



**New South Wales**

# **Legislative Council**

## **PARLIAMENTARY DEBATES (HANSARD)**

**Fifty-Seventh Parliament  
First Session**

**Tuesday, 14 September 2021**

Authorised by the Parliament of New South Wales



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## LEGISLATIVE COUNCIL

**Tuesday, 14 September 2021**

**The PRESIDENT (The Hon. Matthew Ryan Mason-Cox)** 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*

#### **LEGISLATIVE COUNCIL COVID-SAFE PLAN**

**The PRESIDENT (14:33):** I advise members of the arrangements in place for COVID-safe sittings of the House this week. Members would be aware of the COVID-safe plan to support the sittings of the Legislative Council in September. I now table the most recent version of the plan, circulated on 9 September 2021.

#### **Document tabled.**

**The PRESIDENT:** The plan proposes familiar COVID-safe practices, such as social distancing, QR code check-ins and regular hand sanitising. However, the plan also suggests additional provisions to minimise risks to members and staff during the current sittings. This includes compulsory mask wearing, rapid antigen testing, a strong preference for staff and members to be fully vaccinated, and reduced sitting hours, including a break in proceedings approximately every two hours to allow the Chamber to be cleaned.

A key element of the plan is for a minimum number of members to be physically present in the Chamber, with other members participating remotely. A draft temporary order authorising remote participation was circulated last week. Until this order is agreed to by the House, the members who have joined the Webex call this afternoon, as can be seen on the screens behind us, may listen to and observe the proceedings but may not participate at this time. With that in mind, I request all members who have joined the Webex call to remain on mute at this stage. I also remind members to select the Chamber view "move to stage" in your Webex settings.

I take this opportunity to acknowledge the extraordinary efforts of officers in the Department of Parliamentary Services and the Department of the Legislative Council, particularly the leadership of the chief executive, Mr Mark Webb and our Clerk, Mr David Blunt, to develop the infrastructure and procedures to allow for these remote sittings.

### *Business of the House*

#### **MINISTER TO BE PRESENT IN THE HOUSE**

**The Hon. Trevor Khan:** Point of order: I draw to the attention of the House the state of the House and, more particularly, the absence of a Minister or Parliamentary Secretary in the House. In that respect, I bring to the House's attention Standing Order 34, which provides that the House will not meet unless a Minister is present in the House. This standing order has been part of the rules since the new rules came into place in 2004. This issue is dealt with in the annotated version of the standing orders in the name of Want and Moore at page 100, which states:

Where a minister (or a parliamentary secretary acting on their behalf) is not present when the House meets, or where a member calls attention to the absence of a minister during the sitting, the President must leave the chair until a later hour.

I note that this is not an academic matter. It is a matter that has arisen on three occasions since the standing orders came into force. Indeed, before the standing orders came into force there had been numerous instances of the convention of the House immediately rising in the absence of a Minister. My recollection is that in the eighties there were three occasions on which President Johnson left the chair when a Minister was absent. In 2001 I believe it was Deputy President Kelly who left the chair when a Minister was absent.

After the introduction of the new rules in 2004 there have been three instances. There was an unusual instance in 2004 when Deputy President Fazio was in the chair. Her attention was called to the absence of a Minister by the Hon. Patricia Forsythe. She took the unusual, and indeed inappropriate, step of causing the bells to be rung. Nevertheless, she recognised that the standing orders required the presence of a Minister. In 2005 President Burgmann left the chair. That is recorded in *Hansard* on 21 June 2005. The latest occasion was on 24 June 2009 when President Primrose left the chair immediately the Minister was absent. I note that when President Burgmann left the chair in 2005 and President Primrose left the chair in 2009 *Hansard* does not record

a member drawing attention to the absence of a Minister. In both cases the President acted, in my view quite properly, by immediately leaving the chair upon that circumstance arising.

A number of members who are in the Chamber today were members in 2009, including the President, the Leader of the Opposition, Reverend the Hon. Fred Nile and me. Of course, other members who are not formally participating today are also in that category. The position is clear: Standing Order 34 requires that the President leave the chair now and that the House adjourn to the ringing of a long bell. There is no equivocation. With respect, there is no issue for debate. This sitting of the House should end immediately.

**The PRESIDENT:** The Hon. Trevor Khan has taken a point of order drawing attention to the absence of a Minister or Parliamentary Secretary from the House today and has made extensive submissions relating to his point of order. Standing Order 34 stipulates:

The House will not meet unless a Minister is present in the House.

Standing Order 34, which was included in the standing orders in 2004, according to the *Annotated Standing Orders of the New South Wales Legislative Council*, is:

... the formal expression of a longstanding convention that a member of the Executive is present both to ensure the smooth progress of the Government's agenda, and also to answer questions and provide clarification on matters in a House of review.

There is one precedent for its use in this manner, by the then Government in 2009, to effectively terminate a sitting of the Legislative Council. On that occasion the House was taken completely by surprise and the President immediately left the chair upon Ministers and Parliamentary Secretaries having left the Chamber. On this occasion, in contrast, the Government's intention to not have a Minister or Parliamentary Secretary present to prevent the House from sitting has been communicated in advance in correspondence from the Leader of the House.

This is an extremely grave matter. I am aware that a number of members wish to address me on this point of order. If, as may ultimately be required, I am left with no choice but to vacate the chair and bring the sitting to a close, the least I can do is to first hear members' contributions to the point of order. I will therefore allow debate on the point of order. I remind members that debate is required to be relevant to the point of order. I draw members' attention to Standing Order 95 (6), which allows debate on points of order at the discretion of the Chair or the President. I also draw members' attention to the ruling of former President Ajaka on 20 September 2017, found in the Selected Rulings of the President, which states:

The President is under no obligation to rule on matters immediately. It is appropriate that careful consideration be given to certain matters, particularly when a matter arises for the first time in the term of a President.

I add that this is a grave matter which strikes at the heart of a House of review sitting. With those words, I am willing to entertain debate.

**The Hon. Penny Sharpe:** To the point of order: Democracy is an essential service for the people of New South Wales. As we stand here today, our State continues to face one of the most significant health crises we have faced in recent history. This crisis is a result of the COVID-19 virus, which has turned into a worldwide pandemic. In New South Wales 242 people have lost their lives. Since January last year 45,593 people have contracted COVID-19. In the last 24 hours 1,127 people found out that they are COVID-19 positive. Some 1,253 people are fighting for their lives in our overworked hospitals.

As we pass the 12-week mark of lockdown, cases are set to peak and there is immense pressure on hospitals. Now more than ever the community needs answers from the Government about the way ahead. What the people of New South Wales need right now is hope, transparency and accountability from their Government. It is shameful that the Berejiklian Government would come into this Chamber and misuse the rules of the House to stop the majority of elected members from lawfully sitting. With eight million people in lockdown, over two million people living under curfews, businesses falling over, an emerging mental health crisis—

**The Hon. Trevor Khan:** Point of order—

**The Hon. Penny Sharpe:** Are you really going to do that?

**The Hon. Trevor Khan:** I understand the introductory remarks that the Leader of the Opposition is making, but this is an argument over the standing orders. It is not a generalised debate. I ask that she be brought back to the issue, which is whether Standing Order 34 applies.

