



**New South Wales**

# **Legislative Council**

## **PARLIAMENTARY DEBATES (HANSARD)**

**Fifty-Seventh Parliament  
First Session**

**Friday, 19 November 2021**

Authorised by the Parliament of New South Wales



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## LEGISLATIVE COUNCIL

**Friday, 19 November 2021**

**The PRESIDENT (The Hon. Matthew Ryan Mason-Cox)** took the chair at 10:00.

**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.

*Presiding Officers*

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

#### **Presentation**

**The Hon. DON HARWIN:** I remind honourable members that immediately after question time today, members of the Legislative Council will proceed to Government House to present the President to Her Excellency, together with addresses. The House will resume sitting following the ringing of a long bell at 3.00 p.m.

*Documents*

### **INDEPENDENT COMMISSION AGAINST CORRUPTION**

#### **Correspondence**

**The PRESIDENT:** According to the resolution of the House of 17 March 2021 concerning the Cobb Highway at Ivanhoe, Country Garden Australia and the M9 Outer Sydney Orbital, the terms of the resolution agreed to by the House were forwarded to the Independent Commission Against Corruption. On 18 November 2021 correspondence was received from the Commissioner of the Independent Commission Against Corruption indicating that the commission will not be undertaking a preliminary investigation into the matters raised, however noting that the information provided has assisted the commission in its investigative work in relation to Operation Keppel. I table the correspondence.

### **ROAD USER CHARGES**

#### **Production of Documents: Order**

**Ms ABIGAIL BOYD (10:03):** I seek leave to amend private members' business item No. 1301 outside the order of precedence for today of which I have given notice as follows:

- (1) Omitting "21 days" and inserting instead "28 days".
- (2) Omitting "relating to road user charges (including distance-based road charges, distance-based tolling schemes and other proposed new levies, fees or taxes on drivers, howsoever described), including:".
- (3) Inserting in paragraph (a) "submissions, representations and communications" after "all correspondence".
- (4) Omitting paragraph (b).
- (5) Inserting in paragraph (c) "with Transurban" after "any meeting".

**Leave granted.**

**Ms ABIGAIL BOYD:** Accordingly, I move:

That, under Standing Order 52, there be laid upon the table of the House within 28 days of the date of passing of this resolution the following documents (in electronic form if possible) created since 1 July 2016 in the possession, custody or control of the Treasurer, Treasury, Premier, Department of Premier and Cabinet, Minister for Transport and Roads, Transport for NSW, Minister for Energy and Environment, and Department of Planning, Industry and Environment:

- (a) all correspondence, submissions, representations and communications with Transurban Limited, any person or body representing Transurban Limited or any other part of the Transurban Group relating to road user charges;
- (b) all file notes, meeting papers, briefing notes, minutes, agendas or other documents regarding any meeting with Transurban about road user charges; and
- (c) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

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

**Motion agreed to.**

*Motions***INDEPENDENT REVIEW INTO BULLYING, HARASSMENT AND SEXUAL MISCONDUCT IN  
NSW PARLIAMENTARY WORKPLACES****Ms ABIGAIL BOYD (10:05):** I move:

- (1) That this House commends the independent review into bullying, harassment and sexual misconduct at the New South Wales Parliament being conducted by former Sex Discrimination Commissioner Elizabeth Broderick, AO, which:
  - (a) aims to utilise the results in a strictly confidential way to make recommendations for policy, frameworks and workforce development to prevent and respond to bullying, harassment and sexual misconduct at the New South Wales Parliament; and
  - (b) is seeking participation by current and former members of Parliament, staff, contractors, visitors and guests, through the following strictly confidential process:
    - (i) online survey, from 18 November to 13 December 2021;
    - (ii) individual interviews, from 17 November to 17 December 2021;
    - (iii) written contributions, 17 November to 17 December 2021; and
    - (iv) discussion groups, from 22 November 2021.
- (2) That this House calls on all members of Parliament to commit to ensuring that New South Wales Parliament is a safe and inclusive workplace where diversity and democratic participation are valued, and bullying and harassment are unacceptable.
- (3) That this House encourages all current and former staff of members of Parliament who wish to participate in the independent review to do so by contacting EB&Co via email at Confidentialnswparl@elizabethbroderick.com.au.

**Motion agreed to.****HUNTER BUSINESS AWARDS****The Hon. TAYLOR MARTIN (10:05):** I move:

- (1) That this House notes that:
  - (a) on Wednesday 17 November 2021 Business Hunter held the 2021 Hunter Business Awards at the Civic Theatre in Newcastle; and
  - (b) winners of awards included:
    - (i) Business Leader of the Year: Stephen Hunt (Hunt Hospitality);
    - (ii) Kristen Keegan Young Business Leader: Steven Fordham (Blackrock Industries);
    - (iii) Contribution to the Region: Port of Newcastle;
    - (iv) President's Award: Hunter New England Health District;
    - (v) Outstanding Employee: Kelly Davis (Aussie Ark);
    - (vi) Outstanding Local Chamber: Muswellbrook Chamber of Commerce and Industry;
    - (vii) Outstanding Community Enterprise: Youth Express;
    - (viii) Outstanding Employer of Choice: Hume Community Housing;
    - (ix) Excellence in Export: McLanahan Corporation;
    - (x) Excellence in Innovation & Adaptability: Deck Café;
    - (xi) Excellence in Sustainability: Imaginelle;
    - (xii) Excellence in Micro Business: Ancient Wisdom Writers;
    - (xiii) Excellence in Small Business: Aussie Ark;
    - (xiv) Excellence in Business: CPR Plant Repairs and Maintenance;
    - (xv) Start Up Superstar: Grub Lab; and
    - (xvi) Love Water, Love Business: Port Waratah Coal Services.
- (2) That this House acknowledges the outstanding work of Business Hunter and congratulates all winners of the 2021 Hunter Business Awards.

**Motion agreed to.**



*Committees***SELECT COMMITTEE ON THE GREATER SYDNEY PARKLANDS TRUST BILL 2021****Establishment, Membership and Chair**

**Mr DAVID SHOEBRIDGE (10:06):** I move:

- (1) That a select committee be established to inquire into and report on the provisions of the Greater Sydney Parklands Trust Bill 2021.
- (2) That, notwithstanding anything to the contrary in the standing orders, the committee consist of seven members comprising:
  - (a) two Government members;
  - (b) two Opposition members; and
  - (c) three crossbench members, being Mr Borsak, a member of The Greens and a member of Pauline Hanson's One Nation.
- (3) That the Chair of the committee be Mr Borsak and the Deputy Chair be a member of the Opposition.
- (4) That, unless the committee decides otherwise:
  - (a) submissions to inquiries are to be published, subject to the committee clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration;
  - (b) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement;
  - (c) the sequence of questions to be asked at hearings is to alternate between Government, Opposition and crossbench members, in order determined by the committee, with equal time allocated to each;
  - (d) transcripts of evidence taken at public hearings are to be published;
  - (e) supplementary questions are to be lodged with the committee clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness; and
  - (f) answers to questions on notice and supplementary questions are to be published, subject to the committee clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.
- (5) That the committee report by Monday 21 February 2022.

**Motion agreed to.**

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

**The Hon. PETER PRIMROSE:** I move:

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

**Motion agreed to.**

*Documents***LAW ENFORCEMENT CONDUCT COMMISSION****Reports**

**The PRESIDENT:** According to the Law Enforcement (Controlled Operations) Act 1997 and the Law Enforcement Conduct Commission Act 2016, I table the report of the Inspector of the Law Enforcement Conduct Commission entitled *Annual Report 2020-2021: Law Enforcement (Controlled Operations) Act 1997*, dated November 2021, received out of session and authorised to be made public this day.

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

That the report be printed.

**Motion agreed to.**

*Bills***MODERN SLAVERY AMENDMENT BILL 2021****In Committee****Consideration of the Legislative Assembly amendments.***Schedule of amendments referred to in message of 17 November 2021***No. 1 GOVT No. 1 [c2021-203A]**

Page 3, Schedule 1. Insert after line 4—

[1A] Section 3 Objects of Act

Omit "and commercial organisations" from section 3(h).

**No. 2 GOVT No. 2 [c2021-203A]**

Page 5, Schedule 1. Insert after line 27—

[13A] Section 9(1)(e)

Omit "and commercial organisations".

**No. 3 GOVT No. 1 [c2021-201A]**

Page 5, Schedule 1[14], proposed section 9(1)(g1), lines 28 to 33. Omit all words on those lines.

**No. 4 GOVT No. 3 [c2021-203A]**

Page 7, Schedule 1. Insert after line 33—

[28A] Section 24 Transparency of supply chain

Omit the section.

**No. 5 GOVT No. 4 [c2021-203A]**

Page 8, Schedule 1. Insert after line 19—

[30A] Section 26 Public register

Omit section 26(1)(a) and (b).

**No. 6 GOVT No. 5 [c2021-203A]**

Page 8, Schedule 1, proposed section 26(3)(a), line 33. Omit "and commercial organisations".

**No. 7 GOVT No. 1 [c2021-199A]**

Page 9, Schedule 1[37], proposed section 30A, lines 6 to 31. Omit all words on those lines.

**No. 8 GOVT No. 2 [c2021-201A]**

Pages 10 and 11, Schedule 1[39], proposed section 37, line 35 on page 10 to line 27 on page 11. Omit all words on those lines.

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (10:14):** I move:

That the Committee agree to the Legislative Assembly amendments.

In recognition that these matters have already been the subject of lengthy debate both here and in the other place, I do not propose to speak for too long. I will address all eight amendments in one contribution. Amendments Nos 1, 2, 4, 5 and 6 omit Opposition amendments previously agreed to in this place and revert that aspect of the bill to what was proposed by the Government in the first print of the bill—namely, the repeal of section 24 of the Act relating to the supply chain reporting of commercial organisations and consequential amendments. The Government's position is that the Commonwealth scheme should cover the field on regulating the supply chains of commercial organisations. I have made clear that, should the bill be passed by the Parliament, I will advocate for the Commonwealth Government to revisit its reporting threshold in the statutory review of the Commonwealth Act that is due next year and urge it to implement a \$50 million threshold.

Amendments Nos 3 and 8 omit The Greens amendments previously agreed to in this place that would provide the commissioner with coercive powers to obtain information and documents and require a person to answer questions when investigating and reporting on issues relating to the employment and use of seasonal workers in New South Wales. In the debate in this place the Government indicated that the amendments do not make any provision for when a person may have a legitimate ground of privilege that they may seek to rely upon and do not deal with the use that may be made of the material obtained by the commissioner under compulsion. Those points stand and are clear when reviewing the proposed drafting of the powers, notwithstanding Mr David

Shoebridge's contribution in the debate about the continuing operation of the presumption against the abrogation of the privilege of self-incrimination.

I acknowledge that the additional proposed functions and powers for the commissioner put forward by Mr David Shoebridge are very well intentioned and, as I told the House, I share many of the concerns that he raised. However, the Government remains concerned about the operation of those powers and cannot support their inclusion in the bill. The Government thinks it is important that the commissioner's role is focused on their key responsibilities—that is, overseeing the public sector and assisting the broader community to help eliminate modern slavery. As the Government noted in debate earlier this week, the Commonwealth Fair Work Ombudsman has powers and functions relating to the investigation and enforcement of contraventions of the Commonwealth Fair Work Act 2009. On the issue of the plight of seasonal workers, it will be open to the inaugural Anti-slavery Commissioner to make full use of their position to monitor, report and advocate on this issue. This may also be of interest to the parliamentary modern slavery committee; it may choose to inquire into it once it is established following commencement.

Amendment No. 7 omits one Greens amendment previously agreed to in this place to insert a new section 30A relating to procurement by the New South Wales Parliament. I am advised that the substantive content of the amendment has been copied into a proposed concurrent resolution of the Houses and, further, that the proposed concurrent resolution will be considered before Parliament rises at the end of the year. I confirm that the Government will be supporting the resolution. I thank Mr David Shoebridge for raising this matter. It is eminently sensible that the Parliament demonstrate leadership in tackling modern slavery.

I recognise and thank honourable members in this House for what has been thus far the respectful and considered way in which they have engaged with the Government during the consideration of this bill. I make no comment on some of the extraordinary things that were said in the other place. I acknowledge the members of the Legislative Council Standing Committee on Social Issues, who considered and made recommendations on an earlier draft of the Government's bill. I hope that members will agree that the bill as amended by this House and in the other place is better than the first print of the bill as originally introduced. It is abundantly clear that the processes of the House and the Government's engagement with the Opposition and members of the crossbench have improved the bill.

On Tuesday the Government moved amendments enhancing the functions of the commissioner, supported Opposition amendments setting out modern slavery reporting for State-owned corporations, supported The Greens amendments improving the process for the review of the Act, and did not oppose The Greens amendments imposing modern slavery procurement and reporting obligations on local councils or amendments to enhance the independence of the commissioner. I urge on the House the need to remember that we should not make the perfect the enemy of the good. I hope that honourable members will now agree to the amendments made in the other place and pass the bill so that we can go forward, commence the Modern Slavery Act on 1 January 2022 and have the commissioner doing good work.

**The Hon. JOHN GRAHAM (10:21):** I speak for the Opposition in relation to the amendments before the Committee. I will give an overview of the bill. The bill, having been returned to the form it was in when it left this place three years ago and went to the lower House and was then enthusiastically embraced by the Parliament and co-sponsored by the Premier and sent out into the world as law but never enacted, is now a much weaker bill. It has been gutted of the key provisions requiring New South Wales businesses to report under New South Wales law, which is a real pity. We object to that. The threshold is higher under the Commonwealth scheme. The provisions for reporting are absent and the penalties are no longer in this bill. The Leader of the Government is right when he says that this is a better bill than the one the Government tried to bring through. This includes an independent commissioner, State-owned corporations being roped into the scheme and local governments being required to report. All those things are good. The Parliament has driven those improvements to the approach the Government first took.

The Opposition's approach to this bill is in close consultation with community groups, particularly the International Justice Mission. The Opposition thanks them for their guidance on this matter. There are concerns about the further delay of this scheme if this House insists on its original intention for the bill and does not accept the position the Government is now putting. There are real concerns there might be another three years of delay and inaction. The groups who have closely followed this debate urge that something be in place by 1 January. The Opposition is open to that argument after the remarkable parliamentary process we have seen with this bill. We had not seen something like it before. For those reasons, while believing that this bill should be stronger, which is the position we put on the previous bill and in this debate, the Opposition will be agreeing to the amendments the Government places before the Committee today. I reiterate the Opposition's thanks to the Hon. Paul Green, who is a former member of this place, for all he did to steward this bill through the Parliament. We want to see a result in the spirit of what he drove through this place and the work he did with the rest of the Parliament.

I turn to some of the detail of the amendments. As I said, the business reporting is the key dispute between the Government and the Opposition. We see these amendments as gutting that part of the bill. Their effect is to change the threshold to the same as that under the Federal scheme, \$100 million of consolidated revenue. The State's \$50 million threshold would have roped more than 1,500 businesses in New South Wales into the scheme. But, with this amendment, there is no requirement for New South Wales businesses to report under the New South Wales scheme. That is a real loss to its power. It will have an impact on statutory organisations and local governments but will not extend to the private sector.

Bear in mind there are no penalties to talk of in the Commonwealth scheme. Without penalties, this regime across Australia will be weaker than it should be. It will not have the effects we would like to see. That is why the Opposition objects. One of our fundamental objections is that this resolution flies in the face of what the public were told. When this bill was before the Parliament three years ago, the Premier embraced it, co-sponsored it and publicly promised the Parliament it would be put in place and enacted quickly. That never happened, which is why we are here today. We object to that delay.

The Government has made a range of arguments about corporate reporting. But Government members do not understand the sea change in the way in which people engage with these issues, which is taking place around the world. With so much more information about the food we eat and the products we buy, people around the world are much more engaged with these issues. It is not the case only here. That change is taking place everywhere. People have much more knowledge about what they buy, such as where it comes from and the circumstances under which it is produced. They are taking an interest in this. This is a change that is happening across society. But consumers have to do that with one product at a time. They have to take an interest and chase that down of their own accord, product by product, firm by firm.

This bill would drive an overall change, where the Government steps in and lets consumers and firms look behind the curtain and educates them about where those products come from. This change is coming. We seek to provide assistance to consumers who are interested and to good firms who want to know and are doing the right thing. We want to provide a level playing field for them with the firms who are cutting corners and doing the wrong thing. That is what we seek to provide. In moving these amendments, the Government has missed that opportunity. That is a real pity, but we are not going to let that stand in the way of some sort of action for education taking place on 1 January. I genuinely believe that is the right thing to do on this occasion. But the Opposition does not rule out prosecuting this argument again, including in this Parliament, or taking a very strong position to the election again, as we did at the last election, led by my colleague the Hon. Adam Searle. I confidently hope that he will add a couple of thoughts. We have a broad vision for where we would like to head in this area, and we are certainly not ruling out pressing this case sooner rather than later.

Briefly on the other amendments, I welcome the fact that the Leader of the Government has indicated that there will be a concurrent resolution by the end of the year. That will take place next week, given the statement of the Leader of the Government. That is a welcome thing. The Parliament should act in this area. I welcome his other statements on the seasonal workers. We expect to see action in that area. That is possible. We would have preferred to have it flagged as a priority, but that is still possible under this scheme.

Finally, I thank the Hon. Shayne Mallard, who chaired the committee, for the observations he made about our colleague the Hon. Greg Donnelly, who I note is in the Chamber. I thank him on behalf of the Opposition as well. Many members have taken an interest in this issue, have spoken on this issue and care passionately about this issue. It has been a long process, though. On behalf of the Opposition, I thank the Hon. Greg Donnelly. He has kept the vigil on this matter. He has irritated the Leader of the Government many times, raising this issue and pushing the Government along, as he should have done, and we thank him for doing that. The fact that this legislation is here is in no small part due to him keeping a vigil over those years.

The last matter I will raise is that the Leader of the Government has made a commitment to pressure the Federal Government. He will have the enthusiastic support of the Opposition in doing that. Given the position that the Government has taken, and given that it has gutted the business reporting requirements here, this puts heavy pressure on the Commonwealth scheme to deliver. There are no penalties there. There is a higher threshold there. There is a review of the Act coming up next year that the Leader of the Government has referred to. The Federal Government needs to act now and the New South Wales Government should be pushing it along, as the Leader of the Government has said he will do. We will also be doing that. If this is where the law lands in New South Wales, this State has to push the Morrison Government along and insist that there is action at the Federal level. In relation to the review, where we expect to see Federal Government action, there has to be one message from the New South Wales Parliament after this bill comes into law. That is this: Over to you, Scott Morrison.

**Reverend the Hon. FRED NILE (10:32):** I am pleased to support the Government's amendments to the Modern Slavery Amendment Bill 2021. These amendments in essence revert the Government's bill to the original

Modern Slavery Bill 2018. The Christian Democratic Party, particularly the Hon. Paul Green, has fought hard against modern slavery, not because it was popular but because it was the right thing to do. The Christian Democratic Party bill enjoyed popular support in both Houses of the Parliament, including from the former Premier, the Hon. Gladys Berejiklian. Our bill was even recognised by the United Kingdom's former Anti-Slavery Commissioner, Kevin Hyland, OBE, who stated that it was among the best legislation in the world. Mr Hyland said:

The New South Wales Government, as leading one of the largest economies in the Pacific Region, has an opportunity to demonstrate global leadership in the fight against modern slavery by introduction of one of the most comprehensive laws in the world. It will bring improved victim identification and care, introduce an Anti-Slavery Commissioner, provide continual monitoring, raise awareness and lead businesses into generating ethical profits, free from exploitation and modern slavery.

This Government's bill now has the safeguards that the original legislation had. There is reporting of supply chains that rely on slavery. The legislation also establishes an independent Anti-slavery Commissioner to oversee the New South Wales response to modern slavery, including supporting business in an attempt to eliminate supply chains based on slavery. Most importantly, this is a statutory office not subject to the control or discretion of the Minister. Codes of practice are essential and a necessary part of action on modern slavery. This bill creates these codes of practice, and I am pleased to support them.

Finally, there are many major Australian corporations, and many smaller commercial organisations, supportive of this New South Wales Modern Slavery Act. The commercial entities do not wish to be part of supply chains dependent on slave labour. All decent Australians want an end to modern slavery. I am pleased to see that the date of commencement is from 1 January 2022 and that annual reporting requirements for local councils start from 1 July 2022. I commend the amendments and urge all honourable colleagues to vote in favour.

**The Hon. ADAM SEARLE (10:35):** I am obviously no stranger to the debate on modern slavery legislation. I have made contributions in 2018, this year and on a number of occasions since, in trying to harass and harry the Coalition Government into keeping faith with the Parliament, civil society, religious organisations and people of faith, and the wider community in taking a stand against modern slavery and modern slavery-like practices. In reflecting upon what I should say today, I have been at a bit of a loss as to the right tone to strike because, as the Leader of the Government said, paraphrasing the Attorney General when dealing with the sexual consent laws, we must not let the perfect be the enemy of the good, or words to that effect.

This legislation, assuming these amendments are accepted, will definitely be an improvement on the legislation introduced into this Parliament by this Government. But it is a far cry from the legislation that was actually passed by both Houses in 2018 with an unprecedented level of support. I do not just mean in a numbers game sense. When we were debating the modern slavery legislation brought forward by the Hon. Paul Green, there was an unusual coalition of people, political parties and groups in the wider community in support. The centre-left and the centre-right of politics, people of faith and organisations representing religious faiths, trade unions and other civil society groups, as well as their political representatives, all agreed that there needed to be more transparency in supply chains. They also agreed there needed to be an active focus on identifying and weeding out modern slavery inputs into supply chains in the public sector, the local government sector and State-owned corporations as well as across the private sector.

At the time the legislation was passed in 2018, there was no Commonwealth Act. In fact, it seemed unlikely that the Commonwealth would act. But now there is Commonwealth legislation and this Government has hidden behind that to delay, stall, obfuscate and ultimately triage a situation that has led to the watering down of the legislative framework that had been agreed across parties and Houses to tackle modern slavery in this State. I acknowledge that we now have State-owned corporations and local government in. I note that we have an enhanced role for and independence of the commissioner. But I also acknowledge that private sector supply chains are essentially out. I note that the Leader of the Government has said that the Commonwealth legislation will cover the field, but it covers a vacuum because it simply does not deal with businesses of under \$100 million of consolidated revenue. That is an awful lot of modern slavery potentially going undetected and, in fact, not cared about.

**Mr David Shoebridge:** And no penalties.

**The Hon. ADAM SEARLE:** And no penalties. Without any penalties, there are no teeth in any legislative framework. There must be some enforcement mechanism. There must be some consequences for noncompliance with the law; otherwise it is not a law, it is just a gesture. A gesture is better than nothing but this is perhaps not much better than nothing, with the exception that it tackles the public sector supply chains. That is a massive step forward. The Opposition, for the reasons outlined by my colleague the Hon. John Graham, will accept for now this untidy state of affairs to finally activate a modern slavery framework for this State. We must make a start. We are only 3½ years too late. Let us make a start and agree to the amendments. Let us get something on the road.

The Hon. John Graham has flagged that members on this side of the House believe in a bolder, bigger and braver modern slavery framework, a much more robust role for the commissioner so they have more far-reaching powers to tackle exploitation in the private sector to bring bad actors to account. We do not resile from that. We took that to the last election and we reserve the right to pursue that at the next election and also beforehand should the circumstances arise. No-one, not the civil society, religious groups, this House or the other place should be in any doubt where the Labor Party stands. We stand against exploitation of workers. We stand against exploitation of all people. Creating more transparency in the production of goods and services across the supply chains wherever they may occur is a start.

I again note removing Parliament from the legislation but I also note the commitment of the Leader of the Government that the Government will support a cross-House resolution. That is a good start, which we support. It is a shame that we do not have it in legislation, but we will not stand in the way of that. We must make a start; this is the beginning. We will embrace this legislation, as untidy as it is, but we can and must do more. This House, this Parliament and New South Wales must be bigger and better than the legislation makes us look. The only reason it has taken so long and the only reason we are at this slightly tawdry point is because of the dishonesty of the Government, the tawdriness of the former Premier, and the raising and then dashing of expectations for no good reason. We are seeing grubby politics at work here and the corrosive effect of the influence of big business and corporations leaning on the Government to water down any attempt to hold them to account.

**The Hon. John Graham:** Lobbyists.

**The Hon. ADAM SEARLE:** Lobbyists. I wonder what role the Photios empire might have played in all of this. I look forward to the Leader of the Government potentially addressing that point. The Government has never given a proper account of why it stalled, obfuscated and then watered this legislation down. It can only be to further the interests of some big businesses that know they are doing the wrong thing and do not want to fix it. That is very sad. The Government can hide behind all the words it likes, but it has been 3½ years and there is no good reason for why this has taken as long as it has. I will pause my comments there and pull the rest of my punches for another occasion. The legislation is literally better than nothing and it is still better than the United Kingdom's legislation. It is said to be the best in the world. I doubt it is better than some of the laws in place in California that deal with the exploitation of workers, but let us not stand in the way of an imperfect start. We will get this on the road and we reserve the right to send it back to the body shop to turbocharge it at a later date.

**Mr DAVID SHOEBRIDGE (10:43):** On behalf of The Greens I indicate that we will accept the amendments that have come through from the other House. I do so because we made a commitment to stakeholders and to the House that we would do what was needed to have modern slavery laws in place by 1 January 2022. We will live up to that commitment now. As a result of the two-step dance between this House and the other place, I note that we have entrenched the independence of the Anti-slavery Commissioner, which was not in the original bill and which I genuinely think everybody agrees is a significant and essential reform. We look forward to that independent Anti-slavery Commissioner being on the beat from 1 January next year.

We also roped in local councils in a way that will work with the local council sector, placing a clear duty in the Local Government Act and requiring their existing reporting mechanisms to also incorporate modern slavery reporting. It means that we are not placing an undue regulatory burden on local councils but it is making it clear and unambiguous in the law that they—a collective procurement in the billions of dollars across the State—also have an obligation to eradicate modern slavery from their supply chains and procurement.

Through the amendment process we also roped in State-owned corporations into the New South Wales reporting mechanisms. If anyone thought that was not important, I remind members that in the course of debate in this House it was made very clear that even though the majority of State-owned corporations are compliant with their reporting obligations federally, a minority are not. If we wanted a demonstration of the weakness in the Federal laws, that was it. How can State-owned corporations that have a turnover of greater than \$100 million not comply with the Federal legislation? It is because it is a penalty-free zone. If State-owned corporations are not compliant, just imagine what the balance of the corporate sector is doing about those Federal legal requirements for anti-slavery reporting without any stick attached to them.

In this two-step dance we have lost some important protections that members of this House wanted in the bill. The first thing we lost was oversight of slavery and slavery-like conditions amongst the seasonal workforce. I listened to the arguments in the other place and to the position put by the Minister. I found their responses utterly unconvincing. We were giving the Anti-slavery Commissioner coercive powers to seek the production of documents when the Anti-slavery Commissioner had a reasonable suspicion to think that modern slavery was occurring. If the Government objects to those kinds of coercive powers, I wonder how it in good conscience passes any of its criminal law reforms through this House.

Our very clear target was unscrupulous labour hire firms, which we know are exploiting our neighbours, particularly the seasonal workforce from the Pacific who come here for what is meant to be a bargain where each side benefits. The agricultural sector benefits from having produce harvested and the South Pacific workforce benefits from being treated with dignity and getting a fair day's pay for a fair day's work without being ripped off. We know that is not occurring. In fact, we know a minority of unscrupulous players are treating our South Pacific neighbours not as members of the workforce and co-contributors but as a resource to be exploited. This bill created a chance to do something about that and the Government squibbed it. We think it is a major gap. We will not let go of it and will continue to agitate for those reforms.

We also lost the chance to rope in that part of the private sector, corporations and other entities, that have an annual turnover of between \$50 million and \$100 million. We have lost anti-slavery provisions that would have applied to some 1,650 corporations in New South Wales. Again, that is many billions of dollars of procurement. We could have been taking steps to ensure they were modern slavery free, but they will not have any checks and balances on them. In relation to the protections that we proposed to make the Parliament live up to the obligations we are imposing on the rest of the public sector, I indicate that The Greens accept where we have landed. We accept in good faith the Minister's statements, which were repeated in the other place, that we will see a concurrent resolution adopted by both Houses of Parliament that is consistent with the statutory protections that we sought to put in the bill. We accept that in good faith and we look forward to adopting it on Tuesday of next week. I can see that the Minister is nodding vigorously. Is that right?

**The Hon. Don Harwin:** We will do our best.

**Mr DAVID SHOEBRIDGE:** I accept that. Some have said that we cannot let the perfect be the enemy of the good. Perhaps a better description of the situation is "any plank in a shipwreck". That is what we accept, but I say this: The single biggest entity in the country when it comes to procurement and supply chains, the New South Wales Government and the agencies associated with it, will, when we have passed this legislation, be subject to modern slavery laws. That is an achievement we will sign off on and a large positive to take from this. We should at least have an element of collective ownership over that and, for those reasons, The Greens support the amendments.

**The Hon. GREG DONNELLY (10:50):** I welcome the opportunity to contribute to debate on the Modern Slavery Amendment Bill 2021. I make some comments on what is, in one sense, the historic day that we bring the Modern Slavery Act to fruition in New South Wales. I choose not to repeat comments that have already been made by the Hon. John Graham, the Hon. Adam Searle and Mr David Shoebridge. I prefer to make some more observational comments and reflect on how we have come to the situation we are in today and, importantly, how we look to the future. This is the concretisation of a piece of legislation that will be a platform for us to build on not just in New South Wales but hopefully in other States and Territories and at a Commonwealth level.

The trajectory of the bill has been long. I know other members are aware of that and have commented on it, but I reflect on how long it actually has been. On 9 November 2016 the terms of reference of the select committee were established by the Legislative Council to examine human trafficking in New South Wales, which was the platform upon which the Hon. Paul Green developed his private member's bills. I acknowledge him—and I know other members have done so—because it was his determination and fervour that was so critical to driving the bill, putting it into the public domain and animating it so much. Like so many of these things, it is the multiplier effect. We only need one or two good people to pursue an issue to be effective and get people motivated.

Members may not know that the Hon. Paul Green spent some time and a significant amount of money—which I probably do not need to mention—looking at this issue around the world, particularly in the United States and South-East Asia, when he was not in the Parliament. He looked at how legislatures across the world were dealing with the matter, and that was the run-up to the inquiry that members are perhaps not aware of. That work and seeing how terrible the problem was from an international point of view added fuel to his fervour, giving him the purpose and the need to pursue the matter even more vigorously.

That of course led to the inquiry I have just mentioned, which produced a report that became the basis of the platform to open negotiations about the development of his private member's bill that was introduced in 2018. On several occasions the Government has said that the bill was a private member's bill and was hobbled in a few areas, which meant that it could not be easily implemented et cetera. That is all part of the Government's profoundly deceptive narrative. The Government was well and truly, in its own way—perhaps not at the most senior level but at a quite senior level—well aware of the development of the Modern Slavery Act by the Hon. Paul Green. In fact, the Government had significant input, providing ideas, thoughts and observations. It even suggested amendments to the bill before it was introduced to Parliament.

The suggestion that the bill was something that was knocked up—I will not say on the back of a coaster—by a bunch of people interested in the matter, introduced into the Parliament and then only after it was passed did

the Government realise it had systemic and serious problems, is part of the whole deception that has so terribly clouded this matter. The bill that passed the Parliament with the support of both Houses, as the Hon. John Graham mentioned, was personally sponsored by the then Premier of New South Wales, who rallied the troops in the party room and indicated that this was an outstanding piece of legislation that we could all get behind; that it was a unity ticket matter, which rarely comes up in Parliament, and that the Government should do what it could. It passed through Parliament and only one member of this House, whom I will not name—

**The Hon. Scott Farlow:** Name him.

**The Hon. GREG DONNELLY:** No, no. Only one individual decided that, for his own reasons—which I am not particularly clear about and I am certainly not satisfied by the explanation—

**Mr David Shoebridge:** He did not want the anti-slavery bill to get in the way of the free market.

**The Hon. GREG DONNELLY:** Yes. But the Milton Friedman school of economic thought clearly did not carry the day and, as I said, the bill was passed by both Houses but for one vote on 21 June 2018. We all know what happened after that. I will not go through the chronology of it, but I make a couple of observations. It is appalling that a piece of legislation that was passed so overwhelmingly was essentially deceptively put into the deep freeze. We know why. It was because it was during the lead-up to Christmas 2018 and the 2019 election, and people's minds, for obvious reasons, moved towards that. None of us, in our wildest imaginations, thought it would be possible for a government to do such an extraordinary thing as put an unproclaimed piece of legislation in the deep freeze. But that is what the Government did: It put it in the freezer and froze it.

The Government said it did not do it that way, but ultimately it came out through the vigorous examination by the Hon. Adam Searle in this House during question time. He tenaciously pressed Government members with question after question before they finally fessed up. It took roughly to the middle of May 2019 before the Government came clean. If any members are interested, they can go back and read *Hansard*. The Government's argument was utterly unpersuasive but it was couched in language such that people outside Parliament, and perhaps unfamiliar with political parlance and terminology, thought it might be a reasonable explanation. Quite frankly, we in the Parliament know it was utter BS—forgive me for being so crude.

During that time—after the 2019 State election and heading towards May—we discovered what actually happened. I asked a representative of an NGO to contact the office of the Minister responsible for the bill, the Hon. Don Harwin, to find out what was going on. That person was involved with one of the devoted NGOs that had pursued this matter with us so fervently. The representative was reasonably astute, so played it carefully when they contacted a staffer in the Minister's office to discover what was happening. It was a mystery: Why had the Act not been proclaimed? The staffer—because the Minister, as was explained over the phone, was not available—indicated that the representative needed to understand that the Act was an "orphan" piece of legislation. That was the terminology used.

**The Hon. Mark Latham:** Orphan?

**The Hon. GREG DONNELLY:** Orphan! It had no sponsor. The Hon. Paul Green had not been re-elected at that State election—and what a tragedy that was for those who worked closely with him—

**Mr David Shoebridge:** We can debate that.

**The Hon. GREG DONNELLY:** It was an orphan Act. An explanation was pursued about what that meant, which was that no-one would ensure that the Act was brought to fruition. We asked for any other examples of orphan Acts or bills we should be made aware of. They were not forthcoming in that regard, but we were assured that this was definitely an orphan Act, and good luck ever getting it onto the statute books. After the conversation, the person rang me back and I dutifully wrote it all down. It is on file.

We then had the second inquiry, which was chaired by the Hon. Shayne Mallard. I was on that inquiry, as I was on the previous inquiry. To cut to the chase, numbers count. The Government had the numbers and crunched through its outcome. It said that some issues needed to be addressed. With all the resources of Government, the Executive put together enough documents to potentially sink the Titanic to overwhelm everyone. People and NGOs said that the Act was utterly unfit for purpose, yadda yadda yadda. The Greens are familiar with the phrase "blah, blah, blah".

At the end of the day, the Government got what it wanted. The Government suggested that it was a unity agreement and that the recommendations were a consensus outcome. Without being crude, I once again refer to the initials "BS". That was not the case at all; we fought mightily hard. The Hon. Adam Searle made a great contribution behind the scenes to help with the drafting. A number of other members across the parties were involved. Everyone was up to their eyeballs in getting the result we wanted, except the Government, which almost had the Premier of the day out the front of Macquarie Street saying, "Let's get onto this unity ticket and get the



job done". Slave workers around the world deserve our acknowledgement and whatever we can do to put downward pressure on those practices wherever they exist.

Having produced the recommendations in the report, we then had to work through what I can only describe as the tortuous process to get here today. My good friend the Hon. John Graham, who is much more of a gentleman than I, spoke about the remarkable parliamentary process to get to this point. I am a little bit more coarse than he is. I would potentially refer to it as dastardly or appalling or disgusting or deceptive—whatever adjectives members would like to use to describe what the Government has done to drag this out. We have come here today in good faith with an intelligent decision that has been reached together, through the great work of the Hon. John Graham, the Hon. Adam Searle, crossbench members and importantly the faith groups and NGOs. To get to this position is ultimately a reflection of how determined we are to get this onto the statute books.

The fear of delay is an appalling basis upon which to be agreeing to the amendments. We know that the bastardry of the Government in regards to this bill knows no bounds, and we know what will happen if we do not get the deal done. This could drag on for months; the Government does not really care. The Government would be prepared to potentially use it as a matter of policy and debate in the lead-up to the next State election. Government members do not care; it is not a priority for them. The tenacious work of too many individuals to name, although many have been named, has got us to this point. Just before 10 o'clock today I managed to get through to Paul Green and have a bit of a yak about this bill. I had not spoken to him for a while; it has been irregular contact. But I assure members he has been keeping a weather eye on the bill. He has been watching the webcast and following the bill very closely, and he was delighted to have a report on where it was at.

**The Hon. Mark Latham:** He's got to buy a TV.

**The Hon. GREG DONNELLY:** Yes, they get TV coverage in the Shoalhaven. He concurred that this was the time to complete the process and put a full stop to it, as the Hon. Adam Searle said, but this is not the end of the matter by any stretch of the imagination. The Hon. John Graham, the Hon. Adam Searle and Mr David Shoebridge have articulated very clearly the disembowelment of key provisions in the legislation that were passed almost unanimously by both Houses of Parliament. This Minister has had his guiding hand in all of this, all the way through to the disembowelment of those provisions, and we will not forget it. It will also not be forgotten by stakeholders, faith groups and people who come to understand the tawdry history of how we got to this point or who have had any association whatsoever with the important international campaign to abolish modern slavery. I conclude on that note. I commend the comments of all those who have supported the legislation through to this bitter end. In some respects it is not the bitter end but the bitter end of the start of the abolition of modern slavery in New South Wales, Australia and around the world.

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (11:06):** I do not propose to make too much comment about some of the remarks that have been made during the debate. The recounting of an apparent discussion with a member of my staff and their description of it as an "orphan Act" have never been brought to my attention at any stage since the alleged conversation happened. That surprises me, but I will not enter into a long debate about that. I prefer to focus on the fact that we are getting a result. The bill will automatically commence on 1 January, and the Anti-slavery Commissioner and the commission will get on with their work. Mr David Shoebridge is absolutely right that the New South Wales Government is the biggest procurer of services and goods in the country, and the Government will be bound by the Act and leading by example. That is a result worth getting. I thank honourable members for their contributions today. For the very last time, I commend the bill to the Committee.

**The TEMPORARY CHAIR (The Hon. Rod Roberts):** The question is that the motion be agreed to.

**Motion agreed to.**

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

That the Chair do now leave the chair and report that the Committee has agreed to the Legislative Assembly's amendments.

**Motion agreed to.**

#### **Adoption of Report**

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

That the report be adopted.

**Motion agreed to.**

### Messages

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

That a message be forwarded to the Legislative Assembly advising it that the Legislative Council agrees to the Legislative Assembly's amendments.

**Motion agreed to.**

### ENERGY LEGISLATION AMENDMENT BILL 2021

#### In Committee

#### Consideration of the Legislative Assembly amendments.

*Schedule of amendments referred to in message of 18 November 2021.*

No. 1 Amendment No 1. GRN No. 1 [c2021-113C]

Agreed to.

No. 2 Amendment No 2. OPP No. 1 [c2021-111G]

Agreed to with the following amendments-

Omit proposed subsection (1B)(b). Insert instead-

- (b) not result in premature harvesting of timber that causes the corporation to fail to meet a supply commitment to a local timber processor under a timber supply agreement, and
- (c) not result in more than 0.7 per cent of forestry areas currently used for forestry operations with trees of exotic coniferous species being used for the construction and operation of renewable energy infrastructure, and
- (d) not result in a net loss of timber available for forestry operations, and
- (e) result in a net gain of land available for forestry operations.

Insert after proposed subsection (1C)(a)-

- (a1) has an area at least twice as large as the area used for the construction and operation of renewable energy infrastructure, and

Insert after proposed subsection (1C)(c)-

- (1D) The corporation will remain a State-owned corporation that must act in accordance with the objectives of the Act.

No. 3 Amendment No 3. OPP No. 2 [c2021-111G]

Agreed to with the following amendments-

Omit proposed subsection (1A)(b). Insert instead-

- (b) will not result in premature harvesting of timber that causes the corporation to fail to meet a supply commitment to a local timber processor under a timber supply agreement, and
- (c) will not result in more than 0.7 per cent of forestry areas currently used for forestry operations with trees of exotic coniferous species being used for the construction and operation of renewable energy infrastructure, and
- (d) will not result in a net loss of timber available for forestry operations, and
- (e) will result in a net gain of land available for forestry operations, and

Insert after proposed subsection (1B)(a)-

- (a1) has an area at least twice as large as the area used for the construction and operation of renewable energy infrastructure, and

**The Hon. BEN FRANKLIN (11:10):** On behalf of the Hon. Damien Tudehope: I move:

That this House, having considered the Legislative Assembly's message of 18 November 2021, agrees to the amendments proposed by the Legislative Assembly to amendments Nos 2 and 3 of the Legislative Council in the bill.

I am pleased to speak in support of the Legislative Assembly's amendments to the Energy Legislation Amendment Bill 2021. The amendments relate to the reforms that remove barriers to enable renewable energy projects in Forestry Corporation softwood plantations within the Energy Legislation Amendment Bill 2021. Specifically, the Legislative Assembly's amendments refine the amendments made in this House, which introduced safeguards to protect timber supply. Following the passing of the Legislative Council's amendments last month, Forestry Corporation advised that the text as approved would prevent renewable energy projects from being developed in the softwood plantations. The challenge with the requirement that a development must "not result in premature

harvesting of timber" is that there are trees of all different ages in areas that are suitable for developments. It would be very hard to determine and ensure that all trees are mature, and this would effectively prevent any developments from happening.

The Legislative Assembly's amendments will allow the legislation to achieve its original policy intent while ensuring timber supply is maintained. The Legislative Assembly's amendments clarify the original amendment by ensuring that "premature harvesting" does not cause Forestry Corporation to fail to meet a supply commitment to a local timber processor under a timber supply agreement. The Legislative Assembly's amendments will achieve the intent of this House's original amendments while still supporting the New South Wales Government's priority of keeping the lights on, getting electricity prices down for homes and businesses across the State, and achieving our objective of a 50 per cent reduction in emissions by 2030 and net zero by 2050.

The current safeguards in the bill will ensure that the development of these renewable energy projects will not have an impact on the ability of Forestry Corporation to deliver existing softwood timber supply obligations. I reiterate that renewable energy projects in these softwood plantation areas would not result in a large area of land being unavailable for future timber production and stress that the change retains this House's original amendments to require that there would not be a net loss of timber or land available for forestry operations—something I know that is particularly important to the Temporary Chair (The Hon. Rod Roberts). Indeed, the Government is seeking to strengthen the provision by requiring any land used for renewable energy projects to be replaced with at least twice the area for forestry operations. In essence the amendments ensure that the softwood plantation estate grows as a result of any renewable energy projects that are developed.

In addition, the Government is ensuring that no more than 0.7 per cent of Forestry Corporation's softwood plantation can be used for renewable energy developments. These renewable projects would coexist with the range of other uses already taking place side by side in State forests, including tourism, apiary, grazing, timber production and access for recreation. The New South Wales Government has consulted with industry stakeholders to develop new drafting that would balance the need to safeguard timber supplies and forestry jobs with the need to have a framework that is practical to implement. Finally, the Legislative Assembly amendments also reaffirm Forestry Corporation's status as a State-owned corporation which must act in accordance with the objectives of the Act, as moved by the Opposition in the other place. Overall the Legislative Assembly's amendments ensure that the legislation will achieve its original policy intent, which is to unlock opportunities for the development of infrastructure for the generation and storage of energy from renewable sources within Forestry Corporation's softwood plantations.

