New South Wales

Legislative Council

PARLIAMENTARY DEBATES
(HANSARD)

Fifty-Seventh Parliament
First Session

Thursday 24 February 2022

Authorised by the Parliament of New South Wales

TABLE OF CONTENTS

TABLE OF CONTENTS—*continuing*

TABLE OF CONTENTS—*continuing*

TABLE OF CONTENTS—*continuing*

LEGISLATIVE COUNCIL

Thursday 24 February 2022

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.

Announcements

VIRTUAL PARTICIPATION OF MEMBERS

The PRESIDENT (10:02): Two members have requested to participate remotely today. With that in mind, I request that members who have joined the Webex call remain on mute at this stage. I also remind members to select the Chamber view "move to stage" in their Webex settings. I thank honourable members.

Presiding Officers

ELECTION OF DEPUTY PRESIDENT AND CHAIR OF COMMITTEES

The PRESIDENT (10:02): Earlier this week I announced that the election for the Deputy President would not take place until all members were able to be present and able to accept or refuse a nomination. As a number of members are unable to be here today, the election will not take place today. It is hoped the election will proceed on the next sitting day. I thank honourable members.

Committees

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Membership

The Hon. DAMIEN TUDEHOPE: I move:

(1) That the Hon. Don Harwin be appointed as a member of the Committee on the Independent Commission Against Corruption to fill the vacancy created by the resignation of the Hon. Trevor Khan.

(2) That a message be forwarded to the Legislative Assembly conveying the terms of the resolution agreed to by the House.

Motion agreed to.

COMMITTEE ON CHILDREN AND YOUNG PEOPLE

Membership

The Hon. DAMIEN TUDEHOPE: I move:

(1) That the Hon. Catherine Cusack be appointed as a member of the Committee on Children and Young People to fill the vacancy created by the Hon. Peter Poulos.

(2) That a message be forwarded to the Legislative Assembly conveying the terms of the resolution agreed to by the House.

Motion agreed to.

COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

Membership

The Hon. DAMIEN TUDEHOPE: I move:

(1) That the Hon. Catherine Cusack be appointed as a member of the Committee on Children and Young People to fill the vacancy created by the Hon. Peter Poulos.

(2) That a message be forwarded to the Legislative Assembly conveying the terms of the resolution agreed to by the House.

Motion agreed to.

COMMITTEE ON THE OMBUDSMAN, THE LAW ENFORCEMENT CONDUCT COMMISSION AND THE CRIME COMMISSION

Membership

The Hon. DAMIEN TUDEHOPE: I move:

(1) That the Hon. Don Harwin and the Hon. Wes Fang be appointed as members of the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission to fill the vacancies created by the Hon. Peter Poulos and the Hon. Lou Amato.

(2) That a message be forwarded to the Legislative Assembly conveying the terms of the resolution agreed to by the House.

Motion agreed to.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Membership

The Hon. DAMIEN TUDEHOPE: I move:

(1) That the Hon. Ben Franklin be discharged from the Joint Standing Committee on Electoral Matters and the Hon. Scott Farlow be appointed as a member of the committee.

(2) That a message be forwarded to the Legislative Assembly conveying the terms of the resolution agreed to by the House.

Motion agreed to.

Documents

STATE-OWNED CORPORATIONS

Production of Documents: Order

The Hon. DANIEL MOOKHEY (10:04): I seek leave to amend private members' business item No. 1635 outside the order of precedence for today of which I have given notice by omitting "21 days" and inserting instead "28 days".

Leave granted.

The Hon. DANIEL MOOKHEY: 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 the possession, custody or control of the Treasurer, the Minister for Finance, Treasury, Essential Energy, Forestry Corporation of NSW, Hunter Water, Port Authority of NSW, Sydney Water, Landcom or WaterNSW relating to State-owned corporations:

(a) the current business plan and current forecast dividend profile for:

(i) Essential Energy;

(ii) Forestry Corporation of NSW;

(iii) Hunter Water;

(iv) Port Authority of NSW;

(v) Sydney Water;

(vi) Landcom; and

(vii) WaterNSW.

(b) the current statement of expectations issued by either the shareholding Ministers or portfolio Ministers to:

(i) Essential Energy;

(ii) Forestry Corporation of NSW;

(iii) Hunter Water;

(iv) Port Authority of NSW;

(v) Sydney Water;

(vi) Landcom; and

(vii) WaterNSW.

(c) all briefs, including attachments to briefs, sent to, signed by, drafted by, received by or approved by the Treasurer, the Minister for Finance, the current or former Treasury Secretary, the Minister for Transport or any Deputy Secretary of Treasury since 1 January 2021 regarding any matter related to:

(i) Essential Energy;

(ii) Forestry Corporation of NSW;

(iii) Hunter Water;

(iv) Port Authority of NSW;

(v) Sydney Water;

(vi) Landcom;

(vii) WaterNSW;

(viii) Roads Retained Interest Pty Ltd;

(ix) Alpha Distribution Ministerial Holding Corporation;

(x) Electricity Assets Ministerial Holding Corporation;

(xi) Epsilon Distribution Ministerial Holding Corporation;

(xii) Electricity Transmission Ministerial Holding Corporation;

(xiii) Liability Management Ministerial Corporation;

(xiv) Ports Assets Ministerial Holding Corporation;

(xv) Electricity Retained Interest Corporation—Ausgrid; and

(xvi) Electricity Retained Interest Corporation—Endeavour Energy.

(d) 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.

Motion agreed to.

TRANSPORT ASSET HOLDING ENTITY OF NEW SOUTH WALES

Production of Documents: Further Order

The Hon. DANIEL MOOKHEY (10:05): I seek leave to amend private members' business item No. 1636 outside the order of precedence for today of which I have given notice as follows:

(1) Inserting in paragraph (g) "since 1 September 2021" after "Transport Asset Holding Entity".

(2) Omitting paragraph (o).

Leave granted.

The Hon. DANIEL MOOKHEY: Accordingly, I move:

That, under Standing Order 52, there be laid upon the table of the House within 21 days of the date of passing of this resolution the following documents in the possession, custody or control of the Premier, Treasurer, Minister for Finance, Minister for Small Business, Minister for Transport, Minister for Metropolitan Roads, Minister for Regional Transport and Roads, Department of Premier and Cabinet, Treasury, Transport for NSW, Sydney Trains, NSW Trainlink or the Transport Asset Holding Entity of NSW relating to Transport Asset Holding Entity of NSW [TAHE]:

(a) all drafts and the final *Statement of Expectations* (however described) issued by the Treasurer/and or the Finance Minister to the Transport Holding Asset Holding Entity in December 2021;

(b) all correspondence and communications between the current or former Transport Minister and the Transport Asset Holding Entity since 15 October 2021;

(c) all drafts and the final heads of agreement struck by the Transport Asset Holding Entity with Transport for NSW and/or Sydney Trains or NSW Trains in December 2021, including:

(i) all advice provided to the Transport Asset Holding Entity regarding the above agreement from any person or organisation;

(ii) all advice provided to Transport for NSW regarding the above agreement from any person or organisation;

(iii) all advice provided to Sydney Trains and/or NSW Trains regarding the above agreement from any person or organisation; and

(iv) all advice provided to the NSW Treasury regarding the above agreement from any person or organisation.

