with the power to compel witnesses to provide evidence in relation to Work health and safety breaches.

In order to ensure that Work Health and Safety Act prosecutions do not incur sanctions for failing to provide formal witness statements as outlined in s.247E of the CPA, the amendments contained at Schedule 1.8 [9]-[13] will ensure that the regulator can comply with the case management provisions by producing evidence obtained under any of the compulsory evidence powers in the Work Health and Safety Act, whilst giving the District Court the power to effectively case manage these prosecutions.

Schedules 1.1[1-2] and 1.2 make amendments to s 4 of the Bail Act 2013 and clause 3(1) of the Bail Regulation 2014 to clarify an anomaly that has arisen around the use of the terms "Children's Registrars" and "other registrars of the Children's Court" under the Children's Court Act 1987. The Bail Act 2013 and Bail Regulation 2014 refer to the two types of registrars inconsistently. The amendment will clarify that all registrars of the Children's Court can deal with bail matters in the Children's Court under the Bail Act 2013.

Schedule 1.1[3] amends s 40 of the Bail Act 2013 (Bail Act) in order to make it clear that the ability to lodge a bail stay is linked to the first time a decision to grant or dispense with bail is made by a court or authorised justice, and not the first appearance at court.

Section 40 of the Bail Act allows a bail stay to be lodged if a police officer or prosecutor informs the court or authorised justice that a detention application is to be made to the Supreme Court. This is to prevent defendants accused of "serious offences", as defined in the section, remaining at liberty when there is a pending detention application to the Supreme Court to have bail refused or revoked, or to have bail imposed with conditions.

Bail stays are currently limited to bail decisions made on a first appearance by the accused. Where bail is granted or dispensed with after the first appearance, for example, because the defendant has sought a brief adjournment, the prosecution is unable to utilise its powers under section 40 of the Act and the defendant can remain at liberty until the detention application is determined.

This is contrary to the intent of this section, which seeks to protect the community when serious offences are alleged to have been committed. This amendment closes an important gap that has arisen in application of the principle.

Schedule 1.9 of the bill amends the temporary Covid-19 provisions in section 220 of the Evidence (Audio and Visual Links) Act 1998 to clarify that an accused person who is not in custody is able to appear via audio visual link (AVL) from outside New South Wales as well as within the jurisdiction. This will ensure that an accused person is not required to cross borders (particularly where movement is restricted by public health order) in circumstances where AVL can appropriately be used.

#### **Amendments to improve criminal procedure**

I now turn to amendments in the bill that would improve criminal procedure.

Schedule 1.5 amends section 40 of the Crimes (Administration of Sentences) Act 1999 to close a potential loophole which may allow some offenders to avoid serving the full term of the sentences that have been imposed on them.

Under section 254 of the Crimes (Administration of Sentences) Act 1999, where a person is unlawfully absent from custody during the term of a sentence, that sentence is extended by the period for which the person was absent.

Section 40 of the same Act provides an exception where the inmate is unlawfully absent from a correctional centre for reasons other than an escape from lawful custody, a failure to return at the expiry of a leave permit, or a failure to return upon revocation of an intensive correction order or parole order. In such circumstances, the inmate is taken to have been in lawful custody for the whole of that absence for the purpose of calculating how much of the sentence the inmate has served.

Notably, while section 254 applies to a person who is unlawfully absent, the exceptions in section 40 apply to an inmate. Under section 4 of the Crimes (Administration of Sentences) Act 1999, the definition of 'Inmate' includes any person who is subject to a warrant issued by a court committing the person to a correctional centre to serve a sentence by way of full-time detention.

The current wording of section 40 gives rise to a potential anomaly in circumstances where a person who is subject to such a warrant is unlawfully absent without ever having entered custody in a correctional centre.

For example, a person might be sentenced to imprisonment in the Local or District Courts, and a warrant issued committing the person to a correctional centre, with the execution of the sentence being stayed pending judicial review of the conviction or sentence in the Supreme Court.

Should that person subsequently abscond, they would meet the definition of "inmate" by virtue of the warrant, and never having entered custody, would be incapable of being considered to have escaped lawful custody. Section 40 in its current form is open to the interpretation that as an inmate who is unlawfully absent from custody for reasons other than those specified in that section, the person would be considered to have been in custody for the duration of their absence.

Such an interpretation effectively allows certain offenders to serve part of their sentence while remaining at liberty. Should the offender succeed in avoiding arrest for the full term of their sentence, they could be considered to have served their full term of imprisonment without ever having entered custody.

The bill amends section 40 of the Crimes (Administration of Sentences) Act 1999 so that failure to enter a correctional centre in accordance with a warrant or order will form an additional form of unlawful absence to which the section does not apply. This will ensure that the term of imprisonment to be served by an inmate who is unlawfully absent for such a reason will be extended by the full period of their absence.

Schedule 1.10 of the bill amends the Supreme Court Act 1970 to resolve an overlap between two provisions of that Act which gives rise to unnecessary ambiguity.

Subsection 69A(5) of the Supreme Court Act states that when determining proceedings for a judicial review of a conviction or sentence, the Supreme Court may order that the imprisonment under the original sentence of imprisonment commence or recommence on a day specified by the court.

In contrast, section 69D states that the Supreme Court may order that a conviction, order, or sentence that is the subject of proceedings is to take effect or recommence on a day specified in the order, with that day being limited to the day on which the order is made or an earlier day.

In effect, section 69A(5) appears to allow the Court to order that a sentence of imprisonment commence or recommence on a future date, while section 69D explicitly excludes that possibility.

In a recent decision, the NSW Court of Appeal highlighted the uncertainty as to whether the constraint imposed by section 69D limits the Court's general power under section 69A to determine the date on which the original sentence is to commence.

The bill amends section 69D of the Supreme Court Act to make it clear that the Court has the power to order that a sentence commence or recommence on a future day, including by reference to a future event, such as when a person is taken into custody to serve their sentence.

Allowing for sentences to commence by reference to a future day or event is appropriate, as there may be times where ascertaining a specific date is not possible. For example, the order may be for a sentence to commence upon completion of the non-parole period for another offence.

Schedule 1.7 of the bill amends the Criminal Appeal Act 1912 in order to provide the Chief Justice with more flexible powers to manage the Court of Criminal Appeal, including as to the constitution of the court.

The Criminal Appeal Act provides for the constitution of the Court of Criminal Appeal. Under section 22(1) of the Act, certain powers of the court may be exercised by any judge of the court in the same manner as they may be exercised by the court.

Currently, the Chief Justice must direct 3 Supreme Court Judges to constitute the Court of Criminal Appeal, even where one judicial officer will then be selected to exercise the powers of a Judge sitting alone under section 22.

Schedule 1.7[4] to the bill amends the Criminal Appeal Act to enable the Chief Justice to designate a Judge of the Supreme Court to exercise the section 22 powers directly, without first having to constitute a Court of Criminal Appeal.

Schedule 1.7[5] to the bill provides that the powers that may be exercised by a judge sitting alone include any powers "in respect of procedural or interlocutory matters as may be prescribed by the rules of court".

Schedule 1.7[7] to the bill makes clear that rules of the Court may be made in relation to the powers and duties of the Registrar and other officers of the Court, and with respect to the review of decisions made by the Registrar or other officers of the court.

Schedule 1.6 of the bill makes two amendments to the Crimes (Sentencing Procedure) Act 1999.

Turning to the first amendment, Schedule 1.6[1] of the bill clarifies that an accused person who has lodged a written plea in accordance with section 182 of the Criminal Procedure Act and does not attend Court is to be considered an "absent offender" under section 25 of the Crimes (Sentencing Procedure) Act.

The legislation is currently ambiguous as to whether an offender who has lodged a written plea and been excused from attending court pursuant to section 182 of the Criminal Procedure Act is an "absent offender" because under section 182 they are "taken to have attended" court.