**The Hon. PENNY SHARPE (11:14):** Labor will support the amended amendments to the Energy Legislation Amendment Bill 2021. I thank my colleague in the other place, the member for Bankstown, for her work with Minister Kean's and Minister Toole's offices in coming to this agreement. It is very important. Labor supports renewable energy, and it supported the bill that would facilitate that within these lands, but it is also committed to softwood plantations. They are a profit-making enterprise that create a huge amount of jobs and help us to build the houses that we want to build. They have been massively hurt over the past few years because many of them were burnt out in the summer fires.

These amendments deal with our concerns around that, which is about protecting land for soft fir plantation and making sure that development can be facilitated in an orderly way. There are some key things in these amendments: they provide a cap on the amount of land that can be used, they provide a two-for-one on the area that needs to be offset for any land that is taken with that and they keep Forestry Corporation as a State-owned corporation. These are all key priorities for the Labor Party, and I think we have come to a good landing on this. Labor supports these amendments.

**Mr DAVID SHOEBRIDGE (11:16):** The Greens will not be supporting the amendments to the Energy Legislation Amendment Bill 2021 that have come from downstairs. The key change is that this allows the harvesting of a softwood plantation before it reaches maturity. Having taken away that protection, which was a protection that this House had inserted, there are then a series of secondary protections put in place. The Greens strongly support the plantation industry and strongly support a publicly owned plantation industry. It is only a publicly owned plantation industry that will invest over the 20-, 30-, 40- and 50-year time frames that we need to provide a stable supply of plantation timber to build houses and create good, high-paid union jobs not just in the plantation industry but also in the downstream manufacturing industries that are at the core of the economic lifeblood of large parts of regional New South Wales. Towns like Tumut and Tumbarumba are the lifeblood of those parts of New South Wales, which is why The Greens have always fought against any effort to privatise the plantation estate and why we continue to support the plantation estate.

We want to see the plantation estate grow not only because it provides secure, well-paid unionised jobs—which is in contradistinction to the often short-term contractor positions in native forestry logging—but also because the long-term expansion of it is our pathway out. It should be the immediate pathway out of native forest

logging across New South Wales. That is why The Greens supported the amendment that said that the only timber that could be harvested and the only land that could be set aside would be mature forests, so that it was actually providing the sawlogs and the timber that is needed for the industry and the downstream employment. We agree with the position from the Construction, Forestry, Maritime, Mining and Energy Union [CFMEU] Manufacturing Division that these amendments that have come back from the Legislative Assembly do not do that.

There is a cap on the amount of the estate that can be cleared and converted from plantation to renewable energy projects. There are other places to situate these renewable energy projects in close proximity to the towns and the markets that are needed. We are not convinced that the only space to do it is in the 397,000 hectares of land under the control of Forestry Corporation in the softwood plantation division. We are not persuaded of that.

We are concerned that this is a way to put high-return, alternative income streams into Forestry Corporation to make it ready for privatisation. One of our big concerns is that it is not really a renewable energy solution; it is actually a privatisation solution. The amendments say that no more than 0.7 per cent of the softwood plantation estate can be used for that purpose, but that is a bloody large amount of land. If you look at the whole of the land under the Softwood Plantations Division, 0.7 per cent amounts to 2,779 hectares, and 0.7 per cent of the softwood plantation estate is more than 1,600 hectares—that is a big chunk of land that could be harvested. The Greens are concerned that this will see a substantial amount of forest loss well before it reaches maturity. On the analysis done by the CFMEU Union Manufacturing Division, which I accept, we could be talking about the loss of more than 15,000 tonnes of sawlogs lost to the industry.

After the fires, there is a critical shortage of sawlogs from the plantation industry to deliver those sustainable, unionised jobs that are critical to the industry. For example, the AKD mill in Tumut is one of the biggest mills and it receives good investment. Again, there are hundreds of solid, unionised jobs at that mill. Because of the loss of supply, instead of two rotating processing shifts, they have had to go to 1½ shifts. That has meant real job losses in Tumut, and those job losses mean less enrolments at the school and the shifting down of the economic pain into the town of Tumut. We are deeply anxious about the loss of any more plantation supply to the industry—and did I mention that it is a sustainable and great alternative to native forest?

The Government has said that there is a two-for-one replacement deal, so for every hectare taken out of the plantation estate for those projects there will be two hectares put back. But that will come 15 to 30 years in the future. Yes, The Greens support planting, growing and thinking about the long-term future of the plantation estate. We want to massively expand it, particularly on marginal grazing land that has been degraded. The plantation estate should be grown in those parts of New South Wales. It is a great alternative that produces environmental outcomes; it produces the timber we need and it gets us rapidly out of native forest logging. But that is 15 to 30 years in the future, and we are talking about the loss of timber supply now. Whilst we acknowledge that work has been done—and I am not pretending that efforts were not made to try and limit the impact—for those reasons and with those reservations, The Greens do not think it gets far enough and we will not support the amendments.

**The Hon. MARK LATHAM (11:22):** This is one of those moments in the House where One Nation agrees with The Greens, which indicates that the proposal must be the absolute pits. The amendments to the amendments from the Legislative Assembly fit that description. This was never a wise initiative. How much Photios dust do you need to sprinkle around New South Wales to make renewable energy work? In fact, taking very important plantation softwood timber and limiting its supply during a crisis for housing construction in Sydney is lunacy in itself. Mr Justin Field asked why you would put essential energy infrastructure in bushfire zones—that is also compelling. Look at the fires in 2019-20, which went right through many of those plantations. Why would you think, "That is a great spot for a solar farm. Fantastic! That is where we need to generate electricity in New South Wales." That proposition in itself is another act of lunacy.

The Greens have a very valid concern that the early harvesting of softwood well before maturity will put much more pressure on old-growth native forests to supply the timber that is needed to build the new homes and to support the economic recovery and the looming housing boom in Sydney and, indeed, throughout regional New South Wales. There are many compelling reasons to say why the proposal should not get off first base. The amendments should be rejected by the Chamber, but they make a compelling point: How much land do you need for the solar farms to be viable? The data shows that the solar facilities eat up 400 times the amount of land area of conventional electricity generation through coal fire, gas fire or nuclear—400 times! The destruction of the environment is laid out—pictures show the solar farms rolling over hills and valleys and taking up enormous space.

**Mr David Shoebridge:** Have you ever seen an open-cut coalmine?

**The Hon. MARK LATHAM:** The landlord leader of The Greens, who is interjecting, informed the House last week that the big problem for the New South Wales ecosystem is a couple of synthetic hockey fields in

western Sydney—the myth of the urban heat island. The destruction of the environment and the amount of land that is taken up by these solar farms are proven in this faulty amendment. They can only make the solar farms viable in New South Wales by squeezing them into plantation areas, such as the 400,000 hectares run by Forestry Corp, as mentioned by the member. It is worrying on so many fronts. How viable is the renewable energy sector if they need to move into areas that have been ravaged by bushfire just a couple of years ago, or if they need to replace provisions relating to the maturity of softwood to ensure a timber supply for the building of homes in Sydney? Everyone talks about housing affordability; give a timber shortage a crack, when you cannot even build a home. In terms of affordability, that is certain to send the price of established housing stock through the roof.

At every level, whether we are talking about a viable electricity generation system, a viable timber supply in New South Wales or the placing of electricity generators in bushfire zones, it is hard to believe that the Government, with the support of Labor, is persisting with these amendments. Labor, in this case, is spearheaded by Ms Tania Mihailuk, the shadow Minister for Natural Resources and member for Bankstown, who did great work in alerting us to the timber supply shortage, which will send house building costs through the roof. Members must reject the amendments proposed by the Legislative Assembly and stand by the initial amendments to the bill that were made in this Chamber. We will then get it right on all three fronts: electricity generation, timber supply, and not putting excessive pressure on valuable old-growth native forests in New South Wales.

**The TEMPORARY CHAIR (The Hon. Rod Roberts):** The question is that the Committee agree to the Legislative Assembly's amendments.

**Motion agreed to.**

**The Hon. BEN FRANKLIN:** I move:

That the Chair do now leave the chair and report that the Committee has agreed to the Legislative Assembly's amendments.

**Motion agreed to.**

### **Adoption of Report**

**The Hon. BEN FRANKLIN:** On behalf of the Hon. Damien Tudehope: I move:

That the report be adopted.

**Motion agreed to.**

### **Messages**

**The Hon. BEN FRANKLIN:** On behalf of the Hon. Damien Tudehope: I move:

That a message be forwarded to the Legislative Assembly advising it that the Legislative Council agrees to the amendments proposed by the Legislative Assembly to amendments Nos 2 and 3 of the Legislative Council.

**Motion agreed to.**

## **GAMING MACHINE TAX AMENDMENT (PROMOTIONAL PRIZES) BILL 2021**

### **Second Reading Speech**

**The Hon. SCOTT FARLOW (11:28):** On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

The amendments in the Gaming Machine Tax Amendment (Promotion Prizes) Bill 2021 confirm the original legislative intent of taxing all bets placed on a gaming machine, regardless of whether bets are made using cash or non-cash means. The bill makes amendments to definitions relating to taxable profits in the Gaming Machine Tax Act 2001 and confirms alignment of the law with longstanding tax collection practices of the gaming regulator, Liquor & Gaming NSW. Those definitions have been in place since the commencement of the Gaming Machine Tax Act 2001 and need to be clarified and modernised to ensure certainty for taxpayers on their payable taxes. The proposed amendments to those definitions in section 3 of the Gaming Machine Tax Act have three specific purposes. Firstly, the bill clarifies that tax has and will continue to be payable on gaming machine bets that are paid using promotional prizes, such as reward schemes and other marketing or promotional activities. Many clubs and hotels across New South Wales offer player reward schemes or other promotional prizes to encourage people to spend more on gaming machines.

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

**Leave granted.**

These prizes and schemes have operated since at least the early 2000s and are regulated by the *Gaming Machines Act 2001*.

This change seeks to provide clarity for taxpayers who offer such prizes and schemes and improve the transparency and simplicity of our tax system.

Secondly, the bill clarifies the point at which a bet becomes taxable—that is when the bet is placed in the machine, rather than when the player inserts money into the machine.

This change removes any potential ambiguity in the law regarding the point at which money is invested in a gaming machine.

The bill also clarifies the point at which deductions are included in the tax calculation—that is when the player wins a prize (including a progressive jackpot prize) from playing the machine.

Finally, the bill clarifies that the scope of 'revenue from a gaming machine' has always included, and will continue to include, bets placed through non-cash means, such as stored value cards and digital wallets.

This means that, for tax purposes, regardless of the method used to fund a bet, all bets placed in a machine have been, and will continue to be, part of the revenue used to calculate tax liability.

This has always been the Government's position and the legislative intent. As such the amendments provide further clarity and ensure that the taxation system continues to be robust enough to handle future technological developments in payment methods and gaming machine functionality.

Our laws need to provide regulatory consistency, legal confidence and certainty to industry.

The use of promotional prizes, and the use of non-cash payment methods are likely to continue to evolve.

This bill therefore makes it clear that any bets placed in a gaming machine, regardless of the payment method the player uses, are covered by the tax system, including through non-cash means.

These changes are consistent with longstanding tax treatment and collection practice by Liquor & Gaming NSW and clarifies the alignment between the legislation and its application to taxpayers.

There will be no change in how gaming machine tax has been and will be calculated in the future.

Accordingly, for taxpayers there will be no change in historical or future tax liability as a result of these amendments.

Mr Speaker, the bill therefore clarifies that the amendments discussed are taken to have been made on the commencement of the *Gaming Machine Tax Act*.

In summary, these clarifications in the bill will resolve any ambiguities in the law and confirm the application of the law by the regulator since the *Gaming Machine Tax Act* was introduced.

I commend the Bill to the House.

### Second Reading Debate

**The Hon. DANIEL MOOKHEY (11:30):** I have the honour of representing Labor as we go through an intense debate about the Gaming Machine Tax Amendment (Promotional Prizes) Bill 2021. Labor will not be opposing the bill. The explanatory note to the bill states:

The object of this Bill is to amend the *Gaming Machine Tax Act 2001* (the **GMT Act**) to make it clear that bets placed on gaming machines using promotional prizes are taxable.

Under the GMT Act, tax is payable on profits from gaming machines kept in a hotel or on the premises of a registered club. The Bill makes clear—

apparently—

and removes ambiguities about, the determination of profits for the purposes of the GMT Act.

The long title of the bill states that it is:

#### **A Bill for**

An Act to amend the *Gaming Machine Tax Act 2001* to make it clear that bets placed on gaming machines using promotional prizes are taxable; and for other purposes.

The bill is relatively simple and straightforward. As always with these types of bills, we will judge the Government by the results it produces. We have been told by the Government that it has undertaken the requisite levels of consultation with parties in New South Wales that might be affected by its impact. We take the Government at its word that it has completed those consultations and that no significant issues remain with respect to the people who are affected by the bill. The shadow Minister in the other place has had the opportunity to consult with some of those stakeholders. I acknowledge the feedback that we have received from the Australian Hotels Association and ClubsNSW, amongst others. As I said, we will judge the bill by its results. I refer the House to the shadow Minister's comments in the other place with respect to the balance of the Opposition's views on the bill.

**Ms CATE FAEHRMANN (11:32):** On behalf of The Greens I contribute to debate on the Gaming Machine Tax Amendment (Promotional Prizes) Bill 2021. The bill is quite simple. It seeks to fill a regulatory gap and remove any doubt that bets placed on a gambling machine using promotional prizes or player reward schemes are and have always been taxable. Of course The Greens support the tax system being applied fairly and consistently to all forms of gambling. However, The Greens are opposed to the implementation of promotional

prizes and player reward schemes. Make no mistake, promotional prizes and player reward schemes are used to induce people to gamble. They are unethical tactics to prey on some of our most vulnerable communities and dramatically increase the incidence of people experiencing gambling harm. That the Government is amending the tax code to capture prizes and loyalty schemes rather than prohibit them is a testament to its commitment to turning a blind eye to the growing problem of poker machines in this State.

An analysis of poker machines in clubs and local council data across the State shows that pokies are far more common in poorer, less educated areas and that the losses per machine are far higher in areas where residents can least afford them. For example, the local government area of Fairfield, which I have spoken about in this place before, has an average household loss per year of \$5,668 while the median wage is only \$63,544. Across pubs and clubs, the greatest punter pokie losses were felt in Sydney's west and south-west. Canterbury-Bankstown local government area venues recorded a \$50 million profit for the month of May, followed by Fairfield with \$47 million, Cumberland with \$31 million and Blacktown with \$26 million. City of Sydney venues were next on the list with a monthly \$25 million profit, followed by the Central Coast Council with \$24 million. After restrictions on gambling lifted in June 2020, because of the lockdown, the pokies industry reported an increase in profits of \$40 million compared to the previous year.

In budget estimates this year the Deputy Secretary of the Department of Customer Service confirmed anecdotal evidence that suggested a similar increase as the most recent lockdown ended. Unfortunately—despite this bill, which does not address anything in relation to reducing the harms caused by gambling—the Government's budget relies on the assumption that problem gambling will increase. Tax revenue from poker machines increased by 38 per cent in 2020-21 to \$1.865 billion. Despite having a stated goal of working towards zero harm from gambling, this year's budget predicts tax revenue from poker machines will actually increase to \$2.19 billion by 2024. As long as NSW Treasury is predicting increased tax revenue from poker machines, it is predicting increased losses and therefore increased harm from gambling. When asked at a stakeholder breakfast with the NSW Council of Social Service [NCOSS] about how this was compatible with the Government's aims to reduce gambling harm, the then Treasurer, Dominic Perrottet, responded by saying that:

I think one of the worst blights in our country is problem gambling and the fact that we provide and facilitate an environment where people pour their savings down a poker machine is problematic.

Before the pandemic hit, people were losing almost \$19 million every single day to the pokies, causing mental health crises, financial hardship, substance abuse, domestic violence, homelessness and even suicide. The most recent budget ignores the real cost of gambling to our community and reveals once again that the Government has no plan to reduce the incredible damage that poker machines are creating in our communities. Gambling costs the taxpayer, it costs families and it costs our government services. The only people who benefit from gambling are the pubs, clubs and casinos, and the political parties that are all too happy to take their donations. New South Wales prohibits the advertisement of any offer of an inducement to participate in any gambling activity, including an inducement to bet more frequently, yet inside pubs and clubs player reward schemes and promotional prizes, which are clearly designed to induce betting, remain entirely legal.

Loyalty programs provide gamblers with additional rewards and credits, with many programs providing tiered benefits depending on the amount a user gambles. Users who gamble more might access additional benefits that others do not, including access to more exclusive offers, more attention by staff and free food and beverages. Users who gamble more get to feel like they are special; they get to feel like they are VIPs. Really, they are just being taken advantage of by an industry that makes millions of dollars a day. A recent University of Adelaide study found that 40 per cent of people experiencing gambling harms in Australia are loyalty card users and that the less an individual experiences gambling harm, the less chance that they are a member of a loyalty program. Similar studies in the UK found an association between loyalty card use and more frequent gambling.

In 2020 Liquor & Gaming NSW handed out the largest ever penalty to a club linked to the death of someone experiencing gambling harm. Mr Van Duinen died by suicide in 2018 at the age of 45. He had been a diamond member of the Dee Why RSL and was given special treatment including VIP parking, private red carpet entry, personalised hosting, a priority paging service on the gaming floor and accrual of reward points to spend on food, beverages and other benefits. This all went on despite his wife complaining to the club repeatedly and the club being aware of gambling harms being experienced by Mr Van Duinen. He made 170 visits to play gaming machines in the two years before his death on 31 May 2018, playing an average of nearly six hours per visit, with some visits lasting up to 13 hours. The Independent Liquor & Gaming Authority [ILGA] Chair, Phillip Crawford, said:

It was the club's selection of Mr Van Duinen as a 'top 100' gaming machine player, targeted exclusively to receive special 'high roller' benefits like harbour cruises and race day events, that was found likely to encourage the misuse and abuse of gambling ... This contravened both gaming machines and registered clubs' legislation.

Club membership data revealed that, across those visits, he gambled more than \$3.7 million or an average of \$22,333 per visit, losing a total of \$230,000. ILGA handed Dee Why RSL \$200,000 in fines and costs following Mr Van Duinen's death in 2018. In reality, the club barely made a loss—one it certainly will not notice amongst the \$43 million in profits it makes each year as a result of poker machines. This came shortly after the Australian Leisure and Hospitality Group, of which Woolworths is a significant shareholder, was given the second-largest penalty ever handed out by ILGA for systematically providing patrons at two New South Wales hotels free alcohol to encourage their gambling.

Then Treasurer Perrottet also told stakeholders at the NCOSS breakfast that gambling harm "is something that needs to be—to be brave—it's something that needs to be addressed". Yet we have seen no bravery from this Government on the harms caused by gambling. Losses to poker machines are growing every month, every year. Behind those losses are countless tragedies, countless families that are shattered, countless lives that are destroyed. If the Government were serious about protecting the people of New South Wales from this predatory industry we would be voting on a bill to ban loyalty programs and promotional prizes, not one that simply ensures the Government continues to grow its coffers out of the pockets of those whose lives are destroyed by the harms caused by poker machines. The Greens support the bill though.

**The Hon. SCOTT FARLOW (11:40):** On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Daniel Mookhey for his rousing contribution and I thank Ms Cate Faehrmann for her glowing endorsement of the Gaming Machine Tax Amendment (Promotional Prizes) Bill 2021. The Government commends the bill to the House.

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

**Motion agreed to.**

### Third Reading

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

That this bill be now read a third time.

**Motion agreed to.**

## PUBLIC SPACES (UNATTENDED PROPERTY) BILL 2021

### Second Reading Speech

**The Hon. SCOTT FARLOW (11:42):** On behalf of the Hon. Don Harwin: 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.**

It gives me great pleasure to introduce the Public Spaces (Unattended Property) Bill 2021, following a major review and consultation on the outdated Impounding Act 1993 over the last two years, which is to be repealed.

Through this new, future-focused public spaces bill, the New South Wales Government is meeting its commitment to keep our roadsides, open spaces and other public places safe, accessible, and enjoyable for our local communities across New South Wales for generations to come.

The bill will resolve a range of concerns our communities have been raising with every single member of this house and every single council in New South Wales for years - these are about shopping trolleys, abandoned vehicles and stray stock.

This bill will protect our urban and growth areas. It will keep public spaces free from safety, access and amenity problems caused daily by unattended shopping trolleys, vehicles, trailers and other items.

The bill helps implement the Government's priority for well-connected communities with quality local environments, including greener public spaces.

It also supports the Government's Future Transport 2056 Strategy by supporting the vital role played by vehicles and innovative shared services, such as share bikes, in keeping us mobile, cutting commuting times and creating liveable, enjoyable and successful places into the future.

Our rural and regional communities will also be protected. The bill will help to prevent stray cattle, sheep and other stock wandering onto roads and causing tragic accidents. Further, our farmers' livelihoods will be protected from the threat of disease and weeds caused by stock straying onto their land from neighbouring properties.

Importantly, this bill protects the welfare of animals by making it clear that animals taken into possession must be cared for in line with the Prevention of Cruelty to Animals Act 1979.

This bill, building on the successful scheme to regulate share bikes introduced in 2018, will also have the flexibility to deal with new property that may emerge in public spaces over time and that may be used by or shared with the public at large.



Unattended shopping trolleys, vehicles and stray animals are costing our local communities and councils \$17 million per year.

It is clear from extensive feedback that our community has had enough of other people's property cluttering our public spaces and impacting their access and enjoyment of these spaces.

This Government has carefully listened to this feedback and the provisions before you create a wholly new approach to managing these concerns more quickly and efficiently.

This bill puts the onus on owners and others responsible for private property left in public to attend to it responsibly or face tough new laws — including appropriate fines, penalties, orders and taking possession of and storing their items and caring for their animals.

This reverses the current situation in which councils and other authorities must spend time and resources trying to "catch someone in the act" of leaving their property unattended, or attempting to find the owner, or bearing the high cost of disposal when the person responsible cannot be found or refuses to take responsibility.

Put simply, this bill will make those responsible take responsibility, and give necessary powers to help our councils, police and other public land managers deal with irresponsible behaviour and unattended private property left unattended in public.

### **Shopping trolleys**

Abandoned and unattended shopping trolleys alone have been causing problems in our communities for decades now.

In fact, a former Department of Local Government Circular, dated 12 December 1980, shows that the need to control abandoned shopping trolleys was the reason that new laws to impound "articles" were brought in over 40 years ago, after a voluntary agreement between the then Local Government Association and the Retail Trader's Association failed.

While there have been several attempts to revive voluntary codes of practice for shopping trolleys over the ensuing years, the community, councils and local members have told me that dumped, abandoned and unattended shopping trolleys are still a huge issue.

We still have daily problems with shopping trolleys dumped in the bush and waterways putting our natural environment at risk.

We still have daily problems with shopping trolleys left where they obstruct access to train stations, bus stops and emergency exits.

And we still have daily problems with trolleys causing hazards on footpaths for the elderly and those with sight impairment.

The bill will require retailers, or those responsible, to pick up their trolleys within risk-based timeframes, or face fines, and/or have their trolleys taken into possession and moved to a place of storage where they must then collect them, pay the fees associated with collecting them or face another fine for not collecting them.

We understand that this will mean significant changes for retailers who distribute shopping trolleys.

I am pleased to say that the Government has had positive engagement with supermarket chains which have chosen to engage in consultation with us, and which have indicated their commitment to better manage trolleys in collaboration with local councils.

We will work with councils and the retail industry to put in place sensible regulations, as well as a mandatory code of practice, if required.

While the regulations are still being prepared, following consultation to date - as well as the successful scheme this Government put in place for managing share bikes in 2018 – it is proposed the regulations will require that those responsible for shopping trolleys to organise their removal from a public place within three hours of notice if they are causing a safety risk or access issue, or, within four days of notice if they are simply left unattended for seven days or more, or causing an amenity issue.

Penalties for not picking up a trolley within the risk-based timeframe may apply - up to \$2,750 maximum Court-imposed penalty, or a \$660 fine for a trolley left unattended after reasonable notice.

Further, these penalties and fines may compound by 10 per cent for each additional trolley up to 10 more trolleys. This recognises the increased risk that each additional trolley poses.

In addition, maximum penalties will be 125 penalty units (\$13,750) for corporations, reflecting public expectations for stronger action against corporate wrongdoers.

The regulatory framework will also require clear branding of shopping trolleys and anything else considered necessary to protect public safety, access and amenity.

However, importantly, we do not want to put an onerous and unnecessary burden on our small business, such as small "mums and dads" supermarket stores. The regulatory framework will therefore also provide for exemptions from these requirements for retailers with fewer than 25 trolleys.

Further, to deal with the few retailers that continue to fail to meet the new standards, the bill provides for appropriate directions, or orders, to be imposed by an authority on a retailer, such as to enter into a shopping trolley management agreement with that authority.

These measures will help to address the issues reported by Western Sydney councils which report collection of over 1,000 trolleys from streets and parks during two blitzes in 2019 - including 550 in one week by Fairfield, Penrith, Liverpool and Cumberland Councils.

These measures will meet the needs of community members who are fed up with how often trolleys are abandoned and who feel powerless in the face of what they see as a lack of action by retailers or councils.

### **Vehicles**

In the case of unregistered cars and trailers parked long term on residential streets where parking is scarce, councils and members of Parliament have told me they get daily calls from frustrated residents about these - and that they are told very little can be done.

Councils currently need to track down the owner before they can even seek to impound a vehicle. Then, if an owner claims the vehicle, even if it is in poor repair and unregistered, councils often cannot issue fines or impound the vehicle.

That is why consequential amendments to road transport laws will fix the issue of unregistered cars and trailers taking up valuable parking spaces on our roads once and for all.

This bill will enable councils, police and transport authorities to issue an on the spot fine on the registered operator of any unregistered car or trailer parked on a street 15 days after registration lapses.

We have also listened carefully to feedback from the community, councils and boating enthusiasts about boat trailers parked on our streets.

We recognise that law-abiding owners of boat trailers who regularly attend to their boat trailers are not the key issue here and we have therefore removed the special scheme in place for boat trailers from the bill.

Instead, this bill will create a "level playing field" in providing a fair, equitable and effective scheme for owners and other persons responsible for ALL motor vehicles, including boat trailers and other trailers.

This provides a workable solution for a range of problem areas - from cars and trailers left obstructing driveways or school drop off zones, to abandoned, undriveable vehicles and unregistered vehicles and trailers.

And yes, this includes problem boat trailers which may be unregistered and taking up valuable parking spots, or causing other amenity issues because they are unattended or even abandoned at the end of their life.

These reforms will help to address the 1,000 plus complaints about potentially unattended or abandoned vehicles that councils like Randwick City have told me they get each and every year.

The bill will help to put the onus squarely on those responsible to manage their vehicles and trailers to make it easier and quicker for authorised officers to access the information they need to identify and notify people responsible for vehicles, including specific but limited powers of entry to vehicles to do so.

Penalties for not attending to a vehicle within risk -based timeframes will apply - up to \$2,750 maximum Court-imposed penalty, or a \$660 fine for a vehicle left unattended after reasonable notice.

Further, these penalties and fines may continue for up to three consecutive days to act as an incentive to swiftly attend to a vehicle deemed unattended.

#### **Animals**

Tragically, stock animals on roads cause traffic accidents that can result in serious injury, even fatalities.

As recently as this year, for example, one 18 year old man was killed and another hospitalised after separate collisions with livestock in the Upper Hunter.

Farmers have also told me that the current laws do not adequately deal with irresponsible neighbours letting their stock wander onto neighbouring farms, potentially bringing disease and weeds.

This bill will provide meaningful incentives for irresponsible people to take better care of their animals and make sure they are fenced in to prevent road tragedies and threats to other farmers' livelihoods.

Penalties for letting an animal stray onto public land, or a neighbour's private land, have increased - up to \$2,750 maximum Court-imposed penalty, or a \$660 fine for one stray animal. As for trolleys, these penalties and fines may compound by 10 per cent for each additional animal up to 10 extra animals.

Further, directions, or orders, may also be issued to require owners to fence their land, with serious penalties for not complying.

In addition, this bill will enable authorities to temporarily place stock posing an unacceptable risk to health or safety onto nearby private land. This will apply only in emergencies like livestock truck rollovers and other road accidents, amongst other things.

Also importantly, emergency orders under the Biosecurity Act will still prevail.

Importantly, when dealing with stock emergencies, authorities must make all reasonable attempts to obtain the consent of the occupier of the property and comply with their reasonable requests relating to keeping the animals, including to minimise biosecurity risks.

Ultimately, we need to do better to empower authorities to act promptly and to work together to protect our regional and rural communities.

I am assured that the Office of Local Government will work closely with the Department of Primary Industries and the NSW Police Force to develop protocols for seeking landowner consent and other guidance to mitigate biosecurity risks.

To support better collaboration, the bill will enable authorities, such as councils, Local Land Services and the National Parks and Wildlife Service, to enter into agreements to exercise powers across each other's land.

This will make a huge difference in being able to pool resources when responding to stock roll over and other issues on jurisdictional borders in our regional and rural areas.

Finally on this matter, I want to emphasise that the bill does not affect the obligation of authorities to treat animals in accordance with animal welfare laws and, wherever possible, to seek the assistance of a veterinary practitioner to assist in exercising relevant functions.

While the bill will provide for clearer, minimum requirements for those responsible to manage their property, it also provides greater flexibility to meet these requirements in a way that suits them.

This is particularly important for retailers, share bike scheme operators and other businesses that operate shopping trolleys, share bikes and other shared devices.

For example, retailers will not be required to adopt perimeter fencing, wheel lock devices, coin deposit schemes or use GPS technology to track their trolleys. Instead, as long as retailers meet risk -based timeframes for collecting their unattended trolleys from public places, they can choose how they can best meet the timeframes based on local circumstances.

In addition, the bill provides for standards and Codes of Practice to be made, where needed, for specific items and industries. These may be negotiated with industry and regulators to make sure the requirements are clear and sensible.

This bill not only provides for more efficient and effective management of our public spaces, it reduces costs and red tape in a range of areas for councils and other authorities.

The net benefit of implementing all of the proposals in this bill is estimated at \$9.7 million per year - a 60 per cent reduction in costs.

The proposals would also ensure that these costs are borne primarily by the owners and others responsible — not the community.

The bill provides for improved compliance and administrative processes, making it easier for councils and other authorities to establish and share facilities to store items and care for animals.

In practice, this flexibility will significantly reduce time and costs of taking, storing or caring for, and disposing of property.

As members would be aware, these costs are ultimately borne by ratepayers and taxpayers, so this will be welcome news to our communities.

Over the past two years the Minister for Local Government has overseen extensive consultation to develop the reform proposals reflected in this bill.

The Office of Local Government has engaged many times with local councils, the retail sector, recreational boating and fishing groups, farmers associations, disability advocacy groups, affected State agencies and others.

I know that many in the community have an interest in the outcomes of this review - particularly in relation to problem shopping trolleys, vehicles and straying stock.

Opportunities for feedback were provided in response to a Discussion Paper, Options Papers, targeted stakeholder workshops and a range of meetings since I initiated this review in 2019.

This feedback was carefully considered and has been instrumental in shaping the bill before this place.

I would particularly like to recognise the member for Oatley for his contribution to the consultation process. He has actively supported this reform process, chairing consultation workshops in July this year and putting forward the needs and circumstances of the communities he represents with respect to both shopping trolleys and vehicles.

I will now turn to the details of the bill.

### **Objects of the Act**

This bill sets out a primary, outcomes -focused object of encouraging owners and other persons responsible for property to mitigate risks to access, safety and amenity that may arise from the property being left unattended.

And to ensure public spaces can continue to be used, shared and enjoyed by the community as a whole.

This is in stark contrast with the objects of the current Impounding Act, which focuses on operational processes.

The bill also sets out secondary objects to achieve this new, outcomes -focused primary object including:

- to empower authorities to move or otherwise deal with property left unattended in their area of operations and, if necessary, to take regulatory and enforcement action;
- to make arrangements for the appropriate and efficient storage of items or care of animals, where necessary, on a temporary or longer -term basis;
- to ensure that animals dealt with under the Act are cared for in line with community expectations and animal welfare laws;
- to provide for the recovery of costs from responsible persons of dealing with their unattended property, where authorities do take possession of it.

Finally, the bill proposes maintaining the object in the current Act of empowering occupiers of private land to take possession of stray stock animals on their land, such as farmers, who need to minimise biosecurity and other risks to their animals and crops.

### **Scope and application of the Act**

I now turn to the key concepts in Division 2 of Part 2 of the bill.

These are of particular importance in understanding the provisions of the bill, so I will spend some time explaining them.

The bill classifies property that may be possessed by a person into two distinct classes - animals and items.

It then specifies three classes of items in proposed sections 6-9, to enable specific rules to apply to each when determining whether they are "unattended" for the purposes of the bill.

The first class is for small to medium sized items that can be ordinarily collected by one or two persons without the need for machinery to lift, tow or move that item. This would include, for example, baggage, personal equipment or personal recreation equipment — such as bikes and surfboards and kayaks and the like.

The second class of items captures items made available for use by the public at large, whether they are required to be paid for or not, including as part of a specific "sharing service", such as share-bikes, and shared devices used by the public, such as shopping trolleys.

A third class of items captures "motor vehicles", including hire cars, as defined in the Road Transport Act 2013. This therefore applies equally to cars, caravans, boat trailers and all other trailers.

Importantly, the bill has flexibility to move items between classes, and to create new classes of items, if needed in future, such as for share cars, which could arguably fit into either class 2 or class 3 items.

In addition to items, the bill provides for arrangements for the management of most animals under proposed section 5, which are a type of property for the purposes of the Act.

Importantly, the term animals is to include stock animals, as defined in the Local Land Services Act 2013, but is not intended to capture feral and non-farmed natives, which are not generally considered property of a responsible person. These are to be excluded by regulations.

Further, as under the Impounding Act at present, it is made clear that the bill would not apply to companion animals — that is, cats and dogs — with the specific exception of dogs in national parks.

#### **"Unattended" as a key threshold to deal with property**

For many years in this State, our community, councils and other authorities have operated under the Impounding Act, which broadly provides that impounding action may be taken when an item is left "unattended" or "abandoned" but does not clearly provide for what that actually means.

We have heard time and again in feedback that this has created uncertainty in many circumstances, leaving property owners and authorised officers to determine how long, and in what circumstances, property may be left in a public place, as well as when it becomes "unattended", so that regulatory action may be justified.

Therefore, this bill provides for the key concept of "unattended", at proposed section 16, as the key threshold for action.

It ensures that an authority would only ever be able to use their powers under this bill once they have reason to believe that property is "unattended", or "not under the direct control or supervision of a responsible person". Further provisions around the circumstances under which property may be considered "unattended" in public is then provided for in proposed sections 18 (for animals) and 25 (for items).

This completely replaces the narrower term "abandoned" which was too limited and also confusing given its specific meaning under animal welfare laws.

#### **Responsible persons for property**

The bill recognises that, in practice, many different people are responsible for property.

With that in mind, proposed section 15 sets out in detail who, in addition to the legal owner of property, may be held responsible for property, and for failing to attend to it under this bill.

This includes, in part, a person who collects or manages property for its owner, a person who is in possession, or is entitled to possession, of the property. It also includes a person who caused the property to be unattended or engaged in conduct reasonably likely to result in the property being unattended.

This may mean, for example, a shopper who leaves a shopping trolley on a footpath outside the supermarket but is not the owner of that trolley.

Or a person who leaves a gate open on a farm enabling an animal to stray, but is not the owner of the animal.

Proposed section 15, subsection two then spells out more specifically some of those people that are responsible for the different classes of items, such as the operators of sharing services for share bikes, or operators of shopping trolley services used by the public.

#### **Places of care and storage**

Under present impounding laws, councils and other authorities have tended to establish formal pounds for animals and other items.

The Government heard, during the review, that we need greater flexibility to enable different and shared arrangements for storage of items and care for animals in different places within an authority's area of operations, as well as between authorities.

With that in mind, the bill more flexibly refers to "places of care", in relation to unattended animals, and to "places of storage" in relation to unattended items of property.

Importantly, the bill provides, at proposed section 10, that a place of care for an animal means a place appropriate for the keeping of the animal while in the possession of the relevant authority, taking into account both the animal's needs and how long the animal has been, or is likely to be, cared for at the place.

As under the current legislation, authorities with responsibility for animals in their possession must also comply with animal welfare laws and standards for caring for those animals.

#### **Dealing with unattended animals**

Proposed Part 3, Division 1, section 18 of the bill sets out the circumstances in which an authorised officer may take possession of unattended animals on public land.

This enables an officer who reasonably believes an animal is unattended in a public place to take possession of that animal.

It also provides for important exceptions to this power in a range of particular circumstances — such as, for example, where the animal is left with the consent of the relevant public authority, or stock animals grazing on a road or travelling stock reserve.

Importantly, the regulations may provide for additional matters to be considered by authorities in determining whether an animal is unattended, to deal with issues that could arise in future.

**Animals taken into possession**

Further, proposed section 21 of the bill, provides that an animal taken into possession must be either returned to the responsible person for the animal, or, taken to a place of care.

As I have said, this concept of "places of care" provides much greater flexibility for authorities.

To provide certainty for councils and other authorities, however, the bill provides that an authority may nominate a place as a "place of care" to which their authorised officers may take animals.

Importantly, once the authority has taken possession of an animal, it retains an appropriate level of responsibility to ensure that the animal's welfare needs are met while in that place of care, even if that place of care is a place owned or managed by a third party, such as an animal shelter or private individual.

While either returning an unattended animal to its owner, or taking it to a place of care, are the preferred options, there are certain circumstances in which this is simply not appropriate.

In proposed section 22 the bill provides for when an authorised officer reasonably believes that the animal is so severely diseased or injured, or in so poor a physical or psychological condition that it is cruel to keep the animal alive.

Alternatively, he or she may reasonably believe that the animal is a threat to the health and safety of persons, other animals or the environment.

In either of these circumstances, if a veterinary practitioner is not available, or, the authorised officer reasonably believes waiting for a veterinary practitioner would be cruel or otherwise inappropriate, the authorised officer may enable the animal to die quickly and without unnecessary pain.

**Special arrangements for stock animals in emergencies**

The bill provides that in certain circumstances, an authorised officer may, without taking possession of a stock animal, arrange for it to be kept on any practicable premises in the vicinity of the place at which the animal was left unattended.

These circumstances are when there is an emergency, a term to be prescribed by regulation to include truck rollovers involving livestock, in which the officer reasonably believes the animal is unattended, that appropriate arrangements cannot be made for the officer to take possession of the animal, and that failure to move the animal poses an unacceptable risk to the health and safety of persons.

Importantly, however, the authorised officer may only arrange for the animal to be kept on private land if he or she has made reasonable attempts to obtain the consent of the owner or occupier of that property, and, to comply with any reasonable requests that person makes in relation to keeping the animal on the premises.

In addition, under the bill, the authorised officer must arrange for the animal to be removed from the premises as soon as reasonably practicable after the emergency ends unless the owner or occupier of the premises agrees to the animal remaining on the premises.

It is also made clear, in proposed section 19 subsection 6, that this provision would prevail, to the extent of any inconsistency with the Biosecurity Act 2015, over that law, except in relation to any emergency order made under the Biosecurity Act.

**Unattended animals on private land**

As currently exists under the current Impounding Act, proposed section 23 of the bill would enable occupiers of private land to take possession of an animal that is unattended on their land without permission.

Importantly, where this takes place, under proposed section 24 the occupier must either contact a responsible person for the animal within 24 hours, and return the animal within four days; take reasonable steps to identify that person within four days; or contact an authority and make arrangements for the animal to be taken to a place of care.

Further, if an occupier takes possession of an animal in these circumstances, the responsible person for that animal must pay the occupier for certain costs incurred in keeping the animal. These costs include, for example, transportation, food and veterinary costs.

The bill also provides that, if these costs are not paid, the occupier may recover the amount owing to them as a debt.

**Dealing with unattended items on public land**

Part 3 of the bill also provides, separately under proposed section 25, for powers to enable an authorised officer to take possession of items of property. This captures all three classes of items, from motor vehicles to shared devices and other things like personal recreation equipment.

Under Division 3, an authorised officer may take possession of an item of property if he or she reasonably believes that it is unattended and one of a number of other circumstances is met.

This includes where the item is obstructing access to or within a public place, poses a risk to persons, animals or the environment, is interfering with public amenity, or, that the item has simply been in the same, or substantially the same place for seven days, or another period prescribed by the regulations.

Again, as for animals, the bill provides for what must happen to items of property taken into the possession of an authorised officer.

He or she must either move the item to a place in the same general area, where it will no longer pose a risk to persons, animals or the environment, or move it to a place of storage.

The bill then provides for regulations to be made that will set out actions that may be taken in relation to these items.

**Dealing with unattended items without taking possession of them**

Part 3 of the bill also sets out when an authorised officer may deal with an item where he or she reasonably believes it is not necessary to take possession of the item.

This provides flexibility, under proposed section 27(2) for the item to be simply returned to its owner or moved to a place in the same general area, where it will no longer pose a risk to persons, animals or the environment.

Authorities have told us that this flexibility is important in cases where - for example - a vehicle simply needs to be moved a short distance because it is in a place that will block access relating to a temporary event, such as a major fun run event, that the responsible person may not have been aware of.

Relevant liability protections for authorised officers are also provided for - whether or not an authority takes possession of an item or not - under proposed section 57.

It will continue to be expected, of course, that authorised officers consider the specific needs and circumstances of homeless people in undertaking their functions.

#### **Dealing with property taken into possession, including disposal of uncollected property**

Importantly, under Part 4 of the proposed bill, an authority must take reasonable steps to identify the property's owner and give notice that it is in their possession. This must occur as soon as practicable.

The owner may simply then apply for return of their property at any time before the deadline for the property to be sold or otherwise disposed of by the authority, and must pay any fees owing for their costs to date.

A clear deadline of 7 days is then provided for a person to collect their animal, or of 28 days to collect an item of property.

If all reasonable steps have been taken to identify and notify the property's owner - and the item is not collected by the specified time - the authority may arrange for an item to be disposed of.

This includes destroying an item - but not an animal - if the value of the item of property is under a certain amount. This amount will be set by the regulations but will otherwise be \$200 for most items, and \$1500 for a motor vehicle.

O Proposed section 32 of the bill provides that disposal may occur by sale, gift or otherwise rehoming of an animal, or recycling an item, as appropriate.

The Government has a clear expectation that, wherever possible, animals are returned to their owner or rehomed.

Unlike the Impounding Act, the bill no longer provides for an animal to be disposed of based purely on its financial value, and proposed section 32, subsection 4 makes it clear that this type of extreme measure for an animal is only ever an action of last resort.

The bill also provides for the keeping of records by authorities about property taken into possession, places of care, date of return to owner or disposal, and the inspection of these records by members of the public.

#### **Applications to the Civil and Administrative Tribunal**

Part 5 of the bill continues to enable a person responsible for property to apply for administrative review of a number of specific decisions taken by authorities. This is an important check in the system to ensure authorities, and the occupiers of private property, take proper decisions in relation to property they take possession of.

To provide certainty and reduce costs, the bill provides for these applications to be made within 28 days from the day the responsible person for the property was notified.

The bill also provides for decisions that may be made by the Civil and Administrative Tribunal once an application has been made, including, where an authority or occupier's decision is set aside, to return the property to its owner free of fees and at the expense of the authority.

#### **Offences and penalties**

Proposed Part 6 of the bill also provides for new, clearer and stronger offences for people who fail to take responsibility for property under their control or supervision so that they can be better held to account.

The bill makes it clear a person that may be held responsible for an offence may be the owner, the person in control or supervision of property, or a person who has caused property to become unattended - such as a person leaving a gate open allowing stock to stray.