**The PRESIDENT:** The member was making introductory comments. She was about to come to the substance of the debate, which is indeed Standing Order 34 and its application in these circumstances as to whether the House should continue to sit or should adjourn immediately. In that regard, reasons relating to why the member believes the House should remain sitting are relevant.

**The Hon. Penny Sharpe:** As I was saying, there is an emerging mental health crisis and parents are desperate to get their kids back to school. The time for scrutiny and accountability has never been more important. Every day people are calling up their local members of Parliament for help. Our local members are working as food packers, translators, vaccine centre coordinators, community information hubs and are assisting thousands of people every day. This is important work, but it is not their primary job. Our elected representatives are the voice for our communities. We are entrusted to ask questions, seek answers and get help on behalf of the people we represent. It is our job, on behalf of the people of New South Wales, to hold the government of the day to account and to provide scrutiny of its decisions. If we are prevented from doing this, we are no longer living in a democracy. The fragile social contract that exists between those that govern and those that are governed must not be taken for granted.

A positive COVID-19 test has serious consequences not just to a person's health but to the lives of their family and their household. It has serious consequences for their business and their ability to work to put food on the table and a roof over their head. Since the beginning of this pandemic, the people of New South Wales have been asked to do so many things that prior to last year we had never contemplated. Social distancing, mandatory masks, border closures, lockdowns, curfews and the race for a vaccination are part of our daily lives. We have had to close all but the most essential of services and businesses and have had to work from home where we can. Our children have stopped attending school, stopped playing sport and stopped being able to see their friends. We have missed birthdays, weddings and funerals. We have not been able to be with loved ones when they are sick or when they are lonely.

For those doing it tough, in insecure work, in tenuous housing or in overcrowded houses, relying on support workers, lacking good wi-fi or the ability to connect to and navigate the internet, life has been even tougher. Under these circumstances we have learned what really is essential. It is our health workers, truckies, retail staff, logistics and distribution workers, cleaners, garbos, teachers, early childhood educators, police, firies, ambos, community workers, bus and train drivers, and scientists. Heroes wear many capes. I take this opportunity to thank them for everything they have done and are continuing to do. Our community has been prepared to do what is necessary to keep our families and our community safe. Adherence to the extremely tough public health orders that our community is living with requires that the Government that has imposed these orders is accountable for them through the Parliament.

This House has not sat for 82 days. The Government has arrogantly come into the Chamber today and said that it will not allow us to sit for at least another 28 days. No other Parliament in Australia has taken this drastic action. Every other Parliament, no matter which political party is in control, has respected the basic democratic rights of its people and has found a way to keep functioning. In New South Wales we have a Government that has cancelled Parliament and has now cancelled the daily 45-minute media conference to provide information and advice to the public. The Premier and her cabal of Ministers in the Crisis Cabinet seem to think that scrutiny of their decisions is optional. We are gathered here in the Chamber today to say to the Premier and her Ministers that scrutiny cannot and must never be optional.

The only conclusion that can be drawn from the actions of the Government today is that it will do anything and everything to avoid the Parliament sitting and holding it to account. There is no health advice that says we should not sit. I stand here in the knowledge that I am in a workplace with one of the most stringent COVID safety plans in New South Wales. I have had a rapid antigen test. I am double vaccinated. I have been sitting alone in my office without staff and coordinating the Opposition remotely. Through technology and an enormous amount of work by the staff of the Parliament, we have 33 members of the Legislative Council ready and able to get back to work. The actions today by the Berejiklian Government are an insult to the Parliament, but more importantly their actions are an insult to the people of New South Wales. The Government should front up right now and let us get on with the job our community elected us to do.

**The Hon. Mark Latham:** To the point of order: I bring to the attention of the House Standing Order 4. It reads:

**4. Rights of House not restricted**

Nothing in these standing orders affects the rights, privileges and powers of the House.

Properly understood, this standing order overrides and negates the intent of Standing Order 34 as imposed by a representative of the Executive to try to abort the democratic sitting of this House, to wipe our privileges, to wipe our rights and to wipe our powers to represent the people of New South Wales. The Hon. Trevor Khan, who raised this matter on behalf of the Executive, quoted from Want and Moore. I will also quote them with regard to the operation of Standing Order 4. It is written in the commentary on our standing orders:

Standing Order 4 reflects the principle that the standing orders regulate the manner in which the House performs its functions and the practical operation of the rights, powers and immunities inherently held by the House including the orderly conduct of business.

So there is no doubt that the standing orders reflect the manner in which we perform our duties, but under Standing Order 4 those duties, powers and privileges cannot be withdrawn. Standing Order 4 clearly states that it overrides any attempt elsewhere in the standing orders to take away the privileges of this House. As you indicated earlier, Mr President, there is nothing more important to a parliament and nothing more important to parliamentary democracy than the notion of privilege. Privilege gives us the right to be here to represent the people of New South Wales. Privilege gives us the right to exist in a democracy. It gives us our freedom of speech, our right to have committee meetings and our right to call witnesses at committee meetings. Privilege is all important and an essential foundation stone upon which this Parliament operates. Clearly, the provisions of Standing Order 4 protect privilege against all other provisions in the standing orders, particularly one like Standing Order 34 which I submit is being misused in this circumstance.

As the Leader of the Opposition pointed out, there is no health advice saying we cannot sit. There is no evidence that Ministers are being drawn away on urgent business of the State and cannot be present. In fact, we know the health circumstances are okay because the Government has sent the Hon. Trevor Khan into the Chamber to raise this point of order. A Government adviser is sitting in the gallery. The health advice does not say we cannot sit. There is no evidence that Ministers are being drawn away urgently. The pre-emptive letter from the Hon. Damien Tudehope mentioned earlier is evidence of a deliberate strategy of the Government for one purpose and for one purpose alone: to avoid accountability, to avoid transparency and to avoid debate about the grave matters of State raised by the Leader of the Opposition concerning the economic, social and community health of New South Wales. Hundreds of thousands of people are screaming out for parliamentary debate, for representation and for democracy. Further, Want and Moore point out that the terms of Standing Order 4, first adopted in 2004, are similar to Senate Standing Order 208, which states:

Except so far as is expressly provided, these standing orders do not restrict the mode in which the Senate may exercise and uphold its powers, privileges and immunities.

So, again, nothing else in the standing orders, including Standing Order 34, can limit or restrict the powers, privileges and immunities of this Chamber to exist. Want and Moore make other telling points and conclude:

It is likely that SO 4 was adopted as a safeguard against a hostile majority amending or adopting a standing order that could take away the rights of the minority or inhibit the accountability of government.

Note that word "safeguard". Standing Order 4 is deliberately in the standing orders of this place to protect our privileges, our powers, our immunities, and to ensure that the Executive side of government, under the separation of powers, cannot inhibit the accountability of that government. On any correct reading of these standing orders, there is no doubt that Standing Order 4 is our safeguard against the tyranny of a government that does not want to face accountability, a government that pre-emptively and arrogantly sends the President a letter to say, "We're just not turning up. We've got no valid reason but we're not turning up because we don't want to face debate and we don't want to face transparency. We don't want to be part of a representative process for the people of New South Wales."