(d) all documents prepared for all Transport Asset Holding Entity Board meetings, and all documents which record decisions made by the Transport Asset Holding Entity Board since 1 November 2021;

(e) all updates to the Transport Asset Holding Entity's business plan made since 1 November 2021;

(f) all correspondence between the CEO of the Transport Asset Holding Entity and NSW Treasury official since 1 December 2021;

(g) all correspondence and communication between any NSW Treasury and any person at the firm KPMG regarding any issues associated with the accounting treatment of the Transport Asset Holding Entity since 1 September 2021;

(h) all documents, reports and or presentations provided by KPMG to the NSW Treasury regarding the Transport Asset Holding Entity since 15 October 2021;

(i) all documents regarding the relocation of the Transport Asset Holding Entity's offices;

(j) all documents regarding the termination of Mr Mike Pratt as Secretary of the NSW Treasury;

(k) all documents regarding the recruitment of Dr Paul Grimes as Secretary of the NSW Treasury;

(l) all briefs, including attachments to briefs, sent to, signed by, drafted by received by or approved by the Premier, the Secretary of the Department of Premier and Cabinet, the Treasurer, the Finance Minister, the current or former Treasury Secretary, the Transport Minister, the Secretary of Transport for NSW or any Deputy Secretary of either the NSW Treasury or Transport for NSW since 15 October 2021 regarding any matter related to the Transport Asset Holding Entity;

(m) all communications and correspondence regarding the Transport Asset Holding Entity received or sent by the current and former Secretary of the NSW Treasury since 15 October 2021 and:

(i) Mr Rod Sharp;

(ii) Mr Bruce Morgan; and

(iii) the NSW Audit Office.

(n) all documents regarding the Transport Asset Holding Entity created since 1 November 2021 held by the:

(i) Office of the Premier;

(ii) Office of the Treasurer;

(iii) Office of the Transport Minister; and

(iv) Office of the Minister for Finance and Small Business.

(o) 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.

Motion agreed to.

Motions

INTERNATIONAL DAY OF WOMEN AND GIRLS IN SCIENCE

Ms ABIGAIL BOYD (10:06): I move:

(1) That this House notes that 11 February 2022 was International Day of Women and Girls in Science, which celebrated the contributions of women and girls in leading innovation, change and sustainable development in science and technology.

(2) That this House notes that, according to a report by the Australian Academy of Science entitled *Impact of COVID-19 on Women in the STEM Workforce*, published in July 2021:

(a) lack of opportunities is the top motivating factor for why women in science, technology, engineering and mathematics [STEM] would leave their careers in STEM;

(b) COVID-19 has exacerbated gender inequity in the STEM workforce, with challenges and barriers having a significant impact on individual wellbeing and mental health; and

(c) there is a growing need for governments and STEM-related organisations to address this inequity by implementing policy that embeds more flexible workplace cultures and increases the opportunities available for women.

(3) That this House calls on the New South Wales Government to take direct action to break barriers that prevent women and girls from entering and participating in STEM fields, and make gender equality a priority through robust policy and initiatives.

Motion agreed to.

PORT STEPHENS EXAMINER BUSINESS AWARDS

The Hon. TAYLOR MARTIN (10:07): I move:

(1) That this House notes that:

(a) on Thursday 25 November 2021 the *Port Stephens Examiner* announced the winners of the 2021 Port Stephens Examiner Business Awards; and

(b) winners of awards included:

(i) Art, Crafts & Gifts: Port Stephens Community Arts Centre;

(ii) Automotive Services: Adam's Auto Fix;

(iii) Bakery & Cake Shop: Saxby's Bakery Café;

(iv) Beauty Therapy: Forever Hair & Beauty;

(v) Butcher: The Butchery at Lemon Tree;

(vi) Café & Takeaway: Active Diner Medowie;

(vii) Club, Pub or Bottle Shop: Junction Inn Hotel;

(viii) Early Childhood: Angel Tots Early Learning Centre;

(ix) Fashion & Footwear: The Athlete's Foot Salamander Bay;

(x) Fitness: Zumba Raymond Terrace;

(xi) Florista: Beautiful Occasion;

(xii) Hair Dresser: Forever Hair & Beauty;

(xiii) Health Improvement: Eat. Speak. Repeat. Allied Health;

(xiv) New Business: Driving Miss Daisy Nelson Bay;

(xv) Performing Arts: Ultimate Dance & Performing Arts;

(xvi) Pet Care: Barkers in Balance;

(xvii) Professional Services: Genus Wealth;

(xviii) Real Estate: Curtis & Blair Real Estate;

(xix) Restaurant: Zenith Cafe, Restaurant & Bar;

(xx) Service & Trade: East Coast Timber Floors & More;

(xxi) Shopping Centre: MarketPlace Raymond Terrace;

(xxii) Specialised Retail: Lion Studios;

(xxiii) Specialised Services: Poolside Davison;

(xxiv) Tourist: Irukandji Shark & Ray Encounters;

(xxv) Innovative Business: The Bay Butler;

(xxvi) Young Achiever: Jessie-lee Brewer Heartspace Beauty Collective; and

(xxvii) Overall Winner: Forever Hair & Beauty.

(2) That this House congratulates all winners of the 2021 Port Stephens Examiner's Business Awards.

Motion agreed to.

HUNTER YOUNG BUSINESS MINDS AWARDS

The Hon. TAYLOR MARTIN (10:08): I move:

(1) That this House notes that:

(a) during December 2021 the winners of the Hunter Young Business Minds Awards were announced;

(b) awards connect and energise the next generation of creators, innovators, entrepreneurs and business leaders in the Hunter;

(c) the awards were created by Local Chambers of Commerce and business leaders who saw the importance of building greater relationships and connections between industry, business, educators, parents and young people; and

(d) recipients of awards included:

(i) Hunter Water Primary School Award: Myla Tucker and Olivia Lorenz – Newcastle Grammar (winner) and Ollie Ugray – Wallsend South Public School (runner-up);

(ii) Hunter TAFE Tertiary Education Award: Tom Brewer – Busy Little Bosses;

(iii) I2N University of Newcastle Under-25 University Student Award: James Casey-Brown – The University of Newcastle (winner) and James Wooden – The University of Newcastle (runner-up);

(iv) Bengalla Mine Secondary School Student Award: Daniel Bell – St Philips Christian College (winner) and James Vazquez – St Philips Christian College (runner-up); and

(v) Harvey Norman School/Class Innovative Learning Award: Kayla Loyola – Callahan College Jesmond Senior Campus (winner), Annabel Mckensey – Newcastle Grammar (second) and Molly Boyle – Newcastle Grammar (third).

(2) That this House congratulates all recipients of the Hunter Young Business Minds Awards.

Motion agreed to.

Documents

MONARO FARMING SYSTEMS

Tabling of Documents Reported to be Not Privileged

Mr DAVID SHOEBRIDGE: I move:

(1) That, in view of the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, on the disputed claim of privilege on papers regarding Monaro Farming Systems, dated 14 February 2022, this House orders that the documents considered by the Independent Legal Arbiter not to be privileged be laid upon the table by the Clerk of the Parliaments.

(2) That, on tabling, the documents are authorised to be published.

Motion agreed to.

BIOBANKS

Tabling of Documents Reported to be Not Privileged

Ms CATE FAEHRMANN: I move:

(1) That, in view of the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, on the disputed claim of privilege on papers regarding biobanks, dated 17 December 2021, this House orders that the following documents considered by the Independent Legal Arbiter not to be privileged be laid upon the table by the Clerk:

(a) all Department of Planning, Industry and Environment additional documents received by the Clerk on Wednesday 1 September 2021, subject to the redactions of the following personal private information: email addresses, home addresses, phone numbers, credit card and banking information as identified in the index of privileged documents; and

(b) all Department of Planning, Industry and Environment additional documents received by the Clerk on Wednesday 15 September 2021.

(2) That this House orders that the Department of Premier and Cabinet produce, within seven days of passing of this resolution, the redacted versions of the documents referred to in paragraph (1) (a).

(3) That, on tabling, the documents are authorised to be published.

Motion agreed to.