The bill provides for a range of offences which may be committed if a person leaves property - including an animal or an item - unattended in a public place, contrary to the requirements I have already outlined.

The bill also continues to provide for appropriate offences for causing or permitting an animal to trespass, unlawfully recovering property or obstruction of an authorised officer.

Importantly, the bill also creates some new offences.

These include a new offence for failing to recover property from an authority in response to a notice.

This has been provided to offer a greater incentive for owners to recover their items, once impounded, rather than to leave them for the authority to dispose of at the cost of the community.

Across the offences in the bill, higher maximum penalties have been provided to bring this area of the law into line with current penalties for similar offences across the Statute book.

This is appropriate as penalties currently in place under the Impounding Act have not changed for nearly thirty years, a period over which their value would have doubled if the Consumer Price Index was applied.

A reasonable approach has been taken, however, to specify different maximum penalties for different classes of items to reflect their different values and the potential risk they pose.

As with many laws, the regulations may prescribe which of these offences is a penalty notice offence so that "on the spot" fines may be paid in lieu of prosecution.

To ensure that appropriate penalties may be applied by the Courts in relation to different offenders and circumstances, the bill also importantly provides for new offences with higher maximum penalties where a person has been reckless or negligent in their conduct.

The penalties for these offences are double that of strict liability offences.

It is also important to note that higher maximum penalties are provided for in relation to offences committed by a body corporate—this reflects the greater expectations our community has of corporations to behave responsibly.

The bill also provides for higher maximum penalties to apply, where multiple animals stray in a herd, or items are left unattended in a cluster.

An additional 10 per cent penalty may be applied for each additional animal or item up to a maximum of 11, other than for vehicles.

This is appropriate as greater numbers of animals or, say, shopping trolleys, pose a higher level of obstruction, risk or interference.

In relation to motor vehicles, however, the bill provides for maximum penalties which are, in effect, higher up if the conduct that comprises the offence is continuing, up to a maximum of three days.

This will act as a disincentive to property owners simply leaving it to authorities to remove their property, passing these costs on to the community as a whole.

The bill also provides for the regulations to prescribe offences as penalty notice offences and to set out the relevant penalty notice amounts for these offences.

Under proposed section 39, a responsible person may demonstrate to an authority or court, in relation to an offence of leaving property unattended, that the property was, at the relevant time, stolen or otherwise illegally taken and used. Further, this section also enables an approved nomination notice to be given to nominate another person as responsible for the item at the relevant time.

#### **Compliance, enforcement and legal proceedings**

Proposed Part 7 of the bill provides for enforcement and legal proceedings, including the appointment and functions of authorised officers and the conduct of legal proceedings for offences and for the recovery of debts under this law.

It enables authorities to enter into an agreement to collaborate across boundaries under proposed section 47, which, as noted above, will be vital in emergencies involving stock truck rollovers and also useful in dealing with property on authorities' borders.

The bill provides flexibility for an authorised officer to simply direct the responsible person for an item to remove an item of property that is unattended by issuing a written notice.

A similar written notice may also be issued to prevent the property becoming unattended again, and it will be an offence to fail to comply with that notice.

The capacity to issue these kinds of notices provides the kind of flexibility councils and members of the community need. It removes bureaucratic processes and red tape, enabling action to be taken quickly to address concerns with less cost for all parties concerned.

Similarly, the bill enables an authorised officer to enter an unattended vehicle for the purpose of identifying the responsible person for the vehicle. This may be useful where, for example, the vehicle lacks licence plates, and will enable the registered operator of a vehicle to address a risk by simply moving their property.

Part 8 of the bill then sets out a number of miscellaneous matters, including requiring the payment of certain fees for the exercise of functions under the Act.

Importantly, this Part also provides for protections from personal liability for the exercise of functions in good faith under this Act.

Finally, Schedule 1 to the bill provides for a number of savings and transitional matters as well as other consequential matters.

#### **Consequential amendments to road transport laws for unregistered vehicles**

As I said earlier, Schedule 2 to the bill provides for small but vital changes to the Road Transport Act 2013 and to the Road Transport (General) Regulation 2021.

These amendments will enable councils, police and transport authorities to issue fines to the registered operator of unregistered vehicles parked on roadsides 15 days after the registration lapses.

No longer will councils need to go through the onerous process of trying to find the owner of the unregistered vehicle parked on the roadside.

Importantly, the fines may apply to all Class A motor vehicles including cars, trailers and combinations of both.

I am sure that every member of this House and the other place can agree.

The proposals in the bill will help to address the parking congestion in urban and growth areas that councils and communities have been voicing their concerns about to each and every one of us for years.

#### **Conclusion**

This bill has been a very long time coming — nearly 30 years in fact.

This bill proposes sensible changes that all members of Parliament and all members of local communities can get behind and support.

I want to take the opportunity to put on record my thanks to each and every member of our community, and each and every member of this house and the other place who provided important feedback during the review of the Impounding Act over the past two years.

I would also like to thank Mark Coure, MP, member for Oatley, for his contribution to the consultation process. Mr Coure chaired two of three consultation workshops in July and provided a valuable role consulting with stakeholders, discussing their concerns and their opportunities to improve impounding processes for shopping trolleys and vehicles, including boat trailers.

Finally, I would like to thank the Office of Local Government, particularly those in the policy team, and the staff in my office, who have all worked tirelessly to consult stakeholders and deliver this reform.

The proposals will put the onus on those responsible to manage their property in public or face much tougher penalties and legal consequences.

This means there will be a much stronger incentive to drive responsible ownership of animals and items in public and a significant reduction in costs currently borne by the community for dealing with property left unattended in public.

Finally, this bill will help to rid our public spaces of the dangers, access problems, environmental issues and unsightly clutter of shopping trolleys, cars, trailers, other problem items and the dangers posed by stray stock on roads once and for all.

The bill will deliver sensible changes to protect public safety, animal welfare and our valuable public spaces in New South Wales into the future.

I commend this bill to the House.

### Second Reading Debate

**The Hon. WALT SECORD (11:42):** I speak for Labor on the Public Spaces (Unattended Property) Bill 2021. This bill was introduced in the Legislative Assembly on 10 November 2021 by the Minister for Local Government. I see that the Hon. Shelley Hancock is here today in the visitors gallery. This is a bill for an Act to encourage persons responsible for property to mitigate risks to access, safety and amenity that may arise from property being left unattended and to ensure that public spaces can continue to be used, shared and enjoyed by the community by providing a scheme for dealing with unattended property, and to repeal the Impounding Act 1993. The objects of this bill are to:

- (a) encourage persons responsible for property to act quickly and responsibly to mitigate risks to access, safety and amenity that may arise from the property being left unattended, and
- (b) to ensure public spaces can continue to be used, shared and enjoyed by the community as a whole, and
- (c) to empower occupiers of private land to take possession of stray animals on the land.

The Minister has claimed that the legislation follows a review in consultation on the Impounding Act 1993 over the past two years. The Act is to be repealed. The bill seeks to resolve a range of concerns raised by communities and councils in New South Wales about shopping trolleys and abandoned vehicles. But, more importantly, it also relates to stray stock, which is a significant issue for rural and regional communities, in terms of not only biosecurity and related matters but also loss of life and injury due to motor vehicle accidents and collisions with stray animals.

Frankly, I have concerns about the heavy-handed approach being taken by the Perrottet Government and its attacks on business, but my colleague Mr Greg Warren, the member for Campbelltown and Labor's local government spokesperson, has instructed me not to oppose the bill. I follow Mr Warren to the letter. That said, Mr Warren has strong views on errant shopping trolleys and straying livestock, and I know that he and his staffer Ben have been researching this area intensively. They advise that this is one of the most important bills that they have tackled, but I am 1,000 per cent confident that they are on top of this brief. Put simply, years from now, when people are doing their PhDs on local government, they will look back and see that this is the legacy of the Hon. Shelley Hancock and Mr Greg Warren of Campbelltown.

The issue of errant shopping trolleys costs the community about \$17 million a year. The measures in the bill will be welcomed by western Sydney councils. I have been advised that in two blitzes in 2019 in Fairfield, Penrith, Liverpool and Cumberland councils, 1,000 shopping trolleys were found; in fact, in one week 550 trolleys were found. Under these laws introduced by the local government Minister, supermarkets will face fines of up to \$3,750 for dumped trolleys littering the roadside. The laws are quite tough and retailers will face smaller, on-the-spot fines of \$660 for not picking up their neglected trolleys within three hours of a trolley being deemed a safety risk or within a week of being told a trolley had been left unattended. The fine will increase the longer a trolley remains past the three-hour or one-week limit.

Minister Hancock has said that the overhaul of the Impounding Act 1993 would see owners of shopping trolleys, unregistered cars and trailers and stray stock face harsh penalties if they do not remove them from public places within risk-based time frames. The bill has been a long time coming. As part of a review by the State Government, the Office of Local Government sought feedback with regard to the Impounding Act discussion paper and stakeholder workshop options paper, and ran targeted stakeholder workshops. The Opposition believes that the bill strikes the appropriate balance between contemporary community needs and protection, safety, amenity and access to public spaces in a situation where property is left unattended. Labor's local government spokesperson, Mr Greg Warren, feels strongly about this issue. He believes that public spaces can be used, shared and enjoyed by the whole community.



The bill also gives necessary powers to help councils, police and other local public land managers deal with irresponsible behaviour and private property left unattended in public spaces. This includes regulatory action such as clear and simple time frames for the removal of items left unattended and the application of fines; the ability to make arrangements for the appropriate and efficient storage of items or care of animals; and, where necessary, ensuring that animals dealt with under the Act are cared for in line with contemporary community expectations and animal welfare laws. I look forward to the Hon. Emma Hurst's contribution on this bill. It also includes recovery from responsible persons of the costs of dealing with unattended property where authorities take possession of it. Furthermore, the bill maintains the objective in the current Impounding Act 1993 of empowering occupiers of private land to take possession of stray stock animals on their land. That includes farmers, who may, for example, need to minimise risks to their other animals or crops.

There is general consensus that the Impounding Act 1993 is outdated and no longer fit for purpose, having been drafted nearly 30 years ago. Local Government NSW was consulted on the bill, has reviewed it and is broadly supportive of the measures, expressing that they modernise and make many improvements on the Impounding Act and will improve the compliance and enforcement framework for unattended property. I also note that the Disability Council NSW input on the bill was taken on board.

I end on a personal note. This matter was discussed at the Legislative Council Labor caucus meeting this morning. We had a lively discussion. I will embarrass my colleague the Hon. Mark Buttigieg by pointing out that he spoke at length about having to put in a \$1 or \$2 coin to use a trolley to ensure its return. I think that Mark is on the wrong side of history on this one. The community has spoken. It wants coins to be used on trolleys so that people bring them back and we do not have to resort to hurting businesses and pushing the economy backwards. I hope that Mark has heard the community loudly and clearly. I thank the House for its consideration. I support the bill.

**The Hon. EMMA HURST (11:50):** On behalf of the Animal Justice Party, I speak on the Public Spaces (Unattended Property) Bill 2021. It is somewhat bizarre that we have before us a bill that deals with abandoned shopping trolleys, abandoned vehicles and animals in emergency situations. One of these is clearly not like the others, yet they all appear before us today in the Government's somewhat confusingly named "Unattended Property" bill. This bill may seem harmless at first, but it exposes a fundamental problem with our legal system: that sentient, living animals are still classified as mere legal property. A dog who has run off and become lost in a national park, a horse who has escaped through an open gate and onto the road, a truckload of chickens injured on the side of a highway after an accident: these animals are all in serious, life-threatening situations.

It is important that we as a State have systems in place to respond to these emergencies and appropriately penalise anyone who puts an animal's life or safety at risk. But to tack these systems onto a bill that deals primarily with abandoned trolleys and motor vehicles trivialises this important issue. Animals are not unattended property. They are living beings who will be much more seriously affected by these laws than a metal trolley will be. The classification of animals as property is something to which the Animal Justice Party firmly objects. I think if we asked most members of the public, they would be concerned to hear that Government members think that the family dog is a mere piece of property, of the same importance as an abandoned boat trailer or trolley.

I note that this bill will replace the Impounding Act 1993, which has not been reviewed for over 20 years. Though this bill does make some improvements to its predecessor, it is disappointing that the Government has not used this opportunity to move away from this outdated notion of animals as property and towards a modern understanding of animals, which is that they are sentient, living beings with intrinsic value, worthy of respect and their own legal status. I am concerned also about how much of this regime is being left to regulation, which is an ongoing theme of this Government. Though the Minister's office has assured me that there will be extensive consultation on the regulations and that the regulations will give further guidance as to the treatment of animals under this bill, the reality is that we cannot be sure of what these regulations will be going forward, as they will not be scrutinised or voted through the parliamentary process.

I turn to the specific provisions of the bill. One of my main concerns is around proposed section 22 (1) (b), which provides that an authorised officer may kill an animal if there is no alternative to the immediate destruction of the animal because the animal is a threat to the health or safety of persons, other animals or the environment. As explained in the Minister's second reading speech, this power is intended to apply in emergency situations where trucks carrying animals roll over or are involved in accidents on highways. We have seen horrific examples of this occurring time and again. All you have to do is look at the media reports: 300 pigs killed in a truck crash on a highway; a driver and dozens of cows killed in a truck crash near Tamworth; a truck carrying more than 100,000 day-old chickens crashing in the Southern Highlands.

But again this bill misses the broader point. Rather than empowering local authorities to kill animals on the sides of roads, we should look at the root cause of these incidents. Why is the Government allowing 100,000 chickens to be crammed onto a truck? Why are agribusinesses allowed to transport animals such long distances,

without access to food or water for up to 24 hours, to then be hung upside down, put through an electrified water bath and have their throats slit open in a slaughterhouse? Why is this considered an acceptable practice under our animal protection laws? I encourage the Minister to, at the very least, revisit this provision in the regulations and impose very clear restrictions. We do not want to encourage authorities to make knee-jerk decisions to kill animals in emergency circumstances without even consulting vets, rescue organisations or sanctuaries, when there could be available options to save these animals.

I raise two other aspects of the bill. I hope that the Minister will take on board my comments when drafting the regulations. The definition of "animal" under this bill is very broad. It includes all aquatic and terrestrial animals, except dogs and cats, and it is feasible that it could empower authorities to seize and kill wild animals or small companion animals, such as rabbits, guinea pigs and birds, who might escape from a person's property. This is not an intended consequence of this bill and should be looked at further. Also, though this bill excludes most cats and dogs, it does capture dogs found in national parks. This creates a bizarre regime, under which a lost dog in a playground is subject to one set of rules about seizure and rehoming under the Companion Animals Act, while a lost dog in a national park will be subject to another under this bill. I urge the Minister to look at this closely and to ensure that there are no inconsistencies or loss of protections for impounded dogs as a result of this difference.

Finally, I note that this bill removes all references to "pounds", which were previously included in the Impounding Act, and instead refers to "places of care" as being where seized animals are sent to. I understand that this has been done with good intentions, to try to ensure that animals are taken to places that best suit their needs, which may or may not be a council pound. However, I am concerned by the lack of detail around what would constitute an appropriate place of care for different species of animals and what kind of care these animals will receive. Authorities under this bill may not be aware of the needs of certain animals who come into their care, and, if so, the authorities will require guidance to ensure that the animals are properly looked after. It is not enough, as the Minister has done, to refer to obligations that apply to the general public under the Prevention of Cruelty to Animals Act. We already know that these laws are woefully out of touch with community expectations and are failing animals. When animals are being taken into care by government authorities, we expect better.

This bill, though drafted with good intentions, highlights serious problems with the way in which animals are classified and treated under the law as property. Animals are not property. They are not trailers or trolleys. If members think that treating them in the same way sounds stupid, then it is time to change our laws. Animals are sentient beings, with the ability to feel fear and pain and to experience joy. This categorisation of animals as property goes to the heart of the oppression of animals under the law. It is why scholars and lawyers around the world have been increasingly looking to alternatives, such as legal personhood for animals or a guardianship model, which may better reflect the relationship between humans and animals and better protect the interests of non-human animals. This bill reinforces a harmful legal fiction—that animals are property. For that reason, we cannot support the bill.

**Ms ABIGAIL BOYD (11:57):** The Greens will not oppose the Public Spaces (Unattended Property) Bill 2021, which addresses three different issues in the context of unattended so-called property and public spaces. The Greens share the concerns the Hon. Emma Hurst has put on the record in relation to dealing with animals in the same way as trolleys and vehicles. In relation to trolleys, this is a good scheme. Putting the onus back on the corporations to which the trolleys belong and providing adequate incentives for them to more cheaply retain their trolleys, rather than having them disposed of by councils, is a very good step forward. It vibes well with the concept of corporations being responsible for their belongings from the beginning to the end of their life cycles.

In relation to vehicles, we have concerns about the fining of individuals. However, having spoken with the Minister's office, we are happy to wait for the regulations before drawing any further conclusions about that. I mention the examples of an owner who cannot afford to move their car that has broken down or a car being parked on the street while the owner saves up for repairs. In those cases, a fine is not going to be a useful measure. We hope that the regulations will include hardship provisions. In relation to animals, The Greens have concerns about dogs in national parks and particularly an authorised officer being allowed to destroy an animal without having to contact the animal's owner. When that is a dog in a national park, that is of particular concern. We have asked the Minister not only to reflect on that but also to perhaps give us an assurance on that aspect. We will keep a close eye on the regulations but we express continuing concern that this Government is putting so much into regulation and not into primary legislation. It is very much like only handing in half of your homework. We hope that more substantial provisions are contained in primary legislation but we will not oppose the bill.

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

*Questions Without Notice***CONCORD HIGH SCHOOL**

**The Hon. PENNY SHARPE (12:00):** My question without notice is directed to the Minister for Education and Early Childhood Learning. Given that the Minister has been made aware of the serious health and safety issues at Concord High School, which include broken and degraded toilet doors hanging off their hinges, broken bubblers, broken and defaced outdoor seating, chronic teacher shortages and a teacher librarian forced to cover books and desks in plastic every night due to possum urine and faeces, why does the Minister continue to refuse the P&C's invitation to visit the school?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:00):** I thank the honourable member for her question relating to information from Concord High School. I appreciate the manner in which the honourable member has raised the issues around Concord High School. The advice that I have received in relation to that particular school is that work is being done to address the maintenance issues by our School Infrastructure team, and that will continue to be the case. In terms of visiting schools, I visit schools very regularly in my role as Minister, as many in this place would know. I am very happy to speak to the P&C and look at an opportunity to visit that school community. I visit lots of schools and am very happy to look at when we could go to Concord.

**The Hon. Walt Secord:** Point of order: The Minister is misleading the House.

**The PRESIDENT:** There is no point of order. The Minister has concluded her answer to the question as well, I believe.

**The Hon. Walt Secord:** I seek leave to table 26 photographs from the school indicating that no work has been done, in contradiction to the Minister's answer. These are from the parents this morning.

**Leave not granted.**

**The Hon. PENNY SHARPE (12:02):** I ask a supplementary question. I thank the Minister for her answer but ask her to elucidate what work is being done. This is what the teachers have to deal with. This is covered in possum urine and poo every night, with the teacher librarian having to do this. When is the Minister going to visit the school or speak to the P&C?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:02):** I thank the member for her supplementary question. My understanding is that the head of School Infrastructure and one of the advisers from my office met recently with the local member, John Sidoti, in relation to the issue of Concord.

**The Hon. Penny Sharpe:** That is not the question.

**The Hon. SARAH MITCHELL:** The Hon. Penny Sharpe has asked about what we are doing in terms of addressing them.

**The Hon. Penny Sharpe:** I have asked what the Minister is doing.

**The PRESIDENT:** Order! The Minister has the call.

**The Hon. SARAH MITCHELL:** My understanding is that it is a known issue at that particular school. Going back to the original question and indeed followed up in the supplementary, I am very happy to visit Concord High School. I am happy to look at when we can do that in conjunction with the local member, John Sidoti, who, as I said, has been proactive on this issue, raising it with my office, the department and the head of School Infrastructure.

**The Hon. ANTHONY D'ADAM (12:03):** I ask a second supplementary question. Will the Minister elucidate on her answer and advise the House as to whether the maintenance issues identified will be corrected in time for the beginning of term 1, 2022?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:03):** As I said in relation to this particular school, there has been support from School Infrastructure to address some of the maintenance issues that the member raised in her initial question. In terms of the issues around the possums, my understanding and the advice that I have is that there have been some specific issues at that school in relation to "rodents and pests"—I think that is the terminology they use—with all due respect to my Animal Justice Party friends in the Chamber. We will continue to work with that school community in terms of what we need to do to support them. Like I said, there has already been quite a lot of proactive work done in this space by the local member, which is obviously his role, and we very much commend him for doing that. I am happy to visit the school and look at what other measures we need to put in place to support that school community, as I have said.

### ARTS AND CULTURAL SECTOR FUNDING

**The Hon. PETER POULOS (12:04):** My question is addressed to the arts Minister. Will the Minister update the House on additional support for independent artists and the small to medium arts and cultural sector?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (12:04):** Yesterday I detailed nearly a quarter of a billion dollars in COVID-19 support for the arts and culture sector. I am delighted to say that there is more. Today I advise the Hon. Peter Poulos—and I thank him for his question—that an additional \$9.3 million in funding for independent artists and small to medium organisations across New South Wales will be provided. We are setting a record: 198 applicants are going to be supported in round one of the Arts and Cultural Funding Program for this financial year, which will support jobs for 17,000 arts and cultural workers, boosting our State's economic rebound right when the arts sector needs it most.

These funds will leverage an anticipated \$52 million in total project and program expenditure and will see over 10 million audience goers entertained by the programming that is being funded. The success of this round comes off the back of our \$6 million uplift to the Arts and Cultural Funding Program in the 2021-22 State budget, which includes a 10 per cent permanent increase in the amount of funds across all competitive rounds. But as a one-off COVID-19 measure I have sourced further funds to ensure that every single application recommended by the 10 Artform Advisory Boards in this round receives funding. That means, in an absolute first, there is zero unfunded excellence in this major funding round.

I have heard loud and clear the calls for more project funding as a stimulus measure from the visual arts, contemporary music and literature sectors, and from independent artists. With every single recommended application getting funding, this represents an incredible success rate for project applications of 47 per cent across all art forms. Also, 44 per cent of the funding will be going towards projects in regional New South Wales and western Sydney. That is historic. It is exactly what independent artists and the small to medium sector need right now, and it sets up New South Wales for a brilliant 2022. I encourage everyone to go out and buy a ticket and support our brilliant artists.

### GOVERNMENT ELECTION PROMISES

**The Hon. JOHN GRAHAM (12:07):** My question is directed to the Minister for Finance and Small Business. After the Government told the House on Tuesday that "the Government has overwhelmingly kept its promises", despite the incoming Premier's brief reporting that the Government has not completed two-thirds of its election promises from 2015 and 2019, how does the Minister respond to community concerns in places like Bega, Holsworthy, Monaro, Strathfield and Willoughby that the Government simply will not deliver on its promises?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:08):** I thank the member for his question. It is terrible when I have to get up here and be absolutely flogged by the Opposition on a question. It happens every day. I accused them of bullying me yesterday and they are continuing it today. The Hon. John Graham is asking these questions—

**The Hon. Walt Secord:** Daniel has got some questions about the Transport Asset Holding Entity [TAHE]. You wait. Be careful.

**The Hon. DAMIEN TUDEHOPE:** I am very happy to go back to the TAHE any time he wants because he got it so wrong yesterday. If he wants to come back for more today, I am happy for him to come back, because he got it so wrong.

**The PRESIDENT:** Order! The Minister will resume his seat. Members will cease debating across the Chamber. My family is watching. I said that members would be on their best behaviour. So far the report card is not looking great. My 15-year-old will not be impressed. The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** Let us talk about election commitments. Rather than quote the actual briefing, those opposite prefer to quote *The Sydney Morning Herald* and its interpretation of the election—

**The Hon. John Graham:** We could quote either.

**The Hon. DAMIEN TUDEHOPE:** That is okay. In fact, the truth of the matter is that 89.3 per cent of all projects are either completed or are on track. Do not let those opposite mislead anyone. In relation to the projects, the briefing was in fact that the projects are completed or are on track. But let us have a look at—

**The PRESIDENT:** The House will come to order. The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** This is about election commitments. The Leader of the Opposition in the other place came in with the 100-day plan. What have we heard?

**The Hon. Penny Sharpe:** Point of order: We know that the Hon. Damien Tudehope wishes that sometimes he was back in the other place, but in this place he has to follow the rules. I take a point of order under Standing Order 65 (5) relating to direct relevance. The Minister is nowhere near being directly relevant.

**The Hon. DAMIEN TUDEHOPE:** To the point of order: The question was about election commitments.

**The PRESIDENT:** I encourage the Minister to answer the question directly.

**The Hon. DAMIEN TUDEHOPE:** We are a government that does honour its election commitments. We tell the people what we are going to do, unlike those opposite who have no idea what they propose to do in relation to delivering for the people of New South Wales. They will not tell us one single thing. So what do we read into that? We know where they are going with this. The people of the State can draw only one conclusion from their questions and silence on policies they will deliver. The people of this State can be guaranteed one thing by those opposite: that they will raise taxes. There is no way that they have a policy to deliver other than through the raising of taxes. They have to come clean and tell us now. [*Time expired.*]

#### PORT MACQUARIE-HASTINGS KOALA HABITAT

**Ms CATE FAEHRMANN (12:12):** My question is directed to the Hon. Don Harwin, representing the Minister for Energy and Environment. One of the last significant koala breeding grounds in the Port Macquarie-Hastings area and the largest piece of privately owned, unburnt core koala habitat east of the Pacific Highway is currently on the market for residential development or tourism development. The local community, including the member for Port Macquarie, has lobbied the Minister for the Government to purchase this 200 hectare block of land at 147 The Ruins Way in Lake Innes as part of its commitment to double koala numbers by 2050. Will the Minister give Port Macquarie's koalas an early Christmas present, buy this land and protect their habitat?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (12:13):** I thank Ms Cate Faehrmann, who is obviously adding her voice to community concerns and the very good work of the member for Port Macquarie lobbying on behalf of her community and the environment in her area. I am absolutely sure that the Treasurer and Minister for Energy and Environment is giving it his closest possible consideration. I will refer the question to him for a formal response.

#### STANDBY - SUPPORT AFTER SUICIDE

**The Hon. PETER POULOS (12:14):** My question is addressed to the Minister for Mental Health, Regional Youth and Women. Will the Minister update the House on the StandBy - Support After Suicide service and how it will assist those bereaved by suicide?

**The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:14):** I thank the honourable member for his question. Mr President, I welcome your family listening to today's question time. How delightful to add a few extra to our numbers in the Legislative Council. Every suicide is a tragedy and the New South Wales Government is strongly focused on reducing suicide rates across the State. When a suicide does tragically occur, it is not just the immediate family that is affected. Sadly, we know that around 135 people can be impacted by a single suicide, so it is crucial that we provide support to all those in the community who are affected. In the weeks and months after a suicide, there is a need for a wide range of flexible, individualised supports to help family, friends, witnesses and first responders through the trauma and challenges that can arise.

I am pleased to announce that people bereaved and impacted by suicide will now have access to a range of supports through a New South Wales Government investment of \$4.5 million in post-suicide support services. The Support After Suicide service will be provided across the State by Standby in partnership with Jesuit Social Services, Roses in the Ocean and the University of New England. It will focus on reaching bereaved families and friends, first responders and witnesses to suicide. Services include counselling, peer support and practical supports such as financial assistance and support throughout the coronial process. The voices of people with lived experience have been absolutely crucial in designing these services. StandBy Regional Coordinator Tania Tuckerman has shared some words about her hopes for the service, saying she draws on her own lived experience to help those affected feel safe and understood. Ms Tuckerman says:

My hope is that all people impacted by suicide will have the support I never had ... It didn't hit me until decades later the full devastation it had on my life; including my relationships and how I interacted with the world around me ... I am hopeful about the difference our support will bring to the lives of people impacted by suicide and their future generations.

The statewide rollout of post-suicide support services has been enabled by joint investments from the New South Wales and Commonwealth governments. Our investment is part of Towards Zero Suicides, a New South Wales Government \$87 million investment over three years in suicide prevention initiatives and community support. I remind the House and those watching that help is there if they need it. Anyone bereaved or impacted by suicide

is eligible to seek support, regardless of how recent the loss. All members and anyone listening can call 1300 727 247 or visit [standbysupport.com.au](http://standbysupport.com.au).

#### **DR ANNETTE COWIE AND NATIVE FORESTRY BIOMASS**

**Mr JUSTIN FIELD (12:17):** My question is directed to the Hon. Bronnie Taylor, representing the Minister for Agriculture and Western New South Wales. It is regarding the advice provided by the Department of Primary Industries official Dr Annette Cowie as an expert witness in the Land and Environment Court case relating to Verdant Earth Technologies' Redbank Power Station modification proposal. Regarding the evidence provided by Dr Cowie at the recent budget estimates hearings, the Director General of the Department of Primary Industries, Mr Scott Hansen, stated:

There is an important point here about the availability of public servant experts to be able to be called by a party to give expert testimony to help the court impartially arrive at an outcome on matters relevant to that area of expertise.

Given that Dr Cowie in her now published written advice to the court directly contradicts the Government's own experts at the Environment Protection Authority regarding the application of the regulations it administers, did the Director General mislead the committee regarding Dr Cowie's testimony or did Dr Cowie breach her duty under the expert witness code of conduct?

**The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:19):** I thank the member for his question, which is directed to the Hon. Adam Marshall, whom I represent in this place. I am advised that Dr Cowie has been engaged as an expert witness in this case, addressing contentions relating to climate, public interest and ecologically sustainable development. I can inform the House that Dr Cowie is not representing the Department of Primary Industries [DPI] but is appearing as an expert witness based on her expertise developed over many years while working at DPI and the University of New England. Dr Cowie has followed the Expert Witness Code of Conduct in providing her personal opinion based on her expert knowledge of the topic.

I am advised that the Environment Protection Authority [EPA] provided a response to the development application on 16 September 2021. The submission raised comments on the adequacy of information provided, and additional comments for consideration in respect of matters outside the EPA's statutory responsibilities. Dr Cowie considered those comments and responded to them as part of an expert report. The regulations regarding the burning of native forest biomass for electricity are clear and not in dispute. Dr Cowie applied the regulatory framework in her expert report. Dr Cowie acted in accordance with her obligations as an independent expert witness under the Expert Witness Code of Conduct. In recognition and respect of the processes of the Land and Environment Court to reach a determination, it would not be appropriate for Ministers to make further comment on that case.

#### **TEACHER TEMPORARY CONTRACTS**

**The Hon. ANTHONY D'ADAM (12:20):** My question is directed to the Minister for Education and Early Childhood Learning. Given reports that there are New South Wales schools with teachers on temporary contracts for more than 20 years, how many teachers in New South Wales have been on temporary contracts for more than five years?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:21):** I thank the honourable member for his question in relation to temporary teachers and our teacher workforce in schools in New South Wales. I advise the member that the Department of Education has employed more than 92,000 teachers in New South Wales public schools over the past five years. On average we have permanently filled more than 6,000 teaching roles annually. In 2020 we had over 5,400 teachers, including principals and other executives, commence a new role filling a vacancy. Over 2,800 of those were new permanent employees to the department, with a further 2,500 existing teachers commencing a new role via transfer within the department.

As I said when I was asked about these issues earlier in the week during question time, we work closely with our school communities to support staffing, particularly around making sure that vacancies are filled as quickly as possible in accordance with the staffing procedures. Where individual schools are experiencing any difficulties, the department works closely with the principal and local directors of educational leadership to assess each school's circumstances and fill school positions. I also reiterate the point I made earlier in the week: Casual and temporary staff are an important part of our teaching workforce. That flexibility is important in our school communities and those teachers also have a role to play.

**The Hon. ANTHONY D'ADAM (12:22):** I ask a supplementary question. Will the Minister elucidate on her answer by providing to the House information as to whether the maintenance of people on temporary contracts in excess of five years is a deliberate strategy of the department?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:22):** As I said in my earlier answer, every year we employ thousands of teachers in New South Wales public schools, so I do not agree with the premise of the member's question that there is a deliberate strategy to keep people out of permanent roles. As I mentioned when I was asked about these issues earlier in the week, school staffing can be complex and nuanced. There are roles for permanent staff but temporary schoolteachers play a key role in the system through the opportunities presented to them. Schools often use flexible funding to engage temporary or casual staff to support the delivery of a specific program or to support specific students.

When using that flexible funding and depending on the needs of the school, those positions might be temporary or permanent. We give principals the autonomy to decide that. As I said, it is incredibly challenging when those matters are simplified. They are complex and nuanced. Permanent staffing opportunities are available to staff. Teachers, for whatever reason, may want to remain in temporary or casual roles by choice. We will continue to work on school staffing going forward. The \$125 million Teacher Supply Strategy will provide opportunities not only in subject areas where teachers are needed but also in school communities. We will continue to work closely with our school communities when it comes to staffing our schools.

**The Hon. WALT SECORD (12:24):** I ask a second supplementary question. Will the Minister elucidate on how much the Department of Education accrues in savings in a year by employing temporary and casual staff over permanent staff?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:24):** I will have to take the specifics of that question on notice. It is important to make the point that I do not agree with the premise being put forward by the Opposition that teachers are not being given the opportunity for permanency. We must recognise the complexity and nuance of staffing in school communities. We must also recognise that we need flexibility in our workforces, which I mentioned earlier in the week. Often we will use temporary and casual staff to fill positions when permanent teachers are on leave, for example, maternity leave, parental leave, long-service leave or sick leave. Like with any workforce, particularly a public service workforce as big as the Department of Education in New South Wales, which has more than 90,000 employees and is the biggest public education system in the Southern Hemisphere, there are roles for permanent staff as well as flexible roles for casual and temporary staff. I have made that quite obvious. I will take on notice the specifics of the Hon. Walt Secord's question.

#### REGIONAL EVENTS ACCELERATION FUND

**The Hon. TREVOR KHAN (12:26):** My question is addressed to the Minister for Finance and Small Business. How is the New South Wales Government supporting the growth and recovery of regional communities through its Regional Events Acceleration Fund?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:26):** I thank the member for his question, and I thank all Nationals members, particularly the Hon. Sam Faraway—in advance—for their interest in the content of my answer. On this side of the House we are firing up the economy and getting New South Wales back to work. We are encouraging families, including that of the Hon. John Graham, to experience regional events with our Regional Events Acceleration Fund. That \$20 million fund is already making a splash, supporting the National Women's XV Rugby Tournament at Coffs Harbour, the World Surf League on the Tweed coast and the Rabbitohs versus Panthers in Dubbo, where funding of \$150,000 helped stimulate a \$2.4 million boost to the local Dubbo economy, which I know the Hon. Mark Latham has a specific interest in. I know all members are looking forward to the Flying Fruit Fly Circus, Australia's national youth circus, which will be in Albury for the summer. It will be a case of:

Pack up the babies  
And grab the old ladies  
And everyone goes

For five fabulous, fun-filled days in April next year, the place to be will be Parkes for the Parkes Elvis Festival. Support from the Regional Events Acceleration Fund will help bring that iconic event to life, with a program of events inspired by the 1968 musical film, which I am sure all members are aware of, *Speedway*. As the Minister responsible for tax collection in New South Wales, I appreciate Nancy Sinatra's efforts to make sure that the earnings of the Elvis character Steve Grayson from his race winnings went first to pay his tax debt. There will be more than 200 events, including leading Elvis tribute artists from Australia and abroad competing for the opportunity to represent Parkes Elvis Festival in the Ultimate Elvis Tribute Artist Contest in Memphis. The current holder of the crown is Taylor Rodriguez from Virginia, who will be performing at the Parkes festival. She fell in love with Elvis' music at the age of six when she was listening to *Blue Suede Shoes*. Fittingly, I have this message for those opposite:

Well, you can knock me down, step in my face

Slander my name all over the place  
Do anything that you want to do  
But uh-uh Mookhey, lay off of my shoes  
Don't you step on my blue suede shoes ...

### **SYDNEY TRAINS WORKSITE TEMPORARY TOILETS**

**Ms ABIGAIL BOYD (12:30):** My question is directed to the Deputy Leader of the Government in the Legislative Council, representing the Minister for Transport and Roads. Will the Minister please advise how many additional temporary toilets Sydney Trains has had to provide to avoid work stoppages as a result of the ongoing protected action being taken by Electrical Trades Union members at worksites that do not have separate amenities for women employees, and the cost of providing those additional portaloos?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:30):** I thank the honourable member for her question about an issue that I know she feels very passionate about, which has been raised in the House in other contexts over the past couple of weeks. I am very happy to take the specifics of the question on notice, refer it to the transport Minister and come back to the member with an answer.

### **HUSKISSON HOLY TRINITY CHURCH SITE**

**The Hon. WALT SECORD (12:30):** My question without notice is directed to the Aboriginal affairs Minister. What is the Government's response to community concerns that a number of unmarked graves in a traditional Aboriginal female burial ground at the former Holy Trinity Anglican Church in Huskisson are at risk of being disturbed due to a proposal to develop the site?

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (12:31):** I have been asked questions about this matter before in the House by Mr David Shoebridge. I am very well aware of Holy Trinity Anglican Church at Huskisson and that site. I do not have any current information on that with me in the Chamber. I will see if it is possible to get some by the end of question time, but otherwise I will be very happy to provide an answer on notice.

### **KOKODA TRACK MEMORIAL WALKWAY**

**The Hon. LOU AMATO (12:31):** My question is addressed to the Minister for Sport, Multiculturalism, Seniors and Veterans. Will the Minister update the House on how the New South Wales Government is investing in the Kokoda Track Memorial Walkway?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (12:32):** I thank the honourable member for his question on this important topic. The fighting on the Kokoda Track between July and November 1942 included some of the fiercest battles between Japanese and Australian forces in the Second World War. The defeat of the Japanese along the Kokoda Track is amongst Australia's most significant campaigns of the war and ended the myth of Japanese invincibility. In the campaign on the Kokoda Trail, 607 Australians were killed and 1,015 were wounded in battle. The campaign ultimately culminated in the recapture of Kokoda village on 2 November 1942.

On Remembrance Day I was pleased to join Premier Perrottet to announce \$600,000 for the Kokoda Track Memorial Walkway in Rhodes Park over four years to help give visitors a greater understanding of the experiences of Australians who served in Papua New Guinea. It was pleasing to be joined by former member of this place Charlie Lynn, whose great interest in Kokoda is familiar to the House. The walkway stretches more than 800 metres from Rhodes station to Concord Hospital and pays tribute to the bravery of Australian troops, who fought through what can only be described as atrocious conditions in the Papua New Guinea campaign of the Second World War. The funding will assist with capital works, new technology and staff to help facilitate school and community group visits with guided tours from veterans, which is really pleasing to see. I was pleased to meet some of those veterans on the day. The funding will enable future generations to visit and learn about the heroism of our veterans during the Second World War.

It is also a living memorial that runs the length of the course, including luxurious tropical vegetation to mimic the conditions of the Kokoda Track. At the centrepiece are granite walls with photographic images of the Kokoda campaign to give visitors an experience that mimics the Kokoda itself. There are 22 audiovisual stations along the walkway, each describing a significant place or military engagement. Visitors can hold up an iPad and see it visually on the site. It is very interactive and engaging for schoolchildren. Around 4,500 school students visit the memorial site every year, learning important information about the Australian men and women who served in the Pacific in the Second World War. I was privileged to be there 99 years after our diggers bravely battled in Papua New Guinea. I look forward to returning to view the track once the upgrades are completed, which will ensure that many generations to come will continue to remember the sacrifices of veterans in defence of our country.



### HIGHER SCHOOL CERTIFICATE ENGLISH EXAMS

**The Hon. MARK LATHAM (12:35):** My question is directed to the Minister for Education and Early Childhood Learning. With the HSC underway, what is the Minister doing to end the anti-educational practice of students memorising entire English essay answers in response to predictable questions and syllabus scaffolding in the HSC process? Given that memorised essays are the antithesis of critical thinking and analytical skills, will the Minister assure the House that the problem will be solved in time for the HSC next year?

**The Hon. Trevor Khan:** That's how I got through my HSC.

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:35):** I note the interjection from the Hon. Trevor Khan. In relation to the Hon. Mark Latham's question about the HSC, firstly, I hope all the students who are midway through are doing well. Many members in this Chamber have family members or their own children who are experiencing the HSC. We are about halfway through, so the finish line is well and truly in sight. It has been a challenging year for our year 12 kids.

In terms of the specifics of the member's question about the quality of the HSC exam papers, the way they are written and the ability for students to prepare for those exams, the HSC is a world-class credential. A lot of work goes into the preparation of those examination papers. They are written by teams of experts well in advance of the exams themselves, who make sure that they are linked closely to the syllabus and the expected learnings of students in each subject area. The member has been quite specific about how the exam papers are put together and what is done to eliminate the chance for students to pre-prepare and give themselves an advantage by giving pre-written answers to questions. I am happy to seek some advice in relation to that from the NSW Education Standards Authority [NESA]. There is obviously massive variation year on year when it comes to the way that papers are written. The fact that the HSC is known around—

**The Hon. Daniel Mookhey:** Did you memorise this answer?

**The Hon. SARAH MITCHELL:** No, I did not memorise this answer. Can you not tell this is off the cuff? As I said, a lot of work is done to make it a world-class credential. I would like to seek more advice from NESA, which runs the HSC for all school sectors, in relation to some of the specifics that the member has raised in his question. I will do that and come back to the member as soon as possible.

### SPORT ANTI-RACISM GUIDELINES

**The Hon. PETER PRIMROSE (12:37):** My question without notice is directed to the Minister for Sport, Multiculturalism, Seniors and Veterans. What is the Minister's response to community concerns that only three of New South Wales' government-owned sports stadiums have endorsed the new anti-racism guidelines that were backed by the NRL, the AFL, Cricket Australia and Tennis Australia?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (12:38):** I thank the honourable member for his question and his interest in this very important area. I am working with the Office of Sport to ensure that those policies are implemented and that the office works together with the State sporting organisations and State sporting organisations for people with disability to ensure that the policies are followed through. I will endeavour to get the specifics for the honourable member on the current status of those three specific organisations, so I will take that part of the question on notice.

Working closely with CEO Karen Jones, I have been very clear with the department that we will take great interest and ensure that this happens as soon as possible. We are working together with those organisations to implement that. The policy was announced only this week, so we need to give those organisations time to implement it. Many of them may already have that in place. I will take the balance of the question about those three on notice and will get back to the honourable member.

**The Hon. PETER PRIMROSE (12:39):** I ask a supplementary question. When will the Minister require that all New South Wales government-owned stadiums endorse the anti-racism guidelines?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (12:39):** I thank the honourable member for the supplementary question. It is obviously in all of our interests to have these policies implemented at the earliest possible opportunity, ensuring that it can be done in a thorough and comprehensive way and that we can work together to ensure that it is done. I will get some further specifics for the member on notice. It is a matter for venues and organisations to work through with their counterparts.

**The Hon. WALT SECORD (12:40):** I ask a second supplementary question. Will the Minister elucidate her response regarding the anti-racism guidelines that she referred to in both of her answers? What are the three main points of those guidelines, in the view of her Government and her department?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (12:40):** I thank the honourable member for his interest. It is quite a separate question, but I am happy to deal with it.

**The PRESIDENT:** Order! The Minister has the call.

**The Hon. NATALIE WARD:** The policy has been clear and has been announced. I am happy to provide further information for the honourable member in due course. The Government is clear that it wishes to address these issues, and it will do so comprehensively together with those organisations.