Standing Order 4 clearly overrides, overrules and negates Standing Order 34, which is being misused. If we look at the history of this Chamber, we will see that Standing Order 34 was designed as a help to this Chamber, not a hindrance. It was designed to help the Chamber by having a representative of the government who could be held to account. Back in the days before representative democracy, when members were appointed, it was quite common for just one representative of the government to be available in the Legislative Council. Invariably it was the vice president of the Executive Council. I am sure that in those more relaxed and comfortable days, if I can put it that way, every now and then that one Minister would have thought, "There's not much happening here. I might go have a drink with the boys or dinner in the dining room" and they would wander off. The House was disrespected.

The standing order was only ever put in place as a courtesy, as a mark of respect to this Chamber, to make sure there was a Minister present. It was not for the purpose of aborting the sittings. It was not for the purpose of cancelling democracy. It was not for the purpose of a Leader of the House shamefully sending the President a letter days in advance to say, "We're not participating." It was never designed for that and clearly it is overruled by Standing Order 4, our great protector of privilege and the rights of this Chamber to exist and debate. Mr President, I note your letter to Minister Tudehope of 5 September 2021. I will quote it at length. They are very telling comments, which I support and I believe should further guide your judgement and ruling today. The letter states:

It appears your advice overlooks the fact that the normal operations of Parliament are an exempt gathering under schedule 2 of the public health order concerning public gatherings, and members of Parliament and parliamentary staff are authorised workers under the terms of the public health order. This means that the current public health orders contemplate Parliament sitting during the pandemic and enable members and parliamentary staff to travel to Parliament for this purpose.

The letter concludes:

Finally, as you appreciate, it is a duty of the President to reflect the will of the House.

Hear, hear! The letter continues:

I am sure you will agree that in making decisions regarding future sittings of the House it is important that we all reflect upon the critical role of the Legislative Council as a House of Review, charged with the duty to hold the Executive of the day to account as part of our democratic system of responsible government.

Having noted the contents of that letter, the terms of Standing Order 4 and the commentary of Want and Moore, I submit that we have an obligation and indeed a legal basis here for the sitting of the Chamber using Standing Order 4 to override the misuse of Standing Order 34, for the explicit purpose of preventing a government avoiding accountability in the Chamber. We must always, as a Chamber, uphold the privileges, powers and immunities of this House. I find it disgusting that a Presiding Officer of this Chamber would come in as a hand puppet of the Government and try to close down this Chamber. I find it disgusting and he should be ashamed of himself.

**The PRESIDENT:** Order!

**The Hon. Trevor Khan:** You can be a grub.

**The Hon. Mark Latham:** You're the grub for doing this disgusting thing to our Chamber, and you should resign as Deputy President.

**The PRESIDENT:** Order! I call the Hon. Mark Latham to order for the first time. This is not the time for this. The member knows the rules. If he wishes to take an objection to the conduct of any member in this place, he must do so by way of substantive motion. The Hon. Mark Latham has the call.

**The Hon. Mark Latham:** Thank you, Mr President, I look forward to that opportunity. I note the setting in which we find ourselves. In these extraordinary circumstances, I submit that we have every right to sit. We must sit. Legally, we should sit.

**Mr David Shoebridge:** To the point of order: On behalf of The Greens I indicate our utter contempt for the Government's actions today. I do that noting that my two colleagues—Ms Abigail Boyd and Ms Cate Faehrmann—are joining us by videoconference, ready to participate in a COVID-safe hearing of Parliament. While we are having this debate about whether Parliament can sit, the Government is refusing to provide a Minister, allegedly because of reasons of public health. But let us be clear about this. Government members are using COVID as a charade to shut down democracy. They are holding democracy to ransom by refusing to turn up and do their jobs. Ministers are being paid hundreds of thousands of dollars a year but are refusing even to turn up to the workplace and do their jobs, allegedly because of COVID safety.

This would have to be the most COVID-safe workplace in the country. I am here, having been rapid antigen tested—as has every single person in this Chamber. I am here in a Chamber that has additional airflow in order to keep it safe. I am here in a socially distanced workplace where everybody is double vaccinated. Meanwhile, the Government is expecting young workers to be packing supermarket shelves or engaging in essential transport duties without anything like these kinds of protections. Did I mention these Ministers are on hundreds of thousands of dollars a year and refusing to turn up and do their jobs? This is not about COVID safety. This is about a government running from accountability. The Government cancels press conferences. It cancels Parliament. It does everything it can to avoid the hard questions being asked.

I can tell people what we would be doing if the Government allowed this House to sit. We would be passing legislation to protect workers compensation rights so that any worker who is required to be vaccinated is guaranteed to be protected. We would be passing legislation to ensure that the upcoming local government elections, which the Government is barrelling along towards on 4 December without any COVID safety plan, would have guaranteed COVID safety protections. We would be passing legislation to amend the Constitution of New South Wales to allow us to sit virtually during this and any future public health crisis. We are ready to do business.

We would also be passing orders requiring the Government to produce critical documents about the health advice it has received, which it maybe complied with or maybe ignored in whole or in part as we went into a very slow lockdown and which underpins—if it does—the move out of lockdown. We would also be requiring the Government to produce further documents about the Premier's involvement in grant after grant and scandal after scandal. We would be doing our job, which is to hold this Government to account. That is why Government members do not want to sit here. This is not about COVID. This is about avoiding accountability. They do not have the numbers in the upper House, so they are using this charade under Standing Order 34 to avoid accountability.

When we look closely at the order to require a Minister to be in the House, we see that it was not designed to shut down or cancel democracy. It was designed to increase the powers of the House so that a Minister would be here to be asked questions. But it is being abused today by a government that is abusing democracy and thumbing its nose at the eight million people in this State who want accountability in a crisis. A crisis requires

more, not less, accountability. A crisis requires more, not less, work from parliamentarians. A crisis requires a Minister on a Minister's salary to come and do their job in this place and answer questions. That is what a crisis requires.

There are valid arguments about whether Standing Order 34 can prevent a sitting of this House, but Standing Order 4 says that none of the standing orders should reduce the privileges or powers of the House. One of the core privileges of the House is to come together and meet. Mr President, I think there is a question for you to decide about whether Standing Order 34 can be abused like this by the Government. That may not be today; it may be at a future point. But if the Government continues to abuse the standing orders and prevent the House from sitting, we need to look carefully at that.

There were multiple occasions before the adoption of Standing Order 34 when in the absence of a Minister this House continued to sit—time after time. We may not get to that point today, but if this deeply arrogant Government continues to thumb its nose at democracy and at the will of eight million people in New South Wales—who voted for a democracy, not a dictatorship—then I assure the House we will be back here again and the privilege question will be brought before the House again. This arrogance, this contempt of democracy, cannot be allowed to stay.

**The Hon. Emma Hurst:** To the point of order: It is really disappointing that the Government has failed to send a Minister or Parliamentary Secretary to Parliament today to allow a proper sitting of the Legislative Council. We cannot limit the powers of this House. This failure has left the entire democratic process in New South Wales to crumble. In extraordinary circumstances like this, it is all the more important that Parliament continues to sit. That is why I am asking you, Mr President, to give serious consideration to rejecting the point of order taken under Standing Order 34. If the Government's real concern was about health precautions, it would have worked with Opposition and crossbench members to arrange a COVID-safe sitting.