Clarifying that these offenders are classed as "absent offenders" will ensure the Local Court cannot impose certain penalties, including imprisonment, Intensive Correction Orders, Community Correction Orders, or Conditional Release Orders on them in their absence in these circumstances. The person will need to be present for sentencing, so that they can be properly informed of their sentence by the court.

The amendment also makes clear that a magistrate will consider whether an adjournment is more appropriate, while ensuring that they retain the discretion to issue a warrant if appropriate in the circumstances.

The second set of amendments to the Crimes (Sentencing Procedure) Act are technical in nature, however, are necessary to ensure that mandatory sentence discounts are applied as intended under the Early Appropriate Guilty Plea [EAGP] reform.

Schedule 1.6[3] — [6] to the bill amends the Crimes (Sentencing Procedure) Act to clarify that offenders who plead guilty to charges contained within an ex officio indictment, which has been filed after the offender was discharged under section 68 of the Criminal Procedure Act are entitled to a discount variation even where the ex officio charge that the offender pleads guilty to is based on substantially the same facts or evidence served in the discharged committal proceedings.

Currently, section 250 of the Crimes (Sentencing Procedure) Act provides a mandatory sentence discount scheme for guilty pleas ranging from 25 per cent to 5 per cent depending on the timing of the plea. Section 25D(3) sets out a variation of the discount scheme for "new count offences", which enables an offender to access the full 25 per cent discount provided they plead guilty as soon as practicable after an ex officio indictment is filed or the indictment is amended to add the new count.



However, section 250(4) provides that this discount will not apply if "the facts or evidence that establish the elements of the new count offence are substantially the same as those contained in the brief of evidence or other material served on the offender by the prosecutor in committal proceedings relating to the original indictment and the penalty for the new count offence is the same as, or less than, the offence set out in the original indictment."

This amendment make clear that the sentencing discount variation **is** available where the offender was discharged before having an opportunity to plead to certified charges or participate in a case conference and similar charges are brought on an ex officio indictment.

This clarification is consistent with the rationale of the EAGP reforms and will avoid potential unfairness to offenders who plead guilty at the first available opportunity.

**Providing greater protections for vulnerable people within the criminal justice system and the community**

I now turn to amendments in the bill that provide greater protections for vulnerable people within the criminal justice system and the community.

Schedules 1.3 and 1.6[71-19] of the bill introduces amendments to the Children (Criminal Proceedings) Act 1987 and the Crimes (Sentencing Procedure) Act 1999 to clarify that Victim Impact Statements are admissible in the Children's Court for the same offences as in the Local Court, and also enable them to be made for strictly indictable offences.

Victim Impact Statements can be an important part of the sentencing process, and provide a victim with the opportunity to explain the impact and harm an offence has had on them to the court. The statutory scheme for Victim Impact Statements is provided by Part 3, Division 2 of the Crimes (Sentencing Procedure) Act.

Section 27 of this Act sets out the jurisdictions in which Division 2 applies, however the Children's Court is not currently listed.

Rather, section 33C of the Children (Criminal Proceedings) Act 1987, explicitly states that the provisions of the Crimes (Sentencing Procedure) Act 1999 which relate to victim impact statements apply to any offence dealt with by the Children's Court as if it were the Local Court. However this means that the Children's Court is subject to the same limitations as set for the Local Court, namely that a victim impact statement can be made in respect of certain eligible offences but cannot be made in respect of strictly indictable offences.

This amendment clarifies the law by expressly providing for Children's Court VIS eligibility in section 27 of the Crimes (Sentencing Procedure) Act, so that VIS provisions for all jurisdictions are set out in one Act. This will remove the potential for irregular or inconsistent interpretations of existing legislation.

It also expands the Children's Court Victim Impact Statement regime to include strictly indictable offences. This resolves what appears to be an unintended consequence of matching the Children's Court VIS regime to that of the Local Court, where those offences are not dealt with. This will provide victims of such offences the opportunity for their voice to be heard in the sentencing proceedings.

Schedule 1.8[2] to the bill amends section 3 of the Criminal Procedure Act to include offences relating to the recording and distribution of intimate images without consent in the definition of "prescribed sexual offence". These offences have been colloquially referred to as "revenge porn" offences.

Under Part 5 of the Criminal Procedure Act, special arrangements for giving evidence are extended to victims of prescribed sexual offences in order to minimise the stress they may experience while fulfilling a crucial role in the prosecution of these offences.

Such arrangements include requirements for proceedings to be held in a closed court while a complainant in proceedings for a prescribed sexual offence is giving evidence, the option to give evidence via alternative arrangements such as CCTV, and entitlements to have a support person present while giving evidence.

Sections 91P and 91Q of the Crimes Act 1900 make it an offence to record or distribute an intimate image without consent, and section 91R makes it an offence to threaten to record or distribute an intimate image. These offences are not currently included amongst the prescribed sexual offences for which special arrangements for giving evidence are available.

While these offences may not involve a physical assault, they are undeniably offences of a sexual nature which have the potential to inflict significant psychological distress on victims, especially when recounting them in evidence. Often their evidence can include having to examine and comment on intimate imagery of themselves and being questioned extensively around the context of the material, including its creation and distribution. This proposal would provide important and appropriate protections to this class of victims.

This amendment will ensure that these victims are afforded the same protections as victims of other sexual offences while participating in the criminal justice system.

Schedule 1.4 to the bill also seeks to strengthen the criminal law with respect to addressing the offence of threatening to record or distribute an intimate image under section 91R of the Crimes Act 1900.

Under section 91S of the Crimes Act, where a court finds a person guilty of an offence of recording or distributing an intimate image without consent under sections 91P and 91Q of that Act, respectively, it can make a rectification order requiring the person to take reasonable actions to remove, retract, recover, delete, or destroy any intimate image recorded or distributed by the person. Failure to comply with the order is an offence punishable by up to two years imprisonment.

However, courts are not currently able to make a rectification order where it finds a person guilty of threatening to distribute an intimate image of a person without that person's consent, with the intent to cause that person to fear that the threat will be carried out. This amendment seeks to close a gap in the law to allow a court to make this order where it finds a person guilty of an offence of threatening to distribute an intimate image under section 91R of that Act.

Rectification orders under section 91S are intended to provide a clear remedy for serious breaches of privacy. The proposed amendment will ensure that victims who have suffered the fear and trauma associated with a threat to distribute intimate images are afforded the same protections as victims who have had intimate images distributed without their consent, and provide courts with the discretion to make orders which will prevent any future threats from being made with images in the offender's possession.

Schedule 1.8[14] to the bill, if passed, would amend the Criminal Procedure Act to clarify the role of witness intermediaries, referred to in the Act as children's champions, in child sexual offence evidence pilot proceedings. The purpose of the amendment is to ensure that children's champions are able to fulfil their functions during all relevant stages of the investigation and prosecution process.

Part 29 of Schedule 2 to the Criminal Procedure Act establishes the child sexual offence evidence program scheme. A key component of the scheme is the creation of the role of a children's champion, whose function is to impartially facilitate communication with a child witness so that they can provide their best evidence. A children's champion may explain questions put to the witness and the answers they give, so far as is necessary for the questions and answers to be understood by the witness or the questioner.

In practice, a children's champion may be engaged to perform an assessment of a child, including their communication needs, prior to or during the police investigation and interview stage of proceedings.

Where this occurs, and wherever possible, the same children's champion will be appointed by the Court to assist during the trial, in order to ensure that the child witness will be assisted by someone with whom they are already familiar, and so that the Court will be assisted by someone who has already assessed the child witness's capabilities and limitations.