DAM INFRASTRUCTURE

Tabling of Documents Reported to be Not Privileged

Ms CATE FAEHRMANN: I move:

(1) In view of the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, on the disputed claim of privilege on papers relating to a further order for papers regarding dam infrastructure projects, dated 21 February 2022, this House orders that all documents considered by the Independent Legal Arbiter not to be privileged be laid upon the table by the Clerk subject to paragraph (2).

(2) The Department of Premier and Cabinet and WaterNSW must, within seven days of the passing of this resolution, identify any documents returned to this order of the House that contain information that is culturally sensitive to Aboriginal Peoples and which should not be made public pending further evaluation by the Independent Legal Arbiter.

(3) That, on tabling, the documents are authorised to be published.

Motion agreed to.

Committees

PUBLIC ACCOUNTABILITY COMMITTEE

Reports

Mr DAVID SHOEBRIDGE: I table report No. 10 of the Public Accountability Committee entitled *Integrity, efficacy and value for money of NSW Government grant programs – Second Report*, dated February 2022, together with submissions, transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry. I move:

That the report be printed.

Motion agreed to.

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

That the House take note of the report.

I will not speak at length on this second report, but I note a number of critical factors. In this report the committee turned its attention to examining the misuse and maladministration of the bushfire relief grants and arts and cultural grants. The report again notes a complete lack of transparency and accountability for these grants programs. The report questions how widespread this issue is and can only conclude that the administration of grants programs by the Liberal-Nationals Government is deeply problematic and systematically flawed. A system that continues to allow public money to be used to curry political favour and buy votes cannot remain in place. The ongoing failure to address that significantly harms the reputation of these programs in New South Wales and has left many communities feeling betrayed.

There is also the ongoing opportunity costs of improperly allocated grants, which deprive worthy projects of support. The grants system must be fairly allocated to respond to actual need, not political convenience. Importantly, the report not only identifies those repeated systemic failures in the grants system but also proposes

urgent reform to restore public confidence in the system. The recommendations focus on transparency, integrity and accountability. Our recommendations for reform build on the work of the committee's first report on grants, now some 12 months old, together with the more recent review of grants by the Auditor-General's office. This is now urgent work. With the State election on the horizon, the reforms must be adopted before this Government again attempts to literally buy votes in March 2023.

The 2019-20 bushfires caused significant destruction and devastation across New South Wales. They were then followed by other disasters, including flooding and the COVID-19 pandemic, and placed individuals and businesses in incredibly difficult circumstances. It is in that context that we were unable to fathom how it was that the Government allocated funding for bushfire recovery on anything but the needs of those affected communities. Instead, the committee found that funding allocations were politically driven with literally no proper administration or approval processes in place. In relation to the arts and cultural funding, the committee found disturbing examples of ministerial discretion being used to override clear recommendations from Create NSW. Those decisions were made without any documentation and without any reasons being provided or available either to Create NSW or to the general public.

This is now the second report of the Public Accountability Committee into grants in New South Wales. Despite scandal after scandal, the shredding of documents and the gross misallocation of hundreds of millions of dollars, not one integrity measure has been put in place by the New South Wales Government. Not one integrity measure has been put in place by the Perrottet Government. We are now coming to the season of grants where this Government will do all it can to use public money, but not to address community needs. That is not just a finding of the Public Accountability Committee; it is a finding of the Auditor-General and it is a finding of the New South Wales public. This Government will use hundreds of millions or billions of dollars of public money to try to buy the upcoming State election unless it commits to the reforms needed now to restore integrity in the system.

The PRESIDENT: Order! Government members will cease interjecting.

Mr DAVID SHOEBRIDGE: This Government was willing to politicise bushfire emergency grants. Under the then arts Minister this Government literally denied all regional communities access to arts and cultural funding and diverted the money to a single institution.

The PRESIDENT: Order! I know we are discussing a political issue, but I take the opportunity to caution Government members. If there are any further interjections, members will be called to order. Mr David Shoebridge has the call.

Mr DAVID SHOEBRIDGE: These are uncomfortable truths for members of the Coalition Government and it explains their behaviour in the Chamber today. The people of New South Wales have judged them on their performance and they have judged them to be lacking integrity and lacking accountability in the allocation of hundreds of millions of dollars of public money. It must stop now. This is not the time for another report or yet more hand-wringing by the Premier, who was Treasurer while these waterfalls of money were being delivered for political purposes. This is the time for action, for reform and for restoring integrity to the grants system in New South Wales. It has never been more urgent. I commend the report to the House.

Debate adjourned.

Members

LEGISLATIVE COUNCIL VACANCY

The PRESIDENT: I shall now leave the chair for the joint sitting. The business of the House will be suspended during the joint sitting. The House will resume at the conclusion of the joint sitting following the ringing of the bells.

[*The President left the chair at 10:17.*]

Joint Sitting

ELECTION OF A MEMBER OF THE LEGISLATIVE COUNCIL

The two Houses met in the Legislative Council Chamber at 10:34 to elect a member of the Legislative Council in the place of the Hon. Trevor John Khan.

The PRESIDENT: I declare the joint sitting open and call upon the Clerk of the Parliaments to read the message from the Governor convening the joint sitting.

The Clerk of the Parliaments read the message from the Governor convening the joint sitting.

The PRESIDENT: I welcome one and all. I especially welcome Mr Scott Barrett and his wife, Maryanne Hawthorn, who are in the Chamber this morning and are looking forward to this joint sitting. I am now prepared to receive proposals with regard to an eligible person to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Trevor John Khan.

Mr PAUL TOOLE (Bathurst—Deputy Premier, Minister for Regional New South Wales, and Minister for Police) (10:36): I propose Mr Scott James Barrett as an eligible person to fill the vacant seat of the Hon. Trevor John Khan in the Legislative Council, for which purpose this joint sitting was convened. I move that Mr Scott James Barrett be elected as a member of the Legislative Council to fill the seat in the Legislative Council previously vacated by the Hon. Trevor John Khan. I indicate to the joint sitting that if Mr Scott James Barrett were a member of the Legislative Council he would not be disqualified from sitting or voting as such a member, and that he is a member of the same party—The Nationals—as the Hon. Trevor John Khan was publicly recognised by as an endorsed candidate of that party and who publicly represented himself to be such a candidate at the time of his election at the eleventh periodic Council election held on 28 March 2015. I further indicate that the person being proposed would be willing to hold the vacant place if chosen.

The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (10:37): I second the motion.

The PRESIDENT: Does any other member desire to propose any other eligible person to fill the vacancy? As only one eligible person has been proposed and seconded, I declare that Mr Scott James Barrett is elected as a member of the Legislative Council to fill the seat vacated by the Hon. Trevor John Khan. I declare the joint sitting closed. **The joint sitting closed at 10:38.**

[*The House resumed at 10:50*.]

Members

ELECTION OF A MEMBER OF THE LEGISLATIVE COUNCIL

The PRESIDENT: I report that at a joint sitting this day Mr Scott James Barrett was elected to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Trevor John Khan. I table the minutes of proceedings of the joint sitting.

The Hon. BRONNIE TAYLOR: I move:

That the document be printed.

Motion agreed to.

The Hon. BRONNIE TAYLOR: I move:

That the President inform Her Excellency the Governor that Mr Scott James Barrett has been elected to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Trevor John Khan.

Motion agreed to.

Business of the House

POSTPONEMENT OF BUSINESS

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

That Government business order of the day No. 1 be postponed until a later hour.

Motion agreed to.

Documents

MONARO FARMING SYSTEMS

Tabling of Documents Reported to be Not Privileged

The CLERK: According to the resolution of the House this day, I table the documents considered not to be privileged by the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 14 February 2022, on the disputed claim of privilege on papers relating to Monaro Farming Systems, further order.