My understanding is that during this week there was going to be debate on a constitutional amendment that would have allowed Parliament to run virtually. Instead, by the action of failing to send a Minister, the Government has failed to make any effort towards allowing this democratic institution to operate safely during the COVID-19 pandemic. In times like this, when the Government is making decisions that have huge ramifications for the health and lives of the people of New South Wales and is taking us into uncharted territory of the COVID-19 pandemic, it has never been more important to have a functioning Parliament, with Ministers present, so that Parliament can get on with its essential services to the community. We must continue to sit, so the standing order should be rejected.

If Government members had bothered to show up, they would have heard about the many very important issues that need to be addressed in Parliament right now. Particularly in rural and regional areas, hospitals are feeling the strain of COVID-19 and desperately need additional resources. We have seen reports of a council killing dogs and puppies in pounds, using COVID-19 as an excuse. Misinformation has been spread by sources, including New South Wales police and NSW Health, about the ability for essential workers to continue their work. This is why we need Parliament to be up and running and why it is outrageous that Government members have failed to come in today to allow these processes to take place. We have an obligation to sit. That is why I am asking you, Mr President, to reconsider the point of order.

**The Hon. Robert Borsak:** To the point of order: The Shooters, Fishers and Farmers Party supports all of the points made by the Opposition, the Animal Justice Party, The Greens and the Hon. Mark Latham. I am not going to repeat them all, other than to say that this is a massive abuse of Standing Order 34. We know that. The fact that Government members said in advance that Ministers would not turn up shows that this was a premeditated attempt to stop the Parliament from sitting. We all know that it should not be done that way. If they really were going to turn up and win debate on the day, they should be here in force talking to us. They have an obligation under democracy to be here, but they are not here. This indicates to me that this is a government at the end of its third term that is really starting to rot—and I mean rot. This is an abuse of power. This is a tyrannical withdrawal of the obligations, powers and privileges of this House.

Like the Hon. Mark Latham, I too believe Standing Order 4 should prevail. I also am aware of the advice that has been given in relation to what your duties are, Mr President. But, at the end of the day, as long as my arse points to the ground, when this House does sit properly I will be working to make sure that those privileges are restored and that we do not again end up in a situation like we are in now. We are begging to come back to this House, exercise our democratic right and represent the people of New South Wales, and this Government is giving us the finger. That is simply not good enough, and the Government will pay for it at the ballot box.

They will pay for it at the ballot box because people do not like what is going on. It is one thing for the Government to say that it is acting in the best interests of COVID safety. It is entirely another thing that this is the only Parliament in Australia that is not being allowed to sit at this time. What are Government members running

away from? What are they scared of? I can give this Government a guarantee from our party in both Houses that we will be fixing this and fixing it for good at the first opportunity we get. This is not the way to run a democracy in New South Wales or in fact anywhere in Australia.

**Reverend the Hon. Fred Nile:** To the point of order: I support the remarks of the Hon. Mark Latham, except for his criticism of one of the members. I believe he outlined all the legal arguments that support the proposal that the House should be allowed to continue its democratic role to sit and to debate openly and fairly all the matters that concern the people of this State. For that reason, I do not support the argument that we adjourn the House because we do not have a Minister present.

**The Hon. Trevor Khan:** Further to the point of order: I will first briefly deal with the issue raised by Mr David Shoebridge regarding previous examples of not adjourning the House. I am looking at Lovelock and Evans first edition. At least on my reading, my understanding is that the instances to which the member refers of the President not having left the chair relate back to two instances in 1917. The instances were something along the lines of the President not leaving because it was anticipated that a member who was not a Minister was acting on behalf of the Minister and that there was some interplay in regard to that. But the clear position has been, at least in the past 50 years, that it has been an accepted principle.

As for the President looking to the rationale for the application of Standing Order 34, what are we asking? Are we asking that President Burgmann and President Primrose at the time they vacated the chair entered into an exercise of weighing up in their mind whether Standing Order 34 applied because they suspiciously looked at the motivations of the presence or absence of Ministers who were not present? What is essentially being asked in that regard is, with respect, a political and intellectual nonsense. Standing Order 34 is clear and explicit in its terms. It does not say, "If the President thinks it's a good idea", or, "If the Minister isn't in the bar having a drink." It says that if the Minister is not present, then the House cannot sit.

Let me deal with the Standing Order 4 point. Let us accept the proposition that Standing Order 4 was introduced at the same time as Standing Order 34 and at the same time as Standing Order 87, dealing with the right of the member to speak or, indeed, not speak. It came in at the same time as Standing Order 90, dealing with the right to reply and, in other cases, the absence of a right to reply. It came in at the same time as Standing Order 98, which dealt with a motion that a member no longer be heard, and at the same time as Standing Order 99, dealing with the closure of debate. It came in at the same time as Standing Order 91, dealing with the suspension of a member, and Standing Order 94, dealing with the powers of the House not being affected in other circumstances with relation to a member.

The standing orders came in as a bundle and with some generalised expressions, such as Standing Order 4, and then with some explicit carve-outs of what could be described as generalised rights and privileges—some of which I have listed. It is clear that we cannot read down the specific carve-outs like standing orders 90, 98, 99, 191 and 34 by simply referring to a generalised power. The specific carve-outs must be given proper attention and proper meaning. What the President is being asked to do here with regard to Standing Order 4 is essentially to say, "Well, it doesn't matter what the House agreed to in its standing orders. It doesn't matter that it introduced Standing Order 34 and that past Presidents have clearly applied it. We now have a generalised feel-good Standing Order 4, so just do what you like because they say it's what we should do." That is not the way the standing orders were set up. They were set up to regulate the way this Parliament runs.

**Mr David Shoebridge:** Not to make rules to kill the House. Not to make rules to kill democracy.

**The Hon. Trevor Khan:** Please, David.

**The PRESIDENT:** Order! The Hon. Trevor Khan has the call.

**The Hon. Trevor Khan:** Standing Order 34 falls within chapter 6 of the standing orders, which makes repeated references to the presence of a Minister in the House. It says the Minister is to move the adjournment and the Minister is to do various other things. It creates a whole set of standing orders that deal with the meeting of the House and the responsibilities of Ministers in the House. The Minister, and the presence of the Minister, is an integral part to the operation of chapter 6 of the standing orders.

**The Hon. John Graham:** That's why they should be here. That's why they should turn up.

**The Hon. Trevor Khan:** You've been good up until this stage, Graham.

**The PRESIDENT:** Order! The Hon. Trevor Khan will not respond to interjections. The Hon. Trevor Khan has the call.

**The Hon. Trevor Khan:** Mr President, you must give proper weight to chapter 6 and you must give proper weight to Standing Order 34. There is no exception created in the rule, and you should apply it.

**The PRESIDENT (15:20):** I thank all honourable members for their contributions. This is certainly a very complex matter. I regret that members who are present and connected via Webex and ready to contribute remotely have not been able to do so, as I am sure that their contributions would have been equally as valuable. Members who have been able to contribute today have raised a number of powerful arguments concerning the rights, powers and privileges of this House pursuant to provisions such as Standing Order 4, Standing Order 35, and indeed longstanding conventions of the House, notwithstanding the explicit requirement in Standing Order 34 that a Minister must be present for the House to sit.