From the scheme's genesis it was intended that children's champions would be involved at all relevant stages of proceedings, including during the police interview stage. However, the wording of provisions relating to their appointment have recently created confusion as to whether the same children's champion who assisted during the police interview stage may also assist during the trial.

In order to ensure that children's champions remain impartial officers of the Court, sub clause 89(5) states that a person must not be appointed as a children's champion for a witness if they have previously assisted the witness in a professional capacity, other than as a children's champion.

While it was always intended that children's champions would be involved during the police interview stage, the legislation remains silent on their use during this stage of proceedings.

Consequently, there is ambiguity as to whether a children's champion who provides assistance during police investigations is exercising their functions as a children's champion under the child sex offence evidence pilot scheme, or whether they are assisting the witness in some other professional capacity. The latter interpretation would require a different children's champion to be appointed to assist during the trial, to the potential detriment of the child witness and the quality of the evidence before the court.

The bill amends clause 89 of Schedule 2 of the Criminal Procedure Act to clarify that a person will not be prevented from being appointed as a children's champion for a witness merely because they exercised the functions of a children's champion during criminal investigations involving that witness that took place before or after the commencement of proceedings.

#### **Other amendments**

I now turn to other amendments in this bill, which are varied in nature. Each of these will ensure the validity and continuance of current practices.

Schedule 2.1 to the bill amends the Children and Young Persons (Care and Protection) Act 1998 to provide an express power for entry and inspection of the residential premises of authorised carers, those applying to be authorised carers and prospective guardians. The home inspection powers are subject to consent for prospective guardians and those applying to be an authorised carer. For carers with a child residing with them, it is a condition of their authorisation that home inspections are undertaken.

These amendments will clarify the powers for home inspections. They are not intended to impact the existing practice of inspecting homes of carers, applicants and prospective guardians to ensure they provide a safe and secure environment for a child.

These amendments will address an issue that has arisen following the commencement of the Children's Guardian Act 2019. To implement that Act, there is an ongoing project to transfer provisions relating to the functions of the Children's Guardian in other regulations, including the Child and Young Persons (Care and Protection) Regulation 2012, to a new consolidated Children's Guardian Regulation.

An express power for home inspections is necessary to facilitate the transfer of provisions of the Child and Young Persons (Care and Protection) Regulation 2012 relating to the capture of information about home inspections of authorised carers on the Carers Register maintained by the Children's Guardian. These amendments are also required to provide clarity and legislative support for existing practices.

Schedule 2.2 [3] and [4] to the bill amends the Children's Guardian Act to insert an express power to collect, use and disclose information for the purposes of registers kept by the Children's Guardian under section 85 of the Act.

The amendment, which was identified during the drafting of the Children's Guardian Regulation, will support the operation of the new register of residential care workers and ensure existing regulations relating to the authorised carers register and voluntary out-of-home care register maintained under the Children and Young Persons (Care and Protection) Act can be made under the Children's Guardian Act.

By inserting an express power to collect, use and disclose information for the purposes of registers kept by the Children's Guardian, the amendment secures critical information flows necessary to promote the safety, welfare and wellbeing of children and young people in out-of-home care.

In particular, the amendment will allow the Department of Communities and Justice to disclose information gleaned through a Community Services Check to residential care providers, so that when the residential care workers register commences in March 2021, residential care providers can collect and use that information in accordance with the requirements of the register.

The amendments at Schedule 2.2[1] and [2] address oversights identified in the Stronger Communities Legislation Amendment (Courts and Civil) Bill 2020, which was passed by both Houses on 23 September 2020.

The amendment at paragraph (a)(iv) of item [1] completes the regulation-making powers necessary to facilitate the transfer of Division 6 of Part 6 of the Children and Young Persons (Care and Protection) Regulation 2012 to the Children's Guardian Regulation, by allowing the authorised carers register to record information about adult household members of carer applicants.

The remaining amendments at items [1] and [2] of Schedule 2.2 correspond with the amendment set out at Schedule 2.6 of this bill. Schedule 2.6 amends the Stronger Communities Legislation Amendment (Courts and Civil) Bill 2020 to allow commencement of the authorised carers register amendment in item [1] of this bill, and commencement of the residential care workers register amendment in item [2] of this bill, to be split. These amendments will ensure that the residential care workers register is supported by sufficient regulation-making power in the Children's Guardian Act 2019 when the register commences in March 2021.

Schedule 2.7 to the bill will amend the Victims Rights and Support Act 2013 to remove subsection 46(3) from that Act.

Subsection 46(3) operates to apply sections 77, 78 and 79 of the Civil Procedure Act 2005 to financial support or recognition payments authorised by the Commissioner of Victims Rights under the Victims Rights and Support Act.

The effect of this is that payments for persons under a legal incapacity should be paid into the Supreme Court and then, upon the Commissioner of Victims Rights filing a summons in the Supreme Court seeking an order for the court to direct such payment, to such other person as the court may direct.

While an equivalent provision to subsection 46(3) had a role to play under the previous, tribunal-based scheme, the purpose of the administrative scheme established under the Victims Rights and Support Act is to allow Victims Services to assist victims to quickly access appropriate help under the Victims Support Scheme and avoid the need for victims to obtain lawyers to help them apply for assistance.

Removing subsection 46(3) will ensure that a financial support or recognition payment approved by the Commissioner of Victims Rights may be made payable to a person under a legal incapacity, or another person for the benefit of that person, including the NSW Trustee and Guardian, without the need for the payment to be paid into the Supreme Court. This is provided for by section 46(1) of the Victims Rights and Support Act.

Schedule 2.7[2] to the bill is a transitional provision. It provides that a payment made in the past by the Commissioner of Victims Rights to a person under legal incapacity or to another person for the benefit of that person, including the NSW Trustee and Guardian, is taken to be valid as if the amendments were in force at the time the payment was made.

Schedule 2.4 to the bill amends the sunset date and the limit on the extension in Part 12 of the Interpretation Act 1987, which was implemented in response to the COVID-19 pandemic.

Emergency measures relating to the COVID-19 pandemic were implemented in legislation in March and May 2020. The measures included a new Part 12 to allow limitations and other statutory time periods to be modified, suspended or waived and to allow altered arrangements for physical attendance and meetings.

Part 12 of the Interpretation Act includes provisions which limit any extension, suspension or waiver of statutory time periods, or anything done or omitted to be done under such modification, during the pandemic to no later than 31 December 2020. The Part is automatically repealed on a sunset date of 31 December 2020.

This amendment extends the sunset date for Part 12 and the limit on the extension, modification and waiver of statutory time periods, for a further three months, from 31 December to 26 March 2021. This will bring the sunset of the provision into alignment with other COVID-19 provisions that will also sunset on that date.

Schedule 2.3 to the bill also contains a small but important amendment to the Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010. This amendment will ensure that a key COVID-19 measure is able to continue. Ordinarily, contract cleaners must wait 20 weeks for payment of long service entitlements when they leave the cleaning industry. In May this year the Government amended the Act to temporarily waive this requirement in order to assist workers facing financial hardship due to COVID-19 impacts.

This measure was put in place initially for six months and is currently due to end on 15 November 2020. The Government proposes amending the definition of "prescribed period" to end instead on 26 March 2021. This extension will align the sunset date with other COVID measures.

### **Conclusion**

This bill is an important part of the Government's regular legislative review and monitoring program.

Many of the amendments in the bill are important steps towards further strengthening our justice system. They address gaps in the law, support procedural improvements particularly in relation to court processes, clarify uncertainty and correct errors in legislation.

I commend the bill to the House.