BIOBANKS

Tabling of Documents Reported to be Not Privileged

The CLERK: According to the resolution of the House this day, I table the documents considered not to be privileged by the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 17 December 2021, on the disputed claim of privilege on papers relating to biobanks.

DAM INFRASTRUCTURE

Tabling of Documents Reported to be Not Privileged

The CLERK: According to the resolution of the House this day, I table the documents considered not to be privileged by the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 21 February 2022, on the disputed claim of privilege on papers relating to dam infrastructure projects, further order.

Disallowance

WATER MANAGEMENT (GENERAL) AMENDMENT REGULATION 2021

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

Question resolved in the affirmative.

Mr JUSTIN FIELD: I move:

That the matter proceed forthwith.

Motion agreed to.

Mr JUSTIN FIELD (11:08): I move:

That, under section 41 of the Interpretation Act 1987, this House disallows the Water Management (General) Amendment Regulation 2021, published on the NSW Legislation website on 17 December 2021.

This is the third time the Legislative Council has considered a motion to disallow floodplain harvesting regulations. We are here for a third time because former Nationals water Minister Melinda Pavey has not listened to the multitude of stakeholders who have raised legitimate concerns about what the licensing of that water take will do to their communities, their existing rights, the environment and the river. Those concerns were raised by irrigators, particularly in the southern Basin; floodplain graziers; other water licence holders; traditional owners; downstream river communities; and scientists and environmentalists. I acknowledge the many groups and individuals who have continued to advocate to address those shortcomings. We have heard that information many times within the House and during two parliamentary inquiries, including one that reported as late as December last year. Members can look at the detail in that report about those concerns.

The Government has also disregarded the views of this House where the Labor Opposition, the Shooters, Fishers and Farmers Party, The Greens and the Animal Justice Party have come together twice to disallow those and similar regulations. They found common ground where it is quite unusual in matters of natural resource policy. That is because this Government's approach to water management has raised such significant concerns across the political spectrum and the community. There is nothing wrong in principle with regulating to require the measurement and licensing of that form of water take. In fact, there is near consensus that it needs to be done. However, the management rules that apply to the take of that water make a difference to the rights of other water users, downstream communities and the environment.

Currently, those rules are inadequate, inequitable, unsustainable and unacceptable to many. If the Government's planned licensing goes ahead without changes to those management rules, billions of dollars' worth of water entitlements—with some estimating as much as $5 billion worth—will be gifted to fewer than 1,000 mostly large corporate irrigators in the northern part of the State. That entitlement is assumed on the basis that those properties have existing structures that were built in the past, many without proper approvals to take advantage of the flows crossing their properties. Neighbouring properties that may have chosen in the past not to build those structures and engage in that type of water take are not eligible. So at the very start of the process there are clear inequities. The management rules must address those questions.

There is a risk that the taxpayers of this State will be left facing a substantial compensation claim. We have seen the story play out in the Murray-Darling Basin in the past where we realised down the track that we had this very wrong, too many licences were issued, the rules were not adequate to protect communities and the river, and we had to claw it back. Let us not get it wrong. Let us press pause whilst there is water in the rivers and the dams, disallow this regulation and have another look at these issues. This House and various stakeholders have been

clear on what can and should be done to address the inequities in the system. In particular, the debate has focused on the need for downstream clear targets set in the water-sharing plans with inter-tributary, end-of-tributary and end-of-system targets. That can determine how and when floodplain harvesting take can occur during major basin-wide flood events and also localised flood events in certain tributaries. It makes sense to base those targets on the environmental watering requirements that have already been established through the Government's own detailed analysis about the needs of the river.

We will disagree on exactly what volumes those targets should be. But even irrigators say to me that they would prefer a system of targets that makes it clear how and when the water can be taken, rather than what we have seen in the past of confusing embargoes and rules or regulations put in place in the hours before an event hits a particular location. That makes it difficult for everybody to plan and leaves downstream communities and the rivers carrying the risk if we get it wrong. Targets make it easier for everyone to understand what their obligations and rights are in the future. The 500 per cent rule currently in place means that in a given event more floodplain harvesting water could be taken than has ever been taken in the past. That runs against the fundamental principle that the policy is trying to address, which is a growth in the take of this type of water in New South Wales. That is clearly unacceptable to many people.

This take is fundamentally linked to land. The water that flows across a property and the works that have been built to take advantage of that in the past, rightly or wrongly, is linked to the landform itself. The idea that one can simply transfer that entitlement upstream or downstream through the trading of licences creates tremendous uncertainty for neighbours. It means that we will change the flow of floods across the landscape in a way that is unknown. We should not allow those licences to be traded. It makes sense for them to be interim or to have a very clear set of independent regulatory reviews in the early years of any system of licensing and management so we can fix this if we have got it wrong and make it clear in the law that compensation will not be payable if we need to make changes. Those things have been said repeatedly in this place and in communities, but they have not been addressed by the former Minister.

I address two concerns raised in public comments by the NSW Irrigators Council. I indicate that I have had constructive conversations with the NSW Irrigators Council in the past and I know other stakeholders and members of Parliament have as well. Its claim that it is taking a financial hit to give back water to the environment misrepresents what has happened here. A recent analysis by the Government that it championed is that it will take a hit to production of $126 million over 10 years. But the other way to see that is that northern basin irrigators who have taken advantage of this water—well above caps that have been known and set for a long time—have been profiteering from that growth and that unacceptable take of this water possibly for decades. Arguing that it is prepared to take the hit for the environmental outcomes by giving water back is a bit rich and it totally undermines the effort to build consensus about how the water should be regulated, licensed and managed in the future.

The NSW Irrigators Council makes the other argument that it brings take in line with the basin caps. But we all know that those caps have not been set on an environmentally sustainable level of take. We also know that its assumptions around meeting cap levels are based on averages. That type of water flow swings hugely between dry times and wet times. Using averages to base decisions around licences and take leaves the environment and downstream communities carrying a risk should we get this wrong and should inflow patterns change in the future. We know that inflow patterns will change in the future because of climate change. They are falling quickly.

Last Friday the Government switched on elements of the Act relating to requiring a licence to engage in floodplain harvesting. That triggered the issuing of some licences in the Border Rivers region and the Gwydir. That was a deliberate effort to pre-empt this debate. I have described it as political bastardry and an act of bad faith. It is linked to these regulations established by former water Minister Melinda Pavey just days before she was dumped from the portfolio. But there is a new water Minister now. Kevin Anderson has been left in a difficult position by his predecessor. I say to him that there is goodwill in this House and in the river communities to work together to address these concerns. This is an opportunity for a reset. Do not be stuck in the old way of thinking about this by the former Minister.

There is water in the rivers and in the dams and it is wonderful to see. But this regulation needs to manage the dry times, the wet times and the in-between times. We need to reset, work together and come up with a system of rules and regulations that ensure downstream communities, other water users and the environment are not left dry next time there is a drought in the Murray-Darling Basin. I commend the motion to the House.

The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (11:19): Floodplain harvesting is the last major form of water take in New South Wales to be licensed and measured. Bringing floodplain harvesting into the licensing framework so that it can be managed within established legal limits for extraction has been the objective of successive New South Wales governments since 2000. As I stated in this place yesterday, if you cannot measure it, you cannot manage it. That has been the message from the New South

Wales Government and, in many ways, the cry from farmers, irrigators and water users across the State who want to be compliant and do the right thing when it comes to floodplain harvesting.