These arguments, and the counterarguments put so eloquently by the Hon. Trevor Khan, weigh heavily upon my mind. In particular, I note that members found it difficult to reconcile the actions of the Government in this matter with the Legislative Council's constitutional role as a House of review. The House is charged with the duty to hold the Executive of the day to account as part of our democratic system of responsible government. This was authoritatively expressed by the High Court of Australia in *Egan v Willis* in 1998, where Justices Gaudron, Gummow and Hayne jointly stated:

A system of responsible government traditionally has been considered to encompass 'the means by which Parliament brings the Executive to account' so that 'the Executive's primary responsibility in its prosecution of government is owed to Parliament'.

Members also noted that Standing Order 35 explicitly states that the days and times of the sitting of the House will be determined by the House, not by the Executive, while Standing Order 36 provides for the recall of the House at the request of an absolute majority of members. Accordingly, members stated that the sittings of the House are a matter for the members of the House, not the Executive Government, to determine. As required under Sessional Order 3, in light of the request from the Leader of the House for today's sitting to be postponed, I consulted with the leader or designated representative of each party and with independent crossbench members. I can report to the House that it was the clear desire of at least 24 out of the 41 members of this House for today's sitting to proceed.

Preparations for this sitting have been made with the active participation of all parties and members of the crossbench over the course of 10 weekly meetings, which also included Ministers and the Leader of the Opposition and Deputy Leader of the Opposition in the latter stages. Through this process, a comprehensive COVID-safe plan has been developed, with the benefit of advice from Hibbs immunologists and occupational hygienists. A copy of this COVID-safe plan was tabled earlier today. As members are aware, this COVID-safe plan goes to great lengths to ensure that the Council can sit with the least possible risk and subject to the most stringent safety measures, including the deployment of rapid antigen tests, the option of members participating virtually via Webex and the expectation that the minimum number of members and staff required to be in attendance will be fully vaccinated.

The Government has relied on health advice from Dr Kerry Chant, the Chief Health Officer, that the September sittings of Parliament should be deferred on the basis that stay-at-home orders are in place, staff are required to work from home unless it is not practicable to do so, and any sitting of the Legislative Council would present a significant risk of transmission in Parliament itself and a risk of seeding COVID-19 to unaffected regional communities when MPs and staff return home. As members have pointed out, this advice and the Government's position overlook the fact that normal operations of Parliament are an exempted gathering under schedule 2 of the public health orders concerning public gatherings and that members of Parliament and parliamentary staff are authorised workers under the terms of the public health orders. This means that the current public health orders contemplate Parliament sitting during the pandemic and enable members and parliamentary staff to travel to Parliament for this purpose.

Additionally, as members have articulated today, the COVID-safe plan appropriately manages the risk of the Legislative Council sitting this week, and the option of participation of members via Webex in their homes eliminates any concerns that members, regional or otherwise, might have in this regard. Nevertheless, the Government has today deliberately withheld its Ministers from attending the scheduled sitting and, as members have reflected, invoked Standing Order 34 to subvert the will of the House. I note members' advice that they will be bringing forward motions to amend Standing Order 34 to reflect its true purpose so that this tactic cannot be used again in the future by any Executive government in New South Wales.

The Legislative Council operates in an orderly and deliberative manner in accordance with longstanding parliamentary law, practice and precedent. Those proposals to amend Standing Order 34 will no doubt be carefully considered in the appropriate manner and at the appropriate time. For today, I am left with Standing Order 34 in the form that I find it. Accordingly, I have no choice but to now leave the chair until the ringing of a long bell. As I do so, I ask that all honourable members take the opportunity to reflect upon their personal responsibility to this House and to the people of New South Wales.

*[The President left the chair at 15:24.]*

[Continuation of sitting of Tuesday 14 September 2021.]

[The bells having been rung, the House resumed at 13:00 with the President (The Hon. Matthew Ryan Mason-Cox) in the chair.]

*Adjournment Debate*

**ADJOURNMENT**

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

That this House do now adjourn.

**COVID-19**

**The Hon. SCOTT FARLOW (13:01):** It took us 106 days to farewell the attachment to having zero cases of COVID-19 in New South Wales. It was good while it lasted, but almost every jurisdiction that is still attached to having zero cases will have to face farewelling it at some time or another. Even New Zealand, which is on a seven-day average of 40 cases of the Delta variant, has realised that it must farewell COVID zero at some time. Other Australian jurisdictions will come to the same realisation when they have an incursion. I do not blame them for not doing so until then, particularly when Western Australia and Queensland have vaccinated only just over half of their populations aged over 16. However, it is a reality that they all will have to address sooner or later. On 19 June the first Delta case was recorded in New South Wales. One case grew to 100 new cases per day over a month, which then grew to 1,000 in a little over two months, before we peaked at 1,603 cases in September. Thankfully, we stand at only 360 new cases today.

All the old rules that used to work, work no longer. Though New South Wales held the gold standard in contact tracing previously, it did not hold up; nor has it held up anywhere else in the world. Throughout this period we collectively have gone from accepting a threshold of zero cases, to cases in the tens, in the hundreds and then in the thousands. When one of my neighbours asked me on a walk in August, "How many cases today?" and I replied, "Three hundred and something", she told me that, if she had gotten that answer a month before, she would have run inside and barricaded the door. We have all taken a little time to become used to living with COVID. I do not doubt that we will take a little time longer still.

Thankfully, due to the vaccine rollout, even in the early days of the New South Wales outbreak we saw far fewer deaths than we saw in Victoria's second wave. We are now in a position where we can live with COVID-19, even the Delta variant. From the time of the first Delta case in New South Wales, we have gone from just under two million vaccines administered to nearly 11 million administered today. At times we have had some of the fastest vaccination rates anywhere in the world, far exceeding what was ever achieved in the United Kingdom or the United States on a daily per capita basis. Millions of citizens across New South Wales have gotten us through this by stepping up, rolling up their sleeves and getting vaccinated—knowing it is our key to opening up while saving lives and livelihoods. They went out in their hundreds and thousands a day to be tested, and thousands, including my wife and a fair portion of the people in this building, protected the community by staying in isolation for 14 days.

For the past 15 months, I have been spending countless hours working with businesses, not-for-profit organisations, faith groups and community organisations to chart the path through the restrictions in all of its sudden twists and turns. I thank each and every one of them for their input and, in particular, their forbearance. I also thank my adviser, Kevin Baker, who has been there every step of the way and is highly regarded by everyone for his assistance through the process. At times our Government has got it right, and at times—I hate to say—we have got it wrong. There were times over the months when we gave in to those who cheered on harsher and tougher restrictions and those who barracked for more industries to close, more people to be isolated and more people to be out of a job. They yelled that we needed to look to Victoria for the guide on how Delta can be beaten. It needs to be remembered that for a moment on 4 August, as Dan Andrews tweeted "Zero", it looked like they could be right—you have to forgive everybody for taking that view—but that had all changed by the afternoon. That is how different Delta is and how different the response to combat it needs to be.

There were calls for curfews, rings of steel, mandates for wearing masks outdoors, limits on exercise duration and distance, and the closure of hardware stores—all of which the Government eventually enacted in some form or another as part of throwing everything at the virus and what the former Premier referred to as the no-regrets policy for dealing with COVID-19. That was done to follow the path of Victoria, the State which recorded 1,466 cases today and whose peak number of cases of 1,908 eclipsed that of New South Wales. By no means do I blame the Victorian Government for this; Delta has been a very difficult virus to manage. We wish all the very best to our southern counterparts in dealing with the virus and look forward to them opening up with New South Wales.