## **Second Reading Debate**

**The Hon. ADAM SEARLE (23:11:05):** I lead for the Opposition in debate on the Stronger Communities Legislation Amendment (Miscellaneous) Bill 2020. The Opposition does not oppose the bill, which contains a number of disparate amendments that address developments in case law, support procedural improvements and close apparent gaps in the law. Of course, it may do slightly more than that. The overview of the bill states that its object is to make amendments "relating to the Communities and Justice portfolio, and to make other miscellaneous amendments". It is similar to what was once called a justice legislation amendment bill but it is the third bill in recent weeks to bear the more Orwellian title to do with stronger communities. The bill contains a number of provisions that are COVID related.

Schedule 2.4 to the bill makes amendments to part 12 of the Interpretation Act 1987. Those provisions were introduced earlier this year in response to the pandemic. They allowed statutory time periods and limitations to be suspended, modified or waived, and allowed altered arrangements for physical attendance at meetings. The provisions were limited until the end of this year when the part was to be repealed. Uncontroversially, the bill extends the sunset provision for a further three months until 26 March 2021. Schedule 1.9 to the bill amends the

Evidence (Audio and Audio Visual Links) Act 1998 in relation to a COVID provision. Also introduced earlier this year, that provision makes clear that an accused person at liberty is able to appear via an audiovisual link from outside New South Wales as well as from within.

Schedule 2.3 to the bill contains an amendment to the Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010, an Act to which the shadow Attorney General in the other place was very attached, having introduced it when he was Minister for Industrial Relations. The Act was amended earlier this year to assist workers facing financial hardship, specifically to remove the requirement that workers covered by the Act had to wait 20 weeks for payment of long service leave entitlements when leaving the industry. That change was due to expire at the end of the year. The bill extends the expiry period until 26 March 2021. The bill makes a number of amendments to the Criminal Appeal Act 1912, a piece of legislation which is more than 100 years old. The amendments deal with the Court of Criminal Appeal.

One amendment allows for the Chief Justice of the Supreme Court to make arrangements for the transaction of the business of the Court of Criminal Appeal. Another amendment allows the Chief Justice to designate a single judge of the Supreme Court to exercise certain procedural or interlocutory powers without having to constitute the court for that purpose and then designate a single judge. Among the changes is a confirmation that the rules of the Court of Criminal Appeal may confer powers of the court on the registrar or other court officers and provide for the review of their decisions. In the Opposition's view those modest changes are unexceptional. If there is a criticism it goes precisely to their limited scope.

Some 6½ years ago the Government received the NSW Law Reform Commission report No. 140 entitled *Criminal Appeals*. The report made sweeping recommendations about criminal appeals in this jurisdiction. For example, the first recommendation was to repeal the Criminal Appeal Act 1912 and the Crimes Appeal and Review Act 2001 and replace them with a new Criminal Appeal Act. The report was commissioned by this Government. There seems to have been no substantial action taken in relation to that report and its recommendations. It is simply gathering dust in someone's in-tray—perhaps that of the former Attorney General, Gabrielle Upton. Who knows? Its existence makes otherwise unobjectionable amendments look quite derisory. It appears a complete mystery as to why the Government commissioned the report if only to steadfastly ignore it. The law relating to criminal appeals in this State needs a far more thoroughgoing reform than this legislation addresses. However, there are also other proposed changes to the law concerning intimate images and their unauthorised disclosure.

Schedule 1.8 now includes offences under sections 91P, 91Q and 91R as a prescribed sexual offence. The explanatory note to the schedule has an apparent typographical error where it refers to item [1] when it should refer to item [2], but I will leave that to the Government to address. These three are the offences of record intimate image without consent, distribute intimate image without consent and attempt to record or distribute intimate images. That means the victims of those offences will have the same protections in court as other victims of sexual assault. That is a very substantive change to the law and one that is important. I welcome the fact that the Government has brought this forward.

Schedule 1.4 amends the Crimes Act by adding a new subsection (1A) to section 91S. This will allow a court to order the removal, retraction, recovery, deletion or destruction of an intimate image threatened to be distributed in breach of section 91R of the Crimes Act. The Government is quite proud of these changes and issued a media release about it. The changes are unobjectionable but the Government's self-congratulation hides the limitation of the rectification provision. As the Opposition pointed out in 2017 when some of these provisions were introduced, rectification can only occur after someone has been convicted, which is way too long for images to circulate or be published. A much faster mechanism is needed. Further, the rectification mechanism only applies to the defendant, not to third parties. Honourable members will remember this part of law reform emerged from an upper House inquiry which made far-reaching recommendations about the creation of a statutory cause of action in relation to breaches of personal privacy.

In addition, in support there were to be powers vested in the Privacy Commissioner to have take-down powers to get to the nub of a problem when former partners, or even current partners, are engaging in what has been known as revenge porn and publishing unauthorised intimate images. Rather than address that in the civil law, the Government took the criminal law route. That is important and we have no objections but it has the limitation that a conviction is needed first before the real evil can be addressed. A civil counterpart is required in this State. The Legislative Council Standing Committee on Law and Justice report in 2016 entitled *Remedies for the Serious Invasion of Privacy in New South Wales* included recommendations that were incorporated in the shadow Attorney General's private member's bill in 2016 entitled *Civil Remedies for Serious Invasions of Privacy*, which was reintroduced last year. The current law does not go far enough. There is an incomplete reform task here.

There are several amendments to the Criminal Procedure Act concerning case management of criminal trial matters. The Attorney General in his second reading speech said the amendments will give effect to a number of findings from the review of case management in higher courts conducted by the Chief Judge of the District Court, the Hon. Derek Price, AM. We do not cavil with the amendments but would like to see the review upon which they are said to be based. The Attorney General was asked in reply to indicate if the report is publicly available, if so where and if not when it will be available. The last items I mention are the two amendments to the criminal procedure related to the tendency and coincidence evidence amendments put forward earlier this year. These changes are said to result from a Council of Australian Governments process, which was in turn the result of the Royal Commission into Institutional Responses to Child Sexual Abuse.

One of the changes is to create a legislative presumption in favour of joint trials where a defendant has been accused of multiple offences and the prosecution is seeking to rely on tendency or coincidence evidence that relates to more than one of the offences. This is not limited to sexual offences but applies to all criminal matters. Because it is still subject to section 21 (2) of the Criminal Procedure Act, the court still has the power to separate the trials. It creates a presumption in favour, which can be addressed otherwise if there is a need to do so. Experienced practitioners in the field have informed the Opposition that they do not know trials to be severed where there is tendency and coincidence evidence. In practical terms this provision might not make much of a difference but it is nevertheless important. I acknowledge it is an option and it creates a default position. I think it is very important guidance for practitioners and the courts.

The second amendment is item [8] in schedule 1.2, which inserts new section 166A into the Criminal Procedure Act, implementing recommendation 48 of the royal commission criminal justice report of 2017. Better late than never. That provides that a jury is not to be directed that tendency or coincidence evidence needs to be proved beyond reasonable doubt. If such evidence is also an element of the offence, then for that purpose, but that purpose only, it must be proved beyond reasonable doubt. The other exception is where there is a significant possibility that the jury will rely on the evidence concerned as being essential to its reasoning and reaching a finding of guilt. I note that there are also complex transitional provisions in the legislation. The Opposition does not oppose the bill.

**Mr DAVID SHOEBRIDGE (23:19:56):** On behalf of The Greens I indicate that we do not oppose the Stronger Communities Legislation Amendment (Miscellaneous) Bill 2020. We are troubled by the increasing tendency towards the Orwellian names in legislation, particularly what used to be a justice legislation amendment miscellaneous bill becoming a Stronger Communities Legislation Amendment (Miscellaneous) Bill. It seems as if the Attorney is channelling *Fitter Happier* by Radiohead—stronger, more productive, getting-on-well-with-your-neighbours, miscellaneous amendment bill. I will not address each and every one of the elements in the bill. I note that the matters have been canvassed in the Leader of the Opposition's contribution and by the Attorney General in the other place.