Implementing the NSW Floodplain Harvesting Policy will put a stop to unconstrained floodplain harvesting and ensure water take returns to the legal limits set out in the New South Wales water sharing plans and the Murray-Darling Basin Plan. These reductions are expected to result in significant environmental improvements as well as increased river flows in the northern basin. There was a significant increase in floodplain harvesting infrastructure in the northern Murray-Darling Basin [MDB] in the period 1993-94, when the MDB cap was set, and in 2008, which was the reference date for floodplain harvesting infrastructure eligibility. Since 2008 further infrastructure growth has been relatively minor. The New South Wales Government's approach promises to deliver significant local benefits in the northern basin, but analysis confirms that floodplain harvesting as a practice has no significant impact on average inflows to the southern basin.

Approximately $17 million will have been invested in improved data collection and modelling to implement the policy by the time the reforms are complete. Through the many inquiries, and certainly the inquiries that I participated in, members saw that some of this work is leading edge. No other jurisdiction is attempting to achieve this challenging reform. That is important to note. New South Wales is taking a quantum step forward in terms of the accuracy of our modelling and measurement to support the effective regulation of floodplain harvesting. The entire implementation process is being overseen by an independent peer review to provide confidence to all stakeholders that the intended objectives will be achieved. Licensing and measurement of floodplain harvesting in the northern basin will ensure that floodplain harvesting can be reduced where necessary so that total diversions do not exceed the water source legal limits, and that controls are enforceable.

The decision by the New South Wales Legislative Council to disallow regulations on two previous occasions created uncertainty. I have heard evidence of this, and I am sure other members in the House have as well, and certainly it was clear in some of the public committee hearings that took place. The New South Wales Government remains committed to the task of regulating floodplain harvesting within the legal limits set out in New South Wales water sharing plans and the basin plan. This is important so that we can meet our legislative obligations, improve environmental and connectivity outcomes and provide clarity for all water users and the regulator.

The Department of Planning, Industry and Environment – Water is considering and will respond to the 25 recommendations of the Select Committee on Floodplain Harvesting. What is clear from submissions, findings and recommendations is that the vast majority of stakeholders believe that the practice must be controlled within legal limits, and it must be measured and reported on through enforceable rules and restrictions. Licensing is the mechanism that will achieve this. The implementation of the New South Wales Government's policy will see many farmers in the northern basin taking less water. We have been talking about this reform for two decades. Floodplain harvesting needs to be regulated. As I said earlier, if you cannot measure it, you cannot manage it. The only way to effectively measure floodplain harvesting is to licence it. The commencement of a licensing scheme is supported by the findings of the Legislative Council Select Committee on Floodplain Harvesting, which concluded the practice is legal and must be regulated. That is exactly what the New South Wales Government has done.

The floodplain harvesting policy is now law, in what is a significant step forward for water users and for the environment in New South Wales. For the first time we will be able to monitor, measure and restrict how much water is being taken from our northern river systems during flooding events, thereby keeping it within legal limits and improving environmental outcomes across the northern basin. This new scheme will return over 100 gigalitres to the environment and we will implement environmental flow targets downstream. The work has been done, and in many ways the ship has been pushed out to sea. This disallowance motion will not stop the process, but it will tarnish years of good work and good policy that should really have cross-party support. The Government opposes this motion.

The Hon. ROSE JACKSON (11:24): Labor supports the licensing of floodplain harvesting because we believe all water diverted from natural rivers and flood plains should be metered and monitored. This metering and monitoring guarantees the level of take is compliant with scientifically informed sustainable diversion limits, ensuring river connectivity between upstream and downstream communities. Without that connectivity, downstream communities do not get enough water, with massive environmental, social and economic consequences.

Our support for licensing floodplain harvesting is contingent on the licensing regime delivering sustainable water diversions within legal limits and being compliant with the priority-of-use principles in the Water Management Act 2000. These water use principles are best protected by the use of downstream flow targets and flow triggers, which ensure everyone along New South Wales rivers can access water for environmental, town drinking and agricultural outcomes. The reality is that the regulation we are considering today is almost identical

to the regulation disallowed by the Legislative Council, with the support of Labor, in May 2021. This is not editorialising by me; this is a direct quote from the Department of Planning, Industry and Environment [DPIE] website. It states:

> The amendment is mostly unchanged from the following three amending regulations that were adopted on 28 April 2021 and subsequently disallowed by the NSW Legislative Council on 6 May 2021 …

The primary changes that have been made are inconsequential or involve updating time frames because the previous regulation was disallowed. I suppose, then, it is incumbent on members to consider this: If the regulation is entirely unchanged, have the underlying facts or circumstances changed that would warrant us taking a different position on this disallowance motion? Do we have the confidence that the framework we would like to see for floodplain harvesting has been established or, at the very least, that progress has been made since we considered the issue in May last year? The answer, unfortunately, is no. It is obviously frustrating that water licensing remains unfinished business in New South Wales. We are as enthusiastic as anyone to get this issue off the State's to-do list. But the reality is that this is the last time a large volume of water will be issued as an entitlement in New South Wales. Members have an obligation to future generations and to our rivers to get that as right as possible.

When the House considered the regulations in May last year, Labor noted that we remained a long way from basic consensus on important issues like compliance with sustainable diversion elements, the status of unauthorised floodplain works and what targets or triggers are necessary to protect downstream communities. Sadly, despite plenty of people saying that they think they are not that far apart or that they are open to talking and that they want these issues resolved, we are not that much closer to consensus now. This is despite the good work of the parliamentary inquiry that has been mentioned previously by members contributing to this debate. It made 14 findings and 25 recommendations towards resolving some of these outstanding issues. This parliamentary inquiry was established with bipartisan support and participation.

The inquiry, which featured almost 300 submissions and held four extensive and wideranging public hearings, delivered its report on 15 December 2021. The regulatory amendment we are considering today was issued on exactly the same day, 15 December 2021. It is obvious that the regulatory amendment was developed without consideration of the outcomes of the parliamentary inquiry. I do not consider that a particularly positive sign of good faith. It is difficult for me to understand how, after the drama of the May 2021 disallowance, the work of the Regulation Committee, the subsequent parliamentary inquiry and all the talk that has occurred in the meantime, we have landed with an almost identical regulation, with very little or no attention paid to the report of the parliamentary inquiry, and, evidently, not a lot of actual dialogue between interested parties on a path forward since then.

I acknowledge that the new Minister, Kevin Anderson, and his office recently met with me to discuss a path forward on the issue and I appreciate that. They are showing a genuine commitment to getting it done. While I look forward to the fruits of that effort, the reality is the New South Wales Government has not made a considerable effort to engage with the substantial group of downstream water users, First Nations individuals and groups, and river health groups to address their concerns. In fact, those groups remained universally opposed to proceeding with licensing under the current framework and spoke with one voice in calling for us to disallow the regulation. The biggest issue in some ways is not with the regulations themselves, though we have some concerns with them; our primary issue is with the management framework behind them.

The current approach is not desirable because it tries to manage intermittent events like flooding on a long-term average annual basis. It does not have a rigorous process to independently and scientifically verify whether overall water take is consistent with legal limits, as was recommended by the parliamentary inquiry. Unfortunately, the trust is not there that water sharing plans and water resource plans will be used adequately to ensure that downstream communities are protected. A fundamental first question is: Where are those plans? Every other State has operational plans.

We are the only State that has had to withdraw and revise our plans. The process lacks transparency and it is little wonder that people are incredulous that they will deliver a proper priority-of-use framework. I am well aware that many of the concerns that Labor has—about whether our rivers will be healthy and connected—go beyond the scope and operation of the regulation. However, to the extent that we have been unable to influence that management framework through parliamentary inquiries or engagement with the Government, which prior to this week has been limited, disallowing the regulation is one of the only, if not the only, meaningful tools at our disposal to ensure that we do our best to look after the health of the rivers and communities.