Each of the decisions that has been made through this time has come with a cost. There were costs on family budgets and the State and Federal budgets, which will ultimately be picked up by our children and grandchildren; costs on struggling businesses; and costs on mental health. On the other side of the ledger, if we were just to let it rip, there would be costs on the economy as well; there would be costs on our hospital system; and there would be the greatest cost, the cost of lives. Managing the pandemic needs to be a balancing act. There is not a no-cost solution. The best initiatives are those with the greatest impact and the lowest cost. That is vaccination, which is why it is so wonderful to see such high rates across the New South Wales community. We need to stay true to the path in our recovery and ignore some of the loudest voices that steer us from that path.

### COVID-19

**The Hon. JOHN GRAHAM (13:06):** Here we are, back to work. Our State having passed the 90 per cent first-dose vaccination rate, it is a good day. It causes one to reflect on the last day that we gathered here, four weeks ago, on a cold, wintry day, and attempted to meet as a Chamber as had been able to happen around the country. Of course, this Government was not having any of it. Despite 24 of the 42 members of this House calling for us to sit, the Government used the standing orders to immediately shut down the Parliament. Members of Parliament, who were declared essential under public health orders, were given a message by the Leader of the House that they were surplus to requirements. But neither the Leader of the Government nor the Leader of the House told us that themselves; instead, the Government sent a respected member in here under orders to argue that Ministers were so important to the operation of this place that we could not sit without them. That raised the question: If they were so essential, where were they? It was an unhappy episode for not only the Parliament and the public but also the effort to fight this pandemic.

To fight this pandemic, we want an eight-million-person effort in which the State uses the weapons of solidarity of community and care—of looking out for one another—to reach the end faster. Applying the full weight of the State to that effort requires trust and transparency, and it requires us to work together. It requires the Parliament to meet and it requires consistent public communication. As the Opposition, we are prepared to back the health advice, but the health advice must be shared with the public. We will pursue that later this week.

I welcome the Government's reversal. I welcome that we will be in continuous session for the next seven weeks, between estimates and parliamentary sittings. I welcome the opportunity for us to work together to shape the State as it comes out of lockdown, but it must be shaped by this belief: After the pandemic, a better world is possible. This Government came to power while promising to make New South Wales number one. That promise has not been fulfilled; we are number five in the latest CommSec *State of the States* report. In the course of trying to get there, as we now know, we risk having become a divided city and a divided State. Nowhere was that more clearly felt than in the 12½ local government areas of concern, which had troops on the streets and police helicopters overhead as residents faced tough COVID restrictions. Nowhere was this more clearly felt than when promises of a daily call for lockdown patients with COVID was replaced, in some cases, by 10 days of silence and then automated calls as the health system struggled to keep up.

This episode has exposed some things about the pandemic and the response, but it has also exposed some truths about our city and our State. It has exposed where our essential workers live—many of them in the west and south-west of Sydney. It has exposed dramatically, for each of us, the amount of open space that each of our citizens have within five kilometres of their house. It has exposed the complete lack of access that some kids have to computers for education. We heard evidence at the Public Accountability Committee inquiry of a single mobile phone being shared for access between parents and kids trying to access school. Those are some of the truths that have been exposed in this moment about how our city and our State works. We want an eight-million-person effort to beat this virus and then we want the same effort to lift our State. We do all need to be in this together. We need to end some of that division where we have seen two Sydneys or divisions in our State. We believe that to make New South Wales number one; firstly, we need to make New South Wales one.

### EDUCATION STANDARDS

**Reverend the Hon. FRED NILE (13:11):** My adjournment speech is based on section 83C of the Education Act and its misapplication. Fellow members of this Chamber, faith plays a vital role in the development of Australian students. Our Christian faith forms the basis of Western civilization and underpins our laws, values, ethics, moralities and cultural norms. In short, you cannot have a proper education without having at least some understanding of Christianity and its many positive impacts on our past, present and future. In response to community expectations that taxpayer's money was spent delivering educational outcomes rather than for subsidising profits, section 83C of the Education Act was introduced by former Minister for Education Adrian Piccoli in 2014. In his second reading speech he said that the intention of section 83C was:

... to give the community greater confidence that the significant financial investment in non-government schools, by both the Government and parents, is not directed to schools that operate for a profit.

Later in his speech, he said:

The community expects that public funding going to non-government schools be used only for the purpose of enhancing student outcomes.

...

This Government will not countenance individuals enriching themselves at the expense of students.

Notable statements by the former Minister. Unfortunately, the amendment has been manipulated into hampering educational outcomes delivered by Christian or faith-based schools. The organisational structure of many faith-based schools is not as simple as single sites. Often they operate as independent collectives and look vastly different to schools in public sector or large K-12 private schools. The regulatory framework for faith-based schools with complex organisational structures is cumbersome, ill-fitting and detrimental to education providers.

Charity, social justice and caring for the less fortunate are fundamental to the Christian faith. Secularists would also appreciate these noble and decent principles. Why then would charitable mission trips conducted by Pacific Hills Christian School students, for example, be criticised by the Government- commissioned report as "purely spiritual with no connection to education" and "non-school related"? This is particularly galling as former Minister Adrian Piccoli said in his second reading speech:

The Government respects the autonomy of the non-Government school sector and has no intention of undermining that autonomy.

...

We will not restrict the capacity of non-government schools to meet the needs and expectations of their communities, and to follow their particular mission or ethos.

Unfortunately ethos does not exist with the not-for-profit guidelines for non-government schools. One would think that an understanding of the educational culture that underpins the workings of so many faith-based schools should be reflected within the Government-issued guidelines. The modern reality is that faith-based schools are now constrained in their ability to deliver educational outcomes in the face of increased regulation and auditing. I have seen the financial costs associated with audits, the hours and staff required to compose them and the legal minefield that faith-based education providers are subject to. One such audit has so far cost \$450,000. [*Time expired.*]

### COVID-19 AND PUBLIC SWIMMING POOLS

**The Hon. CATHERINE CUSACK (13:16):** There are few things more iconic in rural New South Wales than the local public swimming pool. I grew up attending the Yass Memorial Olympic Swimming Pool, built by the community and operated by council for kids to learn to swim. It is on a large block of land so families can picnic. It is used for school swimming carnivals, therapy for seniors, mothers groups—you name it. The public pool is our best loved leisure infrastructure. It is there for everyone to enjoy and endure our harsh Australian summers. Sadly, last summer some small unsupervised swimming pools were forced to close under the COVID-safe public health orders. These orders work well for pools like the Domain and Andrew (Boy) Charlton which are supervised big budget council businesses, have large indoor spaces and a hefty admission fee. Checking that people have used the QR code and are not breaching social distancing in change rooms became an important feature of COVID safety plans with thousands of strangers congregating every day.

In towns like Stroud, Kramback, Nabiac and Bulahdelah the local pool is a far more modest, low-cost facility and in these towns they are unsupervised and everyone knows everyone at the pool. If there were a COVID event—and I note there never has been—then contract tracers would have no difficulty knowing everybody who had been there that day. So the imposition of costly COVID safety plans designed for huge, busy swimming pools in Sydney on these small communities forced these pools to close altogether last summer and that was a tragedy. This was because we had an emergency with the pandemic but since then, councils and the Government have since had autumn, winter and spring to make sure that this summer these communities are not going to again be robbed of access to their swimming pools.