I particularly note the amendments to the Criminal Procedure Act 1986, which include a legislative presumption in favour of joint trials where a defendant has been accused of multiple offences and the prosecution is seeking to lead tendency and/or coincidence evidence. The Greens note that the initial reforms were undertaken in the context of recommendations of the royal commission into child sex abuse and commenced on 1 July this year. We supported and continue to support those reforms. At the time those changes were made, The Greens noted that there was a need to expand those types of provisions to include other offences. The most obvious are sexual offences and domestic violence-type offending, where tendency evidence can be essential, powerful and relevant and can provide weight to the likelihood of a particular type of offending having occurred. For those reasons, we support the amendments to the Criminal Procedure Act 1986.

We further commend the changes to the Criminal Procedure Act and the Crimes Act regarding the offences of recording and distributing or threatening to distribute intimate images. One of the most significant improvements in the bill is to amend the law to ensure that it covers a situation where somebody threatens to use images. Currently that is not an offence and there can be no proceedings or take-down orders until somebody has actually used the intimate images. The bill fixes that. The law has lagged significantly behind community attitudes in recognising the seriousness of those offences and the need to protect people who are victimised by others, often by somebody who is a former intimate partner and using them in an abusive and coercive fashion.

Being able to take the images that were shared or threatened to be shared out of circulation and out of the possession of the offender is an essential measure to protect victims and one that The Greens support. We must ensure that laws also cover other providers and social media platforms to ensure that take-down orders are fully implemented. Unfortunately, the bill does not resolve all those issues. It does not solve the issue for an offender to simply delete an image if it continues to freely circulate online through other sources. We also note that the Government has yet to provide a response to the 2016 report of the Law and Justice Committee into remedies for serious infractions on privacy.

The Government has failed to provide laws that ensure there are alternatives to the police and criminal justice system for those victims who are unwilling or unable to go through those quite traumatising systems. Study after study has shown that many victims, particularly of domestic violence and coercion from intimate partners, are unwilling to go to the police because of the belief—often well founded—that they are not well suited to addressing and supporting victims in those situations. The Greens believe that an alternative system within the civil courts or potentially providing the power to the Privacy Commissioner in certain circumstances, where take-down orders can be issued for the unauthorised use, sharing or threatening of sharing of intimate images without the requirement of a criminal trial, is a clear priority.

This is why The Greens continue to support more comprehensive privacy protections in civil proceedings. The final matter I note is that in the other place the member for Newtown raised concerns about the amendment to the Crimes (Sentencing Procedure) Act 1999 in this bill that clarifies that an accused person who has lodged a written plea in accordance with section 182 of the Criminal Procedure Act and does not attend court is to be considered an "absent offender" under section 25 of the Criminal Procedure Act. At the time the member for Newtown put those concerns on the record, they were concerns shared by my office.

The amendments provide that the Local Court cannot impose certain orders, including imprisonment, intensive correction orders, community correction orders or conditional release orders, on an absent offender. Since that time we have sought further clarification from the Attorney General's office and we have been persuaded by the representations from the Attorney General that, in fact, the amendments are a protective measure and will ensure that those more serious penalties cannot be imposed upon an absent offender. If the court is minded to go down that path, it will require the attendance of the defendant for those orders to be imposed. Having had that clarification, I indicate for the record that those concerns no longer persist.

**Reverend the Hon. FRED NILE (23:26:07):** On behalf of the Christian Democratic Party, I speak in support of the Stronger Communities Legislation Amendment (Miscellaneous) Bill 2020. I thank the Attorney General for the briefing that he gave to us today. The purpose of the bill is to make amendments to various Acts within the Stronger Communities cluster to address emerging issues, support procedural improvements, clarify uncertainty and correct errors in legislation. The Stronger Communities bills—formerly justice miscellaneous amendment bills—are typically introduced into Parliament each session as part of the Government's regular legislation review and monitoring campaign. The bill, when passed, will implement 28 amendments to 14 Acts and one regulation in the Stronger Communities cluster, one Act in the Premier and Cabinet cluster and one Act in the Customer Service cluster. Amendments of note include introducing a legislative presumption in favour of joint trials where a defendant in criminal proceedings has been accused of multiple offences in which the prosecution is seeking to lead tendency or coincidence evidence.

The bill clarifies that a jury should not be directed as to the standard of proof required in relation to tendency and coincidence evidence. It provides that the offences of distributing intimate images or videos of a complainant without their consent are prescribed sexual offences, meaning that the complainant will be afforded statutory protections when giving evidence, including the closure of the court, the right to appear by video link, the right to have a support person present and the right to not be cross-examined by an unrepresented accused. The Christian Democratic Party particularly supports these changes in the legislation. The bill will enable the court to order that a person found guilty of an offence of threatening to record or distribute an intimate image must remove, retract, recover, destroy or delete the intimate images. We support that revision. Finally, the legislation will clarify that if an inmate is unlawfully absent from a correctional centre because they have failed to enter the correctional centre as required, the inmate's term of imprisonment is extended by the period of the unlawful absence. I commend the bill to the House.

**The Hon. NATALIE WARD (23:29:20):** On behalf of the Hon. Sarah Mitchell: In reply: I thank members for their contribution to debate and support of the bill. I will briefly acknowledge and respond to a number of comments. The Leader of the Opposition, the Hon. Adam Searle, raised a number of issues in his usual articulate way. I thank him for those comments, in particular those on audiovisual links, which I note were well received in the community, as well as those on criminal appeals and non-consensual sharing of images. I note the comments raised about the delays in responding to report 140 of the New South Wales Law Reform Commission [LRC]. Report 140 on criminal appeals was completed by the Law Reform Commission in 2014. The report reviewed existing avenues of appeals in all criminal matters with a view to simplifying and streamlining appeal processes and consolidating criminal appeal provisions into a single Act. Report 140 will be considered and responded to in due course.

The criminal appeals report was one of a suite of LRC reports addressing criminal justice reform in New South Wales, including report 139 into sentencing, report 141 regarding encouraging appropriate early guilty pleas, report 142 regarding parole and report 138 regarding criminal responsibility and consequences. Since that time each of those reports has been comprehensively considered, responded to and implemented in part or full.

The Hon. Adam Searle and Mr David Shoebridge expressed concerns about the scope of take-down powers, also known as rectification orders, for intimate image-abuse offences under section 91S of the Crimes Act 1900, including the ability to order the removal of an image posted by a third party.

On 31 August 2018 the Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018 commenced and it introduced take-down powers for intimate images for the eSafety Commissioner. The eSafety Commissioner can issue removal notices requiring social media, electronic, internet, hosting or end user of a social media services to remove an intimate image. Failure to comply with a removal notice attracts a civil penalty of 500 penalty units or \$111,000. In the event that an offender who is prosecuted for intimate image offences in New South Wales has already been subject to a removal notice, section 91S of the Crimes Act provides the court with enough flexibility to take this into account and may only order for the image to be deleted after ascertaining that it has in fact been removed.

I acknowledge, as the Hon Adam Searle indicated, that the Government's 2017 intimate images reforms had their origins in a committee process in this place. I note that the inquiry was chaired by the Hon. Natasha Maclaren-Jones. I believe Mr David Shoebridge and the Hon. Bronnie Taylor were also members of that committee. I commend them for that work and thank them for their contribution. The Hon. Adam Searle also requested a report on the indictable process review being conducted by the Chief Judge, the Hon. Justice Derek Price, AM. This review remains ongoing and is in relation to case management and jury processes in criminal proceedings in the District and Supreme courts. I can confirm that the outcome of the first stage of the review; namely, on case management, is publicly available in District Court Practice Note 18. It might be some time since the member has looked at the practice notes—as it has been for me.