As a sign of our good faith, I reiterate again the three key essential elements Labor is interested in seeing in the framework to manage the licensing of floodplain harvesting: first, ensuring that overall water taken from the natural rivers and floodplains is consistent with legal sustainable diversion limits—obviously proper metering and monitoring is essential, and I acknowledge the Government's commitment to that; secondly, ensuring that the

environmental, social and economic interests of downstream communities along the Darling-Baaka River and into south-west New South Wales are protected from over-extraction of water in upstream communities, which reflects priority-of-use provisions in the Water Management Act and which is best reflected through meaningful and robust downstream water targets and flow triggers; and thirdly, ensuring that the substantial and unauthorised works on private land that divert and capture water on floodplains are decommissioned and removed.

That is not new and should come as no surprise to people. It is consistent with what Labor has been saying about the issue for some time. We want it resolved, we want this form of water take to be properly metered and we want certainty for users and for those downstream that the rivers and creeks will not dry up unless it is completely unavoidable. But at this stage none of that has been put in place through the right regulatory framework. Disallowing the regulations again will cause frustration and exasperation for some water users who want the issue resolved. I too want it to be resolved. I do not welcome that uncertainty and I wish it were not the case. But the reality is that those groups claim that regulating floodplain harvesting in that way will have an impact.

As Mr Justin Field mentioned, analysis by Aither for the Department of Planning, Industry and Environment suggests that between $19 million and $273 million could be lost from on-farm economic value because of regulated floodplain harvesting. Whatever the cost, to their credit irrigators and water users think it is worthwhile nonetheless in order to protect the environment and provide certainty. Uncertainty has a cost, too. But if we are going to impose that cost on farms and if we are going to have an impact on on-farm economic value, we had better be sure we are getting it right.

We do not want to regulate floodplain harvesting in a way that has a potential economic cost only to not realise the environmental benefits and only to ensure ongoing anxiety for downstream communities that will be hurt by the changes. If we do not get it right, we will not only potentially reduce on-farm economic value but we may also not achieve better outcomes for anyone, which serves no-one's interests. The current framework, which in many ways is close to identical to the one that was previously rejected as inadequate, is not the right one. Labor is supporting the disallowance motion today to provide more time and space to get it right.

Ms CATE FAEHRMANN (11:34): On behalf of The Greens I support the disallowance motion. I thank Mr Justin Field for moving it. I also gave notice of a motion to disallow the regulation, but we have reached Mr Justin Field's first, which is excellent. Once again we are debating a regulation concerning floodplain harvesting because a National Party water Minister has tried to ram through significant changes to the way in which water is regulated in this State and, once again, it has been done in a secretive and opaque way to suit the interests of wealthy irrigators in the northern basin—we have seen it before and we are seeing again. Since the last time the upper House disallowed a very similar regulation, which my colleagues have spoken on, a select committee of the Legislative Council, which I chaired, has inquired into the practice of floodplain harvesting. It was a very informative process. The Chair's foreword states:

> ... the committee ultimately determined, through its 14 findings, that there are too many inadequacies and uncertainties around floodplain harvesting at this point in time, acknowledging the evidence received during this inquiry that caution and improvement is required before a licensing framework is embedded. In particular, the committee finds that floodplain harvesting significantly impacts on downstream flows and river health, with economic, social, cultural and environmental consequences. Further, the committee makes the finding that floodplain harvesting has grown significantly in its volume of extraction over the years, contrary to policy and legislative intent. While the report acknowledges the investment and work completed by the NSW Government in this area to date, it finds that deficiencies remain, particularly in relation to volume measurement, illegal structures, water accounting rules, and community engagement and transparency.
>
> The report accordingly makes 25 recommendations to address the various concerns, including that floodplain harvesting licences are only issued at such a time that the Department of Planning, Industry and Environment is satisfied that the recommendations of this report will be fully met. Other recommendations include that a thorough review of data and an assessment of downstream economic, social, cultural and environmental impacts are conducted prior to finalising floodplain harvesting entitlements, and that the NSW Government establish an independent expert panel coordinated by the Natural Resources Commission to assess and audit floodplain harvesting models and compliance.

The report was handed down on 15 December last year, and the regulation that is the subject of the disallowance motion was gazetted two days later by the former water Minister, Melinda Pavey. That shows what the Government and the National Party water Minister thought of the evidence from stakeholders with scientific, legal and community expertise, which was presented at the inquiry—two days later, bang. The same regulations were doing exactly the same thing that the inquiry found would have environmental, cultural and socially disastrous consequences if they were allowed. I also put on the record evidence from Ms Beverley Smiles, a representative of the Government's Healthy Floodplains Review Committee. Ms Beverley Smiles gave in-camera evidence but agreed to the transcript being published. She said:

> The Healthy Floodplains project has nothing to do with health of flood plains. It is giving retrospective approval to structures and works while granting new floodplain harvesting entitlements that are far too large. The only focus of the project has been to assess floodplain harvesting capability at the property level with the purpose of licensing works and volume of take to lock in history of use as much as possible and identify individual property entitlements that will become a compensable, tradable, private property right.

What do we have here? We have a regulation. Earlier this week we heard that the Government has already started to look at issuing licences for floodplain harvesting in the Gwydir and Border river valleys. During the inquiry into floodplain harvesting we heard that the sustainable diversion limit, or basin cap, is 64 gigalitres. That is the legal limit. But we know that the department has previously stated that it wants to hand out up to 346 gigalitres, which is 286 gigalitres over the legislated limit. To get an idea of how much water that is, Sydney Harbour is 500 gigalitres. This Government wants to hand out two-thirds of Sydney Harbour to big, wealthy irrigators in the northern basin.

This regulation does not override the legislative requirements for total valley extractions to be within the limits set out in the Murray-Darling Basin Plan, which is 64 gigalitres—not 346 gigalitres, the amount this Government wants to hand out. As Ms Smiles said in her evidence, the consequence of that is that licences will become tradeable and compensable private property rights. What does that look like? Mr Justin Field has said that it could potentially be worth billions of dollars. Water buybacks through the Condamine-Balonne strategic water purchase saw the Commonwealth pay $2,745 per megalitre. If the Government hands out 346 gigalitres of licences at that rate, it would equate to almost a billion dollars' worth of licences.

I also put on record that last week I met with members of the Northern Basin Aboriginal Nations, who outlined a strong case that the Government's plan to hand out licences opens it up to compensation from native title holders. A number of native title determinations have recognised the rights to access, take and use of traditional natural resources like water. That includes the Barkandji native title determination, which includes the Baaka or Darling River. The right to take and use resources is also claimed by the other traditional owners in native title claims covering much of north-western New South Wales. Future acts are acts that affect native title rights. The act of keeping back rainwater or floodwaters behind a structure in such a manner that impedes the return of those flows to the river is an act that affects the native title right to access and take water. Until the licences are issued, those works are invalid at State law for the purposes of native title, and any native title compensation liability rests with the landholders.

However, licences issued after the commencement of the regulation will be a future act and will attract compensation under the Native Title Act, potentially setting up the State for massive liability. I previously spoke about compensation in relation to a future State government having to buy back water, which it inevitably will in order to save the rivers—holding all the water up north killed the Darling-Baaka River and caused those mass fish kills. But the Government has not said, "We get it. We're going to legislate floodplain harvesting within the legal limits of the Murray-Darling Basin cap, which is 64 gigalitres. We get it. We will put in place downstream target flows. We will make sure we have flow triggers, and we will make sure that there are healthy environmental assets downstream by measuring and licensing floodplain harvesting." Make no mistake, The Greens also want to see floodplain harvesting licensed and measured.

The Hon. Sam Farraway: Lies.