I have undertaken a survey of councils across my country north region and found varying approaches taken by the councils. There are pools managed by contractors and, without exception, they are open and operating with these COVID safety plans in place. Those costs have been acknowledged by the businesses, and I acknowledge and thank them. They are often families and there is not a lot of fat in the income derived from managing the local pool. These people, who focused on service and helped people to endure the pandemic and summer, are heroes. I thank them for what they have done. The council-managed swimming pools are the ones where I found closures, particularly unsupervised pools in the mid Coast, which have been either been fully closed or, in the case of Tea Gardens, been able to reopen with a sponsor but only for certain limited activities. Others in Stroud, where an Open Our Pools action group has been established, have not been so fortunate. I have a summary of issues that

were identified during my survey, which I will seek leave to have incorporated into *Hansard* at the conclusion of my remarks.

I thank the councils who replied to my survey. All of them are trying their best for their communities—as is the New South Wales Government. Nobody wants to see any pool closed again this summer. I have raised the issue with several colleagues, including Stephen Bromhead, the member for Myall Lakes, who also has been lobbying his council for a solution. I acknowledge his commitment to these small towns. I also acknowledge MidCoast Council councillors, including Troy Fowler, who moved a motion last year that tried to anticipate and avoid a repeat of this, and councillor Len Roberts, who referred Carolyn Dufton of the Open our Pools group to me and really assisted in my understanding of the issues.

The purpose of the survey was to draw attention to unintended impacts of public health orders that were designed for huge infrastructure in Sydney. In the course of my investigation, I became aware that the rules around double vaccinated people that came into effect yesterday are having a devastating impact. For example, MidCoast Council posted a notice, which read:

Due to swimming pools being classified as high risk premises the public health order released on Friday which unfortunately has forced us to postpone all learn to swim lessons and swimming squads for term 4 ... This order also applies to patrons attending the hydrotherapy and Olympic swimming pools so unfortunately if you are not fully vaccinated you will be denied entry.

We are way behind in vaccination rates in the regions due to a lack of supply. Eighty per cent of people in my own Northern Rivers region have had their first jab, but only 50 per cent have had their second. I have sought assistance from Ministers, including the Hon. Stuart Ayres, who is helping to tweak the road map. He has assured me that these impacts were not the intention of the Government, and he is eager to assist and find a solution. I am very grateful for that. I wanted to raise in the House today the predicament of these communities that have gone quite under the radar. I thank the communities for their perseverance. I assure them of our determination to focus on and fix this problem so that they can have their pools back like everybody else for what promises to be another sweltering summer. I seek leave to have the summary of issues identified in the survey incorporated in *Hansard*.

### **Leave granted.**

Surveyed: Port Macquarie-Hastings, MidCoast, Tamworth, Kempsey, Nambucca, Bellingen, Coffs Harbour, Clarence Valley, Richmond Valley, Lismore, Ballina, Byron Bay, Tweed, Kyogle, Tenterfield, Glen Innes Severn, Armidale, Walcha, Uralla, Inverell, Gwydir, Moree Plains, Narrabri, Gunnedah, Liverpool Plains

Response summaries where affected:

MidCoast - Supervised pools will open for the swim season. Unmanned pools will remain closed to comply with current health orders - Council is unable to monitor the number of visitors and the ways in which they are interacting when on the premises. This means some of the district pools will remain closed for general public use at this point in time.

Under the current Safety Plan requirements set out for swimming pools, MidCoast Council is unable to meet the criteria at Nabiac, Bulahdelah, Stroud and Krambach pools, where staff and resources are unavailable to support a COVID-safe plan and as such, will remain closed for a second consecutive year.

This criteria includes:

- Excluding staff, volunteers and visitors who are unwell from the premises
- Electronically capturing contact details of attendees
- Ensuring the capacity of the facility is not exceeded
- Managing physical distancing
- Avoiding congestion in specific areas within the venue, such as change rooms and other communal facilities
- Implementing strategies to manage gatherings that may occur immediately outside the premises.

Although unsupervised pools remain closed to the general public, where possible MidCoast Council has made them available for use by local swim clubs, subject to them holding their own COVID-19 Safety Plans and necessary insurances. Use is based on a booking system, and means the swim groups assume all responsibility for complying with current public health orders.

A lack of staff resources and the ability to service the additional costs associated with providing supervision at pools are the primary reasons that they will remain closed to the general public.

Nambucca - COVID 19 has impacted the pool operations. Closures due to COVID have hurt the customers of the aquatic centre who were not allowed to attend for exercise and recreation

Tamworth - Capacity numbers and other restrictions have had a negative financial. Council has been able to reduce expenditure and absorb the financial loss across the organisation's operational budget.

Kempsey - The cost of implementation CovidSafe plans has been borne by the operators. Managers are struggling to maintain staff and have had to lay staff off as they have had to close their facilities. They are also looking at reduced operating hours due to the loss of staff. They will be impacted further with the requirement to only allow vaccinated persons into their facilities for the coming months. They will be further impacted if schools are not allowed to hold their annual swimming carnivals early in the school term as this is their busiest part of the entire season.

Lismore - The Nimbin Pool has had to be closed (free and unsupervised facility) due to significant challenges in the operation of the pool. In the 2020-21 swimming season, a group of volunteers from the Nimbin community managed the COVID safety plan. This meant it was only open for approximately 50 per cent of the hours normally available to patrons. The volunteers are again available to manage these processes for 2021-22 but with reduced availability and capacity. Council is also looking at employing a paid person to manage some of these requirements at a cost of approximately \$30,000—a cost Council does not normally incur in operating the pool. A significantly reduced season and opening hours each day will be the result of the restrictions. Of particular concern is the requirement for patrons to be double vaccinated to use the facility from 11 October 2021 through until at least 1 December 2021. To ask volunteers to enforce this requirement is a challenging situation and Council is considering whether it should open the pool at all until unvaccinated people are able to use the facility.

Ballina - relatively fortunate not to suffer many long term periods in lockdown since the beginning of the COVID-19 epidemic. However, the restrictions and rules placed on the various Council venues because of COVID-19 have impacted the normal cash flow and staff duties substantially. Ballina Shire Council has two swimming pool complexes one in Ballina and the other in Alstonville. The cost of signage and COVID Safety plans has not been a huge impost to Council directly, but there has been an impact on staff time managing and enforcing rules placed on the facilities. Council's swimming pool facilities are community facilities and generally run at a deficit, COVID lockdowns and restrictions have impacted the facilities operations, but with the pools being so important to the local community, Council has absorbed the addition financial cost and staff time. Council will continue to operate both pool facilities inline public health orders and remain open to the public throughout the summer unless restrictions make this unviable or cause closures.

Inverell - pools were closed from time to time in accordance with the prevailing Health Order. During these closures, Council continued to pay the monthly retainer to the contractors in order that Council retained their services. The costs of implementing Covid Plans at the Pools was met by Council. The pools will be reopening and any additional re-establishment costs will be met by Council.