**The Hon. Walt Secord:** You don't know what's in the guidelines.

**The Hon. NATALIE WARD:** It has been announced.

### SCHOOL INFRASTRUCTURE

**The Hon. LOU AMATO (12:41):** My question is addressed to the Minister for Education and Early Childhood Learning. Will the Minister update the House on the New South Wales Government's historic school building program?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:41):** There is a lot to update the House on. Since 2017 the Government has invested \$7 billion in new and upgraded schools, with a further \$7.9 billion to be invested over the next four years. Since 2019 it has delivered more than 100 new and upgraded schools. Despite the disruptions of the COVID-19 pandemic, the Government has continued to build new school facilities, which we have seen this year. In term 1 the brand new facilities at Armidale Secondary College were officially opened. It was a \$121 million investment in the region, and I am pleased to hear the works are continuing to deliver a new multipurpose hall on site. It was great advocacy from the local member, Adam Marshall.

Also in the first term this year I was able to visit Penshurst Public School with the member for Oatley, Mark Coure, to officially open the redeveloped facilities. This entire school has been rebuilt, and the purpose-built learning spaces will support our students to achieve their best. Term 1 also saw the delivery of projects at Ajuga School, Campbell House School and Glenfield Park School. He is not here today, but I know my friend the Hon. Wes Fang was excited about the opening of the Estella Public School in Wagga Wagga, and the member for Camden, Peter Sidgreaves, was excited about the opening of Barramurra Public School. The Government has also delivered a major redevelopment of Kent Road Public School. I acknowledge the member for Ryde, Victor Dominello, for his advocacy for the project. Earlier this year, we also opened Galungara Public School with the member for Riverstone, Kevin Conolly, and in May we were at the new Northbourne Public School. They are both new primary schools in Sydney's growing north-west.

In May I was in Wollondilly with Nathaniel Smith to open the redeveloped Picton High School, and in April I was at Parramatta West Public School with the member for Parramatta, Geoff Lee. In addition, the Government has delivered the new Tirriwirri School in Queanbeyan as well as stage one of the upgrade to Murrumbidgee Regional High School in Griffith. Upgrades have been delivered this year at Kyeemagh Public School, Ashtonfield Public School, Lake Cathie Public School, Brooke Avenue Public School and St Ives High School, and Mainsbridge School has been relocated. Just this morning I have been at Denham Court Public School opening its brand new school with the member for Camden. It is another project delivered by our Government in south-western Sydney.

I thank the principal, Anna Butler; her staff, who were wonderful in welcoming us this morning; and the students. I say a special hello to the six year 6 students in that brand new school for the last weeks of term: James, Mariam, Aravind, Harry, Hadi and Zara. I thank them for the scarf. I told them I would wear it during question time, and here we are today. It is a lovely and proud memory and memento for me of the great work they are doing at Denham Court Public School, particularly given that was the school that was due to open in term 3, but, with the learning from home period, they were only able to welcome students during term 4. They have hit the ground running, building that school literally from the ground up. I give a big shout-out to the whole team at Denham Court. I am proud of our achievements in education this year despite the challenges. The Government has more projects to be delivered and more good news to come.

### STAMP DUTY

**Reverend the Hon. FRED NILE (12:44):** My question is directed to the Hon. Damien Tudehope, representing the Treasurer. Further to my previous question on notice No. 6941, the Premier has indicated his strong support for stamp duty reform as one way to address housing affordability. On 4 May 2021 the Treasurer said, "There are other ways to improve housing affordability." What are the other ways the Treasurer is considering to address housing affordability? Will the Treasurer abolish stamp duty?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (12:45):** I thank the member for his question and for his interest in the reform of taxation in this State. At least he has an interest in doing it. Where is the interest of members opposite? This is a reformist government. Those opposite have no policy. They were going to have the 100-day reform policy, but we have heard nothing. It is day 166 today, and we have heard nothing about policy development. I started alluding to this earlier. There is a significant trend that we can glean from the little morsels that are dropped by those opposite about what their policies are going to be.

**The Hon. Daniel Mookhey:** Point of order: My point of order is direct relevance. I am eager to hear the Minister's response to the excellent question asked by Reverend the Hon. Fred Nile about precisely what the Government's policy on stamp duty is. I would like the Minister to come back to that question, especially as the Treasurer has created some confusion.

**The PRESIDENT:** I was enjoying the morsels, but the Minister will more directly answer the question.

**The Hon. DAMIEN TUDEHOPE:** Members opposite do not like it when we talk about reform on this side because we at least get a package out there. Let us talk about it and get industry groups involved. Let us talk about how we can advance the position of the people of New South Wales. Members opposite would rather talk about scare campaigns—

**The Hon. Daniel Mookhey:** Point of order: I am feeling equally as fragile as the Minister. Rather than playing towards my fragility, could the Minister at least try to answer the question about his Government's policy? That would be most helpful. He should be directly relevant to the question.

**The PRESIDENT:** I uphold the point of order. The Minister will answer the question.

**The Hon. DAMIEN TUDEHOPE:** The Government has a policy of making sure that it engages the people of New South Wales to participate in the development of opportunities to make housing more affordable. What is the contribution of those opposite?

**Government members:** Nothing!

**The Hon. DAMIEN TUDEHOPE:** There is zero contribution. They were given an opportunity, and there was a great notice of motion that was moved—

**The Hon. Daniel Mookhey:** Point of order: I have two points of order. The first one is direct relevance. The Minister has not even tried to answer what the alternative measures are that the Treasurer is considering to improve housing affordability, and he has 50 seconds left to give his answer. My second point of order is that he is dangerously straying towards canvassing a decision of the House when he raises the notice of motion. He should try to answer the question.

**The Hon. DAMIEN TUDEHOPE:** You don't like it, do you?

**The Hon. Daniel Mookhey:** No, I want you to hook yourself.

**The PRESIDENT:** The Minister will try to be directly relevant.

**The Hon. DAMIEN TUDEHOPE:** A serious contribution towards housing affordability is at least the consideration of how to deal with stamp duty. Those opposite do not want to talk about it. We have engaged with over 100 stakeholders. We have had 23,800 visits to the website, 6,152 polling responses and 3,504 completed online surveys.

**The Hon. Rose Jackson:** Visits to a website!

**The Hon. DAMIEN TUDEHOPE:** You ought to look at that material because what I have been saying to you is—

**The Hon. Rose Jackson:** Publicly release it all!

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

**The Hon. DAMIEN TUDEHOPE:** From the morsels that we glean about how those opposite would deal with housing affordability, we can understand one thing. They are committed to higher taxes. The people of New South Wales should know it. *[Time expired.]*

## BOXING SAFETY

**The Hon. MARK BUTTIGIEG (12:50):** My question is directed to the Minister for Sport, Multiculturalism, Seniors and Veterans. Given the Minister's new head cut rule for boxing, gazetted on Friday 5 November, which requires a match to stop when a competitor is cut, how will the Government assist the sector in implementing the new standard?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (12:51):**

I thank the honourable member for his interest in this important issue. We take matters of safety in all sporting codes seriously, particularly in boxing. We are working together with the sector to ensure that we can implement safety standards such as the one the honourable member refers to. That is important to us.

**The Hon. Walt Secord:** You don't know what's in these rules either. You don't know the anti-racism one and you don't know the boxing one.

**The PRESIDENT:** Order!

**The Hon. NATALIE WARD:** I will not respond.

**The Hon. Walt Secord:** You signed it.

**The PRESIDENT:** I call the Hon. Walt Secord to order for the first time.

**The Hon. NATALIE WARD:** I am happy to take on notice the dates and implementation details and come back to the House. We work closely with all organisations to assist them to implement the rules as best they are able and as quickly and efficiently as possible. Many of the organisations have limited capacity to implement policies. We work closely with them to ensure that they can do so quickly and effectively so that participants, players and officials can be involved in competitions in the safest way possible. I thank the member for his interest in the subject.

**The Hon. MARK BUTTIGIEG (12:52):** I ask a supplementary question. I thank the Minister for her answer. Will the Minister elucidate that part of her answer where she said she is happy to work with dates and consultative mechanisms for the sector? Will the Minister give the House an idea of what the end date of that consultation and implementation plan might be?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (12:52):** In short, I would be happy to do so. To be clear, the New South Wales Government funds the Combat Sports Authority of NSW, which is specifically tasked with implementation and works closely with the sector. We will work with the Combat Sports Authority to make that happen. Of course, I will come back to the House and to the honourable member with specifics about the implementation process. I am pleased the authority is able to work with the sector to ensure competitions occur in the safest possible environment. We work closely with the sector to get feedback about what will work for it in terms of implementation. Having been married to a referee, I know about the difficulty for competition officials in trying to take those steps. Any clarity that we can provide around the competitions and around the points at which safety steps should be taken and competitions stopped to ensure player safety whilst maintaining the integrity of those competitions, as much as the sports sector wants us to in particular codes, is important to us. So we will work closely with them. I will come back to the House on the specifics of that process.

**The Hon. WALT SECORD (12:53):** I ask a second supplementary question. Given the gazettal on 5 November of the new rules made by the Combat Sports Authority of NSW under the Minister's jurisdiction, will she elucidate her answer by telling the House what the new head cut rules are?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (12:54):** I never envisaged that the Hon. Walt Secord would be quite so interested in combat sport, but I am pleased he is interested in the sector. The honourable member is able to access those rules because they have been gazetted and published.

### COMMUNITY GRANTS PROGRAM

**The Hon. TREVOR KHAN (12:54):** My question is addressed to the Minister for Education and Early Childhood Learning. Will the Minister outline to the House what the New South Wales Government is doing to increase preschool participation and access for children experiencing vulnerability and disadvantage?

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (12:54):** I thank the honourable member for his question. The Government wants to ensure that every child in New South Wales has access to 600 hours of quality early childhood education in the year before school. We know there is always more to do in this space and quality early childhood education, particularly for every Aboriginal child in New South Wales, is a long-term commitment for our Government. That is why I am delighted to inform the House of the first tranche of successful applicants under the Community Grants Program, under which Aboriginal children and families will have additional support to participate in those crucial 600 hours of quality early childhood education. In the first round more than 50 eligible services will receive grants that will enable preschool students to engage and learn in their earliest years.

Participation in early childhood education is fundamental to ensure that children have the best possible start in life. The grants program is about making sure that Aboriginal children and their families are supported and have access to quality early learning. I am delighted that the grants will enable services to provide educational activities that will strengthen the foundations of children's learning in the crucial years before school. Grants of up to \$10,000 have been made available for a range of initiatives to support access to quality preschool education for Aboriginal children that will benefit and enrich the development of culture in their community. The funding can be used for initiatives such as transport services to help families access the preschools and development opportunities for staff to learn how to further support Aboriginal children and engage with Aboriginal community members. Grants can be used to promote educational access for Aboriginal children and children from low-income families, as well as initiatives that will improve educational experiences or outcomes for those children who attend our services.

In its assessment process, the department has prioritised applications from services operating in regional and remote areas and in the most disadvantaged areas, and that have significant enrolments of Aboriginal children and children from low-income families. Activities can be in conjunction with other community initiatives delivered by the New South Wales Government or with other agencies supporting Aboriginal children and children from low-income families. As I said, 50 services have received funding in the first round. They include Belmont Community Child Care Centre in Swansea, which is using its grant money to engage an Aboriginal community member to work with the service and with the local Aboriginal community. That person will play an important role linking families to the early childhood service. A lot of evidence shows that if families are engaged in early childhood education, the outcomes are better.

The Thredbo Early Childhood Centre will provide an array of supports to its children and families, including staff development opportunities such as training and conferences that promote outreach to Aboriginal children and children from low-income families. Those are only two out of 50 successful applicants in the first round. I look forward to updating the House further on the good work being done by our early childhood services in this space.

#### AGRICULTURE AND BEEF PRODUCTION

**The Hon. MARK PEARSON (12:58):** My question is directed to the Hon. Bronnie Taylor, representing Mr Adam Marshall, the Minister for Agriculture and Western New South Wales. *The Guardian* reports that the European Union is requiring exporters to prove that beef destined for the European market is not linked to deforestation. Given the record levels of land clearing in New South Wales since the repeal of the Native Vegetation Act 2003, will the Minister inform the House whether the Government is concerned that New South Wales beef producers are at risk of being blocked from exporting their beef to Europe? If so, will the Minister inform the House of the action the Minister will take?

**The Hon. BRONNIE TAYLOR (Minister for Mental Health, Regional Youth and Women) (12:58):** I thank the honourable member for his question. It gives me great delight to speak about the fantastic agricultural industry, yet again, and about my absolute love for meat. Only this morning I attended a briefing held by the Department of Primary Industries. Other members in the Chamber were there.

**The Hon. Mick Veitch:** Hear, hear! I was there.

**The Hon. BRONNIE TAYLOR:** I acknowledge the Hon. Mick Veitch, who was there. The Hon. Taylor Martin was also there because he has a keen interest in agriculture and beef production. The amazing thing there today—

**The Hon. Mark Pearson:** Why wasn't I there?

**The Hon. BRONNIE TAYLOR:** Well, Tamara was there. The amazing thing is the incredible results that agriculture is having in New South Wales at this point in time. There are record beef prices, record crop prices, record canola prices—we have not seen such canola prices in a very long time. I thank the Hon. Mick Veitch very much, because today is AgDay and he has prompted me—

**The Hon. Mark Pearson:** Point of order: Mr President, could you please bring the Minister back to the direct question? There is a dictionary here if the Minister requires it.

**The PRESIDENT:** I am not sure the second part of the point of order was required. The Minister will bring herself back to the direct question that was asked.

**The Hon. BRONNIE TAYLOR:** I do not make any apologies for getting excited about agriculture and talking about meat in this place, because it is a very important topic. The briefing I attended today is directly relevant to the member's question because it directly talked about beef production and beef exportation across the world. It is clear from the data that beef is here to stay and that our export industry is absolutely booming in

agriculture, booming in beef. Obviously, there have been some considerations and people are building their herds back and increasing production. But there honestly has never been a brighter future for agriculture than we are seeing at the moment. I cannot tell members how absolutely fabulous it was to go to a briefing that was so pro agriculture. I am sure those honourable members who were also present will agree with me. It was just absolutely incredible. I am really proud to be a beef producer and a farmer. There are really good things happening. I thank the honourable member very much for his question. Happy AgDay!

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

#### **HUSKISSON HOLY TRINITY CHURCH SITE**

**The Hon. DON HARWIN (Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts) (13:02):** Further to the question that was asked of me by the Hon. Walt Secord in question time about matters to do with the Holy Trinity Anglican Church at Huskisson, my staff have been in touch with Heritage NSW. Heritage NSW is not aware of the matters that were raised by the honourable member in his question. As I have indicated, I have a great knowledge of that particular church, having lived in that area for 18 years. If the honourable member has some matters that he wants me to look into in relation to that church, I would be very happy to do so. If the Hon. Walt Secord could provide those details to my office, they will get close attention. I inform the House that it is not a State heritage-listed property.

**The Hon. Penny Sharpe:** We know that.

**The Hon. DON HARWIN:** We suggested to Shoalhaven City Council that it should think about putting it on the local Heritage register, but it declined to do so.

**The Hon. Penny Sharpe:** Can't you tell Shelley Hancock's people to do that?

**The Hon. DON HARWIN:** Maybe, after 4 December, if the Shoalhaven is lucky enough to have Mr Paul Green back as its mayor, there will be a different approach. But that is not currently the case. If the honourable member provides me some details, I will look into it.

#### **TEACHER TEMPORARY CONTRACTS**

**The Hon. SARAH MITCHELL (Minister for Education and Early Childhood Learning) (13:04):** Earlier in question time the Hon. Walt Secord asked me a question about how much money the Department of Education saves by employing temporary staff over permanent. I am happy to advise the member that due to the fact that temporary teachers in New South Wales public schools are employed by the Department of Education on the same conditions as permanent teachers, there is no cost saving by the department when employing a teacher on a temporary basis.

#### **SPORT ANTI-RACISM GUIDELINES**

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (13:04):** Earlier in question time today I was asked a question by the Hon. Peter Primrose regarding the spectator racism policy that was announced. I will clarify a couple of points regarding the policy, in addition to making a copy of the policy itself available to the honourable member. Racism has absolutely no place in sport or in the stands from those watching on. The Government strongly applauds the Australian Human Rights Commission's new spectator racism guidelines, which of course have already been endorsed by Venues NSW and announced. To be clear, sporting organisations already had an obligation to deal with racism through their codes of conduct, policies and education programs. I am pleased to inform the House that Venues NSW has been very involved in the development of these spectator racism guidelines and it has already incorporated them into how it operates our network of sporting and entertainment venues. So that has occurred.

Venues NSW has a zero-tolerance approach to racism and already has in place strong processes, in line with the commission's guidelines, to identify, listen to and respond to incidents. So in terms of addressing the specifics of the timing, rollout and implementation of the guidelines, a lot of that work has already been done. I thank Venues NSW for its work. A text line is available for people to report incidents anonymously to a control room that is staffed by controllers and the police. It is already operating at venues. Venue staff have been trained to respond and escalate immediately, and any offenders are dealt with by police and immediately banned from all of our venues. That is in place. Responses to spectator racism centre on those who have been targeted, and those who witness it, to ensure that they report it. We are encouraging them to do so. I have the policy available, should members wish to avail themselves of it.

*Supplementary Questions for Written Answers***DR ANNETTE COWIE AND NATIVE FORESTRY BIOMASS**

**Mr JUSTIN FIELD (13:06):** My supplementary question for written answer is directed to the Hon. Bronnie Taylor, representing the Minister for Agriculture and Western New South Wales, regarding the Minister's answer that Dr Cowie's advice contradicting the NSW Environment Protection Authority [EPA] was "in respect of matters outside the EPA's statutory responsibilities". Given the matters raised by the EPA related to the application of the Protection of the Environment Operations (General) Regulation 2021 in regard to the burning of native forest biomaterials for electricity, and that the EPA's website makes clear "the Protection of the Environment Operations Act ... is the key piece of environment protection legislation administered by the EPA", what parts of the EPA's submission does the Minister consider are outside of its statutory responsibilities?

**SPORT ANTI-RACISM GUIDELINES**

**The Hon. WALT SECORD (13:07):** My supplementary question for written answer is directed to the Minister for Sport, Multiculturalism, Seniors and Veterans. In the Minister's answer she referred to fans being banned for racist activity. How many fans were banned for racist activity in 2019-20 and 2020-21?

*Written Answers to Supplementary Questions***TRANSPORT ASSET HOLDING ENTITY OF NEW SOUTH WALES ASSET VALUE**

In reply to **the Hon. DANIEL MOOKHEY** (17 November 2021).

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

I am advised that the Transport Asset Holding Entity moved to an income approach at 30 June 2021 when the new commercial Track Access Arrangements with Sydney Trains and New South Wales Trains were executed.

Any further question about the timing of specific decisions by the Board of the Transport Asset Holding Entity should be directed to the Minister for Transport and Roads.

**ENVIRONMENTAL DEBT**

In reply to **the Hon. MARK LATHAM** (17 November 2021).

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

The Budget Papers for 2022-23 will be prepared and tabled in accordance with the provisions of Division 4.1 of the Government Sector Finance Act 2018 and Section 8 of the Fiscal Responsibility Act 2018.

*Personal Explanation***HUSKISSON HOLY TRINITY CHURCH SITE**

**The Hon. WALT SECORD (13:07):** By leave: I wish to make a personal explanation. Earlier, during question time, the arts Minister made reference to a question that I asked involving burials at a Huskisson church. My recollection is that during question time he offered to take it on notice. To save time, I suggest that he take the question on notice and answer the question as presented from question time.

**The Hon. Don Harwin:** That is not a personal explanation. I offered to try to get the information for the member.

**The PRESIDENT:** I am not sure that was a personal explanation.

*Presiding Officers***PRESIDENT OF THE LEGISLATIVE COUNCIL****Presentation**

*The members of the Legislative Council proceeded at 13:08 to Government House, there to present Mr President to Her Excellency the Governor.*

*Governor*

**ASSUMPTION OF THE ADMINISTRATION OF THE GOVERNMENT**

**ADDRESS-IN-REPLY**

**HIS ROYAL HIGHNESS PRINCE PHILIP THE DUKE OF EDINBURGH**

**Presentation**

*The House proceeded to Government House at 13:08, there to present to the Governor its Address-in-Reply to the message dated 2 May 2019 communicating the fact of her assumption of the administration of the State, its Address-in-Reply to the Speech Her Excellency had been pleased to make to both Houses of Parliament on opening the session, and an address of condolence to Her Majesty the Queen and members of the royal family passed by the Legislative Council on the death of His Royal Highness the Duke of Edinburgh.*

*The House returned at 15:00.*

*Presiding Officers*

**PRESIDENT OF THE LEGISLATIVE COUNCIL**

**Presentation**

**The PRESIDENT:** I report that the Legislative Council went to Government House today—and enjoyed it—where I informed the Governor that, following a vacancy in the office of President, the Legislative Council, in the exercise of its lawful right, had proceeded to the election of their President and that the choice had fallen upon me as their independent and impartial representative. I presented myself to Her Excellency as your President and Her Excellency was pleased to offer to me her congratulations. I further report that, in the name and on behalf of the members of the House, I laid claim to all their undoubted rights and privileges, particularly to freedom of speech in debate, to free access to Her Excellency when occasion should require, and asked that the most favourable construction should, on all occasions, be put upon their language and proceedings; to all of which the Governor readily assented.

*Governor*

**ASSUMPTION OF THE ADMINISTRATION OF THE GOVERNMENT**

**ADDRESS-IN-REPLY**

**HIS ROYAL HIGHNESS PRINCE PHILIP THE DUKE OF EDINBURGH**

**Presentation**

**The PRESIDENT:** I report that the House today presented to Her Excellency the address-in-reply to the assumption of the administration of the Government of the State, the Address-in-Reply to Her Excellency's speech on the opening of the Fifty-Seventh Parliament, and the condolence motion on the death of His Royal Highness the Prince Philip, Duke of Edinburgh, and that Her Excellency has been pleased to give thereto the following answers:

GOVERNMENT HOUSE  
SYDNEY

Friday, 19 November 2021

The Honourable the President  
and Honourable Members of the  
Legislative Council of New South Wales

Mr President and Members of the Legislative Council

It is my great pleasure to have you at Government House today. I commend the members for their Motion of Condolence and I will convey the House's message to Her Majesty.

You have been entrusted to be the voice of the people of New South Wales; to represent their interests when decisions which may affect their everyday lives, are debated and decided within the walls of Parliament.

There are many challenges ahead as you work together for the well-being of the people of New South Wales, and support the community as it continues to recover from the challenges brought by drought, bushfires, floods, mice plagues and the pandemic. It is a testament to this Parliament that New South Wales can take pride in the civil debate and pragmatic way in which past and future challenges shall be faced and overcome.

I extend my warmest good wishes to you for the remainder of this 57<sup>th</sup> session of this Parliament, and wish you every success with your endeavours.



The Honourable Margaret Beazley AC QC  
Governor of New South Wales

GOVERNMENT HOUSE  
SYDNEY

Friday, 19 November 2021

The Honourable the President  
and Honourable Members of the  
Legislative Council of New South Wales

Mr President

It gives me much pleasure to receive your Address in Reply, following the Opening of the 57<sup>th</sup> Session of the New South Wales Parliament on 7<sup>th</sup> May 2019.

Two years and six months have passed since my appointment as 39<sup>th</sup> Governor of New South Wales.

It has been my earnest endeavour to strengthen the links between the Crown and the Parliament and the people of New South Wales. Dennis and I have expended our energies fully and willingly in the interests of this State, and trust that we shall be able to fulfil our part in the years ahead.

I welcome this opportunity of greeting Members of the Legislative Council today, and assure you of my continued close co-operation with you and of my utmost consideration of all matters which you may bring forward.

The Honourable Margaret Beazley AC QC  
Governor of New South Wales

*Bills*

**PUBLIC SPACES (UNATTENDED PROPERTY) BILL 2021**

**Second Reading Debate**

**Debate resumed from an earlier hour.**

**The Hon. MARK LATHAM (15:08):** One Nation supports the Public Spaces (Unattended Property) Bill 2021. We very much support the Hancock-Warren jihad against runaway shopping trolleys. We share the outrage of so many people in New South Wales at these dangerous items flying down the street, knocking over pensioners, the disabled, young children and animals. There needs to be a stop to it and, of course, the shopping centres need to take full responsibility for what they have done. Cost recovery is entirely appropriate. But we also share the very legitimate concerns of the Animal Justice Party about the way in which animals are being worked into this bill.

There is no need to fine anyone if a dog is lost in a national park. There should be sympathy in returning the dog and allaying the distress of the dog's owner. In my world, if my precious dog was lost in a national park I would very much resent a fine. I would be part of the search party to find the beautiful animal and return her home. I do not know why that provision has been rolled into the terror of shopping trolleys in our suburban centres. If the Animal Justice Party was to move an amendment to delete that clause, it would have the support of One Nation.

**The Hon. SCOTT FARLOW (15:09):** On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Mark Latham, Ms Abigail Boyd, the Hon. Emma Hurst and the Hon. Walt Secord for their contributions to the debate. I note that it has been a difficult journey for the Hon. Walt Secord to come to this position, but I thank him and the Opposition for coming on board. I am glad that the member for Campbelltown has won the day with his strong instruction to get the Hon. Walt Secord on board for banning trolleys. I am sure that the Hon. Walt Secord would have had some concerns, being the former purveyor of the trolley of truth through the halls of New South Wales Parliament. That may have caused him some concern, but I am glad he is on board.

The bill will ensure that we meet community expectations to protect open spaces from safety hazards and clutter caused by shopping trolleys and other items, and it will contribute to the Government's commitment to keep public spaces safe and accessible, in line with the Premier's Priority for greener public spaces. It was wonderful to hear from so many supportive speakers, even if they were somewhat reluctant, who welcome the bill. I thank everyone who spoke today. The Government appreciates the input and looks forward to working together as the regulations are finalised so that we can best address other issues that have been raised. The bill will respond to significant concerns in the community about the ongoing dumping of items such as shopping trolleys, trailers and cars, and the abandonment of other items and stock animals, which can clutter our public spaces for extended periods.

The changes will put the onus on those responsible to better manage their items and animals or face stronger regulatory action, including appropriate fines, penalties, orders, and avoid having items taken into possession and animals into care. Concerns have been raised regarding proposed section 22 of the bill, which clarifies the circumstances in which the power may be exercised. The Government assures the House that the intention for that clause is that it can be used only in very serious circumstances. If an animal is injured in a way that would otherwise be treatable or if the animal is not a serious threat, usual practices would apply and the animal's owner would be contacted. As a dog owner who resides next to a national park, I have lost my dog on certain occasions. I am comforted by that provision.

While the proposed bill will provide minimum requirements for those responsible to manage animals and items in public places, it also proposes more flexibility. I thank everyone who took part in the consultation process; their feedback has helped shaped the bill. Further consultation will occur before regulations are introduced. I also thank the Office of Local Government, which has worked tirelessly for over two years to prepare the bill. Without a doubt, it will improve public spaces right across New South Wales. It is a reform of which all members can be very proud. I commend the Minister and her staff on the important legislation before the House and I commend it to the House.

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

**Motion agreed to.**

### **Third Reading**

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

That this bill be now read a third time.

**Motion agreed to.**

## **SERVICE NSW (ONE-STOP ACCESS TO GOVERNMENT SERVICES) AMENDMENT (COVID-19 INFORMATION PRIVACY) BILL 2021**

### **Second Reading Speech**

**The Hon. TAYLOR MARTIN (15:14):** On behalf of the Hon. Damien Tudehope: I move:

That this bill be now read a second time.

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

### **Leave granted.**

Mr President, I am pleased to introduce the Service NSW (One-stop Access to Government Services) Amendment (COVID-19 Information Privacy) Bill. This bill will limit the disclosure and use of any personal and health information collected by Service NSW under the COVID-19 Public Health Orders.

The Service NSW COVID-Safe Check-in app has been central to the New South Wales Government's pandemic response. It has allowed us to quickly identify people who may have been in contact with a positive case and support efficient and effective contact tracing. Now, as New South Wales continues to reopen, the COVID-Safe Check-in app provides customers with case-alerts for venues they have attended. The check-in app has given people confidence that they will be notified if they come in contact with a positive case and will be able to protect their family and friends.

During the Delta outbreak, we asked the people of New South Wales to assist contact tracing by checking -in when attending any indoor venue. We have also asked the people of New South Wales to provide declarations and obtain permits for travel and other activities that would ordinarily be part of their everyday lives. These measures only work with public buy in. Trust and compliance is central to their effectiveness, and to our ability to reduce the spread of COVID-19.

Over seven and a half million people have used the SNSW COVID-Safe Check-in app, for over one billion total check-ins. That is over one billion times people in New South Wales have entrusted the Government with their personal information. Throughout the pandemic we have recognised the significance of this trust and have sought to ensure it is reflected with robust privacy protections.

The Public Health Orders state that contact details collected through COVID-Safe Check-in are only to be used or disclosed for contact tracing during the COVID-19 pandemic. Service NSW has upheld this position and has not provided any personal information collected through COVID-Safe check-in to New South Wales police. All contact details held by Service NSW is stored in an encrypted database and is accessible only by NSW Health through a restricted authenticated interface for the purposes of COVID-19 contact tracing. If information isn't required by Health, Service NSW deletes personal check-in information it holds after 28 days.

The Government has listened to advice from the Privacy Commissioner and decided to further strengthen privacy protections through the introduction of the COVID-19 Information Privacy Bill.

This bill takes the longstanding position that check-in data is only to be used for the purpose for which it was collected, or contact tracing and enshrines it in legislation. It will ensure that information cannot be accessed for secondary purposes, including for law enforcement and by use of a warrant. It will reinforce to the people of New South Wales that the additional collection of their information during the pandemic is only to protect public health.

The bill will prevent Service NSW from disclosing personal and health information collected under the Public Health Orders for any use other than:

- the purpose it was collected
- contact tracing
- to provide it to the person it is about
- or in limited circumstances to investigate a breach of the Public Health Orders.

Service NSW will only be able to use or disclose personal information from COVID-Safe Check-in for the purpose for which it was collected or for contact tracing purposes. This will include contact tracing within other Australian States and Territories, to support our border communities and ensure contact tracing can continue to be effective as our borders begin to reopen.

Permit information, and declarations about entering or leaving New South Wales, will continue to be able to be disclosed to New South Wales police if required to investigate or prosecute a breach of the Public Health Orders related to the permit.

The bill will not impact the ability for an individual to show their check-in information or vaccination certificate on the Service NSW App to a business or to a police officer, in line with the Public Health Orders.

Mr President, as we move forward with the COVID-19 roadmap, we hope to reduce the need to ask the people of New South Wales to provide us with their personal information as they conduct their everyday lives. However, the COVID-19 Information Privacy Bill will give the people of New South Wales the assurance that, if Service NSW needs to collect their information to ensure the safety of the community from COVID-19, their privacy is protected by legislation.

I commend the bill to the House.

### Second Reading Debate

**The Hon. MICK VEITCH (15:15):** I am pleased to lead for the Opposition in debate on the Service NSW (One-stop Access to Government Services) Amendment (COVID-19 Information Privacy) Bill 2021. The bill will address an important issue; namely, the security of COVID Safe Check-in data. It is crucial that the community maintains confidence that their COVID Safe Check-in data is safe, secure and used only for the purpose for which it was collected. The bill will enforce limitations around the disclosure of personal and health information collected by Service NSW under the COVID-19 public health orders. The Service NSW COVID Safe Check-in app has played an important role in our State's pandemic response. The data collected has allowed our contact tracers to quickly identify people who have potentially been in contact with a positive case. I thank our contact tracers, who have worked very hard, for the fantastic work they have done during some of the toughest times of the pandemic.

With our State reopening, the COVID Safe Check-in app will continue to play an important role in notifying people if they have come into contact with a positive case. As the Parliamentary Secretary stated in his incorporated second reading speech, to deal with the Delta outbreak we have asked people to check in when attending any indoor venue and when obtaining permits for travel and work. Those measures work only with the support and trust of the public; that is why this legislation is so important. Over 7.5 million citizens in New South Wales use the Service NSW COVID Safe Check-in app, and we have a responsibility to ensure that their data is protected. I note that the bill was based on advice provided by the Privacy Commissioner to further strengthen privacy protections, and the Opposition supports that. Under the current public health orders, personal information collected by the COVID Safe Check-in app can be used only for contact tracing. Service NSW deletes the data after 28 days.

The bill will reinforce in legislation that the additional information collected during the pandemic is only to protect public health. New section 17B (2) makes clear that information held must not be used or disclosed except for the purpose for which it was collected or for contact tracing, including in another State or Territory. The information collected in relation to the issue of a permit can be used for the purposes of investigating or prosecuting a breach of a public health order related to that permit. The same provisions apply to declarations made when entering or leaving New South Wales. This information can be used for the purposes of investigating or prosecuting a breach of a public health order related to the declaration. Those two provisions allow for information to be disclosed to New South Wales police to investigate and prosecute a breach of the public health order.

The bill makes clear that this information cannot be accessed for any secondary purpose, including for law enforcement or by use of a warrant. Nothing in the bill will prevent an individual from displaying their check-in information or vaccination certificate on the Service NSW app to a business or police officer, in line with the public health orders. I note that the bill will also allow for information to be shared between States and Territories; that is, information for contract tracing as we begin to reopen nationwide. This will also help support our border communities. The COVID Safe Check-in app has been a critical tool in fighting the pandemic. To date, our public health orders have protected citizens' data from being accessed for any purpose other than that for which it was

collected. The Opposition will continue to monitor this space to ensure that the data is protected going forward, and it is pleased to provide its support for the bill.

**The Hon. MARK LATHAM (15:18):** I contribute to debate on the Service NSW (One-stop Access to Government Services) Amendment (COVID-19 Information Privacy) Bill 2021. The Hon. Mick Veitch has provided an accurate assessment and summary of the bill, but I raise two curious aspects. One is why it has taken so long into the COVID response to have these extra privacy provisions. The second is the knock-on effect. Service NSW can provide the information to NSW Health, but there seems to be no extra privacy provisions in place. It is welcome that Service NSW, through Minister Dominello, would put these extra privacy provisions in place, albeit delayed and towards the end of the most serious aspects of the COVID-19 response in New South Wales.

But the Parliament can legitimately ask about what happens to the information going to NSW Health. If NSW Health receives the same information as Service NSW, NSW Health too should be subject to the additional privacy safeguards provided in this bill. We should strap around NSW Health the same provisions we are strapping around Service NSW, so One Nation has circulated an amendment to say that NSW Health should be subject to the same provisions that come out of this bill. In his second reading speech in the other place, Minister Dominello said that trust and compliance is central to the effectiveness of this system and to our ability to reduce the spread of COVID-19. He pointed out clearly:

All contact details held by Service NSW are stored in an encrypted database that is accessible only by NSW Health through a restricted authenticated interface for the purposes of COVID-19 contact tracing.

He rules out the Police Force and other agencies. But where are the privacy guarantees of NSW Health? I would have thought it would be legitimate for the Parliament to say that what is good for Service NSW in these new protections should apply to NSW Health. In this second reading debate I raise my concern about what has happened with NSW Health and its protection of information, which is relevant to how we see this bill and the amendment we will move in Committee of the Whole. If NSW Health is to be the recipient of this material, as the Minister has clearly outlined in his speech, we need to ask about who is guarding the privacy interests there.

I have not sought out any of these privacy breaches at NSW Health. I have not gone looking for them. People have complained to me about what has been going on inside that agency, particularly during the lockdown period. The first breach involved a local health district that circulated the vaccination status of all the staff who were not vaccinated. One staff member's very serious illness was listed on a sheet that was available to all staff members. That sort of private information of a worker should not be distributed to all the other workers. That was a major breach of privacy by NSW Health. The second matter concerned material that I subsequently raised with the health Minister in question No. 7714 on notice, in which I asked:

- (1) Why did NSW Health send detailed staffing information to random email recipients, members of the general public, on 28 September 2021?
- (2) What is the Minister doing about the multiple data security breaches at NSW Health?

The Minister, totally defying the evidence I have in my folder, said:

- (1-2) NSW Health did not send detailed staffing information to members of the general public on 28 September 2021. This incident was an operational error and not a security breach ...

What is going on there? He said that they did not send the information out, but then he said that it was an operational error and not a security breach. So the Minister has contradicted himself in the first two sentences of his answer. He then said:

Steps were immediately taken to remedy the error and further steps have been taken since to make sure the error cannot occur again.

I saw the list. A long list was randomly sent to someone who is not connected to the health system in any way, who works in a different part of the New South Wales public sector, who then sent it to me. This person randomly received that email. We do not know how many other people received it. It had a full list of staff positions. The best the Minister can do is to say that the incident was an operational error, steps were taken to remedy the error and further steps have been taken to make sure that it does not happen again. I assume that they just deleted the faulty email broadcast that went out. I do not know when they did that or whether it was because I alerted them through the question. But it was a huge breach of security and privacy coming on top of that problem at the local health district.

Then we go to another matter that has been raised with me. A nurse working in the system had her vaccination status sent to the Nurses and Midwives' Association, which subsequently sent her a letter, asking why she was not vaccinated. She wants to know how NSW Health, without her permission, sent out private information about her vaccination status to an association of which she is not even a member. There was a time in this country

when vaccination status very clearly was regarded as highly significant private health data, particularly under Federal law. I have seen this material. I asked the health Minister, Brad Hazzard, the following:

- (1) What privacy protocols does NSW Health follow in handling information concerning the vaccination status of its staff?

He answered:

- (2) NSW Health has no record of ever passing on the vaccination status of a member of staff to the Nurses Association or any other trade union.

I can assure the House that to say that it did not happen is fundamentally untrue. It is doubly bad in that NSW Health did it and now says there is no record of this massive security breach. My constituent is hugely aggrieved by what has gone on and even today is sending me further material showing that her vaccination status was sent to an association of which she is not even a member.

I put to the Minister another question, which concerned SMSs that were wrongly sent on 21 September 2021. The Minister owns up in franker fashion than in the other matters. He writes:

On 21 September 2021 5,034 consumers were sent an SMS intended for another person.

That is just appalling. How, on top of all the other problems I have mentioned, did NSW Health send out, to over 5,000 people, SMSs about vaccination appointments for the wrong people? These are massive breaches of privacy. Who wants strangers to know their vaccination appointment or their vaccination status when they have got a serious medical condition that means that they have a medical exemption? Who wants strangers to read the staff listing that was randomly sent out in the email? Who wants the nurses' association to know the status of a nurse who was then sent what she regarded as quite a strongly worded—even harassing—email, demanding to know why she had not been vaccinated? She too had a medical exemption, but it was one that was not accepted by the health department.

These are very serious matters. I am just raising the point. If we are to put extra privacy concerns around Service NSW in this bill and Service NSW says the only other agency that receives the data is NSW Health, why would we not also put those privacy and security protections around the health department and all the work it does? I acknowledge that it has done some very fine work around New South Wales. In unexpected circumstances, NSW Health has had a huge workload. But any breach of privacy is a massive concern. I think it is true to say that, until your privacy is breached, you do not fully understand the consequences of things you regard as deeply personal, such as your relationship and a discussion with your family doctor, being in the public domain. That sort of thing is normally in the private domain. The breaches I have outlined raise a concern, pointing out that the knock-on information that goes to NSW Health should also have the provisions and protections in this bill.

Service NSW does some great work. I must say as a consumer that it is miles ahead of predecessors. There were those dreadful line-ups at the Roads and Traffic Authority and other things to try to get a bit of service. Service NSW goes well. I particularly praise the Gregory Hills Service NSW centre for doing a great job. I have been there and—

**The Hon. Penny Sharpe:** Except for the kids who can't get their licences until next year. That is my son. He is very unhappy.

**The Hon. MARK LATHAM:** That is a COVID-19 consequence, but I am sure that at Gregory Hills and everywhere else they are working overtime to clear the backlog of tests. But it is not a perfect agency. We know the problem with the protection of Michael Daley's driving record around the time of the last State election and the hack into Service NSW, where a huge number of emails were sent out. I do not know who the hacker was, but the emails went into the wrong hands. I think that Service NSW is still undertaking restitution for that particular privacy breach.

In an era when so much of government is online, where the Government collects a huge amount of data, Minister Digital Dominello is the world's greatest data collector. In some respects that is a good thing, and customer service, of course, is needed, but we need to make sure that the privacy protections are world class. Having your privacy breached and your personal details invaded—things you have always assumed only you and your loved ones would know and, in the case of health matters, your family doctor—causes a bad feeling and it has a lot of people worried. They are particularly worried about the loss of privacy and the lack of information security at NSW Health. I think we should extend the bill to the knock-on agency that receives all this information.

I wonder why it has taken so long. Here we are in November when these security and privacy provisions for Service NSW could have been put in place 12 or 15 months ago. When so much of government is online, and when so much of the personal data of eight million people around the State can be accessed by government, hackers, foreign agents and people up to no good, it is welcome to see extra privacy and security. But it should extend to other agencies that receive the material because there is not much point in having the privacy at

Service NSW. It gives the data to NSW Health and, if that is where the breach occurs, there is not much point in having the initial protection. The same data has been passed on and the same problem occurs with the hackers or accidental processes.

The record I have read out from NSW Health is pretty poor. I know it has had a big workload, but you would not expect that in these four different areas, and in four different parts of the State, you would have significant privacy breaches and rudimentary errors made—random email recipients getting staff lists, people finding out the private health status of their workmates, people who do not belong to the Nurses and Midwives' Association being told by that association things about their vaccination that should not have been known and the other problems that I listed. I am supportive of the bill but believe that it should be extended to cover all bases, which is very much needed at a time when we rely on IT security. All these systems are good but they must respect privacy. It is absolutely paramount.

**Mr DAVID SHOEBRIDGE (15:31):** On behalf of The Greens, I indicate that we will be supporting the Service NSW (One-stop Access to Government Services) Amendment (COVID-19 Information Privacy) Bill 2021. The bill fills in a gap in the privacy protections related to information gathered under the Service NSW COVID check-in app. The intent of the bill is to limit secondary access to personal and health information collected by Service NSW under a COVID-19 public health order. As the Minister said in moving this in the other place, it increases public trust and compliance with check-ins if the community feels like the information will be protected and used only for the purpose for which it is gathered. I think we all agree on that and that is the essential public good in this bill, in addition to protecting privacy. The purpose of the bill is to prevent access to COVID Safe check-in data for any purpose other than contact tracing and for enforcement in relation to check-in requirements. I hope it is not too rigorous on checking out, though, because literally just before I stood up I got an alert reminding me to check out from another venue I was at an hour ago.

**The Hon. Scott Farlow:** That was Government House.

**Mr DAVID SHOEBRIDGE:** We all got the same message—some venue operated by the Department of Premier and Cabinet. The public health orders provide the contact details contained through the COVID Safe check-in app will only be used for contact tracing purposes, but the bill will now legislate those protections. Everyone is checking out, I see. That is good. The bill will move protections that are in public health orders, which can be changed at the whim of the health Minister, and place them within primary legislation. The Government says that the bill addressed concerns by the Information Commissioner and Privacy Commissioner, as well as the Law Society and the Council for Civil Liberties, about the protections for privacy under the public health orders.

But in fact, if you look at the material and the briefing that was provided from the Privacy Commissioner, it is pretty clear that the Privacy Commissioner once again is playing catch-up on privacy in New South Wales. In fact, the Privacy Commissioner is responding to months and months of public prodding from the Law Society and the Council for Civil Liberties and eventually, from memory, in August this year, it put a briefing forward about privacy protections in New South Wales for the COVID Safe app—August of this year. The Privacy Commissioner was basically waiting for the lockdown to be almost finished before the issue of privacy bubbles out the commissioner's offices and the Minister gets a briefing on it. I will return to that briefing in a second.