Ms CATE FAEHRMANN: Yes, we do, but we do not want to see 346 gigalitres of water potentially being held up north never to be released. Of course, it is not the right time to talk about this because there is water everywhere. But we know what happens when water suddenly is not everywhere. It is still in those massive storages, many of which are not approved, and some of which are illegal, and this Government has not made any plans public about what it is going to do to ensure that that is dealt with. I urge the National Party and the new Minister to support this disallowance motion because they do not want to go through this a fourth time. I call on Minister Kevin Anderson to consider the report and sit down with crossbench members and the Opposition to work on a regulatory framework that addresses the valid concerns of the community and ensures the health of the Darling-Baaka River and the rest of the basin.

The DEPUTY PRESIDENT (The Hon. Catherine Cusack): Before I call Mr Justin Field in reply, I indicate to members that I am not trying to be annoying about the mask policy in the Chamber, but it is a rule. I was not at the meeting when the rule was made; it is simply my awkward responsibility to remind members of the rule, and that is what I will do. The whole of the State is experiencing annoying rules at the moment. I know that members may forget to put on a mask after they have spoken. I believe that I am doing the right thing in reminding members to put their masks on so we do not find ourselves out of step with the rest of the State.

Mr JUSTIN FIELD (11:45): In reply: I thank all members for their contributions to this debate, which I know is being watched closely around the State, especially in the Murray-Darling Basin communities. There is an extraordinary level of interest in this debate in the Legislative Council, in part because we have been here before. Stakeholder groups have been following the issue closely. I particularly acknowledge the work of the parliamentary inquiry last year and the chair, Ms Cate Faehrmann. It was a detailed inquiry that heard a lot of important evidence about how, at the end of close to a 20-year process, there is still so much doubt around the modelling, the figures, the application of management rules and the risks of compensation. So many of those

fundamental questions, which should have been dealt with by now, are still contested, and we are hearing that that creates uncertainty and frustration.

I pick up briefly on the Hon. Rose Jackson's contribution in which she highlighted the requirements under the New South Wales Water Management Act for the priority of use provisions. The fundamental principles of water management in New South Wales are, in priority order, to deliver for the needs of community drinking water, for the environment, and then for other extractive uses. In late 2020 the ICAC handed down a report into water management, a long-investigated analysis of systemic water management issues in New South Wales. Its key recommendations and findings dealt with the question about whether or not water management in New South Wales was complying with the objects of the Act, in particular, the priority of use provisions. The ICAC report made it clear that water management in New South Wales was failing to adhere to them.

The Government has not been able to articulate how the management rules for that type of take meet the requirements of the law in New South Wales. It has failed to do that. That is why there is so much focus on downstream targets as the logical mechanism for demonstrating that we are complying with our own laws in New South Wales, which protect communities who have a shared interest in water flows across the landscape. It is not unproductive water if it is not captured and put on a crop. Water flowing across a property that would otherwise go onto a neighbour's property would end up in a creek or river or go into the groundwater and continue into the river cycle, as it does. It is valuable water for everybody who relies on the river, including the environment and the river itself. We have to have management rules that respect and understand how that water connects and how important it is to ecosystems, communities and other licence holders, including those few lucky enough to be granted billions of dollars' worth of water entitlements through the process.

The Government had an opportunity today. There is an acknowledgement from all members who contributed to debate that it is a question not so much about the regulation but about the management rules that will apply once the regulation allows those licences to be issued. The Government had an opportunity to say, "We hear you. We have heard you. There are things we can do in terms of regular reviews, engaging the Natural Resources Commission, and clarification about the implementation of targets." There have been good-faith discussions between the Government, the Opposition and other parties over the past six to 12 months about that. The Government could have put it on the agenda and said, "We have a plan to do that and this is how we will work with you to do that." It could have said, "We are going to review the 500 per cent rule and make clear how that will be managed in a way that protects the first flush and ensures that localised flooding events contribute as much as possible to end-of-system flows, without getting into a situation of a huge volume of take by a handful of irrigators at the very north of the system when the whole system is under pressure."

The Government could have done that today but did not at all. The Government did not send one signal that it was listening and was going to engage with the community to address those concerns. It has been just push ahead, push ahead, push ahead. I do not think that is good enough. I do not think that meets the lawful requirements. I do not think that meets the requirements that science has set out. I do not think that meets the expectation of other water users, including other irrigators and farmers right across the basin. That is disappointing. I say again to the water Minister there is a willingness in this House and in the communities to work with him to get the regulations and the licensing in place without causing damage downstream to communities, farming productivity and the river. I implore him to take the opportunity to work with us and communities to do that. I again commend the motion to the House.

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

The House divided.

Ayes 18
Noes 15
Majority.....3

AYES

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

NOES

Amato	Harwin	Mitchell
Cusack	Latham	Nile
Farlow (teller)	Maclaren-Jones	Taylor
Farraway	Mallard (teller)	Tudehope
Franklin	Martin	Ward

PAIRS

Donnelly	Fang
Moriarty	Poulos

Motion agreed to.

Business of the House

BUSINESS LAPSED

The PRESIDENT: I advise the House that, business of the House item No. 1 having been agreed to, business of the House item No. 2 has now lapsed.

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

Questions Without Notice

GOVERNMENT FEES AND CHARGES

The Hon. PENNY SHARPE (12:01): My question without notice is directed to the Minister for Finance, Minister for Employee Relations and the Leader of the Government. He said he wanted questions and he is going to get some today. Given this week the Australian Bureau of Statistics reported that real wage growth has fallen every year since this Government was elected in 2011, why is the Government still planning on collecting record levels of taxes, tolls and fines this financial year?

The Hon. Daniel Mookhey: You are the weakest link.

The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:01): Unlike what we have just heard from the shadow Treasurer, the Government has policies. There have been plenty of opportunities for the Opposition to articulate what its policy is in relation to this area. We had a nurses' strike last week—

The Hon. Penny Sharpe: Remember you have got to be directly relevant—just a hot tip.

The Hon. DAMIEN TUDEHOPE: Yes, I am coming to it. There was an opportunity last week for members opposite to articulate what their wages policy is. When asked, they squibbed the question; they did not have a policy.

The Hon. Daniel Mookhey: You did not ask.

The Hon. DAMIEN TUDEHOPE: The Hon. Daniel Mookhey is the shadow Treasurer today. I invite him to tell us today what the Opposition's policy is so that he can—

The PRESIDENT: The Minister will answer the question.

The Hon. DAMIEN TUDEHOPE: I take the view that this is a serious policy issue that requires deep consideration by both sides of Parliament, because there are plenty of members opposite who would say—

The Hon. Penny Sharpe: You are the Government.

The Hon. DAMIEN TUDEHOPE: And a good Opposition would have policies so it could say, "We say what should occur." The public sector wages policy of a 2.5 per cent increase each year has an opportunity for higher increases where employee savings are identified by the agency. The people of New South Wales expect us to strike the right balance between ensuring decent pay increases and putting taxpayer dollars towards necessary programs and projects.

The Hon. Penny Sharpe: Point of order: The Minister is not being directly relevant to the question. The question is about the Government's record levels of taxes, tolls and fines. It is not about the wages policy for public sector workers.

The PRESIDENT: I uphold the point of order. The issue of real wage growth is background to the question. While the Minister's comments on that are directly relevant, I draw him to the nub of the question.

The Hon. DAMIEN TUDEHOPE: To the point of order—

The PRESIDENT: I have ruled, Minister.

The Hon. DAMIEN TUDEHOPE: After we struck this balance, in real terms, New South Wales public sector wages increased—

The Hon. Daniel Mookhey: Point of order—

The PRESIDENT: Minister, I have just ruled that those comments are not directly relevant to the nub of the question, which is "Is the Government still planning on collecting record levels of taxes, tolls and fines this financial year?"

The Hon. DAMIEN TUDEHOPE: To the point of order—

The PRESIDENT: I have ruled. The Minister will answer the nub of the question.