The reforms in schedule 1.8 [4] to [7] to the bill will support the actions taken by the Chief Judge and formalise in legislation aspects of the practice note in ensuring more effective pre-trial case management in the District Court. I will briefly clarify one aspect of the joint-trial reforms following the comments from the Hon. Adam Searle. It is correct to say that, currently, when the prosecution is permitted to rely on different counts on an indictment as cross-admissible tendency evidence, it would be very rare for the counts not to be tried together on the same indictment. However, where the prosecution is not permitted to rely on the counts as tendency or coincidence evidence, the counts on the indictment would ordinarily be severed and would proceed as separate trials. This amendment applies to both of these situations, so that there will be a presumption in favour of a joint trial whether or not the prosecution is ultimately permitted to rely on the evidence as tendency or coincidence evidence. This reflects the royal commission's sentiment that joint trials should be common, as well as promoting a more efficient use of time for the courts, the prosecution and defendants.

I acknowledge the comments of Mr David Shoebridge in relation to the Criminal Procedure Act, the presumption in favour of joint trials, the recording and distribution of intimate images and absent offenders. I thank him for his support of the bill. I also acknowledge the contribution of Reverend the Hon. Fred Nile and his, as always, articulate summary of the amendments proposed in the bill. I place on record my thanks to the Attorney General, the Hon. Mark Speakman, and his team, in particular the eminently capable Mary Klein and the Department of Communities and Justice officers Laura Schultz and Jasmine Flattery-Shirley. The bill is an important part of the Government's regular legislative review and monitoring program. Many of the amendments in the bill are important steps towards strengthening our justice system further. They address gaps in the law; support procedural improvements, particularly in relation to court processes; clarify uncertainty; and correct errors in the legislation. I commend the bill to the House.

**Motion agreed to.**

### **Third Reading**

**The Hon. NATALIE WARD:** On behalf of the Hon. Sarah Mitchell: I move:

That this bill be now read a third time.

**Motion agreed to.**

### *Adjournment Debate*

### **ADJOURNMENT**

**The Hon. SARAH MITCHELL:** I move:

That this House do now adjourn.

### **VENUES NSW**

**The Hon. NATALIE WARD (23:36:00):** On 15 October 2020 I was privileged to have carriage under the tutelage of the Minister of the Sporting Venues Authority Amendment (Venues NSW) Bill 2020. For various

reasons, I was denied the opportunity to complete my speech in reply and I wish to make certain and place on record a number of matters. I note the bill has now passed both Houses. I sought and obtained advice, which will guide the balance of my speech. I shall not comment on amendments and appreciate the work of both Houses on the matter. I place on record my thanks to Minister the Hon. Geoff Lee for his stewardship of the important bill, which is now an Act, and congratulate him on his first legislation in the Parliament. I acknowledge and thank Nicolle Nasr for her impeccably capable and always appropriate advice. I also acknowledge and thank Feargus O'Conner from the Office of Sport. I very much appreciate the opportunity to have had involvement and carriage of the bill. I was glad to note that the Opposition, represented by the Hon. John Graham, agreed with the fundamental aim of the bill, which is now an Act, that New South Wales needs to consolidate the management of our largest sports and entertainment venues.

That opens the door to a single bid for large national and international content. It means that we can manage our network in a coordinated way to promote the best experience for our fans and spectators. A key issue has been how to balance precinct development with safeguards. All sides support Venues NSW being able, under certain circumstances, to develop precincts, including via hotel and residential development. That is not contrary to the core role of delivering sports and entertainment. It assists by creating vibrant precincts and a mini economy around our largest venue and it will create jobs. On 23 June 2020 the Acting Minister for Sport announced the New South Wales Government would merge the Sydney Cricket and Sports Ground Trust [SCSGT] and Venues NSW into a new agency to create a single organisation to manage major sporting and event entertainment venues in New South Wales.

The new entity will be best placed to attract first-class sports events, concerts and entertainment to the State. The Government has made a significant investment in world-class facilities and venues and the new entity will ensure that we get maximum returns with a strong, coordinated and streamlined approach to attracting events. The new entity will work to make New South Wales the number one destination in Australia for securing sports and live entertainment content, which will put New South Wales in the best position to attract and win major events, which will provide economic benefits across the State. The new entity will focus on affordability and access to sports venues in New South Wales to ensure that New South Wales communities make the most of their Government's substantial investment into those venues.

An interim advisory board is overseeing the development of the operating model for the new entity and will include longstanding members of the SCSGT and Venues NSW board. In particular, for SCSGT members the new entity will deliver the SCSGT obligation to reinstate new stadium club member facilities, with their opening expected to coincide with the completion of the new football stadium. Members' benefits and entitlements will continue to be protected. ANZ members will continue to enjoy their current rights and entitlements to events at ANZ Stadium. For sporting partners, the merged entity values the long-term partnership with all sporting partners and the new entity will have no impact on the long-term contractual arrangements in place.

I am pleased to say, and I support, that the merged entity values the partnerships with all commercial partners and the new entity will have no impact on the contractual arrangements in place. The creation of the new entity provides the opportunity to scale commercial opportunities to improve the overall customer experience and competitiveness of the New South Wales venues offering while also reaching audiences right across New South Wales metropolitan and regional areas. I thank the Government for its work and Minister Lee in particular. I again appreciate the input of his office and the Office of Sport and appreciate the opportunity to have been involved in this important bill.

#### ANTI-SEMITISM

**The Hon. WALT SECORD (23:39:48):** As the Deputy Chair of the NSW Parliamentary Friends of Israel, I urge the Berejiklian Government to honour its promise to ban the offensive display of swastikas and Nazi flags in New South Wales. In mid-April I called on the Government to undertake a formal investigation into ways to ban the offensive public display of Nazi flags. This occurred after Nazi flags were flown in a Newtown backyard and from a light tower in Wagga Wagga. Shortly afterwards the Attorney General, the Hon. Mark Speakman, confirmed that the Government would conduct an investigation. I welcomed this as part of a bipartisan approach. Unfortunately, we have heard little about the status of the investigation or deliberations. Therefore, in late August I lodged a freedom of information request to find out how many incidents had occurred in New South Wales and what steps the Government had taken to ban the offensive public display of Nazi flags and swastikas in New South Wales.

Last week, after protracted discussions with the information and privacy division of the Department of Communities and Justice, I received a bundle of documents. In total 25 pages were secured under the Government Information (Public Access) Act 2009 from the Department of Communities and Justice, the Attorney General and the NSW Police Force's Engagement and Hate Crime Unit. Five of the pages were heavily redacted, so we do not know the progress of the Government's deliberations. However, the documents that were not redacted still



present disturbing reading. They show that between June 2018 and April 2020 at least 31 separate incidents were reported to the NSW Police Force where swastikas and Nazi flags were displayed in public places, aimed at intimidating and vilifying Jews in the State. The documents also reveal that the New South Wales Attorney General's department believes that "there is some evidence that suggests an increase in anti-Semitic conduct" in New South Wales in recent years.

Further, the Attorney General revealed a total of 112 incidents of anti-Semitism in New South Wales since the introduction on 13 August 2018 by the Berejiklian Government of section 93Z of the Crimes Act 1900. Section 93Z relates to criminal vilification, where it is an offence to publicly threaten or incite violence toward a person or a group on the basis of race, religion, sexual orientation, gender identity, intersex or HIV/AIDS status. The maximum penalty is three years in prison. The documents also show that there was not a single charge laid under section 93Z in relation to the 112 events. The documents reveal that there have been many more events in New South Wales than we were led to believe and it is much worse than we thought. From June 2018 to December 2018 there were five cases, in 2019 there were 23 cases and in the first four months of 2020 there were three cases.