The bill prevents Service NSW from disclosing personal and health information it collects and holds under a COVID-19 public health order for any reason other than a limited set of reasons. These are the purposes for which it was collected, being check-in data and contact tracing. We can see how it is useful for contact tracing. In fact, it is one of the core elements and reasons for it and, in many ways, contact tracing is the purpose for which it was collected. Another reason is in the case of a permit or declaration about entering or leaving New South Wales, for checking whether or not the permit or declaration had been complied with. It also obviously allows the information to be provided to the individual concerned.

Usefully, the provisions of the bill will have effect despite any other law, including a warrant. So the police cannot obtain information by warrant. That is one of the key reasons we support this bill. It is a meaningful protection, and we want it in law as soon as possible. The bill also does not prevent individuals from displaying their own privacy information, which is useful because otherwise it would be hard to get a copy. The Government has engaged with a series of stakeholders in relation to this and we are told that they support them.

I turn to the briefing that was given to the Attorney General as well as the Minister for Customer Service by the Privacy Commissioner. I cannot help but express my frustration that the briefing that was finally delivered in relation to this is dated 2 August 2021. By that stage Service NSW had been collecting detailed privacy information about our travelling around the State and the venues we go to, and collecting a vast amount of information about citizens and accreting it into a database. The only protections up to that point had been administrative provisions, which of course can be changed at the whim of the Minister, or provisions in the public health orders, which again can be changed at the whim of the Minister. It was only after a concerted campaign

from the Council for Civil Liberties, and from privacy advocates and groups like the Law Society and Bar Association, that it appears the Privacy Commissioner was moved to even commence the process of encouraging the State Government to put in some privacy protections.

New South Wales is at the back of the pack in the country when it comes to putting protections in. Even the Commonwealth Government, which is hardly the great protector of privacy, has moved. It loves accreting data but even it has moved to put in privacy protections. Western Australia has moved to put in privacy protections and then eventually in August 2021—the better part of 18 months after the pandemic had started and 12 months after this huge amount of information had started being collected—we finally get the briefing from the Privacy Commissioner. But then what does the Privacy Commissioner recommend? I will read it onto the record. The recommendation is this:

Accordingly, the Privacy Commissioner recommends—

I am here waiting for something punchy—

that Ministers give further consideration to whether legislation to provide additional insurance to the community and promote public trust in venue check-in requirements should be introduced in NSW.

It is not even a recommendation for privacy protections, let alone a clear guidance to the Government about what it should do. It is not even a recommendation that there be privacy protections. It is just a recommendation that the Minister have a good think about it. What is the point of a Privacy Commissioner that (a) cannot do the job at least 12 months before, when the information is being gathered, and (b) when they do the job, after being forced to by the actions of the Law Society, Bar Association and Council for Civil Liberties, cannot even make a clear recommendation to put privacy protections into the law? What is the use of that office? It is so frustrating. Eventually, the Minister at least did the job, drafted the protections and is now putting them into the law. It is because the Minister did the job and the protections are meaningful. There is nothing from the Privacy Commissioner about protection from warrants or clear statutory limitations on secondary use. But, thankfully, it is in the bill and that is why we will support it.

**The Hon. TAYLOR MARTIN (15:39):** On behalf the Hon. Damien Tudehope: In reply: I thank the Hon. Mick Veitch for his contribution and the Opposition for its support of this very sensible bill. I thank the Hon. Mark Latham for his contribution. I will engage with the points he raised in the Committee stage shortly. I thank Mr David Shoebridge as well for his precis of the bill and his contribution. I commend the bill to the House.

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

**Motion agreed to.**

### **In Committee**

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

**The Hon. MARK LATHAM (15:41):** I move One Nation amendment No. 1 on sheet 10PP:

(1) Page 3, after line 24, insert new subsection (e) as follows:

"NSW Health also has a role in privacy protection relating to Covid-19 and is bound by the privacy protections of this Act."

Mr Chair, it is sheet 10PP. I know our code system sometimes flummoxes you.

**The Hon. Penny Sharpe:** That is what happens when you write your own amendments.

**The Hon. MARK LATHAM:** What is wrong with writing our own amendments? It is a very good amendment. I have raised a number of concerns about four massive privacy breaches at NSW Health. They are just the four that I know of and have come to my attention. There may well be many more. If it was one or two one might think that maybe they got a bit unlucky, someone pressed the wrong button and it went out flying on the email system, or someone got the wrong SMS with the vaccination status of a different person. But four indicates a pattern of problems. The amendment adds a new subsection in the objects of the bill at page 3 after line 24 that:

NSW Health also has a role in privacy protection relating to Covid-19 and is bound by the privacy protections of this Act.

It seems to me that if we are limiting the capacity of Service NSW to distribute this data, for instance, to the police, the same rule should apply to NSW Health, which is the sole recipient, we are told, of this particular information. The amendment would tighten up rules around NSW Health in the objects of the bill. I am sure it would give the constituents who raised with me the serious privacy concerns a bit of comfort going forward. I would have thought

that this is an eminently supportable amendment and certainly does not harm but makes clear that the recipient of the Service NSW data also has to observe the rules that Service NSW itself is bound by in this new statute.

**Mr DAVID SHOEBRIDGE (15:43):** The Greens will not support the amendment. We understand the rationale that is being brought forward. If we thought it had utility, we would actually support it. There are two reasons why we do not support the amendment. First of all, the bill refers to the privacy protections of the Service NSW (One-stop Access to Government Services) Act. Therefore those privacy protections are crafted for the purposes of the CEO of Service NSW, who has a job of accreting together large amounts of information and using it for the purposes of Service NSW. The protections are not drafted to work effectively with NSW Health and for the purposes with which NSW Health has to use information.

I have looked at how the amendment interacts with the express protections that we are putting in through this bill. Interpreting how the two interacted would create, to be honest, a dog's breakfast. As I said, I acknowledge the intent of the amendment but I just do not think it achieves the intent. The second reason is, of course, Health is already covered by the Health Records and Information Protection Act and has privacy protections under it, which are quite onerous. To the extent that Health holds this information, it would be for a health or related purpose and it would already be covered by the Act. We understand the intent, but we do not think it achieves the intent. For those reasons we will not support the amendment.

**The Hon. TAYLOR MARTIN (15:44):** The Government does not support One Nation's amendment. The Government's bill is concerned with the powers of Service NSW, not with NSW Health. I remind the House of the significance of the scope of the bill. The bill will protect the personal information of 7.7 million people in New South Wales who have used the Service NSW COVID check-in app to date, 2.3 million people who have obtained permits for travel and a further 1.15 million people who have declared entry into New South Wales and worked under the public health orders. The unprecedented collection of personal information by Service NSW has taken place in the context of the global pandemic of COVID-19. The Government's bill recognises the significance of the powers of Service NSW to collect information through providing for the protection of such personal information. The protection of personal information collected by Service NSW from the use or disclosure by Service NSW is far-reaching and the bill overrides the effect of other legislation that might normally allow police or other law enforcement bodies to obtain that information.

The Privacy Commissioner and the Law Society of New South Wales specifically raised the need to protect check-in data due to the extensive collection of information and the need to promote public trust in the COVID Safe Check-in scheme. The bill provides extraordinary protections for this information in recognition of the extraordinary nature of this information collection in the context of the pandemic. Limiting the bill to Service NSW is entirely appropriate as Service NSW collects a vast array of check-in information and permit information under the public health orders. The purpose of Service NSW to collect information is primarily to then assist NSW Health with contact tracing. Service NSW itself has no need for any such information. In contrast to Service NSW, NSW Health uses and discloses data collected under public health orders for many essential purposes that support the fight against COVID-19.

COVID-19 is a scheduled medical condition and a notifiable disease under the Public Health Act. NSW Health receives notifications of all cases that have tested positive to COVID-19. NSW Health conducts contact tracing in respect to cases, including collecting information from persons with COVID-19 and contacts of those cases. Contact tracers may also collect a range of information about cases and contacts, including the QR code check-ins and vaccination statuses. NSW Health also receives a range of other identified and de-identified information relating to COVID-19, including information about vaccinations, outcomes of diagnoses and information about noncompliance with public health orders. NSW Health then uses the data it collects under the public health orders for the care and treatment of citizens at risk of or diagnosed with COVID-19 and for protecting the community through ensuring that individuals comply with self-isolation obligations, quarantine requirements and testing obligations.

New South Wales needs to be able to use and disclose information collected through the COVID-19 contact tracing for legitimate secondary purposes relating to patient care, referring patients to other services and the management of health services. In order to include NSW Health into the scope of this bill, consideration would then need to be given to amendments to ensure that the important work of NSW Health is not impeded by unintended results. This may include exemptions for the enforcement of public health orders and related offences, which could be prosecuted under mainstream criminal law, such as providing a false statement. Such exemptions would create complexity and ambiguity.

NSW Health has always had robust policies and procedures in place to protect health information and comply with its record-keeping obligations. Health practitioners have a strong professional obligation to treat patient information confidentially. This is the important bit that goes to the heart of Mr Latham's concerns: NSW Health is bound by the Health Records and Information Protection Act 1998. Information can only be used



or disclosed for the purpose for which it was received or other limited permitted uses and disclosures. NSW Health appreciates the importance of maintaining confidentiality of health information so that members of the community can feel confident that the information that they provide to contact tracers will be protected.

Finally, I draw the attention of honourable members to the unclear effect of the One Nation amendment. NSW Health is not a legal entity; it comprises many entities, reflecting its diverse functions, including local health districts, the ambulance service and hospitals operated by not-for-profit organisations such as charities. The amendment would have uncertain reach and unforeseen consequences. In order to avoid ambiguity, the amendment would need to be directed at specific health entities rather than NSW Health more generally. The bill is not concerned with general privacy protections; it is for the protection of COVID-19 data collected under public health orders. The reference to privacy protections is uncertain in scope and meaning. The Government does not support the amendment.

**The Hon. MICK VEITCH (15:50):** I will not prolong the debate. Since the amendment was tabled, the shadow Minister has undertaken an investigation and many of the items in my notes have already been canvassed by Mr David Shoebridge and the Parliamentary Secretary's excellent contribution. Some of the issues raised by the Hon. Mark Latham around the potential for personal information to be circulated are quite concerning. Those cases raise some concerns and there is a degree of sympathy from the Opposition about that process. But I am not quite sure whether the amendment meets the objective that One Nation is trying to achieve, so the Opposition opposes the amendment.

**The Hon. MARK LATHAM (15:50):** It seems that fate and the numbers are against the amendment, but I make an important point, which I hope all members, particularly the Government, take on board. If NSW Health has its own privacy protections, as stated by the Parliamentary Secretary and the leader of The Greens, we must ask why they are not working. How is it that in four different areas the vaccination status of all the staff of a local health district was sent out, including a serious medical condition that should have remained private? How is it that a random tradie in western Sydney received an email with a list of health workers and their positions? How is it that a nurse who had her medical exemption for vaccination knocked back received an email from the nurses association, of which she is not a member, asking why she was not vaccinated? How is it that over 5,000 text messages of vaccination appointments went out to the wrong people? They received the vaccination appointment of someone else. We should be worried about that.

Those are major flaws and major breakdowns in the system. If NSW Health has existing privacy provisions, I plead with the Government to review them, improve them and take account of the matters I have mentioned. The Parliamentary Secretary had no response to those serious issues. When I looked at the legislation I thought: If Service NSW passes the data on to NSW Health, would it not be helpful for NSW Health to be bound by the same restrictions that we are now applying to Service NSW? The Parliament will move in a different direction, which is its will, but I hope that the Government acknowledges the matters I have mentioned, which were raised with me by constituents. I did not seek out new privacy breaches through some research exercise; people have come to me. I have raised their concerns in the parliamentary forum and I hope in the way of representative government there is some account taken of them. Perhaps next time we look at whatever provisions are guiding privacy in NSW Health we can improve them substantially—or the Government might do that off its own bat.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Mark Latham has moved One Nation amendment No.1 on sheet 10PP. The question is that the amendment be agreed to.

**Amendment negatived.**

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

**Motion agreed to.**

**The Hon. TAYLOR MARTIN:** I move:

That the Chair do now leave the chair and report the bill to the House without amendment.

**Motion agreed to.**

### **Adoption of Report**

**The Hon. TAYLOR MARTIN:** On behalf of the Hon. Damien Tudehope: I move:

That the report be adopted.

**Motion agreed to.**

**Third Reading**

**The Hon. TAYLOR MARTIN:** On behalf of the Hon. Damien Tudehope: I move:

That this bill be now read a third time.

**Motion agreed to.**

**GREATER SYDNEY PARKLANDS TRUST BILL 2021****First Reading**

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

**The Hon. TAYLOR MARTIN:** 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. TAYLOR MARTIN:** I move:

That the second reading of the bill stand an order of the day for the first sitting day of 2022.

**Motion agreed to.**

**CRIMES LEGISLATION AMENDMENT (SEXUAL CONSENT REFORMS) BILL 2021****Second Reading Debate**

**Debate resumed from 12 November 2021.**

**The Hon. EMMA HURST (15:57):** On behalf of the Animal Justice Party, I speak in support of the Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021. As many others have noted, the bill is long overdue. It enshrines basic principles of respect and decency that most people in the community would regard as common sense. Critically, the bill clarifies that there is no consent to sexual activity if a person does not say or do something to communicate consent. That means consent cannot just be assumed, and requires positive words or actions, which some have described as "enthusiastic consent". The bill also clarifies that a person does not consent to a sexual activity just because they do not physically or verbally resist, and that consent can be withdrawn at any time. It is shocking to think that those principles are not already enshrined in law in 2021, but I am pleased we are fixing that today.

We know that reporting abuse and going to court is an incredibly traumatic experience for people who have experienced sexual violence. To think victim-survivors could have their experiences invalidated by the justice system, simply because the other party claimed to have mistakenly believed the person had consented to a sexual act, is truly horrific. I have recently been reading Louise Milligan's book *Witness*, which is an investigation into the brutal cost of seeking justice. Those words, "brutal cost", describe exactly what happened to Saxon Mullins, a young woman who was sexually assaulted in 2013 in a lane in Kings Cross. The court found that while she did not consent that night, the man involved had the "mistaken but genuine belief" that she did, so he was therefore acquitted. I have no doubt that several women in this Parliament have been victims of sexual assault, because it happens all too often. I particularly acknowledge and thank my colleague Ms Abigail Boyd for her brave and inspiring contribution and for being so vulnerable in sharing her own experiences during the debate.

I want every man to know and truly absorb this: Allowing someone to buy you a drink is not consent. Smiling at someone is not consent. Letting someone walk you home is not consent. Flirting with someone is not consent. Clothing choice is not consent. Meeting someone for coffee is not consent. Giving a compliment is not consent. Replying to a text is not consent. Being intoxicated is not consent. Foreplay is not consent. A third date is not consent. Dancing with someone is not consent. Eye contact across a room is not consent. It seems so obvious and almost stupid to list those, but I know I am not the only woman here who knows the rules when going out at night: Be careful not to be friendly with strangers, keep your head down, do not make eye contact, do not compliment men, do not smile at men you do not know or trust, think twice about what you wear, never be alone with a man you do not know and do not let your friends be alone with a man that they do not know.

That is how many women live, because we do not want to be victims of sexual assault and because we have been repeatedly told that it is our fault that it happens. I do not want to be blamed anymore, and no woman should be made to feel that they have to watch their every move just to remain safe. Now the law will shift from a focus on "no means no" to "yes means yes", meaning those pathetic excuses cannot be raised as a defence in

court. Thanks to Saxon's bravery and tireless efforts, along with those of many other victim-survivors who have come forward to tell their stories, these legislative changes have come before this Parliament.

I also thank the Attorney General for introducing the bill. I believe the Attorney General is committed to introducing sensible, evidence-based reforms in this place, and that is reflected in the level of support the bill has attracted from all sides of Parliament. He has done an outstanding job with this legislation and has ensured its passage through Parliament, but we need to do so much more to fix the pervasive problems of sexual assault and violence against women in our society. One in five Australian women has experienced sexual violence since the age of 15, and the most recent New South Wales statistics show a substantial increase in reports of sexual assault since the 2020 lockdown. We need to do much better, not just in our legislation but also in how we educate young people about consent and respect and how we as a society view and talk about those issues. While there is more work to be done, the bill brings us closer to legislation that values respect and genuine consent. I am honoured to support it.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (16:01):**

In reply: I thank honourable members for their thoughtful and respectful contributions to the debate. I thank the Hon. Bronnie Taylor. I thank the Leader of the Opposition in this House, the Hon. Penny Sharpe, who recognised and was very clear about the challenges for survivors. I thank her for her articulation of those, among many other things in her speech. Ms Abigail Boyd's bravery and honesty as a survivor was extraordinary, and her elucidation of always carrying this with her stopped the Chamber. I thank her for that bravery and honesty, and I wish I could say to that young woman at the age of eight, "You will make a huge difference." That was demonstrated in this Chamber today, and I thank her.

I thank the Hon. Mark Latham and the Hon. Catherine Cusack. I thank the Hon. Adam Searle for his excellent summary, as always, of the legal position. Ms Cate Faehrmann's contribution quite rightly took us back to how it was in the eighties and noted that it should not be this way in 2021. I recognise that Reverend the Hon. Fred Nile has seen generational change like no other member in this Chamber. I thank him for his elucidation of justice for women and education for young men on how to treat women. As a husband of two wives, he has demonstrated respect—

**Reverend the Hon. Fred Nile:** At different times.

**The Hon. NATALIE WARD:** Yes, thankfully, on the record. His having met with survivors himself speaks volumes to the Chamber as well. The Hon. Emma Hurst, as always, was entirely practical and sensible in elucidating the realities of what the bill is not. I thank her for her contribution. I thank Liz Pearson, adviser from the Attorney General's office, for her assistance. I particularly thank the Attorney General and place on the record my gratitude for his commitment to the bill. His willingness to listen and to work with all parties is to be commended.

I address some other matters briefly. The New South Wales Government welcomes the bipartisan support for these important, commonsense reforms. I acknowledge the contributions by members in this place and the other place and the spirit in which the important and constructive discussions have been had. I particularly acknowledge and thank members who have shared very personal experiences and accounts on behalf of victim-survivors. The New South Wales Government has listened to sexual assault survivors and those who advocate on their behalf to ensure that the reforms are as effective as possible.

As has been acknowledged by members in the debate, the bill introduces an affirmative consent requirement to the Crimes Act 1900 to prescribe that an accused person's belief in another person's consent to sexual activity will not be reasonable if they did not say or do anything to ascertain that consent. The bill reinforces that consent is a free and voluntary agreement at the time of the sexual activity that involves mutual and ongoing communication. Consent cannot be presumed. The bill makes clear that a person does not consent to sexual activity unless they say or do something to communicate consent. The bill is a significant reform by the New South Wales Government to strengthen the law in relation to sexual offending and to ensure that those crimes are prosecuted fairly and effectively.

Before the bill goes into Committee, I correct two misunderstandings that have arisen in the contribution by the One Nation member. Firstly, to assist the member, let me be clear that the Government's bill does not make consensual sex illegal. Secondly, it will not overturn the laws of evidence that govern context and relationship evidence, which can still be admitted in a criminal trial where relevant and admissible. The bill does not make it illegal for a couple in a long-term relationship to have consensual sex, whether in the middle of the night or during the day, with no prior words or gestures. The question is whether each person consented to the sexual activity, as is already the case under existing law. The mere fact of a marriage or long-term relationship does not mean sexual activity is consensual, nor should it ever be assumed because of the existence of such a relationship that there is consent. Consent must be present throughout every sexual encounter, no matter the relationship between the adults

participating. That is true of the current law, and the bill does not change that. In the context of a long-term relationship, consent may be communicated through gestures that are familiar and have a particular meaning to the couple by reason of their shared history.

The One Nation member used an example of a mutual embrace that may lead to sexual intercourse and asserted that the bill will criminalise such an encounter. It will not; that is consent. The bill supports such a positive, mutual and reciprocated interaction. The bill does not criminalise spontaneous night-time sex between a couple where each person freely and voluntarily agrees to the activity. A number of other non-verbal cues and indications that are familiar to a couple would be relevant to a court in determining consent and an accused's knowledge of that consent.

Consent to sex at the time of sex may be communicated both verbally and non-verbally. In each case it will be necessary for the Crown to prove that the complainant was not consenting and that the accused had knowledge of that lack of consent. Those are all questions of fact and will depend on the circumstances of each case. In the context of a long-term relationship, subtle gestures may well suffice to communicate consent. Contextual evidence, if deemed relevant and admissible, could be adduced to inform it. The bill does not preclude the context of the history of the sexual and/or long-term relationship between the complainant and accused being adduced, so long as it is held relevant and admissible to the issues in the criminal trial. Those areas are strictly governed by the laws of evidence. The bill sets an appropriate standard that all people should be able to expect from a sexual partner, to be applied fairly across all types of relationships and situations. The bill does not criminalise sexual activity between a couple where each person freely and voluntarily agrees to the activity.

The Government's changes will not, as asserted by the One Nation member, "weaponise consent" in family law or other legal matters. The onus is always on the prosecution to prove the criminal case against an accused beyond reasonable doubt. The changes in the bill are about making the law clearer and easier for people to follow. The Government's reform offers more protection for everyone. Instead of presuming consent from a lack of protest or a lack of physical reaction, the bill asks all people in a commonsense way to indicate they want to have sex and to ensure that the other person wants to have sex with them. Several members indicated in their contributions their intention to move amendments, and I will address those matters at the Committee stage of this bill.

In conclusion, this bill will make important but commonsense amendments to strengthen consent laws in this State. It will reinforce what are basic principles of common decency—that consent is a free choice involving mutual and ongoing communication and that it should not be presumed. This affirmative model of consent is not onerous; it is simply a matter of respect. I echo the words of the Attorney General in the other place in acknowledging all stakeholders who provided input and shared their insights and expertise both in the Law Reform Commission process and with the New South Wales Government in the process of settling the drafting of this bill. I recognise the courage of victim-survivors in sharing their lived experience. It was an absolute privilege to walk beside some of them in my short time in practice. I thank them for their bravery. I also acknowledge the work of the Attorney General, whom I had the privilege of working alongside during part of the consultation. He was genuine, sincere and considerate throughout his consideration of all of these difficult and complex issues, and he brings the bill to this place in good faith, as do I. I commend the bill to the House.

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

**The House divided.**

Ayes .....29  
Noes .....2  
Majority.....27

#### AYES

Amato  
Boyd  
Buttigieg  
D'Adam  
Donnelly  
Faehrmann  
Farlow  
Field  
Franklin  
Graham

Hurst  
Jackson  
Khan  
Maclaren-Jones  
Mallard (teller)  
Martin (teller)  
Moriarty  
Moselmane  
Nile  
Pearson

Poulos  
Primrose  
Searle  
Secord  
Sharpe  
Shoebridge  
Tudehope  
Veitch  
Ward

NOES

Latham (teller)

Roberts (teller)

**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. I have the following sheets of amendments: Opposition amendments on sheets c2021-179A, c2021-180A, c2021-177A and c2021-178A; One Nation amendments on sheets 68S and 70SC; and The Greens amendments on sheets c2021-190A, c2021-140C and c2021-223A. Amendments on one Opposition sheet and on one of The Greens sheets cover the same areas but are somewhat in conflict. So we will start with the area of most complex conflict and then return to amendments that involve a more straightforward exercise. We will start with Opposition amendment No. 1 on sheet c2021-178A and The Greens amendment No. 2 on sheet c2021-190A.

**Ms ABIGAIL BOYD (16:21):** I move The Greens amendment No. 2 on sheet c2021-190A:

No. 2      **Impairment**

Page 6, Schedule 1[9], proposed section 61HK(3)(b), line 17. Omit "a cause". Insert instead "the cause".

The amendment to proposed new section 61HK (3) (b) provides an exception in circumstances where a person has a cognitive or mental health impairment. In the lower House my colleague Jenny Leong, the member for Newtown, proposed an amendment to insert the word "substantial" between "a" and "cause" in section 61HK (3) (b) so that the word "cause" was qualified by a reference to being substantial. I understand that the Opposition proposes to move that same amendment. When Ms Leong moved that amendment in the other place, the Attorney General responded:

This is one particular amendment that we have given a lot of thought to and it is tempting to agree to it. But, on balance, we think the legislation is better left as it is. There is some circularity in this discussion but a cause is a cause and unless there is a cause and effect, it is not a cause. If something is slight, it cannot be a cause. There has to be some causal connection between the cognitive impairment or the mental health impairment on the one hand, and the failure to have said or done something on the other hand.

That statement was made in the context of a provision that provides for the exception to seeking confirmation of consent. So if the cognitive or mental health impairment led to or caused the failure to have said or done something then it is considered the cause. The Attorney General continued:

If something is slight or insignificant, it just will not be a cause. There will not be that causal connection of the accused not doing or saying something.

As I mentioned before, it has to rise to the level of clinical significance. It is not just mere anxiety or mere depression. It has to be a disorder that is a clinically significant impairment and the fact it rises to that level and is not just mere anxiety, worry, depression or grief goes to the need that there be some causal connection.

Later he said:

... we prefer the current approach because there is not a causal connection between something of clinical significance on the one hand and the failure to do something on the other hand, unless there is something that is more than slight and insignificant.

That is a really solid legal response. However, the problem is that the current drafting refers to "a cause". Something either is or is not a cause. There cannot be multiple causes of not saying or doing something. If a person has not said or done it, it must be related back directly to the cognitive or mental health impairment. That is why The Greens suggest that that cognitive or mental health impairment must be proved to be the cause of a person not actively consenting. I am paraphrasing the wording of the section. I think inserting the word "substantial" begs the question slightly as to what other causes were potentially there. If something is a substantial cause, that implies that perhaps there could be multiple causes, which goes against what the Attorney General has said. However, I do think that "substantial cause" is better than "a cause" in this circumstance because at least it makes it clear that if it is to be a cause it has to be the main or substantial one. I prefer "the cause" but if we are left with "substantial cause" then so be it, because it would be an improvement.

**The CHAIR (The Hon. Trevor Khan):** I do not wish the Hon. Mark Latham to feel in any way excluded from the table. Before I call the Hon. Penny Sharpe, would the member like to come to the table?

**The Hon. MARK LATHAM (16:26):** Thank you, Chair. I am happy to come to the table. I point out that One Nation amendment No. 1 on sheet 70SC goes to the same question of adding the word "substantial", albeit two lines earlier.

**The CHAIR (The Hon. Trevor Khan):** Because it is two lines earlier, we will deal with that amendment separately.

**The Hon. MARK LATHAM:** Will we deal with the conflict over line 17 and then come back?

**The CHAIR (The Hon. Trevor Khan):** Yes. At this stage I will call on the Hon. Penny Sharpe because she has an amendment in exactly the same area as Ms Abigail Boyd's amendment.

**The Hon. PENNY SHARPE (16:27):** I move Opposition amendment No. 1 on sheet c2021-178A:

No. 1      **Impairment substantial cause**

Page 6, Schedule 1[9], proposed section 61HK(3)(b), line 17. Insert "substantial" after "was a".

The amendment inserts the word "substantial" after "was a" in line 17 in proposed section 61HK (3) (b), which deals with the accused person's knowledge about consent to sexual activity, particularly with regard to an accused person with a cognitive or mental health impairment. Proposed subsection (2) provides that it is not reasonable for an accused person to have a belief that sexual activity was consented to if they did not "say or do anything to find out whether the other person consents to the sexual activity". Proposed subsection (3) then states that proposed subsection (2) does not apply if the accused person had a cognitive or mental health impairment at the time of the sexual activity and the impairment was a cause of them not saying or doing anything to find out whether the other person consented to the sexual activity.

The Opposition amendment adds the word "substantial" to proposed subsection (3) so that it would read that proposed subsection (2) would not apply if the cognitive or mental health impairment was a substantial cause of the accused person not saying or doing anything. The amendment will prevent what could be an unintended consequence of the bill, namely that if an accused person's cognitive or mental health impairment was a minor or inconsequential cause of the behaviour they would not be subject to the requirement to seek affirmative consent. This issue has been the subject of a lot of discussion. All members have received a lot of correspondence about it. Labor has tried to work its way through it.

This is a complex issue and I do not wish to diminish its complexity. That is why this is where Labor has landed. After considering the debate and hearing from a range of people—obviously from the women's groups who feel very strongly in relation to this, but I have also been contacted by disability advocates who are also concerned about the way in which we would deal with this—the Opposition feels that the amendment we have put forward, which I acknowledge was originally put by The Greens, is worth pursuing again, particularly after the Attorney General's indication that he could see some benefit.

That is why Labor does not support The Greens "a cause" rather than "the cause" amendment. Labor understands what The Greens are saying, but we believe that "substantial" is a better way to deal with the amendment. So the Opposition will not be supporting The Greens amendment, but we thank them for their support of the Opposition's "substantial" amendment. I hope that the Government will also support the amendment. This is a complex piece of law that is fundamentally reframing the way that we think about consent, after hundreds of years of the way in which this issue is thought of in the law. It is tricky and it is difficult. Finding the balance, I think, has been a struggle.

I believe that most people, barring a few members in this Chamber, think that this is a really important bill that is fundamentally changing the law. At this point, we are just trying to get it into the best shape we can. I foreshadow that the Opposition has another amendment to put about the review provisions, which we think will be essential in terms of dealing with these matters. These are not simple matters; they are complex, but Labor believes this is an important amendment that provides the surety that survivor groups and those who work in the sector want. Labor believes this amendment will get us there. We will obviously be looking at the review into the future.

**The Hon. MARK LATHAM (16:31):** One Nation supports The Greens amendment No. 2 on sheet c2021-190A. We have a general concern about this page 6, proposed subsection (3) clarification of what might be thought of as pleadings or alibis to get the accused off the hook. It is too easy to plead mental health or cognitive impairment in the courts and the legal system in New South Wales at the moment. Rape, which is what we are talking about here, is such a heinous crime, such a severe violation of a person's existence and their own physical integrity, that it is not sufficient just to say that the impairment was "a cause". It really does need to be "the cause". I know it might be seen as trifling with the English language, but there is no doubt that "the cause" is a tougher test in a court of a law than "a cause". So I think that is the right approach.

But, at the same time, as foreshadowed earlier, One Nation has a separate amendment, which I am taking together as a package for determining how we are voting, to say that it should be more than "a cognitive impairment", it should be a "substantial cognitive impairment" three lines earlier in the bill. That is the combination that One Nation supports. We are after best practice here, so that is what we are intending to vote for in both cases. You need to have a higher test than saying that anyone who rapes someone can get off the hook because of a cognitive impairment. There should be a substantial cognitive impairment.

I suppose we do not do it due to time restraints, but if members of Parliament were to sit in on some of these court cases they would see that the highest possible test is needed, because so many people are just getting off the hook with excuses, medical reasons and mental health pleas that would not be valid if they were fully tested and had to be substantiated by a higher level of evidence. That is One Nation's position—to have a "substantial cognitive impairment" and that that impairment would be "the cause" of the accused person not saying or doing anything to confirm consent.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (16:33):** I will deal firstly with The Greens' amendment appearing on sheet c2021-190A in relation to impairment, which proposes to omit "a cause" and insert instead "the cause". As the Attorney General indicated in the other place, the New South Wales Government has given close consideration to the wording of this provision—and I thank the honourable member for acknowledging that. On balance, the Government considers that the current drafting in the bill is preferable, and so it does not support the amendment. The commonsense reforms, that go beyond the Law Reform Commission's recommendations, make clear that an accused's belief that the victim consented to sex is not reasonable in the circumstances if the accused did not say or do anything to find out whether the other person consented to sexual activity.

Under the bill as drafted, an exception to this applies to an accused person with a cognitive impairment or clinically significant mental health impairment, where the impairment was "a cause" of the accused person not saying or doing anything. Replacing the words "a cause" with "the cause" will create confusion and difficulty where there may be several causes for the behaviour. Proving that a person's cognitive impairment or clinically significant mental health impairment was "the cause" is problematic. Under the bill as drafted, there has to be some causal connection between the cognitive impairment or the mental health impairment on the one hand, and the failure to have said or done something on the other hand. If something is slight, it cannot be a cause.

As a further safeguard, the accused must prove on the balance of probabilities that the impairment was "a cause" of not doing or saying something to find out if the other person was consenting. This is not a get out of jail free card. An offender with a cognitive impairment or mental health impairment can still be convicted if all elements of the case are established beyond reasonable doubt. For those reasons, the Government opposes The Greens amendment. In relation to the Opposition amendment appearing on sheet c2021-178A—the proposed insertion of the word "substantial"—as the Attorney General indicated in the other place, the New South Wales Government has given close consideration to this particular provision and amendment. The Attorney General explained:

... on balance, we think the legislation is better left as it is. There is some circularity in this discussion but a cause is a cause and unless there is a cause and effect, it is not a cause. If something is slight, it cannot be a cause. There has to be some causal connection between the cognitive impairment or the mental health impairment on the one hand, and the failure to have said or done something on the other hand. If something is slight or insignificant, it just will not be a cause. There will not be that causal connection of the accused not doing or saying something.

As I mentioned before, it has to rise to the level of clinical significance.

However, the Government acknowledges the concerns that have been raised about ensuring that the balance in this provision is right. While the Government does not think that adding the word "substantial" is strictly necessary from a drafting perspective, we acknowledge that the wording will give comfort to others in this place and in the community. Accordingly, the Government will not oppose inserting the word "substantial" into the provision. The Government supports the Opposition's amendment. This tempered form of affirmative consent was included by the New South Wales Government, after careful consideration, to ensure that a person with an impairment is not unfairly disadvantaged by the expanded reasonable belief test, which goes beyond the Law Reform Commission recommendations as part of our reforms. While the Government acknowledges the genuine concerns raised, this is not a get out of jail free card. It is important to be clear that an offender with a cognitive impairment or mental health impairment can still be convicted of a sexual offence if all elements of the case are established beyond reasonable doubt. This is not a loophole.

**Ms ABIGAIL BOYD (16:37):** I speak, for a second time, to reflect on the contribution from the Hon. Natalie Ward, because it has actually caused me to be less happy with this provision than I was before. When The Greens refer to not wanting it to be "the cause" because there could be a number of causes, I personally find it very difficult to think of what that other cause might be. We are talking about a person failing to say or do anything to find out whether the other person consents to the sexual activity. What other causes could there be that would be acceptable in this context other than having a cognitive impairment or a mental health impairment? That causes me great concern, if there is an idea that we could have multiple other types of causes. For example, perhaps a cause was that the person did not want to find out whether the other person consented to sexual activity. But if we also have a cause being that the person had a mental health impairment or cognitive impairment and that was significantly the cause, are we saying that is sufficient? I would argue that either the cognitive impairment

or mental health impairment was the cause of that person not doing it, or that it should not be acceptable under this provision. This makes me very concerned.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (16:40):** In these circumstances I think it is important that I respond. Whilst I acknowledge the honourable member's concerns, it is always the challenge of drafting legislation in this place to try to account for every circumstance. But, of course, there may be other causes such as other medical conditions, noise and other circumstances and issues, which we know the courts will take into account in the facts of each matter as they hear it. In this case, for this particular amendment in relation to impairment, the Government does not wish to be prescriptive in the sense that it does not want to create confusion.

The Government would like to be able to clarify the particular circumstances. There may be multiple impairments. It may not be one impairment; there may be a number of impairments to take into consideration. That is where I would be content for the courts to consider each of those facts and circumstances in the particular case. For those reasons, the Government cannot agree with the honourable member. For example, if the accused deliberately did not turn their mind to it, they may be reckless, which is another element of knowledge. They may have a number of considerations for those reasons. I will leave it at that. For those reasons, the Government cannot agree.

**Ms ABIGAIL BOYD (16:41):** I am aware that this is going to be the record of debate on this provision. For that reason, I ask: Are we saying that a failure to say or do anything to find out whether the other person consents to sexual activity could be caused by noise? I think that is probably not the case. Perhaps we might just say that is not necessarily the case. I totally understand that this shows how complex this is, but recklessness and other things are not an exception. If they are involved in this, then the impairment is no longer the cause and it should not except the person. I think it really does highlight that this provision is not ideal in its current form. Could the Minister perhaps make a correction around the noise issue?

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (16:42):** The Government is satisfied with its drafting. It is the member's amendment to move and it is for her to convince the Committee, not me. A lot of work has gone into this; it is complex. The Government is content with the drafting as it is. I will leave it at that.

**The CHAIR (The Hon. Trevor Khan):** Ms Abigail Boyd has moved The Greens amendment No. 2 on sheet c2020-190A. The question is that the amendment be agreed to.

**Amendment negatived.**

**The CHAIR (The Hon. Trevor Khan):** The Hon. Penny Sharpe has moved Opposition amendment No. 1 on sheet c2021-178A. The question is that the amendment be agreed to.

**Amendment agreed to.**

**The CHAIR (The Hon. Trevor Khan):** We will now move to Opposition amendment No. 1 on sheet c2021-179A and The Greens amendment No. 1 on sheet c2021-140C.

**The Hon. PENNY SHARPE (16:44):** By leave: I move Opposition amendments Nos 1 and 2 on sheet c2021-179A in globo:

**No. 1 Ministerial review**

Page 7, Schedule 1[24], proposed section 583(1)–(4), lines 21–31. Omit all words on those lines. Insert instead—

- (1) The Minister must conduct reviews of the reviewable provisions to identify if—
  - (a) the policy objectives of the reviewable provisions remain valid, and
  - (b) the terms of the reviewable provisions remain appropriate for securing the objectives.
- (2) In conducting the review, the Minister must consider the transcripts of criminal trials—
  - (a) conducted during the review period, and
  - (b) to which the reviewable provisions were applicable.
- (3) The first review must be commenced within 6 months after the period of 3 years after the commencement date.
- (4) Subsequent reviews must be commenced every 5 years after the end of the 6-month period.
- (4A) A report on the outcome of each review must be tabled in each House of Parliament within 1 year after the last day by which the review must be commenced.
- (4B) The Minister must, at least 6 months before each review, table in each House of Parliament a report on the training that has occurred during the review period in relation to communicative consent, detailing—



- (a) the type of training provided, and
- (b) the number and kinds of persons to whom it has been provided, including whether it has been provided to police officers, judicial officers or legal practitioners, and
- (c) how effective the training has been.

**No. 2 Ministerial review**

Pages 11 and 12, Schedule 2[19], proposed section 368(1)–(4), line 31 on page 11 to line 8 on page 12. Omit all words on those lines. Insert instead—

- (1) The Minister must conduct reviews of the reviewable provisions to identify if—
  - (a) the policy objectives of the reviewable provisions remain valid, and
  - (b) the terms of the reviewable provisions remain appropriate for securing the objectives.
- (2) In conducting the review, the Minister must consider the transcripts of criminal trials—
  - (a) conducted during the review period, and
  - (b) in which a consent direction set out in sections 292A–292E was—
    - (i) given, or
    - (ii) requested by a party to the proceedings to be given.
- (3) The first review must be commenced within 6 months after the period of 3 years after the commencement date.
- (4) Subsequent reviews must be commenced every 5 years after the end of the 6-month period.
- (4A) A report on the outcome of each review must be tabled in each House of Parliament within 1 year after the last day by which the review must be commenced.

The bill represents a fundamental change to how we approach consent in New South Wales. All members are worried about getting it right. At the moment there is a provision in the bill that means it would have a normal five-year statutory review; this was quite extensively covered in the lower House. Labor's amendment is about bringing that forward. Proposed section 583 proposes that the first review of the laws will be in five years' time. In the Opposition's view, that is far too great a period for such a substantial legislative reform. The Opposition's amendments propose that the first review of these changes to the Crimes Act 1900 and the Criminal Procedure Act 1986 must commence within six months following the period of three years after the commencement date. We are bringing it forward by two years.

The amendments also require the Minister to table in each House of Parliament a report on the training that has occurred regarding communicative consent and ensure that these important reforms are being supported by adequate education, particularly for police, judicial officers and legal practitioners. I will not speak for a long time about this. We have all acknowledged the challenges in this law. We are all pretty happy with how it is going. All members, no matter where they are in the debate, are concerned about how it is actually going to be applied. Labor's amendments seek to make sure that we have a thorough review within three years' time, but they also pick up on the issue of training. So many of us have said in this debate that this law is not going to be able to stop sexual assault, and the consent provisions are not going to be dealt with, until there is real training on what it means. This is a real shift in the way we think about consent and I think it is very important that we get it right. I commend the amendments to the Committee.

**Ms ABIGAIL BOYD (16:46):** It is probably not worth moving The Greens amendment No. 1 on c2021-140C, but I would like to throw our other review amendment into the mix.

**The CHAIR (The Hon. Trevor Khan):** That is entirely your call.

**Ms ABIGAIL BOYD:** I move The Greens amendment No. 1 on sheet c2021-223A:

**No. 1 Review of section 61HK(3)**

Page 7, Schedule 1[24]. Insert after line 38—

**584 Review of section 61HK(3)**

- (1) The Minister must review the operation of section 61HK(3) to determine whether the provision is operating in accordance with the objective set out in section 61HF.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of section 61HK(3).
- (3) In conducting the review, the Minister must consider judgments in criminal trials—
  - (a) conducted during the review period, and
  - (b) to which section 61HK(3) was applicable.

- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

I turn first to the Opposition's amendment. It is in a slightly different form to the one we have proposed. We prefer ours, but I understand that the Opposition's amendment is going to have greater support. In the interest of time, I will let that sit. I absolutely echo the comments from the Hon. Penny Sharpe around the need for such an important change of law to be reviewed sooner rather than later. The amendment which I have thrown into the mix is trying to bring that forward slightly when it comes to the provision on impairment that we were just discussing. The amendment asks for a review to happen within two years, looking very specifically at that particular provision, given how difficult we have found that provision to be, and taking into account the judgements in criminal trials to which proposed section 61HK (3) was applicable, to be absolutely sure that that is going to have the impact that the Attorney General wants it to.

**The CHAIR (The Hon. Trevor Khan):** Does the Hon. Mark Latham want to seek the call at this stage, or will we wait and see what the Minister has to say?

**The Hon. Mark Latham:** I don't have an amendment on review questions.

**The CHAIR (The Hon. Trevor Khan):** No, but you are entitled to speak. I call the Minister.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (16:49):** The Government will support the Opposition amendments regarding ministerial review. As the Attorney General outlined in the other place, we consider that on balance it would be better, as the Government proposes, to have a five-year review rather than a three-year review. That is because the reforms will apply to sexual offences that are alleged to have occurred only after the provisions commence, meaning that there will be a time lag between now and the commencement to enable provision of professional development and training to the judiciary, police, stakeholders and the general community. There will be subsequent lags between when the alleged assault occurred, when the arrest is made, when charges are laid, when the matter comes to trial and when sentencing occurs. With those lags, there will not be much of a database or a case base within three years that would allow, in our view, a meaningful review.

Nevertheless, we appreciate the importance of ensuring that the reforms are operating in practice as intended. A consideration of the relevant trial transcripts will occur as part of the usual process of a statutory review, in addition to consultation with stakeholders, legal research through judgements and remarks on sentencing. It is not necessary to stipulate that in a legislation; it occurs anyway. But, for those reasons, the Government does not oppose the proposed amendment. The Government will be opposing The Greens amendment, because we are agreeing to the broader review in the Opposition's amendment.

**The Hon. PENNY SHARPE (16:51):** I will respond briefly to The Greens amendment. I think that review has been the number one concern of the groups who are broadly pleased with the bill. But we think, for the reasons about the time lag, outlined by the Minister, it is going to be very hard to have anything on those cases. What the Minister outlined, the very slow speed from an incident through to charging and then through to getting to court, is part of the problem. As we know, around 1 per cent get to court. It is pretty tricky. So, as a result, we are happy to stay with three years rather than two. But all power to The Greens for trying.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Penny Sharpe has moved Opposition amendments Nos 1 and 2 on sheet c2021-179A. The question is that the amendments be agreed to.

**Amendments agreed to.**

**The CHAIR (The Hon. Trevor Khan):** Ms Abigail Boyd has moved The Greens amendment No. 1 on sheet c2021-223A. The question is that the amendment be agreed to.