### **COVID-19 AND WESTERN SYDNEY REGIONAL AND RURAL HEALTH SERVICES**

**The Hon. SHAOQUETT MOSELMANE (13:21):** Monday 11 October was truly freedom day for the people of south-west and western Sydney. It was a day of relief for more than two million people who have been locked up and frustrated by a government that has refused to listen or extend a helping hand. For them the pandemic was not just a health crisis but also an economic and political crisis as they suffered the full brunt of the Government's dictates. Police operations ramped up, the army was on the ground and surveillance helicopters were in the air. The suffocating noose around western Sydney tightened. The New South Wales Government's imposition of curfews was another blow to communities that were forced to their knees to plead for assistance as they struggled to pay their mortgage, pay their rent and pay their bills.

The people of western Sydney wondered: Why the harsh treatment? Why are people in eastern Sydney allowed to flock to the beaches in their thousands with little regard for masks or social distancing and free to enjoy the fresh air, while south-west and western Sydney residents are slapped with a complete ban? Why the difference in policy decisions when Delta originated in and spread from Bondi, yet Bondi was never made a local government area of concern? The lack of any curfew in the east of Sydney intensified perceived partiality and a sense of injustice. The former Premier herself admitted the use of curfews did not have much of an impact on stopping the spread of COVID-19, so why did the Government persist with its curfew policy in western Sydney?

The New South Wales Government needed to provide extra financial support for individuals and businesses, as many suffered losses in trade of up to 70 per cent. Western and south-west Sydney bore the brunt of restrictions such as movement permits, curfews, heightened enforcement measures, forced business closures, and the overwhelming number of COVID-19 cases, yet minimal support was provided. In a press release, shadow Treasurer Daniel Mookhey said, "Unless there is urgent support, there is a real risk of long-term negative impacts, and turning short-term, temporary pain, into long-term economic devastation." That is why Leader of the Opposition Mr Chris Minns held a virtual roundtable with western and south-west Sydney business and community leaders to hear firsthand from those who matter most. Deputy Liberal Leader Stuart Ayres, MP, admitted that his Government's lockdown singled out and disproportionately impacted western Sydney. We knew this and, as our shadow Minister for Western Sydney, Greg Warren, said, "The people of Western Sydney won't forget how this Government treated them during this lockdown."

The New South Wales parliamentary inquiry into rural health has provided alarming evidence of neglect, waste and disinterest by this Liberal Government and its Nationals Coalition partners, who have deserted the people of rural New South Wales. The inquiry heard shocking revelations. For instance, the operating theatre at the 66-bed Leeton hospital has been unused since 2016 because the recovery room is 11 centimetres too small. The hospital's maternity services almost no longer exist, with only eight babies delivered each year compared with 100 a year previously. Earlier this year, the inquiry heard that operating theatres at Tamworth Hospital were being used for storage. In response to this, shadow Minister for Health Ryan Park said:

We have tens of thousands of people sitting on a waiting list for life changing elective surgery, often for many months. To find out we have operating theatres right across NSW sitting unused is unacceptable.

Furthermore, Jeff Mitchell, the CEO of Cancer Council, said:

The out-of-pocket costs are higher for people outside metropolitan areas, so much so that one in five people with cancer in regional New South Wales report that they skip health appointments because of the cost. People in regional New South Wales are less likely to have access to a nearby public hospital and, for those that cannot be treated locally, travelling to and from treatment and staying away from home comes at an enormous physical, emotional and financial toll.

That is shocking and unacceptable. Sydney gynaecologist and obstetrician Dr Zeina Merhi wrote to me saying:

Absolutely unacceptable, I get calls from Leeton and the neighbouring rural areas for all obs and gynae cases and it is quite stressful sometimes to the patient getting them to travel to Wagga for assessment especially after hours. Rural health needs a revamp.

There is undeniable evidence that there is a health crisis right across rural and regional New South Wales. It must be addressed and urgently fixed.

### ANIMAL CRUELTY

**The Hon. MARK PEARSON (13:26):** I was pleased to see the Government was bringing in amendments to the Prevention of Cruelty to Animals Act, which increased the penalties for animal cruelty and neglect. Step by painfully slow step, we are bringing our animal protection laws into the twenty-first century. The Animal Justice Party is keen to see the Government's long-promised new animal welfare bill, rather than these piecemeal changes to an Act that reached its use-by date long ago in 1979. An enormous amount of social and scientific advancement has occurred since then, and we need that reflected in the laws that govern the lives of animals. It will come as no surprise to members that I believe that one of the most necessary changes is to modernise the enforcement and prosecution aspects of animal protection. Countries such as Sweden, Italy and the Netherlands, as well as a number of States in the United States, have ditched the old model of using a charitable agency as an arm of law enforcement.

The dierenpolitie in the Dutch animal police was an initiative that the Dutch Party for the Animals introduced. The unit was formed in 2010 and its members were the first so-called animal cops. They are a specialist division of the Dutch police, specifically recruited and trained to identify, investigate and prosecute animal cruelty and neglect. In New York, the police department takes the lead role in responding to all animal cruelty complaints in New York City, while the American Society for the Prevention of Cruelty to Animals directly cares for animal cruelty victims by providing critical support, including welfare evaluations, medical care, accommodation and rehoming.

The most recent example is in Ontario, Canada, where paralegal Jeff Bogaerts launched a five-year legal battle against the Ontario Society for the Prevention of Cruelty to Animals [OSPCA] after assisting several animal owners who were under investigation. Bogaerts challenged the constitutionality of the OSPCA's exercise of enforcement powers, given the lack of any public accountability or transparency in their own operations. In the judgement, Superior Court Justice Minnema ruled that, as a private entity, the OSPCA was not subject to the same channels of oversight and accountability as police and public enforcement agencies. The OSPCA had been wrongfully given public enforcement functions despite the fact that the agency cannot be investigated by the Ontario Ombudsman, is not subject to freedom of information laws and is not regulated by laws such as the Police Services Act. Instead, complaints about the OSPCA are investigated by the OSPCA. Justice Minnema found:

Although charged with law enforcement responsibilities, the OSPCA is opaque, insular, unaccountable, and potentially subject to external influence, and as such Ontarians cannot be confident that the laws it enforces will be fairly and impartially administered.

I am on record as describing the current situation with the New South Wales RSPCA in exactly the same terms. Examination of the operations of the OSPCA shows considerable similarities to the RSPCA of New South Wales, including too few offices spread over large geographical areas, high reporting rates versus low conviction rates, a reliance on education and awareness rather than punishing crimes, and an indifferent government that is deaf to complaints about poor performance.

Although the Ontario decision was recently overturned on the basis of constitutional interpretation, the appellate court did not dispute the need for such accountability as a matter of good public policy. As a consequence, the OSPCA decided not to return to conducting enforcement, and there has been a complete transfer of powers to the Ontario police. Animal cruelty investigations can be multifaceted, risky and challenging to conduct. Often there is overlapping domestic violence and child abuse or underworld criminals linked to illegal gambling, race fixing and drugs. Surely it makes sense that the thin blue line in New South Wales be drawn a little wider to encompass the protection of animals.

**The PRESIDENT:** The question is that this House do now adjourn.

**Motion agreed to.**

**The House adjourned at 13:31 until Tuesday 12 October 2021 at 14:30.**