The Nazi flag is deeply offensive to Australian and Allied veterans who fought against fascism. It is an affront to the survivors of the Holocaust and their descendants. The Nazi flag is an emblem of genocide and racism. The decision to fly a Nazi flag is a simple expression of hatred. While there are protections in some European countries—including Germany, Austria and France—where it is unlawful to publicly fly the Nazi flag, it is not unlawful in New South Wales or any Australian jurisdiction. I do recognise that these laws need to be workable and that there has to be some scope for exemptions for films and plays. I also note that the swastika is a Hindu symbol that was misappropriated by the Nazis and there has to be recognition of that. That said, I cannot see any other reason to display a Nazi flag outside a home or in a community space in New South Wales other than to offend. Put simply, that flag represents a regime that murdered six million Jews.

In conclusion I wish to acknowledge the NSW Association of Jewish Service & Ex-Service Men & Women, or NAJEX. In late May it wrote to the Berejiklian Government urging action on this matter. I also acknowledge the Melbourne-based chairman of the Anti Defamation Commission, Dr Dvir Abramovich, who has been campaigning at the national level. Finally, I wish to thank the NSW Jewish Board of Deputies president, Mr Lesli Berger, for his supportive comments earlier this evening at the NSW Jewish Board of Deputies' monthly plenum on the plan. I thank the House for its consideration and sincerely hope that the Attorney General makes good on his promise to ban the offensive public display of Nazi flags in New South Wales.

### CAT AND DOG CONSUMPTION

**The Hon. EMMA HURST (23:43:49):** Here is a nauseating fact: Eating cats and dogs is legal in Australia. Our friends at World Dog Alliance in Hong Kong have reached out to us to help close this loophole and join the majority of other countries around the world that have prohibited eating cats and dogs. The last thing that we need is another species of animal on the plate. Cats and dogs are beloved family members in countless homes across New South Wales, so you would be forgiven for thinking that it is illegal to eat them. It is not. Only in South Australia is it illegal to consume cats and dogs.

In New South Wales only the sale of cat and dog meat is illegal, meaning that killing these animals at home and eating their flesh is not. This creates a loophole where people can eat these animals provided they are not taking payment. Our animal protection laws only protect cats and dogs from being killed in an explicitly cruel manner prior to being eaten. It is only when the slaughter causes the animal unnecessary pain or leads to the animal having a prolonged death that it can constitute an offence under the general cruelty provisions of the Prevention of Cruelty to Animals Act 1979 or the Crimes Act 1900. In other words, even if the RSPCA is made aware of cats and dogs being eaten there is little it can do unless it can prove cruelty. There are no laws to stop it. These loopholes occur across the country and lead to sickening incidents.

In 2015 a skinned Cavalier King Charles spaniel was found at Raby in Sydney. A vet confirmed the dog had evidence on her head of a captive bolt pistol—a device used for stunning animals prior to slaughter, usually in an abattoir—leading to speculation that this incident was linked to an underground market for dog meat. Just last year in Tasmania the Museum of Old and New Art [MONA] in Tasmania served up a dish of dead cat as part of an art exhibit. The fact that this is still allowed to occur is in stark contrast to community expectations. Each year we see widespread condemnation of the controversial Yulin dog meat festival or action taken against the continuing sale of dog meat in holiday hotspots. People are horrified to find out that every year millions of cats and dogs are bred, stolen and slaughtered around the world for their flesh.

It has now been a year since I introduced a petition of more than 500 signatures requesting that the Government introduce legislation to completely ban the consumption of cats and dogs in New South Wales. It has been a year, and yet the Government has taken no action. We cannot wait any longer. It is time to close the

loopholes allowing this brutal underground activity to be carried out. While it remains, all cats and dogs in New South Wales will remain at risk. But consider this, too: Finger-pointing at other cultures is easy; what is harder is recognising that no animal wants to suffer and die for our palate. Fish, chicken, pig or dog: They have the same ability to feel pain, the same ability to suffer and the same capacity to experience joy. Let us be outraged by the legal loophole that allows companion animals to be eaten in Australia. Let us push to close that loophole. But let us also extend this compassion to all animals and leave every species off the plate.

### TRIBUTE TO EDWARD ALLEN AND JAYLAN STEWART

**The Hon. BEN FRANKLIN (23:47:15):** Tonight I speak about two tragic events that have absolutely rocked the Lismore community to its core. In the past month two 17-year-old boys who played for both Lismore Rugby Union Club and Marist Brothers Rugby League Club were killed in separate single-vehicle car accidents. The deaths of Edward "Eddie" Allen and Jaylan Stewart have left a devastating hole in the heart of their community—a hole that for many will never be able to be filled. Eddie died on 14 September after the car he was driving hit a tree. Jaylan attended Eddie's funeral on 25 September. A week later, on 3 October, Jaylan was killed in exactly the same way. Jaylan's funeral was last Friday. They leave behind a trail of devastated family and friends who will forever feel their loss.

At Eddie's funeral, held at the Lismore Rugby Union Club, his friends and teammates were his pallbearers. Boys who are only 17 themselves carried their mate off the field one last time. Only three weeks later those same friends were back once more to say goodbye to Jaylan. Today, on the first day of the HSC, those shocked and shattered children walked into their final year of school without their mates. They are at the tail end of their school journey and now carry the huge weight on their shoulders that not one but two of their friends are not there with them. The Northern Rivers rugby league grand finals were held in Ballina over the weekend. Eddie and Jaylan should have been there to play with their team—but they were not. Their deaths were pointless, and a searing reminder of the critical importance of making our roads as safe as possible. At Jaylan's funeral his father spoke of the importance of road safety and the hope that sharing the stories of Eddie and Jaylan might save others on the road. Mr Stewart said:

If this story helps save one life, be it from speeding, mobile phone use or not wearing a seatbelt, as hard as it is, I'm willing to share it.

We've lost two beautiful, happy and healthy boys and I want people to understand and know that by reading this and changing their ways, then we haven't lost two boys for nothing. I add my voice to that campaign today. We must continue to work hard to teach people, particularly young people, the importance of driving safely every time they get behind the wheel so that no family has to know the pain that the Allans and the Stewarts must now endure. To help achieve that, the New South Wales Government has partnered with the New South Wales Rugby League to increase road safety and awareness on country roads through the Knock-On Effect. The program is aimed at teaching people about the ongoing consequences of unsafe behaviour on the road and what it can really mean for those who are left behind.

Rugby league legends Greg Alexander and Brad Fittler are at the core of the campaign. They shared their respective stories of losing brother and teammate Ben Alexander in a car crash in 1992. After the deaths of both Eddie and Jaylan, Greg Alexander and Brad Fittler held a video call with the boys' teammates before their semifinal two weeks ago. They spoke with the team about their own experiences, how they carried on playing after Ben's death and how you can keep a teammate's memory alive. Greg Alexander told the boys that their semifinal would be "a day to remind yourselves that as mates, you need to rely on each other." I know that they will rely on each other for many years to come.

Death is so final. It feels so wrong and so pointless that that is the fate of Eddie and Jaylan. The Stewarts and the Allans join many other Australians who have been rocked to their cores by a feeling of absolute disbelief and despair, of heartache and pain, of an emptiness that never truly goes away. But this is grief, and this is what it is to grieve for someone who was truly loved. I know that those two boys were deeply loved by many people. Stories from their friends and their families have flooded the community. Jaylan and Eddie are described as loveable larrikins—as fun, cheeky and as having lives full of friends and family. They were true to themselves, caring towards others and they were forces to be reckoned with on the footy field. That is how they will forever be remembered. Vale, Eddie Allen and Jaylan Stewart. In such a short time they touched the lives of many. They will be forever missed, but they will never be forgotten.