**Amendment negated.**

**The CHAIR (The Hon. Trevor Khan):** I may be making some assumptions there, but I think that is just about the end of the Kumbaya.

**The Hon. MARK LATHAM (16:52):** I move One Nation amendment No. 1 on sheet 68S:

- (1) Page 4, line 13, subsection (c), after "activity" insert the following words:

"Ongoing communication does not in itself require the various stages and progressions of sexual activity to be based on separate, distinct acts of consent."

This is an amendment to try to provide clarity as to what the bill actually means. You only need to be listening for the past 15 minutes to hear the number of times it is described as very complex or very complicated. I think that in some parts it is incomprehensible. Part of the problem is that at various times the Minister has walked both sides of the street on this question of the stages of progression of sexual activity. He said that you would need

separate acts of consent. There is a clear statement to that effect in his second reading speech. But then the Minister at the table, in wrapping up our second reading debate, said that that is not the case. Either way, you need clarity.

I think any judicial officer who delves into *Hansard* and reads some of the speeches the Government has given on the bill would laugh, throw their head back in disbelief or scratch their head, trying to work out what it all means. The problem is that the Government is here driven by ideology more than practicality. No-one in their right mind would say that the various stages of progression of sexual activity need to be based on separate, distinct acts of consent. This is the stop-go, red-light-green-light phenomenon that has been debated out, and what the Minister is intending is still not clear. The muddle-headed Minister is all over the shop on this. The Parliament should provide some clarity by inserting the words on page 4, line 13, subsection (c) after "activity":

Ongoing communication does not in itself require the various stages and progressions of sexual activity to be based on separate, distinct acts of consent.

The Government might say that that is what the bill already means, but it is not clear in the bill. Anyone who reads the bill will know that that is not the case. Anyone who looks at that worrying phrase in the Minister's second reading speech in the other place would know that it is not the case. You would have to concede that large parts of this legislation are setting up a complete judicial lottery as to how it plays out in practice in the courts. There might be some smarties who think that they are providing good, purposeful legislation, but any sensible reading of some of these bewildering, complex, complicated clauses would show that the practicalities of how it will work in the real world of the New South Wales courts will be a judicial lottery.

Many of the One Nation amendments, including this one, try to take the lottery out of it, to make very clear that the ongoing communication does not itself require that the various stages of progression of sexual activity be based on separate acts of consent. If Government members do not support that, what are they saying? Are they saying that you do need those separate acts of consent? Are they saying that they are not willing to have the clarity? I would be very glad to hear that they do support it, because it would negate the worrying things the Minister said in the second reading speech in the other place.

**Ms ABIGAIL BOYD (16:56):** The Greens will not be supporting this amendment. Because I think that many of these amendments are coming around the same point, I think that it will be useful to now lay on the table our approach to dealing with them. I will put on the record the text of a 2015 blog post by Rockstar Dinosaur Pirate Princess, which went on to be animated into a viral video called Tea and Consent by Blue Seat Studios. I will try to omit the sweary bits of it, for the benefit of the House. It might be useful and informative for those members of the House who have not quite got their heads around consent. It says:

If you're still struggling, just imagine instead of initiating sex, you're making them a cup of tea.

You say "hey, would you like a cup of tea?" and they go "omg ... yes, I would ... LOVE a cup of tea! Thank you!" then you know they want a cup of tea.

If you say "hey, would you like a cup of tea?" and they um and ahh and say, "I'm not really sure..." then you can make them a cup of tea or not, but be aware that they might not drink it, and if they don't drink it then – this is the important bit – don't make them drink it. You can't blame them for you going to the effort of making the tea on the off-chance they wanted it; you just have to deal with them not drinking it. Just because you made it doesn't mean you are entitled to watch them drink it.

If they say "No thank you" then don't make them tea. At all. Don't make them tea, don't make them drink tea, don't get annoyed at them for not wanting tea. They just don't want tea, ok?

They might say "Yes please, that's kind of you" and then when the tea arrives they actually don't want the tea at all. Sure, that's kind of annoying as you've gone to the effort of making the tea, but they remain under no obligation to drink the tea. They did want tea, now they don't. Sometimes people change their mind in the time it takes to boil that kettle, brew the tea and add the milk. And it's ok for people to change their mind, and you are still not entitled to watch them drink it even though you went to the trouble of making it.

If they are unconscious, don't make them tea. Unconscious people don't want tea and can't answer the question "do you want tea" because they are unconscious.

Ok, maybe they were conscious when you asked them if they wanted tea, and they said yes, but in the time it took you to boil that kettle, brew the tea and add the milk they are now unconscious. You should just put the tea down, make sure the unconscious person is safe, and—this is the important bit—don't make them drink the tea. They said yes then, sure, but unconscious people don't want tea.

If someone said yes to tea, started drinking it, and then passed out before they'd finished it, don't keep on pouring it down their throat. Take the tea away and make sure they are safe. Because unconscious people don't want tea. Trust me on this.

If someone said "yes" to tea around your house last saturday, that doesn't mean that they want you to make them tea all the time. They don't want you to come around unexpectedly to their place and make them tea and force them to drink it going "BUT YOU WANTED TEA LAST WEEK", or to wake up to find you pouring tea down their throat going "BUT YOU WANTED TEA LAST NIGHT".

**The Hon. MARK LATHAM (17:00):** It is a reflection on the amendment that has been moved. At one level it is a joke and it makes a joke of the bill to read out whatever that was about a cup of tea. But it also makes

a telling, devastating point against the arguments that The Greens, the Government and Labor would put in another context, because you only have to be in a long-term loving relationship with a partner who wants and expects a cup of tea when they wake up on a Saturday morning to know that words are not spoken, gestures are not given, the cup of tea is made for that person and it is gratefully received in the normal passage of that relationship. If they want to use the absurd, joking tea analogy, it puts a massive torpedo into the argument that The Greens are making about the nature of consent.

I cannot speak for the life experience of other people in this debate. But if you have been in a decade-long, loving, close relationship with a partner who wakes up on a Saturday morning and, as part of your ritual and everyday practices, you make a cup of tea for that individual, knowing for sure that they are grateful for that and want the cup of tea—not a word is spoken, not a gesture given, it is just the ritual of being close and loving with someone to whom you are dedicated in your life—it makes the point in devastating fashion about the foolishness of this legislation. So the tea analogy is an exploding cigar for The Greens and the point that Ms Abigail Boyd is trying to make. It really is.

Seriously? Is that where we have got to in this debate—some US rap song without the swearing about a cup of tea, when people in those relationships would know that making the cup of tea is just part of the normal practice, unspoken and without gesture, in a relationship of that kind? I am not going into the detail of how I know that, but you would not have to be Einstein to figure it out. This is the problem with people who are so arrogant and self-centred about what they think they know about others and, in a context where in other parts of politics they talk about diversity, they understand bugger-all about other people, how they live their life and what real diversity might mean in partnerships, sexual and loving, in life. If they come to this debate assuming they know everything about everyone else, that is a stunning demonstration of how little they know and how little they truly appreciate diversity. And if the tea analogy is going to become the defining point in this debate, they just put a massive hole in what they otherwise believe in.

**Ms ABIGAIL BOYD (17:03):** Mr Chair—

**The CHAIR (The Hon. Trevor Khan):** You are entitled to the call but I would be interested in hearing from both the Leader of the Opposition and the Minister before too much longer.

**Ms ABIGAIL BOYD:** I will be very quick. I just want to respond on that particular point because I think that it is really important. If someone brings you tea every Saturday morning and then one day you wake up and you say, "No, thank you," you do not force them to have the tea. That is all that is being said here. It is very simple.

**The Hon. PENNY SHARPE (17:04):** The Opposition is not going to agree with One Nation in relation to this amendment. The amendment would add the following objective to the bill:

Ongoing communication does not in itself require the various stages and progressions of sexual activity to be based on separate, distinct acts of consent.

This amendment undermines the objectives of the bill. Consent should be continuous and capable of being withdrawn. Consent to one sexual act does not equate to consent to all future sexual acts, and that is the whole point. People in this room, myself included, know women who have consented to sexual acts and who have then found themselves in the position where what they originally consented to is not what actually happened to them—whether it is the removal of condoms, whether it is people wanting their mates come and join in or whether it is all of a sudden they are tired and unwell but they still have to do it. That is what we are talking about when we talk about what this bill, and active and continuous consent, are about. It is not "red light, green light". It is fundamental decency and it goes fundamentally to where consent is. Because the reality is that there are too many women who have experienced consenting to one sexual act and then found themselves in positions which they have not consented to and where they have been raped. This is the problem and this is what is wrong with this amendment—the suggestion that, once you do this under these circumstances, that is fine.

I will talk about the judicial lottery because I again want to remind people about what is happening. Nowhere else in the law would it be the case that we accept that 1 per cent of offenders end up being found guilty of the offences that are there. Let's look at the figures again. Just in 2021, there have been almost 8,000 reports to police in relation to sexual assault, and 95 people have been found guilty—less than 1 per cent. If we think that the current laws are working to bring perpetrators of rape and sexual assault—whether they are husbands, boyfriends, strangers, grandparents, uncles or any of those people—and if we think that we are getting justice, then we may as well go home, and we will continue to fail victim-survivors of sexual assault.

This is not a joke. The tea analogy is important. It has been an important tool to try to educate people because, as we spoke about in the second reading debate, the culture, norms and beliefs of so many people in our community are still that all of those things are okay. If a woman was drunk, it is okay—she has consented. If she has changed her mind, that is okay. She said yes in the first place—she has consented. "I bought her dinner." That

is alright—that is consent as well. This is the whole point of the bill. It is not a joke. We need to educate and we need to change norms.

We also need to recognise that we are failing victims of sexual assault because our consent laws have not allowed us to understand the circumstances in which this happens and the overwhelming myths that surround this kind of assault. That is why it is important. That is why Labor will not be supporting One Nation's amendments. I understand that the Hon. Mark Latham has a view about this in a particular circumstance, but rape in marriage happens. We made it illegal only a few decades ago. This is a problem because this reopens this debate and we cannot reopen this debate.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (17:08):** The Government also opposes the One Nation amendment seeking to insert the following words:

Ongoing communication does not in itself require the various stages and progressions of sexual activity to be based on separate, distinct acts of consent.

This amendment by Pauline Hanson's One Nation Party is unnecessary and risks creating confusion. It risks negating the proposition in the bill that a person who consents to a particular sexual activity is not, by reason only of that fact, to be taken to consent to any other sexual activity. The Attorney General has already made the following clear in his second reading speech:

Consent may be regarded as a "continuum" in the sense that a person can consent to and maintain consent to a range of sexual activity, including consent from the outset to multiple forms of sexual activity. A commonsense approach—rather than an unduly narrow approach—should be taken as to what constitutes a different "sexual activity". ...

The bill does not require every small increment along a sexual continuum to have consent sought and obtained—although consent must be present at all times during this encounter. Consent can be given to a wide range of activity simultaneously and subsist.

The New South Wales Government considers that the text of the bill read in its context and purpose, including extrinsic materials, is clear. For those reasons, we oppose the amendment.

**The Hon. ADAM SEARLE (17:09):** I share the views outlined by the Leader of the Opposition on this amendment, but note that it has a further vice. Objectives in legislation are meant to embody the spirit of legislation and also, hopefully, clarify some of the provisions and its purpose. Subsection (c) of proposed section 61HF deals with what constitutes consensual sexual activity. It must involve "ongoing and mutual communication, decision-making and free and voluntary agreement". The amendment deals only with the issue of ongoing communication, but by being tacked onto the end of that paragraph it obscures and confuses whether it is also intended to apply to those parts of subsection (c) dealing with decision-making and free and voluntary agreement.

The amendment confuses and potentially undermines the central tenet of the legislation, which is what the Minister and the Opposition leader have described as the continuum of consent being necessary. It is made very clear in the Attorney General's second reading speech and most of the contributions to debate that consent is a continuum and it can be withdrawn at any point in time. The problem with the amendment dealing only with ongoing communication is it obscures and undermines that central tenet of the legislation. Apart from the fact that it is bad policy, in my view, it should not be supported if only because it confuses an area that this legislation is trying in a herculean way to clarify. The amendment is dangerous.

**The Hon. MARK LATHAM (17:11):** It is not dangerous. The amendment is clarifying what can be read as a very confusing notion of "ongoing communication". Is the "ongoing communication" at each of the stages and progressions of sexual activity? There is a world of difference between that and the straw-man argument that was put forward by the Leader of the Opposition about rape in marriage. Of course there is rape in marriage, and it should be illegal. And if consent is withdrawn at any stage, that should be respected. To act contrary to that is sexual assault. The straw-man arguments are easily dealt with. They do not go to the real purpose of this amendment, which is to give clarity to the meaning of "ongoing communication". This is new law and new territory. We are telling the judicial system there must be "ongoing communication", but it is left in fairly vague terms. There is a phrase in the second reading speech of the Attorney General that worries me about consent needing to be renewed through the various stages and progressions of regular sexual activity—the embrace, the fondling, the foreplay, the oral sex, and the sexual intercourse. We can summarise it as the stop-go issue.

No-one in a familiar, loving, consenting relationship would think that this Parliament and this Government should be legislating to effectively regulate the various stages of sexual activity and sexual consent in that fashion. It is an abomination to think of couples in that way. It is a world apart from the basic propositions of the straw-man argument about rape in marriage and consent being withdrawn. I accept those arguments entirely, but that is a world apart from this new experimental law and its definition and understanding of consent, which is being introduced without clarity. What makes the law experimental is the lack of clarity. The Parliament's job is to give clarity to judicial officers, juries and courts. I see no harm in my amendment. In fact, a lot of good will come out of it. Whether the amendment is looked at through the prism of making tea or the straw-man arguments, or the

Government saying that it wants it to be true in practice but will not support it, it confirms my earlier point that this is all just an ideological belief informed by the ideas and experiences of certain individuals without acknowledging what happens in the lives of other people. That is a very dangerous legislative practice.

All this talk about diversity, but in the end diversity is based on the ideological parameters and boundaries of The Greens, the Labor Party and the Government. That is such a bad way of making law. The amendment would have given clarity to the meaning of "ongoing communication". Someone could read the bill dozens of times and still not know whether or not "ongoing communication" means what the Attorney General at different times has said about renewal or what the Minister at the table has said. In interviews given by the Attorney General, he has walked both sides of the street. He has said black is white and white is black at various times and as it suits him. He is a confused, muddle-headed lawmaker, which is reflected in the bill. I am absolutely certain that ultimately and tragically this bill will be an embarrassment to the Perrottet Government.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Mark Latham has moved One Nation amendment No. 1 on sheet 68S. The question is that the amendment be agreed to.

**The Committee divided.**

Ayes .....2  
Noes .....29  
Majority.....27

**AYES**

Latham (teller)

Roberts (teller)

**NOES**

Amato  
Boyd  
Buttigieg  
D'Adam  
Donnelly  
Farlow  
Farraway  
Field  
Franklin  
Graham

Harwin  
Hurst  
Jackson  
Maclaren-Jones  
Mallard (teller)  
Martin (teller)  
Mason-Cox  
Mookhey  
Moriarty  
Moselmane

Nile  
Pearson  
Poulos  
Primrose  
Searle  
Sharpe  
Shoebridge  
Veitch  
Ward

**Amendment negatived.**

**The CHAIR (The Hon. Trevor Khan):** I understand the importance of the bill, and the Hon. Mark Latham is free to move his amendments in the order he wishes. But One Nation amendments Nos 2, 3, 5 and 8 seem to have a common thread, so the member might consider moving them together. It is entirely a matter for him.

**The Hon. MARK LATHAM (17:24):** By leave: I move One Nation amendments Nos 2, 3, 5 and 8 on sheet 68S in globo:

2. Page 4, after line 13, insert new subsection (d):  
"the context and practice of sexual consent varies according to the nature, familiarity and longevity of personal relationships in society."
3. Page 5, line 5, at the beginning of subsection (a) insert the following words:  
"Other than in circumstances of a long term, familiar sexual relationship with established practices of non-verbal and non-gesture-based consent,"
5. Page 6, line 8, at the beginning of subsection (2) insert the following words:  
"Other than in circumstances of a long term, familiar sexual relationship with established practices of non-verbal and non-gesture-based consent,"
8. Page 6, after line 24, insert new subsection (c) as follows:  
"must consider the historical context, familiarity and nature of the personal relationship between the accused person and the complainant."

The amendments go to the question of things in a relationship that can be habit, ritual, assumed or unspoken. It is remarkable how many times in long-term familiar relationships the same thought, not necessarily sexual, pops into the heads of both partners and prompts actions that do not need to be agreed upon or gestured to. That is the nature of a long-term familiar personal relationship. The Government has said that the bill does not require consent spoken and gestured in those relationships. If that is the case, surely it should be written into the statute for clarity. One of the difficulties is the diversity of relationships, because there is a world apart in people meeting for the first time on a Friday or Saturday night and what consent would mean in those circumstances, which I addressed in my second reading debate contribution, and long-term familiar relationships where the practice of consent can be entirely different—not always, but it can be.

I want the Parliament to recognise that diversity of relationship types and consent practices in the bill. The cup of tea analogy is an easier way to talk about those matters. I heard that members in the other place were a bit red-faced or schoolyard-ish in hearing some of the descriptions of sexual activity. It is an awkward thing to debate and consider, but the cup of tea analogy is a useful way of saying that you could make that cup of tea every Saturday morning, year after year, without a word spoken or gesture granted. That is the relationship diversity dealt with in the bill, but much of the rhetoric from the Opposition, The Greens and the Government goes to questions of consent in a relationship where people are meeting for the first time or shortly thereafter. As I have said previously, One Nation has no objection to what the bill is trying to achieve in that space and we support many aspects of the bill. But not all relationships are the same. In fact, the great bulk of relationships in our society are not people meeting for the first, second or third time; they are people in the family unit, in long-term familiar relationships.

The bill must acknowledge that the context and practice of sexual consent varies according to the nature, familiarity and longevity of personal relationships in society. That refers to amendment No. 2, but the wording is similar in amendments Nos 3, 5 and 8. They provide clarity to the bill by recognising the diversity of relationships and the plain reality that there are relationships of a long-term familiar nature where a spoken word or gesture—or, as the Minister was saying earlier, an indication—does not need to be given for consent to still exist. Unless we acknowledge that, in relationships that break up, particularly in the context of a custody dispute, some innocent people will go to jail. That is a practical consideration and projection of what the provisions will mean. Earlier on the Minister said that an indication is needed, and then gave examples of when no indication is needed. I am trying to insert clarity into the bill through my amendments, which clearly set out the circumstances—practical, understandable and a big reality in our society—where the indication is not needed as otherwise defined in the bill.

**Ms ABIGAIL BOYD (17:29):** The Greens do not support the amendments.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (17:29):** Given it is Friday afternoon, I will confine my comments to encapsulate all four amendments. The Government opposes all of them. The amendments are unnecessary and would undermine the key objectives of the bill. They include recognising that every person has the right to choose whether to participate in a sexual activity, regardless of the longevity of the relationship, and that consent to sexual activity is not to be presumed. That is the starting point. The need for sexual consent to be present at all times during sexual activity does not vary. The objectives apply uniformly to all relationships but are sufficiently broad to ensure the law can respond to the many different factual circumstances in which sexual offences may occur. The mere fact of a marriage or long-term relationship does not mean that sex is consensual.

Under the bill as drafted, historical context in terms of the history of the sexual and/or other long-term relationship between two persons may be relevant and can be taken into account by a trier of fact in determining both whether the complainant consented and whether the accused had knowledge of any non-consent, provided the evidence is admissible under the laws of evidence. The bill does not preclude the historical context being taken into account in determining the question of consent and knowledge of non-consent. The bill simply prevents the trier of fact from reasoning that a complainant has consented by reason only of the fact that they consented to sexual activity on a prior occasion.

There is no limit to how "historical" the evidence of historical context can be so long as the evidence is relevant and admissible under the ordinary laws of evidence. To the extent that this amendment undermines the provisions in the bill that a person who consents to a particular sexual activity is not by reason only of that fact to be taken to consent to any other sexual activity, or that a person who consents to sexual activity with a person on one occasion is not by reason only of that fact to be taken to consent to a sexual activity with that person on another occasion, it is not supported. To the extent it does not undermine those provisions, it is unnecessary. I do not propose to go into the details of non-verbal cues and other indications of consent. For those reasons, we oppose the amendments.

**The Hon. PENNY SHARPE (17:31):** Labor also opposes the amendments. The issue here is pretty straightforward. No-one will be brought before the courts or charged with an offence unless someone has brought forward a complaint. It troubles Labor that the amendments suggest that somehow the bill will interfere with all these innocent people—and I would argue innocent men—who have been having sex with their wives for a very long time. That is not the case. The only reason a person would be charged is if someone has made a complaint because they have withdrawn consent and someone has had sex with them without their consent. It does not matter whether they have been married to them for one year, 30 years or 50 years.

That gets to the fundamental point here. I know that the Hon. Mark Latham has an issue with the intrusion of the law into the bedrooms of married couples, long-term couples or really any couples. I am not particularly comfortable with that either, but that is not what the bill is about. It is about recognising that consent can be withdrawn within long-term relationships and that the person who has been assaulted as a result of that withdrawal of consent should be able to have that dealt with through the law. That is why we do not support the amendments. If innocent people are having sex in long-term relationships, or even in one-night stands, no-one is going to jail. They are having sex, and hopefully they are having an excellent time. That is the entire point. We are looking for hypotheticals that do not go to the problem of the fundamental injustice in the law, which is that people who have withdrawn consent for sexual activity for a whole range of different reasons—I will not go through them again—basically cannot get justice because the law does not recognise what is being set out in the bill. Labor does not support the amendments.

**The Hon. ADAM SEARLE (17:34):** I thank the honourable member for bundling up the amendments in a convenient way. Amendment No. 2 provides words without meaning. It obscures; it does not illuminate. It puts a proposition that does not assist in the interpretation of any part of the legislation, and it should not be supported on that basis. Amendments Nos 3 and 5 are in a different category. They refer to established practices of non-verbal, non-gesture-based consent. That is a very dangerous proposition to import into the legislation. I accept what the Hon. Mark Latham has said a number of times in his contributions, which is that in established relationships of any longevity people will build up a practice of indicating things to each other and of communicating. But if those communications are in no way verbal and do not involve any gesture of any kind, the mover of the amendments is inviting us to accept that people are mind readers. We know that is not the case and that there can be misconceptions and misunderstandings in personal relationships, even married personal relationships or established long-term partnerships of various kinds.

Those two amendments would import a dangerous proposition that would undermine the fundamental tenets of the bill, which is trying to clarify the difficult-to-navigate area of legislation dealing with such intimate and personal interactions. Amendments Nos 3 and 5 should not be supported on that basis. To my mind, amendment No. 8 runs the risk of importing the notion that the historical context, the familiarity and the nature of the personal relationship, might go to establish that there was consent by reason of past practice or history. That is the very hurdle that the bill is seeking to address, in many respects—that just because someone has done something a hundred times does not mean they are agreeing to do it on the next occasion. That would be a dangerous thing to import into the legislation that is under consideration. For those reasons, each of the amendments should be rejected.

**The Hon. MARK LATHAM (17:36):** Not mind readers, but minds can certainly be synchronised in ways that are quite remarkable. There is a heavy responsibility on the Parliament to legislate to cover all contingencies and all possibilities. Members opposite may scoff, but it is a weird experience to see real-life practicalities so easily dismissed. State MPs have never sat in a Federal MP's office listening to Family Court and child support disputes, on both sides of the fence. Members would not believe the things that get weaponised: migration status, housing status, employment status—anything the parties can grab onto. In some of those circumstances, the closest of relationships can quickly turn into the worst. Where children are involved, just about anything the parties can grab hold of gets weaponised. It is exceptionally naive and ignorant of the Parliament to think that this bill will not be in that category in the immediate future, once it passes the Parliament. That is the practical reality. They are horrible things to have to listen to, to be a representative caught in the middle of it or to decide between right and wrong. Now we will take that circumstance and stick it in the courts of New South Wales. It is just wrong.

**Mr DAVID SHOEBRIDGE (17:38):** I appreciate the leadership shown by the Minister, the Leader of the Opposition and Ms Abigail Boyd in this debate. I spent the first three years of my legal career working as an associate for a judge in the Parramatta Family Court, hearing the trials day in, day out. In my first week of work there, the court was shut down after I heard a loud bang outside the window of my office because an empowered man shot dead his partner and the mother of his kids literally just outside my window. We are talking about getting the balance right.



Having sat there for three years with a man whom I greatly admire, Justice Eric Baker, and heard the play between men and women over their kids, I cannot but endorse the comments that were made by those three women here about how grossly biased against women the criminal justice system is. Members have suggested that we are looking at hypotheticals, and that is the reason we do not take steps on consent. As the Hon. Penny Sharpe said, there have been 8,000 complaints and 95 convictions this year. I am grateful for the leadership shown by the three politicians at the table. My experience of sitting in the Family Court in Parramatta compels me to not only listen to what they say but understand the fundamental truth about how grossly unfair our courts and our legal system are against women. We need to reassert the balance in the way that has been said.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Mark Latham has moved One Nation amendments Nos 2, 3, 5 and 8 on sheet 68S in globo. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes .....2  
Noes .....27  
Majority.....25

**AYES**

Latham (teller)

Roberts (teller)

**NOES**

Amato  
Boyd  
Buttigieg  
D'Adam  
Donnelly  
Faehrmann  
Farlow  
Field  
Franklin

Hurst  
Jackson  
Maclaren-Jones  
Mallard (teller)  
Martin (teller)  
Mason-Cox  
Mookhey  
Moriarty  
Moselmane

Nile  
Pearson  
Poulos  
Primrose  
Searle  
Sharpe  
Shoebridge  
Veitch  
Ward

**Amendments negatived.**

**The Hon. PENNY SHARPE (17:49):** I move Opposition amendment No. 1 on sheet c2021-177A:

**No. 1 Active consent**

Page 4, Schedule 1[9], proposed section 61HI(1), line 28. Insert ", actively" after "freely".

The amendment inserts the word "actively" after "freely" in proposed section 61HI (1) of the bill. It is about how active consent is. There has been quite a bit of discussion about that issue, which was the subject of a lengthy debate in the lower House. The amendment deals with proposed section 61HI, regarding the definition of consent. Currently, under proposed section 61HI (1) a person consents to sexual activity if at the time of the sexual activity the person freely and voluntarily agrees to the sexual activity. The Opposition amendment adds the word "actively" to the definition, so the provision would read, "A person consents to a sexual activity if, at the time of the sexual activity, the person freely, actively and voluntarily agrees to the sexual activity."

Again I refer members to the lengthy debate in the lower House about the matter. Proposed section 61HJ (1) provides that a person who does not say or do anything to communicate consent does not consent. It is confusing that that requirement is not reflected in the characterisation of consent in proposed section 61HI alongside the principles of it being freely and voluntarily given. The amendment would reflect the reality of affirmative consent in the bill. It would be difficult for anyone to be practically assured that consent is freely and voluntarily given without some activity communicating that. That should be made clear in proposed section 61HI.

**Ms ABIGAIL BOYD (17:51):** I read the *Hansard* of the debate that took place in the lower House. My colleague Jenny Leong made valuable contributions in the course of that debate. The amendment proposes a pretty nice fix. Proposed section 61HI (1) provides:

- (1) A person consents to a sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity.

It is hard to imagine an agreement that is not reached by words, conduct or action. However, given the reluctance of our judicial system sometimes to find the right balance in these cases, the addition of "actively" provides clarification, so The Greens will be supporting the amendment.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (17:52):**

The Government opposes the amendment because it is unnecessary and because, by replicating a principle expressed elsewhere in the Act using different language, it may add to the complexity that the NSW Law Reform Commission and the Government have worked to minimise in the bill. It is similar to another amendment that was considered but was unsuccessful in the other place. The bill already contains a clear, active communication requirement. Proposed section 61HI (1) provides:

- (1) A person consents to a sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity.

It is unclear what the word "actively" would convey that is not already effected by the current drafting. Proposed section 61HJ (1) (a) reinforces that a person who does not say or do anything to communicate consent does not consent. That has the same effect as the proposed amendment. To amend the bill in the terms proposed is not necessary and may have unintended consequences for interpretation. It is unclear what, if anything, this amendment adds. If it does add something, that is equally problematic as the provision would then overreach by requiring something emphatic. The affirmative consent model embodied in the bill already places communication at the heart of consent. For those reasons, we are opposed the amendment.

**The Hon. MARK LATHAM (17:53):** One Nation opposes the amendment because adding "actively" does not add a lot to proposed section 61HI (1). Currently, it defines consent to sexual activity as something given freely and voluntarily, which is a fairly understandable way of expressing it. Judicial officers, juries and courts would understand that. Putting in "actively" raises the question: How active do you need to be? That is a sort of variation of what in this space is known as "enthusiastic consent" or "positive consent". How enthusiastic do you need to be to be deemed enthusiastic and how positive do you need to be to be deemed positive? That is the problem with the use of a synonym like "actively", so One Nation opposes the amendment.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Penny Sharpe has moved Opposition amendment No. 1 on sheet c2021-177A. The question is that the amendment be agreed to.

**Amendment negatived.**

**The CHAIR (The Hon. Trevor Khan):** We move on to The Greens amendment No. 1 on sheet c2021-190A.

**Ms ABIGAIL BOYD (17:54):** I will not be moving that amendment.

**The Hon. MARK LATHAM (17:55):** I move One Nation amendment No. 4 on sheet 68S:

- (4) Page 5, line 32, delete "is mistaken" and insert "has been misled by the other person."

During an earlier division there was a recent discussion among members at the table. I look forward to any clarification the Minister can provide. Proposed section 61HJ (1) (j) is curious in one respect. It provides:

- (j) the person participates in the sexual activity with another person because the person is mistaken—  
 (i) about the identity of the other person, or  
 (ii) that the person is married to the other person ...

None of that constitutes consent. The first point is that we have established clearly that being married is not an automatic guarantee or green light for consent, so the marital status should be irrelevant. I do not know why it has to be spelt out that being mistaken about marital status means there is no consent when, clearly, in a marriage consent needs to be given freely and voluntarily in the relevant circumstances. It is curious how that ended up in the bill. However, my main concern in wanting to change the wording is the use of the word "mistaken". What if both parties are led to be mistaken by a third party, neither of them are at fault, and both are mistaken and misled about the nature of what has gone on?

Until I asked around about it in the last couple of days, I had not heard that sham marriages are arranged where one party is tricked. I assume it is possible for there to be sham marriages where both parties are tricked. Who knows what weird circumstance might exist: a practical joke, a weird thing that happens. I am sure it is not all that common in society, but I am told it does exist. The person could be mistaken by a third party, with neither the first or second parties being at fault or culpable. Would it not be clearer to say the person "has been misled by the other person", which makes it clear that the person has been tricked into consent through a belief in a certain identity and marital status? That would clarify what appeared to me at first glance to be a drafting error—to say that the person has been misled by the other person, rather than leaving open the possibility of action being taken where the mistake has been generated by a third party, where both the first and second parties are victims of the mistake.

**Ms ABIGAIL BOYD (17:58):** I take the point made by the Hon. Mark Latham. However, proposed section 61HJ must be read in the context of the bill as a whole. The proposed section sets out the circumstances in which a person does not consent. It does not get to the point of whether a person is at fault for the action for which there was no consent. It is purely about whether or not there was consent. For a number of reasons, it is important that we be very clear about the circumstances in which there is no consent. The consequences for not having consent should be different. From a victim-survivor's perspective, I believe that we need to be very clear that it does not matter how the person came to be mistaken. If there was no consent, there was no consent—full stop. We then move to proposed section 61HK, which talks about knowledge about consent, where it says:

- (1) A person (the accused person) is taken to know that another person does not consent to a sexual activity if—
  - (a) the accused person actually knows the other person does not consent to the sexual activity

So that covers the Hon. Mark Latham's point about what if they were both fooled by somebody else. If the accused person actually knew that the victim had been misled by somebody else, then they will be at fault under this provision. But if they have both been misled then they will not be at fault under this provision because they would not have actually known. Subsection (b) provides that the accused person is reckless as to whether the other person consents, and then (c) provides that the accused person's belief that they have the other person's consent is not reasonable. But what we are getting at is that if a person actually knew that the victim had been misled by a third party, that should be captured here. I see the Hon. Mark Latham's point and if it did work in that way perhaps that would be a problem. But that is not, in the context of the whole Act, how the provision operates.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (18:00):** The Government opposes One Nation's amendment. It is unnecessary, it departs from the Law Reform Commission's recommended drafting, it risks introducing confusion into the interpretation of the bill and it would fail to provide recourse for a significant area of moral culpability. Proposed section 61HJ (1) (i) prescribes that a person does not consent when the person participates in the sexual activity because they are mistaken about the nature of the activity or the purpose of the activity. This is consistent with the current law, the common law and other jurisdictions. The substance of this provision already exists in section 61HE (6) of the Crimes Act and there is still work for a provision concerning non-induced mistake to perform. This phrasing should not be deleted or replaced, as is suggested in this amendment.

There is still moral blameworthiness when a person knows that another person is participating in sexual activity with them because the latter is mistaken about the identity of the former person, or mistaken that they are married to the former person, even without the former person being actively misleading. This should continue to be reflected in the law. I appreciate the point that the Hon. Mark Latham is raising, but the Government says that it is already there and the bill already separately and clearly provides for circumstances where a person participates in sexual activity because of a fraudulent inducement. I have provided that section to the honourable member. What would be considered a fraudulent inducement was outlined in detail by the Attorney General in his second reading speech and in consideration in detail in the other place. Inserting the phrase "has been misled by the other person", as proposed by One Nation, would impute a different test in a different section of the bill and risk creating confusion, with the unintended consequence of undermining the efficacy of both provisions. For those reasons, the Government opposes the amendment.

**The Hon. PENNY SHARPE (18:02):** I have listened carefully to the debate. Labor opposes the amendment for the reasons outlined by the Minister and Ms Abigail Boyd.

**The Hon. MARK LATHAM (18:02):** The point I make is that, obviously, a fraudulent inducement is different to being mistaken. I am conceding that the numbers will not be in favour of my amendment. But I raise a further point which I think should worry the Minister, the Government and the members opposite. Proposed section 61HJ (j) (ii), read in its totality, is saying there is no consent where the person participates in the sexual activity with another person because the person is mistaken that the person is married to the other person. Does that not imply that marital status is an automatic consent?

**The Hon. Penny Sharpe:** No.

**The Hon. MARK LATHAM:** No? It doesn't? Okay. It seems members are not worried about that. I still do not understand why that particular example has found its way into the detail of the bill. I would read it as saying that if a person is tricked into a belief of being married then that marital status automatically gives their consent. That is how I am reading the logic that is set out here. But maybe logic to one is not logic to all.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Mark Latham has moved One Nation amendment No. 4 on sheet 68S. The question is that the amendment be agreed to.

**Amendment negated.**

**The Hon. MARK LATHAM (18:04):** I will not move One Nation amendment No. 6 on sheet 68S regarding the various stages of progression of sexual activity. I was writing it in as an avoidance of doubt. But, clearly, it was dealt with by the Committee earlier in debate. I also will not move One Nation amendment No. 1 on sheet 68S. The question of "a cause", "the cause" and "substantial" was dealt with earlier. One Nation had a preference that was voted down, so there is no point in persevering with that particular amendment. I move One Nation amendment No. 7 on sheet 68S:

(7) Page 6, line 16, delete:

"(ii) a mental health impairment."

This amendment is to delete from the bill a clause we skirted and danced around earlier on in the first set of amendments at page 6. It takes out mental health impairment as exempting the accused person from the crime of sexual assault. This is a provision that has been recommended by Rape & Domestic Violence Services Australia in the material that has gone to all members from its CEO, Hayley Foster. It plays into a longstanding concern I have had about the workings of the criminal justice system, whereby it is estimated that 80 per cent of the accused in our courts are pleading some form of mental health impairment to get off the hook or to reduce their punishment. This is obviously bad news for women who have been sexually assaulted or physically abused. We know of these cases. It is remarkable that someone like Andrew O'Keefe could get off the hook for a physical assault. One minute he is a successful game show host and the next he is accused of bashing up his partner; that seems to be proven in the court and yet he is let off the hook.

Similarly, the recent example of Michael Slater—again, a physical assault but the same principle applies with sexual assault—where one minute he is challenging the Prime Minister to a national debate about the rights of returning Australians during COVID-19, and the next minute, when he is in trouble in the court, he enters a mental health facility and pleads mental health reasons to try to get himself off the charge. At the top of page 9 of the material circulated by Hayley Foster she gives four examples that relate to sexual assault trials where mental health was used as a reason for people to be found not guilty or to have their punishment reduced. That material, without going into all of the detail, is available to honourable members.

So that really is a concern. It is like clockwork now that people—most notably, celebrities—accused of these crimes are in the courts saying that they have a mental illness. This is a very inexact science. Medical science does not know a great deal about the workings of the human brain and the mental state. In fact, it is often said there are only two things we do not know about mental illness: what causes it and how to fix it. That shows the scope available for someone to use this provision to get off a charge.

The knowledge of medical science about the human brain is rudimentary. Over the years, more and more conditions are being regarded as a mental illness. What started out as people worrying too much—anxiety—was popularised by Jeff Kennett at Beyond Blue and it morphed into anxiety and depression, a medical condition that people had not heard of up to that point in time. One of the things that, apparently, is very much being used in our court system is a thing called borderline personality disorder, which I heard about recently. People may not have seen much about it in the media, but it is being pleaded in the courts to get off physical and sexual assault charges. My reaction to hearing of borderline personality disorder was to think that it describes everyone in politics, but that does not necessarily prove they have a mental illness. Borderline personality disorder is the new plea among the 80 per cent of those who go to court and plead some form of mental illness.

We have to be worried about a provision in this bill that will allow rapists and those who engaged in sexual assault to get off the hook because they have got a so-called "mental health impairment". I am not saying it is good legislative practice, but there has certainly been a desire around the table for the advocates of the bill to say that the conviction rate in sexual assault needs to lift. The Hon. Penny Sharpe has said that the current conviction rate is 1 per cent. The police commissioner in an article in *The Daily Telegraph* said it is 2 per cent. In my second reading speech I referred to data from the NSW Bureau of Crime Statistics and Research from 2019 that said it was 15 per cent.

**The Hon. Penny Sharpe:** It's still pretty bad.

**The Hon. MARK LATHAM:** Well, you can calibrate it that way. The observation is that it is still pretty bad. The main point is that whether it is 1 per cent, 2 per cent or 15 per cent, we still would not want people getting off the hook because they have fabricated a psychiatric report that is not genuine, or they have pleaded borderline personality disorder or that they worry too much and they have anxiety. We would not want them to get off the serious charge of sexual assault when all the evidence is against them and the only mitigating factor is for them to plead a so-called mental health impairment. Surely the advocates of lifting the conviction rate would recognise that it is a huge problem. If 80 per cent of people in the courts are using so-called mental conditions as an alibi, would we not want to take that out of the bill? We have to base these laws on evidence.

The nebulous, unproven, medically uncertain nature of mental health in our society is being manipulated and exploited in the court system in a way that should be a huge concern to lawmakers and law officials. We have had our differences as to the detailed meaning of "consent". But I would have thought, given the seriousness of the crime of sexual assault, that to have people in the New South Wales court system using this as a defence to avoid or mitigate punishment under false pretences should be abhorrent to the Parliament. I strongly recommend the removal of this clause, as does Hayley Foster and Rape & Domestic Violence Services Australia, who provided a lengthy and detailed submission that I found quite compelling. It certainly matched up with my concerns about the misuse of mental health conditions in the criminal justice system in New South Wales.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (18:11):** The Government opposes the amendment. While I hear what the Hon. Mark Latham has said and his concerns, these are commonsense reforms. They go beyond the Law Reform Commission recommendations. They make it clear that an accused's belief that the victim consented to sex is not reasonable in the circumstances if the accused did not say or do anything to ascertain whether the other person consented to sexual activity. An exception to this applies to an accused person with a cognitive impairment or clinically significant mental health impairment where the impairment was a cause of the accused person not saying or doing anything. This exception, which goes beyond the Law Reform Commission recommendations, was included by the New South Wales Government as part of our reforms after careful consideration to ensure that a person with an impairment is not unfairly disadvantaged by the expanded reasonable belief test.

While the Government acknowledges the genuine concerns raised, the definitions of "cognitive impairment" and "mental health impairment" in the Crimes Act were developed by forensic mental health experts for the purposes of the Mental Health and Cognitive Impairment Forensic Provisions Act 2020. The Government is satisfied that these definitions are consistent with other existing criminal sanctions and provide an appropriate threshold for when criminal liability is lessened due to an impairment. This is not a get-out-of-jail-free card. An offender with a cognitive impairment or mental health impairment can still be convicted if all elements of the case are established beyond reasonable doubt. It is still the case that a person with a cognitive impairment or mental health impairment can be convicted if the Crown provides beyond reasonable doubt that the person had no reasonable belief that the other person was consenting. What the accused did or did not say or do will still be relevant to those grounds. A tempered form of affirmative consent still applies to a person with a cognitive impairment or mental health impairment. For those reasons, the Government opposes the amendment.

**Ms ABIGAIL BOYD (18:13):** This provision needs to be read in context. One could say that anybody with an impairment suddenly gets a get-out-of-jail-free card, but that is not what this provision does. We are talking about impairment as an exception and only where it is an actual cause. So we are coming back to the same issue as was raised before. It also has to be proven that it was a substantial cause of the accused person not saying or doing anything, which is only relevant to subsection (1) (c) of proposed section 61HK. There are three tests there for deciding whether someone knew that they did not have consent, and the third test is that they have a reasonable belief that the person was consenting.

Subsection (2) goes on to say that in order to establish that reasonable belief, a person needs to have actually done something to find out. But we only get to that if it is proved that the accused person actually knew that the other person did not consent or the accused person is reckless as to whether the other person consented. This is a very limited circumstance. As we have discussed, it is a very tricky area. On balance, The Greens think the provision gets us there in its current form. I do not think taking out "mental health impairment" in this context would be helpful, but we will look towards the review in three years to check that it has not had any unintended consequences.

**The Hon. PENNY SHARPE (18:15):** Labor does not support the amendment. As to the points made by the Hon. Mark Latham about too many people getting off for what are not insubstantial matters, that is a serious issue. There is no doubt about that, and there will be no disagreement from this side of the House on that matter. However, the Opposition believes that there will be circumstances where impairment is an issue and that it should be included in the bill. I know many parents of children with very significant and substantial mental health impairments who would be very troubled by the full removal of this clause. Given the other tests included in the bill, as outlined by the Minister and Ms Abigail Boyd, this provision does not in any way undermine the importance of it not being an excuse for people to get off an offence of sexual assault. I note that the Opposition will keep a close eye on this matter in the review, but we do not support its deletion at this point.

**The Hon. MARK LATHAM (18:16):** I am glad there is concern in the Parliament and that it will be monitored in the review process years down the track. But seriously, if members want to lift the rate of conviction, this is the big one. This is the big, practical amendment. In all my remarks I have tried to speak to practicality, rather than theory, ideology and dogma. The practicality is that judicial officers are having a difficult time sorting out whether the mental health issue is the cause of the crime or is created as a product of the crime. That is not an

easy thing to sort out. I find it completely wrong that any man would get off the hook for rape by pleading borderline personality disorder or too much anxiety. "I worry too much, so I am not really a rapist", "I have borderline personality disorder, so I am not really a rapist"—really? As to practicalities, Hayley Foster is onto it. Maybe members of Parliament need to spend more time in that other division of governance and sit in courts or get data on how often this is happening. It is a huge concern. I hope the Government in particular does not wait for the review years down the track but has a look at the data on mental health pleadings early in the experience of this new statute. I can assure the Committee that it is a huge problem of which members should be aware. I believe we should legislate at this stage to deal with the problem. A watching eye will certainly be needed in the future.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Mark Latham has moved One Nation amendment No. 7 on sheet 68S. The question is that the amendment be agreed to.

**The Committee divided.**

Ayes .....2  
Noes .....26  
Majority.....24

**AYES**

Latham (teller)

Roberts (teller)

**NOES**

Amato  
Boyd  
Buttigieg  
D'Adam  
Donnelly  
Faehrmann  
Farlow  
Field  
Franklin

Hurst  
Jackson  
Maclaren-Jones  
Mallard (teller)  
Martin (teller)  
Mason-Cox  
Mookhey  
Moriarty  
Moselmane

Nile  
Pearson  
Poulos  
Primrose  
Sharpe  
Shoebridge  
Veitch  
Ward

**Amendment negatived.**

**The Hon. PENNY SHARPE (18:27):** By leave: I move Opposition amendments Nos 1 and 2 on sheet c2021-180A in globo:

**No. 1 Sexual assault by self manipulation**

Page 7, Schedule 1[20], line 9. Insert "vagina" before "(including)".

**No. 2 Sexual assault by self manipulation**

Page 7, Schedule 1[20], line 10. Insert "Insert instead "genitalia"." after "*self-manipulation*".

Currently section 80A of the Crimes Act 1900 provides for the offence of sexual assault by forced self-manipulation, defining self-manipulation as:

... penetration of the vagina (including a surgically constructed vagina) or anus of any person by an object manipulated by the person, except where the penetration is carried out for proper medical or other proper purposes.

I am sure everyone is pleased to know that. What these amendments do is use more inclusive language. It seeks to remove the words "including a surgically constructed vagina" and instead use the words "genitalia". It is about inclusive language and making sure that we pick up the ambiguity that occurs for some intersex people, to make sure that they do not fall out of the definitions in the bill. I commend the amendments to the Committee.

**Ms ABIGAIL BOYD (18:28):** The Greens will be supporting the amendments.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (18:28):** The Government will be opposing both amendments. These are complex proposals, as the Attorney General outlined in the other place, that go further than providing inclusive language. The amendments will extend and expand definitions in the Crimes Act that deliberately use anatomically specific language in the context of offences that were not the focus of the Law Reform Commission's work. Consent is not an element of the section 80A offence of sexual assault by forced self-manipulation that this amendment seeks to change. Any changes to other sexual offences are not appropriate for the purposes of these reforms. However, the Government will reconsider

this issue and other offences as part of the future statutory review of the consent law reforms. But at this time we are not able to support this amendment.

**The CHAIR (The Hon. Trevor Khan):** The Hon. Penny Sharpe has moved Opposition amendments Nos 1 and 2 on sheet c2021-180A. The question is that the amendments be agreed to.

**Amendments negatived.**

**Ms ABIGAIL BOYD (18:30):** By leave: I move The Greens amendments Nos 3 and 4 on sheet c2021-190A in globo:

No. 3 **Jury direction—lack of physical injury, violence or threats**

Page 10, Schedule 2[3], proposed section 292C(b), line 11. Omit "necessarily".

No. 4 **Jury direction—response to giving evidence**

Page 10, Schedule 2[3], proposed section 292D(b), line 18. Omit "necessarily".

The amendments are pretty straightforward. They go to the jury directions that are specified in proposed sections 292C and 292D. It is unfortunate; I know in a previous draft "necessarily" had not been included in this wording. The way that "necessarily" reads here perhaps implies that a person would ordinarily not be telling the truth about their alleged sexual offence but that it is not necessarily the case. I think what the clauses meant to say is that, although it is possible that a person is not telling the truth, the presence or absence of emotional distress, injury or violence does not necessarily mean that they are not telling the truth. It is an unfortunate addition, which is why The Greens are asking for it to be removed.

**The Hon. NATALIE WARD (Minister for Sport, Multiculturalism, Seniors and Veterans) (18:31):** The Government opposes both amendments. The provision as drafted in the bill reflects the wording recommended by NSW Law Reform Commission in recommendation 8.6. The Law Reform Commission closely considered the submissions of many stakeholders. The New South Wales Government considers that the word "necessarily" in this new direction provides sufficient flexibility to ensure the appropriate application of the new directions for judges and fact finders. Many varied circumstances of sexual offending come before the court and it is important that the bill can legislate with certainty but also appropriately to meet those various situations. For that reason, that amendment is not supported. In relation to amendment No. 4, the Government considers that the word "necessarily" in this new direction provides sufficient flexibility to ensure the appropriate application of the new directions. For those reasons, the amendments are not supported.

**The Hon. PENNY SHARPE (18:32):** Labor opposes the amendments for the reasons articulated by the Minister.

**The CHAIR (The Hon. Trevor Khan):** Ms Abigail Boyd has moved The Greens amendments Nos 3 and 4 on sheet c2021-190A. The question is that the amendments be agreed to.

**Amendments negatived.**

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

**Motion agreed to.**

**The Hon. NATALIE WARD:** 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. NATALIE WARD:** I move:

That the report be adopted.

**Motion agreed to.**

### **Third Reading**

**The Hon. NATALIE WARD:** I move:

That this bill be now read a third time.

**Motion agreed to.**

*Visitors***VISITORS**

**The PRESIDENT:** Before the Clerk reads the order of the day, I introduce to members a few special people in the President's gallery: Brodie Donegan, Nick Ball, Nathan Donegan, Jackie Sparks, Kristin Brickle, Jess Cole, Chris Spence, Doug Walther and Jennifer Walther. I welcome them to our Chamber tonight for debate on a very important bill and thank them for being a part of that journey. I thank them for all they have done in regard to bringing justice on an issue that has long haunted this Parliament.

*Bills***CRIMES LEGISLATION AMENDMENT (LOSS OF FOETUS) BILL 2021****Second Reading Speech**

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (18:36):** On behalf of the Hon. Natalie Ward: I move:

That this bill be now read a second time.

Mr President, I join you in welcoming your guests. It is appropriate to apologise that it has taken so long to get here. This issue has been a significantly long haul and, in many respects, the various iterations of this bill over the years have re-traumatised many of the people involved and caused them to relive their experiences and the trauma of the loss of their unborn children. I offer my apology that it has taken so long to get here and I apologise for re-traumatising people who have been through significant trauma in their lives. I also thank them for their continued agitation for a cause that has so much justice to recommend it. It would have been easy to walk away from it and say that this is all too hard, but the continued support for what can only be construed as reaching the right outcome has been the impetus for where we have landed tonight.

All those people who are guests in the President's gallery tonight have been part of that journey. I also specifically mention Chris Spence and his involvement because this started when he was the member for The Entrance. It cannot be denied that he has never lost sight of the importance of this issue. I think all of us, to the extent that this bill will hopefully pass tonight, owe him and all of those people that he has represented over a period of time a significant debt of gratitude. Having said those few words, I seek leave to have the remainder of the second reading speech incorporated in *Hansard*.

**Leave granted.**

The Government is pleased to introduce the Crimes Legislation Amendment (Loss of Foetus) Bill 2021. This bill represents a suite of important reforms by the New South Wales Government to better recognise the loss of a foetus as a result of a third-party criminal act.

In 2018 the New South Wales Government committed to seeking expert advice on the complex legal issues involved in recognising this loss in order to achieve effective and appropriate reform. The loss of a foetus in all circumstances is harrowing, and to lose a foetus as a result of another person's criminal offending is profoundly distressing for parents, victims, families and the wider community.

Tragically, several families in New South Wales and other Australian States and Territories have suffered this loss in previous years, most commonly as a result of dangerous driving. In some circumstances these criminal acts have also resulted in the deaths of a pregnant woman and other individuals. I acknowledge all the expectant parents who have been advocates for reform, particularly Brodie Donegan.

I recognise her courage and remarkable advocacy over too many years for these reforms. I also recognise Chris Spence for his tireless contribution in advancing these matters inside and outside of Parliament. Currently the law in New South Wales, like several other Australian jurisdictions, recognises the destruction of a foetus as grievous bodily harm to the pregnant woman. However, despite accommodating the loss within grievous bodily harm to the mother, there is currently no guarantee that the loss of a foetus will be specified within the particulars of a criminal charge, nor result in the imposition of a higher penalty to recognise the criminality of the act or the unique harm caused by the loss.

Close family members are currently unable to provide a victim impact statement to a court regarding a loss. This means they are unable to address the harm caused to them by the loss of a foetus separately in sentencing proceedings when grievous bodily harm to a pregnant woman has occurred, or when the pregnant woman has died. This bill will strengthen the criminal law and its recognition of the loss of a foetus as a distinct and grave harm suffered by a woman and her immediate family. These amendments will also improve support and recognition available to these families.

Importantly, the bill does not in any way affect a woman's ability to obtain a lawful abortion under existing New South Wales legislation. It also does not displace the "born alive" rule, which deems legal personhood to apply when an infant is born independently of its mother and has taken a breath.

The born alive rule has existed for centuries, not just in Australia but across a number of other Commonwealth jurisdictions, including England and Wales, Canada and New Zealand. In New South Wales it is reflected in the criminal and civil law.

The born alive rule ensures that a foetus does not have a legal personhood that can compete with the rights or interests of other existing persons, primarily the woman carrying the foetus. This bill provides a way to maintain this fundamental aspect of the law



and to provide better recognition of the loss of a foetus as a result of criminal behaviour, including serious personal violence and driving offences.

The reforms will introduce two new offences into the Crimes Act 1900. The first is a standalone "Offence of causing loss of a foetus", which can be charged when grievous bodily harm is occasioned to the pregnant woman, causing the loss of the foetus. This offence will carry a maximum sentence that is three years higher than currently available for this conduct under existing law. The second is a standalone "Offence of causing loss of a foetus (death of pregnant woman)", which can be charged when a homicide offence is also charged for the death of the pregnant woman—such as murder, manslaughter or dangerous driving occasioning death—and the foetus has also been lost as a result of conduct giving rise to the homicide offence.

This offence will carry a maximum penalty of three years' imprisonment. The maximum penalty for the homicide offence will also apply with respect to that offence. The bill will amend the Criminal Procedure Act 1986 to allow the name of an unborn child lost due to a third-party criminal act to be included on an indictment in the particulars of the criminal charge. The bill will amend the Crimes (Sentencing Procedure) Act 1999 to expand eligibility for making a victim impact statement to the immediate family members of the pregnant woman whose foetus was lost as a result of an offence, to explain the impact of the loss on them to the court.

The bill will ensure that relevant family members will have a statutory entitlement under the Motor Accident Injuries Act 2017 to claim funeral costs for the foetus when lost as a result of a motor accident.

Each amendment has been carefully developed to take into account the range of views held by stakeholders and the community. In addition to this bill, the Government is also developing an administrative payment scheme to provide a bereavement payment to families who lose a foetus due to a third-party criminal act. This recognises the loss and ensures that families can access the support services they need during such a difficult time.

Before detailing the contents of the bill I will briefly outline the development of these reforms and thank stakeholders and the community for informing these legislative reforms. In October and November 2018 the then Premier committed to seek expert advice and community feedback about how the loss of a foetus as a result of a third-party criminal act might be further recognised in New South Wales law. The Government closely consulted with expert stakeholders, legal bodies, victims' groups and affected families in order to ensure that these reforms are effective and appropriate.

In 2020 the Government developed an exposure draft bill entitled the Crimes Legislation (Offences Against Pregnant Women) Bill 2020, which was consulted on via the Have your Say website from 10 November 2020 to 29 January 2021.

A total of 114 submissions were received in response to that bill, including from seven advocacy, not-for-profit or medical organisations; eight legal body stakeholders; one political party branch; four religious leaders; and 95 individuals.

Stakeholder views were diverse. Some members of the community called for harsher punishment and standalone criminal offences for the loss of the foetus. Others opposed any reform, suggesting that existing criminal and sentencing regimes are sufficient.

The Government remains committed to reform to address the gaps that have been identified in the law and to reflect the widely held community view that it is necessary to recognise in the criminal law the loss of a foetus as a result of a criminal act of another.

Today's bill provides a different approach to the exposure draft bill by introducing two new standalone criminal offences that may be charged when a foetus of a gestational age of at least 20 weeks, or 400 grams, has been lost as a result of criminal acts affecting the pregnant woman. The standalone offences ensure there is independent recognition of this harm, separate to the existing offences under the Crimes Act. This bill, together with the administrative payment scheme, will provide better recognition of the gravity of the loss of a foetus due to a third-party criminal act.

I turn now to the substance of the bill. The most significant aspect of these reforms is the introduction of two standalone criminal offences in schedule 1 to the bill. The new offences will recognise that causing the loss of a foetus is a specific type of harm that merits express and distinct recognition. These offences will be available to be charged when a foetus has reached a gestational age of at least 20 weeks, or if this cannot be reliably established, of a body mass of at least 400 grams. Identical thresholds are contained in the Births, Deaths and Marriages Registration Act 1995 applicable to the registration of a stillbirth. Importantly, both offences make clear that they do not apply to the termination of a pregnancy under the Abortion Law Reform Act 2019, or any act or omission of the pregnant woman that causes the loss of her foetus.

These reforms do not in any way intend to criminalise either of these circumstances. They seek to address a very specific gap in the law in relation to the criminal behaviour of a third party towards or affecting a pregnant woman which causes the loss of her foetus. Proposed section 54A of the Crimes Act, as contained in schedule 1 to the bill, will introduce a new offence of causing the loss of a foetus.

This offence provides an additional penalty of three years' imprisonment where a grievous bodily harm offence that resulted in the loss of a foetus of over 20 gestational weeks, or a weight of 400 grams, is proven. Under New South Wales law, the destruction of a foetus is included in the definition of "grievous bodily harm" to the pregnant woman within section 4 of the Crimes Act. This applies whether or not the woman suffers any other harm. The bill does not change this definition, and that offence remains available, particularly when the foetus that was lost was under the required gestational age.

Proposed section 54A will draw on and modify existing offences in which grievous bodily harm is an element, where a foetus of the relevant gestational age has been lost as a result of the act or omission of an accused. In order to establish this new offence, all of the elements of the relevant substantive grievous bodily harm offence must still be proved by the prosecution. This includes any relevant mental element, such as specific intent or recklessness, specified for those offences. Proposed section 54A (5) also makes clear that it is not necessary for the prosecution to prove that the defendant knew, or ought reasonably to have known, that the woman was pregnant unless that knowledge or intent is an element of the grievous bodily harm offence.

The drafting of the provision will capture offences like dangerous driving, where the defendant may not directly interact with the woman, and therefore may not have known that she was pregnant.

There are currently more than 20 offences in the Crimes Act that have a physical element of grievous bodily harm, with sentences ranging from a maximum two years' to 25 years' imprisonment. Drawing on existing offences will ensure greater flexibility, better recognition and a more targeted response to the specific circumstances that cause the loss of a foetus in any given case. It will also

ensure that the new offence can address varying levels of criminal behaviour and intent. A charge under section 54A also leverages the full suite of existing maximum penalties for these grievous bodily harm offences, increased by three years.

For example, in the case of dangerous driving causing grievous bodily harm, which carries a maximum penalty of seven years' imprisonment, under proposed section 54A an offender is liable to 10 years' imprisonment. In the case of grievous bodily harm with intent, which carries a maximum penalty of 25 years' imprisonment, under proposed section 54A an offender is liable to 28 years' imprisonment.

If other harm is occasioned to the pregnant woman as a result of the same act or omission, proposed section 54A (3) makes clear that other offences can still be charged separately from the offence of causing the loss of a foetus.

However, proposed section 54 (4) will limit the total penalty for multiple offences arising from the same act or omission to the maximum penalty available under proposed section 54A (3), being the maximum penalty for the substantive grievous bodily harm offence charged, plus three years' imprisonment.

This requirement aims to prevent disproportionate sentences being imposed for overlapping conduct and reflects the likely sentencing practice of the courts—that is, that sentences for the same course of conduct are usually served concurrently or only partly consecutively. The higher maximum penalty that applies by virtue of section 54A (3) will provide courts with ample sentencing scope to impose appropriate sentences in these cases.

Proposed section 54B of the Crimes Act, as contained in schedule 1 to the bill, provides a new standalone offence to address the circumstances where, tragically, a pregnant woman has died and a foetus has also been lost as a result of criminal offending. This offence will only be able to be charged when an applicable homicide offence for the death of a pregnant woman has also been charged.

The relevant homicide offences are listed at proposed section 54B (6) and include murder, manslaughter and dangerous driving occasioning death. The commission of the relevant homicide offence is an element of proposed section 54B that must be proved beyond reasonable doubt. This is contained in proposed section 54B (1) and means that an accused may only be found guilty of this offence if the tribunal of fact is satisfied that the relevant homicide offence occurred.

Similar to proposed section 54A, it will not be necessary for the prosecution to prove that the defendant knew, or ought reasonably to have known, that the victim was pregnant as an accused takes a victim as they found them.

A person who is guilty of the proposed section 54B offence will be liable to a maximum penalty of three years' imprisonment. They will also be liable to the maximum penalty for the relevant homicide provision that has been charged because, as a matter of practice, the person's guilt must have also been established for that offence in order to find the offender guilty of proposed section 54B.

The total sentence imposed by a court will be subject to existing sentencing principles including totality, proportionality and the need to give effect to the purposes of sentencing, including deterrence and rehabilitation.

This provision will be unique to New South Wales and only invoked when another offence has been established. This provides an effective way to maintain the "born alive" rule, while recognising the serious harm that occurs when a pregnant woman has been killed and a foetus has been lost.

Schedule 3 to the bill is another important amendment that will allow for the independent recognition of a foetus that has been lost within the particulars of a criminal charge. This amendment will apply to the proposed new offences in schedule 1 to the bill, as well as all existing offences in the Crimes Act that may be charged where a foetus, of any gestational age, has been lost as a result of a criminal offence.

Currently in New South Wales, criminal charges are required to be expressed and described in a manner that contains the particulars of each element of an offence when appearing on an indictment. In circumstances where a foetus has been lost, it is unclear whether the name of the unborn child may be included within the details of the criminal charge. Although there is no legal principle preventing this, doing so is not required for the purposes of the prosecution of these criminal offences and concerns have been raised that if this occurred it may lead to arguments that the indictment is prejudicial, defective or duplicitous.

Schedule 3 [1] to the bill will amend the Criminal Procedure Act 1986 to ensure that the name of an unborn child can be included within the particulars of a criminal charge. This will provide clarity and recognition of the extent of harm caused by the offender. However, it will not be mandatory for the name to be included on the indictment.

That is because in some circumstances it may not be appropriate, especially if the family does not want the name included or may not yet have decided on one. Schedule 2 to the bill will make changes to the Crimes (Sentencing Procedure) Act 1986 in relation to victim impact statements. Significantly, it will expressly allow close family members of a "primary victim" who has lost a foetus, of any gestational age, as the result of a third-party criminal act to also give a victim impact statement in relation to the harm they have suffered as a result of that loss. This entitlement will exist whether the primary victim is alive or has died.

Currently, under division 2 of part 3 of the Crimes (Sentencing Procedure) Act 1986, following conviction and prior to sentencing, a court may only receive and consider a victim impact statement from either the "primary victim" of the offence, or, if the primary victim has died as a result of the offence, his or her "close family members", outlining the particulars of the harm caused to them.

If a woman loses her foetus as the result of a third-party criminal act and survives, she is the "primary victim" and the only person who may give a victim impact statement in relation to harm she has suffered. These reforms recognise that the harm caused by such offending can cause widespread harm for the immediate family of a pregnant woman, especially including her spouse or partner who would have been the other parent.

Victim impact statements play an important role in sentencing proceedings. They are a written or spoken statement that provides a voice to victims and their immediate family members and offers a personalised perspective for courts which may assist in their determination of an appropriate sentence.

These statements may include particulars of any personal harm suffered as a direct result of the offence, as well as emotional suffering or distress, harm to relationships with other people and any economic loss. This reform will expand eligibility of those entitled to give a victim impact statement in circumstances where an unborn child has been lost to family members, recognising the impact this loss can have on a family unit. This entitlement is not dependent on securing convictions for either of the proposed new offences in schedule 1 to ensure consistent operation of the entitlement in all sentencing proceedings.

Schedule 4 to the bill introduces an amendment to the Motor Accident Insurance Act 2017 so that statutory benefits are payable for any funeral expenses incurred as a result of the loss of a foetus in a motor accident. Currently, under section 3.4 of the Motor Accident Injuries Act 2017, such benefits are only payable "if the death of a person results from a motor accident".

This reform will make it clear that the entitlement extends to funeral expenses for a foetus of any gestational age that is lost as a result of a motor accident. Under part 3 of the Motor Accident Injuries Act 2017, a mother will remain entitled to obtain benefits for income loss; treatment, which includes grief counselling; and care expenses incurred as a result of her prenatal injuries.

This amendment provides an important acknowledgement of the suffering and grief that families and parents experience in these terrible situations. This amendment will ensure that, if families wish to hold a funeral or memorial for the unborn child who was lost as a result of a motor accident, they will be able to do so without being financially burdened.

I turn now to the proposed commencement and transitional provisions in the bill. The bill provides that the new provisions, if passed, will commence on proclamation.

We will be working with agencies and stakeholders to operationalise the bill as quickly as possible, and we anticipate commencement will occur in the first quarter next year.

Schedule 1 [2] to the bill provides that the new provisions within the Crimes Act will be available to apply to offences committed on or after their commencement. Schedule 2 [3] to the bill provides that family victims will be eligible to provide a victim impact statement in sentencing proceedings that are commenced after the commencement of the provision. Schedule 3 [2] to the bill provides that the name of the unborn child may be included within the charge on an indictment in proceedings that have not yet commenced.

Schedule 4 [2] to the bill provides that funeral costs incurred for the unborn child lost as a result of a motor accident that happens after the commencement of the amendment will be available to be claimed under the Motor Accident Injuries Act 2017.

I am pleased to introduce this bill to make these changes to the laws in New South Wales to ensure that the loss of an unborn child as a result of a third-party criminal act is better recognised, especially in the criminal law. This bill does not displace recognition of the harm that has been caused to the mother as the primary victim of the criminal offending but it ensures that the grave consequences that she, and other immediate family, experience when a foetus is lost as a result of a third party criminal act will be independently recognised by the courts. These changes are necessary.

On the basis of the state of the current law, such recognition is not guaranteed. Throughout the course of consultation with the community and with stakeholders, important gaps have been identified and this bill provides a way to address these issues.

This bill strikes the right balance, by recognising and implementing changes that acknowledge the gravity of the loss of a foetus, without abrogating the born alive rule or conflicting with the rights of the pregnant woman.

I thank all of the stakeholder groups and members of the community within New South Wales who have engaged closely with these reforms.

I would especially like to pay my respect to families and expectant parents who have lost loved ones as a result of another's criminal behaviour. This Government is committed to improving the way that our justice system supports victims and these reforms serve as another very important example of this work.

I commend the bill to the House.

### Second Reading Debate

**The Hon. PENNY SHARPE (18:39):** I lead for the Opposition in debate on the Crimes Legislation Amendment (Loss of Foetus) Bill 2021. I indicate that Labor supports the bill. It introduces two new offences to the Crimes Act 1900 relating to the loss of a fetus due to criminal acts. A new provision, section 54A, "Offence of causing loss of a foetus", will be charged when grievous bodily harm has been caused to a pregnant person causing the loss of a fetus. Many different offences in the Crimes Act relate to grievous bodily harm. The maximum penalties range from two to 25 years. When a person is charged with one of those offences and the alleged act causes the loss of a fetus, new section 54A will allow a new offence to be included in the criminal prosecution. The new provision allows for an additional maximum penalty that is three years higher than is currently available for the same conduct under the existing law.

A second offence contained in section 54B, "Offence of causing loss of a foetus (death of a pregnant woman)", will operate in similar terms to section 54A and can be charged with a homicide offence such as murder or manslaughter, where the pregnant woman is killed and the fetus is lost as a result of the conduct. The offence will also carry an additional maximum penalty of three years imprisonment. The Criminal Procedure Act 1986 will also be amended to allow the name of an unborn child lost to a third-party criminal act to be included on the initiating process or the indictment of the criminal charge. Currently, the law does not allow it. It will not be compulsory and the pregnant person may request that the fetus' name not be included on the indictment.

The Crimes Sentencing Procedure Act 1999 will also be amended to allow for immediate family members of the pregnant person whose fetus was lost to make victim impact statements. Currently the Motor Accidents Injuries Act 2017 allows for certain payments to be made to a person injured in a motor vehicle accident. That Act will be amended to allow for a pregnant person to claim funeral costs for the fetus if it was lost as a result of a motor accident. Most significantly and importantly for someone like me standing on this side of the House in relation to this long debate, the bill provides that new sections 54A and 54B do not apply to:

- (a) the termination of a pregnancy under the *Abortion Law Reform Act 2019*, or

- (b) an act or omission of a pregnant woman that results in the loss of the woman's foetus

The bill will not affect a pregnant person's ability to obtain a lawful abortion under reforms introduced by the Abortion Law Reform Act 2019. In addition, it does not displace the "born alive" rule and therefore does not recognise fetal personhood. We have come a long way in this debate. I have been in the Parliament for the many years in which there have been various iterations of trying to recognise this crime to get appropriate justice in this space. It stopped and started for a number of reasons. I will be honest about those tonight, because I also know that Brodie Donegan is in the President's gallery. I welcome her and I welcome her tenacity on this matter.

I spent a lot of my political life trying to change the laws relating to abortion. There have always been significant concerns, while ever abortion was not decriminalised in New South Wales, that a bill like this would undermine efforts to do so and therefore undermine important other protections for women relating to their reproductive rights. I know that Brodie Donegan recognises that and she has said that on many occasions. I want that to be noted in relation to her tenacity on this bill. People have tried a number of iterations, but the Opposition and I believe this bill has found the right balance in terms of recognising the harm done to a fetus. We recognise that the women carrying the fetus consider it to be a baby.

That is important, because in the times that I have previously argued about this issue over very technical reasons about fetal personhood that are deeply felt and deeply important, I never felt comfortable with the fact that the law could not properly recognise women who had this happen to them. I always thought that was an injustice. I know that there are others who have fought this and who have argued differently. Tonight I acknowledge one of the things that I think is particularly wrong: Some of the victims were misconstrued, or were actually treated very poorly, by some reproductive rights campaigners who saw a tension between wanting to have this crime recognised and supporting women's reproductive rights, and that is just not the case. I think it is extremely important to acknowledge that.

This bill has been a long time coming. I deeply respect the women and their families who have continued tenaciously with this when it has often been quite a difficult discussion. I am sad that it has taken this long but there are really significant reasons for that in terms of working through it, and that needed to be done. I believe the Government and the Attorney General have found the right balance that allows all of us to come together and support this bill, which I think is extremely important. Labor supports the bill.

**Reverend the Hon. FRED NILE (18:45):** On behalf of the Christian Democratic Party, I join in debate on the Crimes Legislation Amendment (Loss of Foetus) Bill 2021 and speak strongly in support of the bill. I am very pleased to see that the bill finally has come before the House and that justice has been done for Zoe Donegan and all other unborn children who tragically lost their lives in motor vehicle accidents. I believe that Ms Brodie Donegan and members of her family and friends are here to witness this historic and important bill come to pass. I thank Ms Donegan for her courage and persistence with this matter in what has become an extremely difficult time for her and the Donegan family.

I believe this bill gets it right. The preventable killing of the unborn due to motor vehicle accidents should be criminally punishable. The family of the unborn should be able to provide victim impact statements. The naming of the unborn is common sense, which is why the bill I introduced some years ago was named Zoe's Law; Zoe, as I have already said, was the name of Ms Donegan's daughter. Of course, any funeral expenses should be borne by the perpetrator. I support the bill without amendment and thank the Government for having the moral courage to bring it forward. My earnest prayer is that all sides of Parliament see the clear need for this bill and vote in favour of it, without amendment. Let it be done.

**The Hon. TAYLOR MARTIN (18:47):** The Crimes Legislation Amendment (Loss of Foetus) Bill 2021 aims to address a flaw in the current laws of the State of New South Wales. At the moment, when an unborn child is tragically killed by a person who causes grievous bodily harm to a pregnant woman, there is no justice for the family or the child whose life is lost. The unborn child is simply written off as an injury suffered by the mother. Discussions of this bill cannot occur without acknowledging the circumstances that have led to its creation and the reasons for the push for changes to fix the blind spot in our current law. Efforts will continue until it is addressed, and I hope today is that day.

On Christmas morning in 2009, Brodie Donegan, who was 32 weeks pregnant, decided to go for a short walk from her home at Ourimbah on the Central Coast along a road that I used to drive along every day. I remember the widespread sense of loss and injustice that was felt across our Central Coast community at the loss of one of our smallest ones. Brodie and her partner, Nick, and her daughter Ashlee were anticipating driving to Newcastle later that day. At 10.30 a.m. Brodie was struck by a driver. The unborn baby, who Brodie and Nick had named Zoe, tragically died. Brodie suffered significant injuries that included a shattered pelvis, thigh, lower spine and foot. The driver who struck them both should not have been on the road that day. The day before, the driver had ingested a cocktail of methadone and five other prescription drugs. She was found guilty of dangerous

driving, causing grievous bodily harm and driving under the influence of prescribed drugs. In sentencing the driver, the judge was explicit in highlighting that blind spot in the law:

The court acknowledges that from a purely legal point of view there was no loss of life, but there was a loss of an unborn child.

Brodie, Nick and Ashlee lived in The Entrance electorate on the Central Coast. Their former local member, Chris Spence, met with the family, who then commenced a lengthy process to update the law to reflect what I believe is a near universal view in our community that there should have been justice for Zoe and the Donegans. I acknowledge Chris Spence for the work he has done for more than a decade to ensure that unborn children like Zoe, whose lives are brought to an end before they even begin, receive justice. Chris was successful in passing an earlier version of the bill—Zoe's Law—in the other place, but unfortunately the same outcome did not eventuate in this place. I am sure that will be different tonight.

I also acknowledge Brodie and Nick Donegan, who are here tonight, as well as Jacqueline Sparks, who tragically lost her daughter, Mia, in similar circumstances seven years ago. When another version of Zoe's Law was debated in the last Parliament, I repeated Brodie's version of the day she lost Zoe. I will not read it again tonight, but it is incredibly moving. I invite members who were not here for that and anyone viewing online to read my contribution to that debate in *Hansard*. It is a moving story. As we know, Brodie and her family have done so much since that tragic day to get to where we are tonight.

A similar tragedy occurred in October 2018 when Katherine Hoang was killed along with a young relative in a car crash in Orchard Hill, near Bankstown. Katherine was heavily pregnant with twins that night. The driver was convicted last year of two counts of manslaughter and one count of aggravated dangerous driving causing grievous bodily harm. The driver was driving up to 112 kilometres per hour in a 60 kilometres per hour zone, had a blood alcohol level of 0.204 and had cannabis in his blood system when he lost control of his vehicle, crossed a median strip and veered onto the wrong side of the road.

I ask you to put yourselves in the shoes of Katherine's husband, Bronko. He had his whole life ahead of him with Katherine, the twins and their wider family. He was newly married and expecting twins, when one person's erratic, aggressive and grossly negligent act destroyed it all. Instead of the life they had planned, Bronko woke up in hospital a week later and was told the most distressing news imaginable: His wife and their two unborn children were dead. The driver was sentenced to 15 years in jail last year. Four people lost their lives that day, but he was only convicted for two of them because of the blind spot in our laws that we will fix tonight.

The bill before us creates two new offences in the Crimes Act. Firstly, there is a new section 54A, "Offence of causing loss of a foetus". That applies to a wide range of criminal acts, such as dangerous driving or grievous bodily harm with intent to the pregnant woman. Combined with existing maximum sentences, the new maximum penalty will be three years higher than currently available for that conduct under existing law. Secondly, there is a new section 54B, "Offence of causing loss of a foetus (death of pregnant woman)". That applies to existing homicide offences, such as murder, manslaughter and dangerous driving occasioning the death of the pregnant mother and baby. Again, that offence will carry a maximum penalty of three years' imprisonment and applies in addition to the maximum penalty for the homicide offence, thereby increasing the maximum jail term by three years.

Other important changes in the bill include an amendment to the Criminal Procedure Act to allow the name of an unborn child to be included within the particulars of a criminal charge if appropriate, an amendment to the Crimes (Sentencing Procedure) Act to allow a family member of the deceased unborn child to give a victim impact statement and an amendment to the Motor Accident Injuries Act to enable family members to claim funeral costs for the loss of an unborn child caused by a car accident. The bill is well and truly long overdue, and I am pleased to be in this place to be part of the process as we finally close this loophole. I commend the bill to the House.

**Ms ABIGAIL BOYD (18:54):** On behalf of The Greens, I oppose the Crimes Legislation Amendment (Loss of Foetus) Bill 2021. The loss of a fetus is an incredibly traumatic experience for anyone. The Greens acknowledge the pain of any person who finds themselves in that situation, and we agree that if the loss of a fetus is brought about by criminal conduct, the person responsible must be appropriately held to account. I also acknowledge that Brodie Donegan and her family are in the Chamber, and I acknowledge her pain.

**The Hon. Greg Donnelly:** You don't care.

**Mr David Shoebridge:** Point of order: The Hon. Greg Donnelly is attacking Ms Abigail Boyd while she is making her contribution. I ask that he be called to order and if he does it again that he be called to order for the first time. His behaviour is totally inappropriate and it is not the first time.

**The ASSISTANT PRESIDENT (The Hon. Rod Roberts):** The Hon. Greg Donnelly will reflect on his behaviour. The House is dealing with a solemn bill. It would be appropriate if the Hon. Greg Donnelly could show some restraint. Ms Abigail Boyd has the call.

**Ms ABIGAIL BOYD:** As my colleague in the other place the member for Newtown, Jenny Leong, has outlined, while The Greens recognise the trauma of the loss of a fetus by criminal conduct, we do not agree that it needs to be dealt with in the form of this bill. I note that the bill is an attempt at compromise between the status quo and the type of law previously introduced by Reverend the Hon. Fred Nile. I put on record The Greens' gratitude to the women and activists who fought for so long against that particular version of the bill. However, the bill before the House is still wholly unnecessary, and risks eroding—intentionally or not—hard-fought women's rights. The legislative change would elevate the impact on the fetus over and above the impact of a criminal act on a pregnant person. It would allow an unacceptable encroachment on women's reproductive rights. In 2005 the Crimes Act was amended to change the definition of "grievous bodily harm". That definition now includes:

- (a) the destruction (other than in the course of a medical procedure ...) of the foetus of a pregnant woman, whether or not the woman suffers any other harm ...

The offence of grievous bodily harm is punishable by imprisonment of up to 10 years, and 25 years if intentionally caused. It is not correct to claim that there are no consequences for the destruction of a fetus; it is considered in the context of injury to the pregnant person involved. Looking at the injury to the fetus as a separate issue is not warranted. While the bill does not overrule the "born alive" rule by creating a standalone offence for causing the loss of a fetus, it effectively establishes implied fetal personhood. I state again that The Greens recognise the extraordinary pain that can be caused by the loss of a fetus, but that only justifies considering that loss as an aggravating factor to an offence against a pregnant person, not a separate offence perpetrated against the fetus.

Reproductive rights have been long and hard fought for, and the bill risks undermining the right to bodily autonomy, which the Parliament enshrined just two years ago. Recognising that the bill will pass, however, I foreshadow that The Greens will move a number of amendments to protect reproductive rights, to resist the creep towards fetal personhood, to recognise the reality of trans and gender-diverse pregnancy, to provide for the NSW Bureau of Crime Statistics and Research to monitor and report on prosecutions under the legislation and to require a review of the legislation in three years' time.

**The Hon. LOU AMATO (18:58):** I am pleased to speak in support of the Crimes Legislation Amendment (Loss of Foetus) Bill 2021. I start by acknowledging Brodie Donegan and Jacqueline Sparks, who were in the Chamber a short time ago. I also acknowledge Reverend the Hon. Fred Nile for his valuable contribution in his private member's bill, the Crimes Amendment (Zoe's Law) Bill 2019. Reverend the Hon Fred Nile's contribution has no doubt been an influencing factor that has led to the Parliament recognising the importance of the mother-child relationship during gestation. For many women pregnancy is one of the greatest joys. An expecting mother does not look upon the contents of her womb as a fetus but as her baby. Fathers also watch the wonder of human life taking shape in their wife or partner. Both expecting mums and dads look forward with great anticipation to the day they will hold their beautiful child in their arms.

Expecting parents spend time in prenatal classes, purchase baby clothes and get their home ready for the arrival of their baby. Expecting mothers avoid alcohol and research healthy diets to ensure that their baby is given the best possible start in life. For many women, having a baby is the greatest joy in their life. If a woman has ever spoken to you openly about miscarriage, you can see the pain and loss in her eyes. Sadly, miscarriages are part of the reproductive cycle and unavoidable. The loss of a child due to natural miscarriage is extremely painful for a woman. However, the loss of a child due to violence must be one of the worst violations against a woman imaginable.

The Crimes Legislation Amendment (Loss of Foetus) Bill 2021 seeks to create new offences under the Crimes Act 1900 for harm to a woman resulting in the loss of her baby. The bill also amends the Crimes (Sentencing Procedure) Act 1999, providing for the preparation and consideration of victim impact statements by an immediate family member or the primary victim in relation to the loss of a child during gestation. The bill will amend the Criminal Procedure Act 1986 to provide that the naming of a baby in utero does not affect an indictment for an offence under the Crimes Act 1900 in relation to the destruction or loss of a baby in utero.

Finally, the bill amends the Motor Accident Injuries Act 2017, providing for statutory benefits for reasonable funeral expenses following the loss of a child in utero resulting from a motor accident. Much of what I had to say has been covered in this debate. I will finish by saying the Crimes Legislation Amendment (Loss of Foetus) Bill 2021 is long overdue—well and truly long overdue. It is a long overdue step forward in acknowledging the suffering a woman experiences due to the loss of a child in utero. I wholeheartedly support the bill.

**The Hon. GREG DONNELLY (19:02):** I make a brief contribution to the debate on the Crimes Legislation Amendment (Loss of Foetus) Bill 2021. I am delighted, I have to say, that this matter is before the House tonight and that we can ultimately bring conclusion to an issue that goes to the very heart of what we are

about in this place—that is, producing laws that strive to provide justice to the citizens of our communities that we represent. I formally acknowledge Brodie and Nick Donegan in the President's gallery tonight, along with Jackie Sparks and other guests and, of course, Chris Spence.

I acknowledge and concur fully with the comments of the Hon. Damien Tudehope about the justice that will be brought by the ultimate resolution of this issue, which goes back a number of years. Other members who have contributed to the debate have all dealt with the chronology. I do not want to repeat that chronology, but I will touch on a few relevant points in the chronology from my own point of view that members might not be aware of. After reading about this tragic accident many years ago, Reverend the Hon. Fred Nile ultimately took steps to introduce a bill to Parliament. I said then and I will say again for the record that I was not completely happy around the circumstances in which that matter came to Parliament, primarily for the reason that the woman profoundly affected by it, Brodie Donegan, had not been spoken to before the bill was put before Parliament.

I became aware of that and took steps to make contact with Brodie Donegan. I ultimately found her mobile phone number and rang her up, and it was the most memorable occasion. I drove up to Erina Fair on the Central Coast to meet with her in a coffee shop. I had never met her before, but I had heard about the terrible circumstances around the death of her unborn child—clearly a child, at 32 weeks of age. I came into the coffee shop not knowing who to look for, and quite a tall woman was sitting there. I said, "You will probably identify me. I have a grey suit, so I am pretty recognisable as a politician. I stand out in a crowd." She said, "Yes, come and sit down."

That short cup of coffee became almost an hour with her, just talking about the circumstances. When I leave Parliament and look back on the things that will forever remain as a memory, I will remember that conversation with that woman clearly for the rest of my life. She was so strong and so overcome by the fact that she had lost her unborn child, and still recovering. It is a shame she is not here. I passed the comment that if Brodie went through an x-ray machine at the airport, she would set it off because she has so much metal in her body. Members have to understand the circumstances. A driver who I understand was affected by drugs—there may have also been alcohol—came over to the other side of the road and pinned her against a tree. She was just taking the dog for a walk, if I remember correctly. She was pinned against the tree for almost an hour, from memory, before the paramedics and ultimately fire and emergency were able to extricate her from those circumstances. She knew that her child—not fetus—was dying, and she obviously went through the torment of knowing that was happening over the ensuing minutes, which became almost an hour. By the time she was extricated from that accident and taken to the hospital, the child had died. She knew that.

If anyone wants to read a statement that will move them, I suggest the statement that she made. I still have it somewhere in my office, but I could not locate it this evening. The Hon. Taylor Martin made reference to it. It is essentially a victim impact statement. Back then she could not produce such a thing, but she wrote down her statement. It is an extraordinary statement of her feelings about the impact of the killing of her unborn child. For Brodie herself it was touch-and-go for a little while as well. She was in hospital for a long time before she got out and had the said cup of coffee with me at Erina Fair.

More than one iteration of Reverend the Hon. Fred Nile's bill did not proceed through the Parliament. Jumping forward very quickly, Chris Spence, then an MP from the Central Coast, picked up the torch and took it forward. During that whole period, which is now a number of years, it has troubled me greatly that Brodie Donegan has been absolutely condemned and shredded by women in this State who should know a whole lot better—women who unfortunately take the view that their control over their reproduction is absolute, which does not even apprehend the substance of what we are dealing with tonight. We are trying to bring some justice for the death of her unborn child—and not just the child but also the enormous agony that she experienced, to say nothing about Nick. He is a wonderful bloke, who I also had the chance to meet. It is extraordinary to set all that aside and pretend it does not mean anything.

Brodie's good reputation was shredded time and again by people trolling and ringing her. I have her mobile phone number on speed dial; we talk from time to time. She was called up and told that she was being a stooge of Fred Nile and then a stooge of Chris Spence and that she was being manipulated by men. Those are the most vulgar imputations, and they took place over months and months. All Brodie wanted to do was see whether she could play a part in bringing about some legislative change to provide for the recognition of the hurt and pain caused by the loss of her child.

Talk about a parallel universe. The loss of a child or the loss of a fetus from a miscarriage is a terrible tragedy. That is completely acceptable to talk about. There has been a Senate inquiry in the Commonwealth Parliament. There are now provisions for leave in industrial instruments, and that whole discussion continues. We could talk about loss through miscarriage endlessly and we are all on the side of angels. But in this case, Brodie Donegan was seeking some justice for circumstances where she was an innocent person who was personally and physically very badly damaged—and I suspect still is to this day—and she lost a child. To talk about that though

is completely unacceptable; it is off the table. You are challenging women's reproductive rights; it is just not acceptable. That is not reasonable, fair, true or just.

I am absolutely pleased that the work was done over years and years to finally bring us to this bill. I was somewhat taken aback listening to the speeches in the Legislative Assembly. There is a desire now to stand next to goodness and receive the reflected light. That is called the halo effect. Many people did that in the Legislative Assembly. A number of those people were the very ones who were encouraging people to get on the phone and troll and condemn Brodie and charge her with basically being a stooge of Fred Nile and Chris Spence et cetera. That is what they did, and they did it because they talked about it. They essentially idly boasted about the fact that "Zoe's Law" would never, ever over their dead bodies see the light of day. I had people say that to me.

I had colleagues in this Parliament make the bold claim that this bill would never see the light of day and that they would be proud to be associated with making sure that was the case. I never understood that. I expect that in most instances those people did not even bother to speak to Brodie Donegan and find out about the utter tragedy that she, Nick and the whole family had suffered and about the other children who had lost a sibling. That is just extraordinary. The Parliament has done well to bring this bill to fruition. It has been a long and difficult journey. It has meandered; it has gone off the tracks and got back on the tracks. It has been pushed and shoved, but we finally have a Government bill. Once again, I thank Brodie in particular but also Nick, who supported her all the way through. He has been a pillar of strength to her, saying, "We will get there eventually. We will get there." He has been working away, and I am grateful for that.