### RON HEMMINGS UNIT

**The Hon. TARA MORIARTY (23:52:02):** In a month when we are telling people to think about their mental health, the logical response from the Government should be to support those who make the tough decision to reach out for care. The opposite has occurred by the Government in southern New South Wales over the past week. Unfortunately, the Southern NSW Local Health District advised through a statement last week that it has decided to close a mental health unit in Goulburn. The health district announced the decision to close the Ron Hemmings Unit at Kenmore Hospital as part of, and pending, a review of the services that are provided by

the unit as part of a broader review of services in southern New South Wales. The patients who were using the unit were advised that they would be transferred to a different type of facility at the Chisholm Ross Centre in Goulburn.

Over the past week I have heard from a number of concerned community members and from family members of people who use, and very much like, the support and services that are provided by the Ron Hemmings Unit. The people who I have spoken to are very upset and concerned about the decision to close and review this service without proper explanation to, consultation with or consideration of the people who rely on it. Families have contacted me to raise their concerns about the proposed movement of their loved ones to another facility. I understand that the Chisholm Ross Centre is a fine facility, but it offers a different kind of health support to the people who use it. There has been no proper acknowledgement of the distinction between the services that are provided at the two facilities and, more importantly, no information has been provided to the community about where people can access local services in the absence of this unit.

It is important to note that the Ron Hemmings Unit provides non-acute care and supports the long-term rehabilitation of people with mental illness, whereas the Chisholm Ross Centre provides short-term treatment for patients who are experiencing severe episodes of mental illness and who are at risk of harm to themselves or to others. Those two facilities cater to different needs in the community. The services they provide are quite distinct and the people who use them have different types of issues. Like many people in the community, I was appalled by the decision to close that vital mental health unit, especially because it is one of a very few in the southern New South Wales area and one of far too few in regional New South Wales. It demonstrates a real lack of care for or understanding of the mental health needs of people across southern New South Wales. The Southern New South Wales Local Health District services over 200,000 people spanning from Delegate to Crookwell and Eden to Yass. It has been reported in official health data that there were 234 acute mental health episodes in the April to June quarter in Goulburn. This represents an increase of 193 in the same period the year before. These numbers demonstrate that this is not the time to be cutting services.

I have been pleased to be working with and supporting concerned families and community members in calling on the Government to keep this unit open and ensure no loss of mental health services in regional New South Wales. I am pleased to be advised that as of late today there has been a change and the local health district is reviewing the decision. The Government has responded to community pressure and is backing down on the closure, at least for now, but it should never, ever have been an issue. The stress that this has caused people who are already in difficult situations in this community is completely unacceptable. I support the community's call for the service to be maintained. I call on the Government to commit to not cutting mental health services in New South Wales, especially not in regional New South Wales.

While so many people in our community are doing it tough, this is not the time to be limiting mental health resources. But this is not a one-off case. The Government has taken the same approach when it comes to our schoolkids. At the last election the Government promised that every public school in New South Wales would have a full-time counsellor or psychologist. We are well and truly past that time and less than a quarter of this commitment has been fulfilled. Still 84 per cent of students are waiting for a full-time counsellor. In a year when our students are feeling isolated and disrupted in their studies—more disrupted than ever before—the Government has not flinched. The additional counsellors should have been put in place in as many New South Wales schools as is possible over the course of the pandemic. Failure to fast-track the appointment of those counsellors will mean that three-quarters of kids will be forced to wait until after 2022 before they receive the mental health experts that have been promised.

In a report by the University of Sydney's Brain and Mind Centre it is predicted that if we do not act to support our kids' mental health, we could see a 27 per cent increase in the number of young people presenting to our hospitals because of self-harm. This again demonstrates that we cannot neglect people's mental health. The statistics are preventable but it requires the Government to act now. Labor has been calling for it, students, parents and teachers have been calling for it, *The Daily Telegraph* has been calling for it but the Government has not budged. Get on with it!

#### MICHAEL PHOTIOS

**The Hon. MARK LATHAM (23:57:01):** Last Thursday in this place I introduced the concept of sprinkling Photios dust as an explanation for how the Premier, Gladys Berejiklian, could run a \$252 million grants program with no guidelines and no application forms. On the Government benches I have not seen people sit up so straight since year 7 at Hurlstone when we were threatened with the cane. Clearly, parts of the Government have been sprinkled with Photios dust. In a Parliament building where Daryl Maguire has demonstrated that anything goes, we need to look at the institutional structure that has allowed this system to flourish inside the New South Wales Liberal Party. Michael Photios is the key. This former Minister in the Fahey Government has shaped the business model whereby the Government subsidises renewable energy companies in a distorted market,

and through lobbying, access fees and other mechanisms, the money comes back to enrich Photios, his associates and the moderate faction itself.

This business model also benefits from the wilful blindness of the left-of-centre parties in this place. In their love of renewables, they have turned a blind eye to the crony capitalism that sustains the likes of Photios. Since Adam Smith was a boy, corporate rent seekers have relied on distorted markets to extract their economic rents. In this Government, the energy Minister has declared his technological preferences, thereby accommodating such a system. He wants to rub out coal-fired power and permanently ban nuclear—limiting the competition to renewables. He is even against gas, and the Prime Minister has had to rail against such a policy. The Government hand-picks renewables as the only energy source for the future and their factional boss lives off the money through his lobbying firm, PremierState, and its long list of renewable energy corporate clients.

Photios' power is such that he even played a role in the feud between the Nats and the Liberals in early September. He was trying to broker a truce to save the Government and, most surely, save his meal ticket. Minister Kean tried to address these issues recently in a piece by Yoni Bashan in *The Australian*. "I'm very conscious of the perception that Photios is some Svengali pulling the strings," Mr Kean claimed, "It's ridiculous, laughable ... I don't meet with lobbyists. We will not meet with lobbyists. You can be a powerbroker or a lobbyist—but you can't be both". That was the Minister's defence but then, as the journalist pointed out, Minister Kean's director of policy, Ava Hancock, is the sister of Mr Photios' business partner, the co-director of PremierState, Ian Hancock. The NSW Office Holder's Staff Code of Conduct states:

Office Holder staff must meet the following standards in the course of discharging the duties of their employment:

...

5. Take reasonable steps to avoid, and in all cases disclose, any actual or potential conflicts of interests (real or apparent), noting that staff are required to provide their Office Holder with a statement of private interests and update accordingly.

...

8. Not make improper use of their position or access to information to gain or seek to gain a benefit or advantage for themselves or any other person.

Minister Kean needs to answer whether Ava Hancock has made those declarations. Otherwise, Photios and Ian Hancock do not need to lobby his office because Hancock's sister is in there doing the work for them. Every tender, every government grant and every policy decision will be renewables only. It is one great shower of Photios dust. Both Ian Hancock and Michael Photios are directors of Clean Energy Strategies, a corporate advisory whose clients intersect with the portfolio of the energy Minister. Ian Hancock is also a co-board chair of the BluePrint Institute, a think tank devoted to so-called green energy. Photios sits on the institute's strategic council. How has this clear conflict of interest between the roles of Ian and Ava Hancock been allowed to flourish? There is clearly a conflict and the potential for impropriety. It flourishes because proper standards have not been maintained. As we have seen with Daryl Maguire, the Government has no problem with a system based on insider deals.

The Government quite likes the idea of crony capitalism and deal-making as the Liberal Party way. I speak out against these things because they are wrong. But where are the others? Last week Mr Justin Field complained that I was trying to damage the liberal left-wing machine. But the bigger question is, why isn't he? In turning a blind eye to the obvious conflicts of interest and the role of Michael Photios, the Coalition has been encouraged to go harder and further in its preferment of selected companies. Only the spivs and crooks win out of crony capitalism, never the public interest or the powerless. That is why I always have, and always will, fight it. And I believe that others should do the same.

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

**Motion agreed to.**

**The House adjourned at 00:02 until Wednesday 21 October 2020 at 10:00.**