The Parliament should be pleased and satisfied that the bill, which will soon become an Act, is providing the type of recognition that women and all decent human beings understand is totally reasonable and appropriate. It is well overdue. I commend the bill to the House.

**The Hon. SCOTT FARLOW (19:14):** Today is a very significant day. As the Hon. Greg Donnelly just said in debate on the Crimes Legislation Amendment (Loss of Foetus) Bill 2021, this issue has had a long and chequered history in both this place and the other place. It is a day that has been a long time coming—far too long, in my opinion. I join with the Leader of the House in expressing my sincere apologies to all of the families that it has taken us this long. We have been debating this bill in one form or another for many years, including the Spence bill that passed the Legislative Assembly. I commend Chris Spence, the former member for The Entrance, for his fine work in continuing to see this through both outside the Parliament and during his time inside the Parliament. It came through the Legislative Assembly at that time, but it was not put in the Legislative Council because the numbers were not in this place.

I commend Reverend the Hon. Fred Nile for his reiterations of similar legislation, which my heart has always been incredibly supportive of. I spoke somewhat from the crossbench, in a sense, in support of his legislation without endorsing it, bound by the party position we had at that stage in the last Parliament. The Hon. Trevor Khan also spoke in that debate and there was goodwill from members. That was nearly realised before the last election. At that stage, the Hon. Trevor Khan was recommending a committee process to work through this, which, sadly, was never realised. Prior to the last election in 2019, it was promised that the Government would act on this in the first year, but that was not to be the case. We are here now, and I am glad that we are.

I pay credit to those in the Chamber who have seen this come to fruition, including the Leader of the House for bringing this bill today and for his advocacy on this bill within the party; Reverend the Hon. Fred Nile, for never letting this issue rest; and the Hon. Greg Donnelly. One of my first conversations with the Hon. Greg Donnelly in this place was about Zoe's Law. He has been a great friend of the family, but also a stalwart in doing his part in seeing this come to fruition. I also acknowledge Brodie Donegan and her partner, Nick Ball, as well as Jacqueline Sparks, who have all joined us in Parliament today. I cannot begin to fathom what they have gone through and what they have carried for all these years. As the Leader of the House mentioned, every time this debate re-emerges it raises additional trauma. Hopefully, after all those years of trauma, they will have realised something good for others.

In the time that the Parliament has wasted, we have seen others who have been impacted. We have seen it with Bronko Hoang and the tragic death of his wife, Katherine Hoang, and his two unborn twins, Roman and Archer. If this law had been in place, we may have seen some kind of justice for them. It is sad that we have sat on our hands for so long and not seen that to be the case. Think of the loss that Bronko, Brodie, Jacqueline and Nick have gone through—and I take this opportunity to commend Nick. I learnt before that the inclusion of the victim impact statement for partners and others impacted was one of his ideas and initiatives. I commend him for that because it is so important. The loss is of course most severely felt by the mother, but it is not only felt by the mother. The father also feels it. I am the father of two children, and I could not fathom what my response would have been if that had happened to them. I thank the Donegans for their courage and Jacqueline Sparks for her



dedication and strength, and I thank them all for being here today and continuing the fight on this issue to see it through for so many others.

As it stands today, the loss of an unborn baby through a criminal act is considered an act of grievous bodily harm to a pregnant woman, but in law no offence is committed against the unborn baby. The unborn baby is considered an injury against the woman and is not recognised. That is wrong. Ever since I came to this place I have supported changes to fix this issue and have spoken about how important it is on multiple occasions. Changes that have been proposed over the years have been criticised and debated, and ultimately today we have landed on what I hope will be the day when we finally get it done. Of course, the definition of "gestation" and "fetal personhood", as we have heard today, is still a topic of debate. I think it is sad that is the case and that the true impact on people cannot be separated from that debate, which Reverend the Hon. Fred Nile always tried to make clear in his previous bills. I hope—as we have heard in the debate, and I believe this is where it is going—that the bill in its current form is agreeable to all members and strikes the right balance. I commend the Attorney General for getting the bill to this place and for his consultation with all parties to achieve that.

The bill will amend several Acts: the Crimes Act 1900, creating an offence of causing the loss of a fetus or a pregnant woman, which can add up to three years onto a sentence where a woman has been killed or has been inflicted with grievous bodily harm and loses her unborn baby; the Criminal Procedure Act 1986, allowing the name of an unborn baby lost to a criminal act to be included on an indictment in the particulars of a criminal charge—the formal document that sets out the detail of the alleged offence that is read out in court—the Crimes (Sentencing Procedure) Act 1999, allowing for immediate family members of a pregnant woman whose unborn baby was lost to make victim impact statements, which can be read out in court and taken into account when sentencing offenders; and the Motor Accident Injuries Act 2017, allowing families to claim funeral expenses where an unborn baby is lost due to a motor accident. In addition, families who lose an unborn child where one of those new offences is charged may be eligible for a one-off \$3,000 payment to assist with accessing support services, including counselling. To be clear: This is not a bill that changes or affects abortion rights in New South Wales. That debate has been had. As the Attorney General recently said:

This bill does not in any way affect a woman's ability to obtain a lawful abortion under existing NSW legislation.

It is a shame for anyone to try to conflate that issue with this bill. As I reflected on in 2017, these reforms address the loss of a child, the loss of the right to give birth to a child, and the great and unfathomable loss of a loved child—a member of a family. As the Hon. Greg Donnelly said, it is not just for the parents, it is for their siblings as well. While these reforms have come about as a result of driving offences, importantly they cover a range of other criminal actions—indeed, any offence that is considered to be a third-party criminal act, including a domestic violence offence.

I thank all members who have participated in good faith in support of the Government to bring this bill forward today. I also put on the record, as I do not think anyone else has in the debate, my thanks to Ray Hadley for advocating on this front. He has been a tireless advocate for seeing justice done in this area. He has continued to put it on the agenda when, at times, many members would have liked to have seen it fall off—maybe even members of the Government at times, when it was difficult and it did not necessarily fit with the narrative that they wanted to pursue. At times in this place we have the opportunity to achieve genuine change that impacts people's lives. The time has come for change on this issue. I commend the bill to the House.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (19:23):** On behalf of the Hon. Natalie Ward: In reply: Some wonderful contributions have been made to the debate. I thank the members who made a contribution, including: the Hon. Penny Sharpe, Ms Abigail Boyd, Reverend the Hon. Fred Nile, the Hon. Lou Amato, the Hon. Taylor Martin and the Hon. Scott Farlow. In particular, I thank the Hon. Greg Donnelly for his contribution. For many years he, Chris Spence and Reverend the Hon. Fred Nile have advocated for this reform. It is appropriate that their contribution to the outcome is acknowledged in this place. Most importantly, I acknowledge the untiring advocacy, which I mentioned earlier, of those who have suffered so badly as a result of injuries and loss of their children and who have been prepared unstintingly to participate and pursue the justice that is so appropriate. We nearly got it done a few times. Everyone recognised that an injustice needed addressing. While I do not agree with anything that Ms Abigail Boyd said, I know why she said it, and I know why it created an impediment. I disagree with her. Notwithstanding that, it has been an impediment to what I think has been an overwhelming demand for a just outcome in relation to women and families who have suffered the loss of an unborn child.

Scott Farlow became emotional when he said he could not conceive how he would react in similar circumstances. I share that view. The Hon. Lou Amato spoke about preparing to have a family—preparing the baby's room and all those things that are necessary for the birth of the child—and having it taken away by a criminal act. It is hard for a person to get their head around the impact of that unless they have been through it. In many respects, it is highly appropriate to have as part of the bill the victim impact statements, which have been

so well advocated for. It is so important to be able to give a name to a child who has been lost. It is so important to have bereavement entitlements as part of the process. We have reached an historic place tonight. It is a noble moment for this Parliament. Some would say we do noble things all the time in this place, but in my view this stands out as a noble acknowledgement of the pursuit of justice and the achievement of just outcomes. I commend the bill to the House.

**The ASSISTANT PRESIDENT (The Hon. Rod Roberts):** The question is that this bill be now read a second time.

**Motion agreed to.**

### **In Committee**

**The CHAIR (The Hon. Trevor Khan):** There being no objection, the Committee will deal with the bill as a whole. I have one set of amendments, being The Greens amendments on sheet c2021-222B.

**Ms ABIGAIL BOYD (19:29):** By leave: I move The Greens amendments Nos 1 to 8, 10 to 19 and 24 to 26 on sheet c2021-222B in globo:

**No. 1 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(1)(b), line 10. Omit "woman". Insert instead "person".

**No. 2 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(2), line 12. Omit "woman" wherever occurring. Insert instead "person".

**No. 3 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(2), line 15. Omit "woman's". Insert instead "person's".

**No. 4 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(4), line 21. Omit "woman". Insert instead "person".

**No. 5 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(4), line 23. Omit "woman". Insert instead "person".

**No. 6 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(5), line 29. Omit "woman". Insert instead "person".

**No. 7 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(6)(b), line 34. Omit "woman". Insert instead "person".

**No. 8 Pregnant person**

Page 3, Schedule 1[1], proposed section 54A(6)(b), line 35. Omit "woman's". Insert instead "person's".

**No. 10 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B, line 1. Omit "woman". Insert instead "person".

**No. 11 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B, line 3. Omit "woman". Insert instead "person".

**No. 12 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(1)(b), line 6. Omit "woman". Insert instead "person".

**No. 13 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(1)(c), line 7. Omit "woman's". Insert instead "person's".

**No. 14 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(2), line 10. Omit "woman". Insert instead "person".

**No. 15 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(3), line 14. Omit "woman". Insert instead "person".

**No. 16 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(4), line 16. Omit "woman". Insert instead "person".

**No. 17 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(4), line 17. Omit "woman". Insert instead "person".

**No. 18 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(5)(b), line 21. Omit "woman". Insert instead "person".

**No. 19 Pregnant person**

Page 4, Schedule 1[1], proposed section 54B(5)(b), line 22. Omit "woman's". Insert instead "person".

**No. 24 Pregnant person**

Page 8, Schedule 4[1], proposed section 3.4(4), line 6. Omit "woman". Insert instead "person".

**No. 25 Pregnant person**

Page 8, Schedule 4[1], proposed section 3.4(5), line 9. Omit "woman" wherever occurring. Insert instead "person".

**No. 26 Pregnant person**

Page 8, Schedule 4[1], proposed section 3.4(5), line 9. Omit "woman's". Insert instead "person's".

These amendments are really straightforward. Members had this discussion during the very long debate on the Abortion Law Reform Act 2019. There are people other than women who have the potential to have a fetus. The amendment seeks to change "woman" to "person" throughout the bill in recognition of trans and other people who have the capacity to become pregnant. I thought that we had reached agreement on this as a Parliament and it is very disappointing to see this creeping back in again. For that reason, we move these amendments.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (19:30):** The Government will not be supporting these amendments. I am not going to get into a debate at this time of night in relation to it. My position is probably well known to Ms Abigail Boyd. I do not think that it is appropriate to inject identity politics in relation to this bill.

**The Hon. PENNY SHARPE (19:31):** On behalf of the Opposition I indicate that we will not be supporting any amendments in relation to this bill. As members have previously discussed, this has been a long time coming and we believe that the bill has been carefully thought out. We believe that the Government has got the balance right on this occasion. I make the point, though, that inclusive language in the way that we deal with these matters is something that needs to be considered. However, these amendments are not going to get the support of the Labor Opposition tonight.

**Mr DAVID SHOEBRIDGE (19:31):** The Greens amendments are about politics. They are about good politics, and about ensuring that we have inclusive language in our criminal laws. I commend my colleague Ms Abigail Boyd for moving them.

**The Hon. ROD ROBERTS (19:32):** I will not say anything, and show restraint, other than to be on the record as saying that One Nation will not be supporting these amendments.

**The CHAIR (The Hon. Trevor Khan):** Ms Abigail Boyd has moved The Greens amendments Nos 1 to 8, 10 to 19 and 24 to 26 appearing on sheet c2021-222B. The question is that the amendments be agreed to.

**Amendments negatived.**

**Ms ABIGAIL BOYD (19:32):** By leave: I move The Greens amendments Nos 9 and 20 on sheet c2021-222B in globo:

**No. 9 Pregnant person not liable for act or omission that results in loss of foetus**

Page 3, Schedule 1[1], proposed section 54A(6)(b), line 35. Insert ", even if the act or omission is an unlawful act or omission" after "foetus".

**No. 20 Pregnant person not liable for act or omission that results in loss of foetus**

Page 4, Schedule 1[1], proposed section 54B(5)(b), line 22. Insert ", even if the act or omission is an unlawful act or omission" after "foetus".

These amendments are an attempt to clarify the drafting. We understand from the second reading speech that there is an intention that the offence under this bill cannot apply to the pregnant person themselves. However, that is not quite what the bill itself states. With these amendments, we seek to ensure that even if the act or omission of the pregnant person is an unlawful act or omission—for example, they have stolen a car or something else has happened—that they will not be found liable under this provision.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (19:33):** The Government will not be supporting either of these amendments.

**The Hon. PENNY SHARPE (19:33):** As I stated, the Opposition is not supporting any amendments to the bill. I do understand what Ms Abigail Boyd is trying to talk about in relation to this. However, we believe that the drafting is adequate as is. We also believe, for clarity in relation to the matter, it has been dealt with in the second reading speech in the lower House.

**The Hon. ROD ROBERTS (19:34):** One Nation will not be supporting the amendments. This bill, as we have discussed, has been a long time coming. The bill has been drafted very carefully and, therefore, One Nation will not be supporting any amendments to it.

**The CHAIR (The Hon. Trevor Khan):** Ms Abigail Boyd has moved The Greens amendments Nos 9 and 20 on sheet c2021-222B. The question is that the amendments be agreed to.

**Amendments negatived.**

**Ms ABIGAIL BOYD (19:34):** I move The Greens amendment No. 21 on sheet c2021-222B:

No. 21 **Pregnant person not liable for act or omission that results in loss of foetus**

Page 4, Schedule 1. Insert after line 38—

**54C Review by Attorney General**

- (1) The Attorney General must, within 3 years after the commencement of this section—
  - (a) conduct a review of—
    - (i) the operation of sections 54A and 54B, and
    - (ii) the operation of the amendments of other Acts made by the *Crimes Legislation Amendment (Loss of Foetus) Act 2021*, and
  - (b) provide the report to the Presiding Officer of each House of Parliament.
- (2) A copy of a report provided to the Presiding Officer of a House of Parliament under subsection (1) must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.

**54D Reviews by BOCSAR**

- (1) BOCSAR must—
  - (a) monitor prosecutions for an offence against section 54A or 54B, including who is prosecuted and the circumstances of the offence and prosecution, and
  - (b) prepare, and give to the Attorney General, a report about the matters mentioned in paragraph (a)—
    - (i) within 12 months after the commencement after this section, and
    - (ii) for the 3 subsequent years on at least an annual basis.
- (2) The Attorney General must provide a report given to the Attorney General under subsection (1) to the Presiding Officer of each House of Parliament.
- (3) A copy of a report provided to the Presiding Officer of a House of Parliament under subsection (2) must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.
- (4) In this section—

**BOCSAR** means the Bureau of Crime Statistics and Research of the Department of Communities and Justice.

This is a standard review provision. There are actually two provisions that have been put in here. One is of the more standard version, being a review of the provisions within three years by the Attorney General in the ordinary course, just to ensure that the provisions are operating in accordance with the objectives. The second review is to require Bureau of Crime Statistics and Research data to be used in the assessment of the operation of the provisions to ensure that they are operating without unintended consequences.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (19:35):** The Government will not be supporting the amendment. I make the point that if this sort of review was to be undertaken, the appropriate body to do so would be the NSW Sentencing Council. By and large, the additional sentence that arises as a result of these offences is an increased penalty. I say that, on a proper reference, the appropriate body to do a review sometime in the future, if it was to be deemed necessary by whatever government was in power at that time, would be the Sentencing Council. So the Government will not be supporting the amendment.

**The CHAIR (The Hon. Trevor Khan):** Ms Abigail Boyd has moved The Greens amendments No. 21 on sheet c2021-222B. The question is that the amendment be agreed to.

**Amendment negatived.**

**Ms ABIGAIL BOYD (19:36):** I indicate that I will not be moving The Greens amendment No. 23 on sheet c2021-222B, so this will be the final amendment on the list. I move The Greens amendment No. 22 on sheet c2021-222B:

No. 22      **Victim impact statements**

Page 6, Schedule 1[2]. Insert after line 29—

- (3)      If a pregnant person who is a primary victim but is not the person against whom the offence was committed loses the person's foetus as a result of the offence, a family victim may prepare a victim impact statement about the impact of the loss of the foetus on the family victim or other members of the immediate family only with the permission of the person who was pregnant.

There was a concern raised with The Greens by domestic violence advocates and stakeholders around a situation where a pregnant person had lost the fetus and then, during the opportunity to give a victim impact statement, members of the family of the fetus were able to speak against the wishes of the person who had been pregnant. We see this, for example, in situations of domestic violence, where a person may have lost a fetus through a domestic violence incident, for instance—that is probably not going to be caught here, but for whatever reason has become estranged from their partner. We believe the person who had been pregnant should have the right to exclude people from giving victim impact statements in circumstances where that would cause trauma to the person who had been pregnant.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance and Small Business) (19:38):** The Government will not be supporting this amendment. The appropriateness or otherwise of a person giving a victim impact statement would be a decision made by the prosecutor in the case. I say to the member that the prosecutor would make an assessment of all the facts and circumstances relating to the relationship and the appropriateness of the person wanting to make a victim impact statement in the circumstances. To the extent this has been raised potentially in respect of a domestic violence situation, it would be unlikely that a prosecutor would allow a victim impact statement to be given in those circumstances.

**The Hon. PENNY SHARPE (19:39):** The Opposition agrees with the Government in relation to this amendment.

**The CHAIR (The Hon. Trevor Khan):** Ms Abigail Boyd has moved The Greens amendment No. 22 on sheet c2021-222B. The question is that the amendment be agreed to.

**Amendment negatived.**

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

**Motion agreed to.**

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

That the Chair do now leave the chair and report the bill to the House without amendment.

**Motion agreed to.**

### **Adoption of Report**

**The Hon. DAMIEN TUDEHOPE:** On behalf of the Hon. Natalie Ward: I move:

That the report be adopted.

**Motion agreed to.**

### **Third Reading**

**The Hon. DAMIEN TUDEHOPE:** On behalf of the Hon. Natalie Ward: I move:

That this bill be now read a third time.

**Motion agreed to.**

*Documents***MISCELLANEOUS GRANTS****GLENDELL CONTINUED OPERATIONS PROJECT****INVESTMENT NSW****GOSPERS MOUNTAIN FIRE AND BUSHFIRE HAZARD REDUCTION PROTOCOLS****Variation of Order**

**The PRESIDENT:** According to sessional order, I inform the House that the Clerk has received correspondence, dated 17 November 2021, from the Deputy Secretary, General Counsel, of the Department of Premier and Cabinet requesting that the scope of the following orders for papers be varied:

- (1) Miscellaneous grants or related matters, requesting that the due date be 15 December 2021.
- (2) Glendell Continuation Project, requesting that the due date be 15 December 2021.
- (3) Investment NSW, requesting that the due date be 15 December 2021.
- (4) 2019 Gaspers Mountain fire and bushfire hazard reduction, requesting that the due date be 15 December 2021.

I table the correspondence. I further inform the House that the relevant members who moved the motions for the following orders for papers have agreed to the requests from the Department of Premier and Cabinet as follows:

- (1) Investment NSW, that the due date be 15 December 2021.
- (2) 2019 Gaspers Mountain fire and bushfire hazard reduction, that the due date be 15 December 2021.

I further inform the House that the relevant members who moved the motions for the following orders for papers and the Department of Premier and Cabinet have agreed to the following variation:

- (1) Miscellaneous grants or related matters, that the due date be 10.00 am on 10 December 2021.
- (2) Glendell Continuation Project, that the due date be 10.00 am on 10 December 2021.

The question is that the varied terms of the orders for papers be agreed to.

**Motion agreed to.**

**GREAT WESTERN HIGHWAY UPGRADE****Return to Order**

**The CLERK:** According to the resolution of the House of Wednesday 20 October 2021, I table documents relating to an order for papers regarding the Great Western Highway Upgrade between Katoomba and Lithgow, 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 received this day 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.

**NEW INTERCITY FLEET****Report of Independent Legal Arbiter**

**The PRESIDENT:** I report that the Clerk has received a report from the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, on the validity of a claim of privilege on documents lodged with the Clerk on 14 October 2021, 9 November 2021 and 18 November 2021, relating to an order for papers regarding New Intercity Fleet, and has provided his report to the Clerk. The report is available for inspection by members of the Legislative Council only.

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

**The CLERK:** According to the resolution of the House of Wednesday 11 November 2021, I table additional documents which were subject of a disputed claim of privilege and upon which privilege is no longer claimed regarding New Intercity Fleet, received this day from the Principal Legal Officer, Legal Branch of the Department of Premier and Cabinet, together with an indexed list of documents.

*Adjournment Debate***ADJOURNMENT**

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

That this House do now adjourn.

**AUSTRALIA-CHINA RELATIONS**

**The Hon. LOU AMATO (19:43):** Former Prime Minister Paul Keating has been in the news of late. Every now and then Keating surfaces to give us his two bob's worth on world issues—not that it matters, as no-one takes him seriously anymore. However, when a former Prime Minister makes comments contrary to Australia's national interest it is prudent we listen, as he is ideologically aligned with a major political party. It is important that we investigate whether Keating's thoughts are alive and well in the Federal Labor Party. Why does that matter? It matters because Keating decided to jump in on the China threat debate. In a recent interview, Keating stated:

Taiwan is not a vital Australian interest. Let me repeat that, Taiwan is not a vital Australian interest ...

What the Chinese want, I think, is respect for what they have created ...

China does not represent a contiguous threat to Australia ...

China is not about turning over the existing world order. It only wants to reform it, and it wants to reform it only because of its scale.

According to Keating—apparently now a spokesperson for China—Australia has no interest in Taiwan, so it should keep quiet on the issue. The Australia-USA alliance should be thrown away because it upsets China. China does not pose a threat to Australia as long as we respect what it has created, which is a huge military presently preparing for war. Lastly, China wants to reform the world because of its scale, which is another way of saying that because China has achieved military might on a large scale, it now has the right to reform the world according to the Chinese Communist Party's ideology.

Another former Prime Minister, Kevin Rudd, who just happens to belong to the same party as Keating, decided in 2007 to exit the Quadrilateral Security Dialogue. The Quadrilateral Security Dialogue is a diplomatic and military arrangement between the United States, India, Japan and Australia as a response to increased Chinese economic and military power. Protests from the Chinese made the former Prime Minister run away with his tail between his legs. Neville Chamberlain, if he were alive at the time, might have warned Rudd about the dangers of appeasement. On 30 September 1938, after agreeing to all of Hitler's territorial demands, Neville Chamberlain stood in front of 10 Downing Street and declared:

My good friends, for the second time in our history, a British Prime Minister has returned from Germany bringing peace with honour. I believe it is peace for our time ... Go home and get a nice quiet sleep.

Less than a year later, on 1 September 1939, Nazi Germany invaded Poland, embroiling the world in a terrible war. Neville Chamberlain died a disillusioned and broken man. Fast-forward to the present, and shadow Minister for Foreign Affairs Penny Wong—another Labor party member—has accused Scott Morrison of endangering Australia's relationship with China for political gain. All Scott Morrison has done is re-engage with the Quadrilateral Security Dialogue and enter into the AUKUS agreement with the United States and the United Kingdom to strengthen Australia's security and protect its sovereignty. Sorry, Penny, putting Australia first is not an act of political gain but an expectation that the people of this country have of their Prime Minister.

**The Hon. Penny Sharpe:** If you think Penny Wong doesn't put Australia first, you don't know her very well.

**The Hon. LOU AMATO:** Point of order—

**The Hon. Penny Sharpe:** You can't call a point of order. One of your people needs to do it.

**The Hon. LOU AMATO:** Okay. It was fun though. Granted, the Federal Labor Opposition leader, Anthony Albanese, distanced himself from Keating's rather ludicrous remarks—though he still did not have the nerve to criticise Keating or pull his shadow foreign Minister into line. This raises the question of whether the Labor Party is united in Australia's best interests. If Anthony Albanese cannot at least have his present and former party colleagues sticking to a uniform narrative, which should be "Australia first", then the Labor Party or at least his leadership should come under intense scrutiny. We need to get our priorities right.

China has embarked upon trade sanctions against Australia in an attempt to seriously hurt our economy. Xi Jinping makes no excuse for his goal of global domination and is rapidly preparing the Chinese military for war. All the while, Australia and the US receive threats of aggression from China. I have no illusions that appeasement can only end in the enslavement of our people. Appeasement may buy us a season or two, but our job is about the long-term future of Australian sovereignty and the security of our people. We pray that peace will

prevail and, as is our nature, we will never initiate an act of aggression against any nation. But we must stand shoulder to shoulder with our greatest ally, the United States of America, and be prepared if the unthinkable occurs.

### CAPITALISM AND CLIMATE CHANGE

**Ms ABIGAIL BOYD (19:48):** Earlier this week the people of New South Wales were regaled with a masterclass in circular economics. Clearly the New South Wales Treasurer, the Hon. Matt Kean, is not quite ready to relinquish his mantle as Minister for Energy and Environment, keen as he was to demonstrate his recycling credentials. New capitalism is thus born, supposedly emerging from the ashes of nasty old capitalism and bravely standing in contrast to its precocious cousin, can-do capitalism. Unfortunately for us all, this is less "reduce, re-use, recycle" and more "rebadge and re-use". New capitalism, can-do capitalism, compassionate capitalism, green capitalism—what's in a name? Capitalism by any other name would smell as foul.

The essential and fundamental feature of capitalism is the exploitative pursuit of profit. Regardless of the adjective placed in front of it, at its core it is still the same lukewarm, overheated system of wealth and resource consolidation through a fundamentally unequal and exploitative system of social relation. These used car salesmen are trying to stick a Tesla badge on an old clunker, roll back the odometer and tell us it is a brand new car; never mind the fact that it is the same busted up, outdated, polluting and prone-to-breaking-down engine. Capitalism is a system in decay. It is a system incapable of responding to the fundamental and most pressing crisis facing present and future life on this planet. Climate change is not an unfortunate by-product of capitalism; pollution and exploitative resource extraction is rewarded with super profits by design.

A fundamentally dissatisfied economic system, capitalism constantly demands and pursues infinite growth and expansion, which is unsustainable and undesirable in a finite world. What is required is a complete paradigm shift away from the relentless pursuit of profit and growth and towards an unrelenting pursuit of social and ecological good if we are going to have any chance at preventing the very worst effects of anthropogenic climate change. The scale of the challenge facing us is immense. Greenwashed capitalism will not cut it. New capitalism would have us applaud BHP and Rio Tinto for using solar panels to power their coalmining operations. At the recent UN climate change conference, COP26, supposedly the biggest and most powerful conference of nations and parties coming together to confront the climate crisis, more than 500 fossil fuel lobbyists were in attendance—more members than any single country that attended the summit.

Fossil fuel use is the single biggest driver of anthropogenic climate change, and yet even at COP26 those lobbyists were welcomed and valued. Fronting the Australian stall was an ad for a fossil fuel company. The proponents of capitalism view it as morally neutral—that is a cop-out. There is nothing neutral about preferencing profit over people and planet. By the Treasurer's own admission, capital requires incentivising and subsidising before it will do what is necessary to preserve life on the planet—as if having a future that is not scorched by drought, buffeted by storms, drowned by sea level rise and starved by famine was not incentive enough! In the past few weeks the insidious forces of rampant capitalism have shown themselves in this Chamber. Government members stood up and argued against improving the conditions for female workers in trade industries, undoubtedly because it would cost a bit more to make sure that women had a clean, safe and accessible toilet.

Both major parties voted against a motion to make it slightly easier for people with a disability to visit or live in a home because it might cost less than 1 per cent more when constructing that building. The Government will not even ensure a proper and timely clean-up of toxic waste from coal-fired power stations that leaks into our groundwater and lakes. My clean air bill went through an inquiry and that report was released this week. The overwhelming majority of all submissions itemised in extreme scientific detail the chronic and often-fatal health effects of the toxic emissions from coal-fired power stations. There is a simple fix to protect the life and health of this State's residents, and it could be done immediately, but it would cut into the profit margins of the coal-fired power station operators. We will have to wait and see whether the Government will take the side of profiteering capitalists or the side of the people.

The climate emergency punishes the many and is driven by a political and economic system built by and privileging the few. A better, kinder, fairer world is possible, but we will not get there through the relentless pursuit of profit whether or not we rebrand it. Capitalism is still capitalism regardless of the words we put before it. We can do much better than that outdated and destructive economic system. A progressive economic system is possible and we are more than capable of embracing it. Now more than ever we must look past capitalism and build a fairer, sustainable and compassionate world.



**WESTERN SYDNEY INTERNATIONAL NANCY-BIRD WALTON AIRPORT**

**The Hon. SHAYNE MALLARD (19:53):** My contribution will be an uplifting tribute to capitalism. I am pleased to inform the House that construction of terminal one at Western Sydney International Nancy-Bird Walton Airport began today.

**The Hon. Taylor Martin:** Who was there?

**The Hon. SHAYNE MALLARD:** This morning I joined Prime Minister Scott Morrison, Premier Dominic Perrottet and Federal Minister for Urban Infrastructure Paul Fletcher at Badgerys Creek for the start of the construction of the \$1.5 billion terminal. The contract has been awarded to Multiplex, which is a great capitalist company. With a quarter of the airport's construction complete, the terminal build represents the next step forward in Sydney's first 24/7 international airport. The combined international and domestic terminal is expected to welcome over 10 million people a year from 2026, when the first planes will land. It will serve as the gateway between the surrounding aerotropolis and the rest of the world.

Construction of the airport is expected to support 11,000 jobs, with targets set to ensure that western Sydney residents can access those jobs. When I was there today, I saw several thousand construction workers working. A massive amount of work was going on for as far as the eye could see. Half of those workers are from western Sydney. The procurement contract at the airport is waiting for western Sydney suppliers and contractors. It is a good news story already for western Sydney. So far the 30 per cent target has been exceeded, with 50 per cent of the airport workforce living in western Sydney. The terminal project will support over 1,400 direct jobs. When the Nancy-Bird Walton airport opens in 2026, in conjunction with the operation of the Western Sydney Airport metro, the Bradfield City Centre—the city centre project right next to the airport—will open its first building in time for the airport opening and will support tens of thousands more jobs in area. As the Parliamentary Secretary for Infrastructure and the Aerotropolis that project is very dear to my heart.

It is believed that the aerotropolis alone will generate 60,000 jobs by 2036. Chief executive officer of Western Sydney Airport Simon Hickey was there today, and he declared that with customers at the heart of the design the Nancy-Bird Walton airport terminal will be Australia's best. One feature that will put the terminal at the forefront of design is the innovative baggage system being employed to cut down passenger wait times. The system will give passengers the option to track their baggage with a dedicated app. We would all like to know where our bags wind up. We will probably find them in London or somewhere.

**The Hon. Penny Sharpe:** How is your parking app going? Another Victor special.

**The Hon. SHAYNE MALLARD:** From boarding to disembarking, that is just one example of the ways in which Nancy-Bird Walton airport is employing technology to ensure a smooth journey. I heard a member mention the parking. One of the things about this new airport is that it is going to create competitive tension in the airport market in Australia, which is capitalism at its best. Other airports are going to have to reconsider the money they charge for parking and the duty-free fees they charge because the competition out of the Western Sydney Airport will attract aircraft to it rather than other airports. Melbourne and Brisbane are already very nervous about that, let alone Sydney Airport.

Today at the airport I witnessed water harvesting in the use of Sydney Water recycled water for construction, and solar panels are being constructed. They are also investigating hydrogen energy production as part of our hydrogen plan. That is great news. The Nancy Bird-Walton airport and associated cargo precinct will utilise the best practice design and technology to facilitate the handling of 220,000 tonnes of cargo per year. Fast and efficient handling of cargo will be an essential part of unlocking investment and creating jobs in the aerotropolis, connecting western Sydney producers and manufacturers to markets around the world within hours. Sitting at the heart of one of Australia's most diverse regions, the airport will bring millions of family members from around the world to visit Australia every year. It play an important role in boosting the tourism and visitor economy in the aerotropolis and western Sydney.

Before COVID, the Western Parkland City area hosted around 12 million visitors each year, and tourism was the third largest employment industry in the Blue Mountains, providing about 12 per cent of jobs there. The tourism industry of western Sydney will be turbocharged with an additional 10 million visitors arriving at the Nancy Bird-Walton international airport every year. The airport unlocks a range of potential domestic and international flight paths, which will further expand the opportunity for visitors to experience everything New South Wales has to offer. The infrastructure and the investment the airport will attract to the aerotropolis play a major part in delivering a 30-minute city. Residents of the Western Parkland City will be able to access good jobs, amenities, green spaces and social infrastructure all within 30 minutes of their homes.

## TRANSGENDER DAY OF REMEMBRANCE

**The Hon. PENNY SHARPE (19:58):** Saturday 20 November 2021 is the Transgender Day of Remembrance. This is an important day that has been running for over 22 years. It was started by Gwendolyn Ann Smith in San Francisco as a vigil to honour the memory of Rita Hester, a transgender woman who was killed in 1998. Of the day, Gwendolyn said:

Transgender Day of Remembrance seeks to highlight the losses we face due to anti-transgender bigotry and violence. I am no stranger to the need to fight for our rights, and the right to simply exist is first and foremost. With so many seeking to erase transgender people - sometimes in the most brutal ways possible - it is vitally important that those we lose are remembered, and that we continue to fight for justice.

More than 20 years later, I wish Gwendolyn's words seemed archaic or outdated, but sadly, they still ring true. Many in our community still seek to erase transgender people, to argue that they do not exist at all, in both figurative and very real, physical and dangerous senses. It is still vitally important that those who are lost are remembered and that we continue to fight for justice.

Tomorrow, the Gender Centre will host an online memorial to honour the memories of the trans and gender diverse people who have died. Tomorrow we will again hear a list of too many trans, gender diverse and non-binary people who have died as a result of violence and discrimination in a community where they should be safe. We will also remember and honour those who have died in years past. Worldwide, 2021 has been a record year for the number of transgender people who were killed. At least 375 trans people have been murdered around the world so far this year: one-quarter were killed in their own homes; most victims were black and migrant trans women of colour; and 96 per cent of those killed were trans women or transfeminine people.

It is more difficult for us to know how many trans and gender diverse people have been killed in Australia. Our crime data is only recorded and reported in male/female binaries, without additional information about whether the person was trans. This is a significant difficulty for being able to track whether we are doing better or worse when it comes to the safety of trans, gender diverse and non-binary people in this State. I acknowledge that the New South Wales Government has announced a long-awaited judicial inquiry into gay and transgender hate crimes between 1970 and 2010. I eagerly await the establishment of the judicial inquiry and the changes that it will make for the safety of the LGBTI community in New South Wales.

This week is also the Transgender Week of Awareness. I was pleased that earlier this week this House passed a unanimous motion in support of this week of awareness. This is when we take the time and opportunity to uplift the voices and experiences of the transgender and non-binary community through education and action. In recognition of Transgender Week of Awareness, I give a shout-out to the incredible work of The Gender Centre in Annandale, New South Wales. The Gender Centre is an accommodation service, though it also acts as an education, support, training and referral resource centre to other organisations and services for trans, gender diverse and non-binary people, their partners, family members and friends in New South Wales. They also run a very important parents group that I have had the privilege to attend on many occasions.

The Gender Centre emerged from a small group of transgender people who founded the Australian Transsexual Association in the very early 1980s. A member of the group, Roberta Perkins, had earlier completed an honours thesis about transgender people. Roberta Perkins approached Reverend Bill Crews of the Wayside Chapel Crisis Centre to see if they could use the chapel as a regular meeting place to offer support to transsexual girls and women in Kings Cross. Reverend Bill Crews, of course, agreed. Many of the transgender women in Kings Cross at that time were extremely vulnerable to assaults, robbery, rape and harassment. Many experienced drug dependency, which also led to limited employment opportunities, insecure housing, verbal and physical abuse, violent attacks and discrimination.

Roberta later met with Frank Walker, the then Labor Minister for Youth and Community Services, seeking the creation of a refuge for transsexual people. That was the terminology used at the time. In October 1983 Frank Walker opened the doors of Tiresias House at 75 Morgan Street, Petersham. It was named for the hero in Greek mythology whose sex was changed by the gods from man to woman. The 12-bed spaces were filled immediately. By 1993 the functions of Tiresias House were expanded to respond to the HIV and AIDS epidemic. With the addition of a social worker, the service was incorporated and renamed The Gender Centre. In 2021 the Gender Centre provides essential services, education, support and accommodation, much of which is well above and beyond its funding. Its work is simply lifesaving. To my many transgender friends and family: I see you, I love you, and I will continue the work to make sure we get the law reform in place to ensure that you have the same opportunities as everybody else and you get to be yourself.

## FIRE STATION CLOSURES

**The Hon. MARK BUTTIGIEG (20:02):** At the budget estimates hearing last month Labor confirmed, through questioning of the Liberal Minister, that as many as 30 fire stations around New South Wales could be

temporarily shut due to TOLing. TOLing is an acronym for "taking offline". It causes staff shortages. It means that Fire and Rescue NSW will close additional stations temporarily when available staff fall below four people. The State is heading into bushfire season and the closure of fire stations will require crews to be sent further afield to answer emergencies. On top of the 34 fire stations that are on the TOLing list, another 30 fire stations will be added including stations in Bundeena, Scarborough, Helensburgh, Camden and Picton. This process has created fears that lives and property could be endangered by protracted response times during an emergency. The Minister for Emergency Services, David Elliott, did not deny that the measure was intended to save money in the budget. He did not have an answer readily available on how much money had been saved from previous TOLing of fire stations.

I pressed the Minister and department on the decision to let Bundeena, Scarborough and Helensburgh be taken offline, especially as Bundeena fire station is located within the Royal National Park and accessible via a single road with the next nearest stations, Sutherland or Revesby, more than 30 minutes away. Minister Elliott said, "If I had it my way there would be [a fire station] in every suburb." This completely contradicts his decision to allow these local fire stations to be taken offline. On Monday our shadow Minister for Emergency Services, Jihad Dib, and I met with concerned locals and representatives of the Fire Brigade Employees Union, including its secretary, Leighton Drury, to hear concerns about what such closures mean for various communities. They told of the substantial risks that this policy presents, and that slower response times from temporary closures of our stations only heighten people's fears and increase the risk of tragic outcomes.

At Bundeena we met with locals, including Graeme Kelly, Moya Turner, Ross Kelly and ALP spokesperson for Heathcote SEC Maryanne Stuart. They feel threatened by the idea that their only fire station, which actually doubles as an ambulance service, could be taken offline in such a bushfire-prone area because the Government wants to save money. The community are more aware of the ravages of bushfires than most because Bundeena lies in the heart of the Royal National Park, with dense bushland. One of those locals, Ross Kelly, told us how he became unwell and that Fire and Rescue NSW were the first responders. If he had to rely on someone coming from so far away, he could have been in real trouble.

Jihad Dib and I also met with fires Jonathon Wright and Max Murphy at Camden Fire Station, who told us how they get about \$3,000 as retained firefighters to make themselves available around the clock. When you add the call-out money, it averages out to approximately \$14,000 per year. Therefore, the Government gets great value from these firefighters, who do not do it for the money but are part of the local community and work hard for them. The Government would rather skimp on paying these people a small amount so that Camden and Picton fire stations would end up relying on surrounding stations like Narellan to fill in the gaps. It is extremely worrying if there is a major incident at Narellan as the safety of our residents could be at risk. Remember these fires do not just put out fires; they also attend emergency incidents like cars crashes and medical emergencies.

The New South Wales Government should not be shutting down fire stations and decreasing fire services. Delays in emergency response times leave our communities exposed. The people of Sydney's southern suburbs, northern Illawarra and south-west Sydney deserve their own local fire stations. They should not have to wait for fire trucks from other areas to arrive.

### HERMES CROCODILE FARMS

**The Hon. EMMA HURST (20:07):** No animal is exempt from cruelty in Australia—not even crocodiles, with French fashion brand Hermès planning to open a new industrial-scale crocodile farm that will farm and slaughter up to 50,000 animals. Saltwater crocodiles are a national icon and native predator. But these highly intelligent reptiles are also protective, attentive parents. They have complex methods of communication, and amuse themselves by playing with objects and even blowing bubbles. Crocodiles are wild animals who belong in the wild. They also feel pain and fear, and deserve to be protected from suffering and exploitation. Yet footage released earlier this year by the Kindness Project showed the horrors that hundreds of thousands of crocodiles are forced to endure on Hermès farms already operating in Australia. Crocodiles in this industry are exploited even before they are born. Hatched from eggs stolen from wild nests, they are deliberately incubated to produce fast-growing males to reduce the time between birth and slaughter. Once hatched, they spend the majority of their lives isolated in grow-out buildings, being held in tiny wire cages and barren plastic-lined pens filled with fetid water. Despite crocodiles being known to travel distances of up to 900 kilometres in the wild, these pens give them little more room than the length of their body to ensure no scratches or damage is done to their profitable skin.

After enduring two to three years of confinement, these animals will be electrocuted, dragged from their pens as their bodies convulse and shot with a bolt gun. Their spinal cords will be severed and a screwdriver forced into their heads to scramble their brains. Their deaths are slow and brutal, with some crocodiles continuing to breathe rapidly and attempting to stand after the ordeal. Because these animals are predominantly slaughtered for their smooth belly skin, up to four crocodiles must endure this suffering just to make one Hermès handbag. That

company relies on extreme animal cruelty to sell its handbags to the thoughtless, wealthy minority for thousands of dollars.

We cannot forget that just 50 years ago saltwater and freshwater crocodiles were threatened with extinction due to commercial hunting. While this led to their protection in 1971 and a recovery in their numbers in the wild, habitat loss and pollution continue to be a threat. Sickeningly, the intensive crocodile farming industry is attempting to capitalise on this by falsely claiming that its intensive farming and slaughter of wild-born crocodiles is supporting ongoing conservation efforts. Even more shocking is that it is doing this with the support of one of the world's biggest conservation bodies, the International Union for Conservation of Nature, which falsely suggests that the intensive farming of animals is a useful conservation tool. Let me be clear: It is an absurd idea that to protect animals they must be killed for handbags. We would never accept an argument that elephants should be farmed for their tusks to save the species, so why would we accept it for crocodiles?

Confining and killing animals for their skin is not conservation; it is simply slaughter. This newest farm is operating at a time when many high-end fashion brands and their consumers are turning their backs on animal skins. Chanel, Mulberry and the owners of Calvin Klein and Tommy Hilfiger recently adopted policies against using exotic animal skins, including those from crocodiles. A life is worth more than any bloody handbag or accessory. With so many sustainable and animal-friendly alternatives available, there is no need to slaughter any animal for fashion. It is time for the Australian Government to recognise that animal skins are firmly out of fashion. The Government needs to ban this cruel industry. The Australian public hates animal cruelty. It does not want to see wild animals brutally killed en masse. It is time to listen to our communities, take action for hundreds of thousands of suffering animals and put an end to Australia's cruel crocodile farming industry.

**The ASSISTANT PRESIDENT (The Hon. Rod Roberts):** The question is that this House do now adjourn.

**Motion agreed to.**

**The House adjourned at 20:12 until Tuesday 23 November 2021 at 14:30.**