The Hon. DAMIEN TUDEHOPE: The nub of the question, which I will address, is that this week the Australian Bureau of Statistics [ABS] reported that real wage growth has fallen every year. The first part of the question is what I will address—that the suggestion by the ABS is that real wage growth has reduced. I am addressing that issue and I will continue to address that issue.

The PRESIDENT: I call the Hon. Damien Tudehope to order for the first time. I have asked the Minister to answer the part of the question which is framed in a question, and not the background of the question, which he has already addressed.

The Hon. DAMIEN TUDEHOPE: I thank Mr President for his ruling, and I look forward to the supplementary question from the Opposition. This is a government that is committed to making sure we have real opportunities to address cost-of-living issues. If you want to look— [*Time expired*.]

BUS SAFETY WEEK

The Hon. CATHERINE CUSACK (12:06): My question is addressed to the Minister for Regional Transport and Roads. Will the Minister update the House on the importance of Bus Safety Week?

The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (12:06): I thank the member for her very important question. This week is the seventh week of the annual Bus Safety Week. Safety on and around our buses is incredibly important in Bus Safety Week, which runs from Monday 21 February to Sunday 27 February. The State has an incredible regional transport network, with over 3,000 buses operating right across rural and regional New South Wales. Clearly, members opposite have little respect for the regions and those that operate school buses. With school recently returning, one would hope that members opposite would take some interest in Bus Safety Week, but clearly not. They have so little respect for the regions.

The PRESIDENT: Order! Opposition and crossbench members will stop incessantly interjecting. If it continues, I will start to call members to order. The Minister has the call.

The Hon. SAM FARRAWAY: As I said, Bus Safety Week is this week, running from Monday 21 February to Sunday 27 February. As I said earlier, we have an incredible regional transport network, with over 3,000 buses operating across rural and regional New South Wales. Unfortunately, in the five years to 2020, 11 people lost their lives and 70 were seriously injured in crashes involving buses on country roads. This is a serious issue, despite the carry-on from members opposite, for our rural and regional communities that they need to be aware of. We know that buses are large and they cannot stop as quickly as cars. This is not rocket science.

The Hon. Penny Sharpe: You stopped them on Monday.

The Hon. SAM FARRAWAY: Again, members opposite clearly have so little respect for this. Recently, we saw a demonstration that found that at 80 kilometres per hour a bus needs a further 30 metres to reach a complete stop. That 30 metres can be a life or death situation. Because of the size and weight of the buses, there are severe outcomes for road users in these crash events. It is incredibly important. As we have seen—

The Hon. Catherine Cusack: Point of order: The Minister is giving an important answer about 11 deaths that have occurred in regional areas relating to buses. I cannot understand the level of interjection and efforts at hilarity coming from members on the other side. I ask that the Minister be heard in silence because I want to hear his answer.

The PRESIDENT: I uphold the point of order. I caution Opposition members that I will start putting members who interject on calls to order.

The Hon. SAM FARRAWAY: I thank the Hon. Catherine Cusack for the point of order. Clearly those opposite are so disrespectful in this space. I reiterate, up until 2020 we had lost seven people—seven people had died—in serious accidents or crashes involving buses, and 70 had been either seriously injured or injured. This is an important topic. Members should remain silent because we need to acknowledge these important issues, especially in the regions and after what we have been through with COVID. As the education Minister said, with kids recently returning to school, it is a good time to remind us all to be bus aware.

When kids get on and off buses and the lights flash, drivers need to observe a 40-kilometres-per-hour speed limit. It is incredibly important. I am absolutely gobsmacked by the attitude and behaviour of those opposite earlier, but I will move on. It is incredibly important to note that 40 kilometres per hour is the enforceable speed limit when the lights are flashing. I urge everyone entering school zones, particularly with kids back at school, to please pay attention and slow down. The safety of kids is absolutely important.

REGIONAL DISCOUNTED TRAIN FARES

The Hon. JOHN GRAHAM (12:10): My question is directed to the Minister for Regional Transport and Roads. As the Minister said that he had only heard about the train lockout when he watched it on the 6.00 a.m. news, has he asked Transport for NSW to extend the reported upcoming Sydney discounted train fares to regional commuters?

The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (12:11): I thank the member for the question. Yes, that is all covered in the briefings that we have had from Transport for NSW. Might I just add—

The Hon. Penny Sharpe: Sorry, did you ask or do you just wait to be told?

The Hon. SAM FARRAWAY: Are you going to keep interjecting? What's the story?

The PRESIDENT: Order! I call the Hon. Penny Sharpe to order for the first time.

The Hon. SAM FARRAWAY: I have been satisfied to date with the briefings that I have received from Transport for NSW on the Regional and Outer Metropolitan division.

The Hon. Anthony D'Adam: Point of order: The clock needs to be reset.

The PRESIDENT: The Clerk will reset the clock.

The Hon. SAM FARRAWAY: What I will touch on whilst I have the ability to answer this question is that I am in constant contact with the Regional and Outer Metropolitan division of Transport for NSW. We highlighted that yesterday in the continuation of the XPT services.

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

The Hon. SAM FARRAWAY: The point is that we would not have to be offering discounted fares if the unions had not walked away from the negotiation table on Sunday. The Government went to the Fair Work Commission. They met on Friday. There was an agreement. Everyone was around a table.

The PRESIDENT: I call the Hon. Courtney Houssos to order for the first time.

The Hon. SAM FARRAWAY: By Saturday and then into Sunday, the unions had walked away from the negotiation table. They sent representation with no direction. The unions and the Labor Party can be as tricky as they like about saying, "Oh, there is no strike." But if you walk away from the negotiation table, if you send representation into the negotiations with no direction, how can our rail operator, Transport for NSW, operate? How can it operate our rail network safely when there is absolutely—

The Hon. Mark Buttigieg: Point of order: My point of order is on relevance. The question was very specific: Has the Minister asked Transport for NSW to extend the reported upcoming Sydney discounted train fares to regional commuters? It was not about what was in the briefing or what the unions did or did not do. It is a very specific question and I ask that the Minister be brought to it.

The Hon. SAM FARRAWAY: To the point of order: I am being directly relevant. I am explaining that the Government would not have made this decision if the union movement had not walked away from the negotiation table. Members opposite can be tricky and call it what they like, but at the end of the day I am being directly relevant.

The PRESIDENT: Order! I have heard enough on the point of order. The Minister has been drifting from direct relevance to general relevance. He will focus directly on the part of the question that has been brought to his attention.

The Hon. SAM FARRAWAY: At the end of the day, we would not be talking about discounted fares, whether it is for the metropolitan or the regional transport network, if the network was not put in the situation that it was on Monday morning, that is, that our rail operator, Transport for NSW, could not operate the rail network safely because of the position it was put in by the union movement, supported by the Australian Labor Party.

The PRESIDENT: I call the Hon. Mark Buttigieg to order for the first time.

The Hon. SAM FARRAWAY: If you cannot operate the rail network safely, you cannot operate the rail network. If you cannot operate the rail network, it will not run. If the Government was not put in this position, we would not be offering discounted fares. At the end of the day Transport for NSW will continue to do whatever it can to ensure that commuters can get from A to B, whether they are in the regions or in the Greater Sydney area. This city is the gateway to Australia. We were meant to open up brilliantly on Monday. We were meant to welcome international tourists. We were meant to get more and more people into the city, from A to B, but instead—

The PRESIDENT: Order! I understand that this is a politically sensitive issue and that Opposition members are invested in it, but at this point their enthusiasm is running away with their common sense. Opposition members will cease interjecting. I call all Opposition members to order for the first time.

The Hon. Walt Secord: I have not said anything.

The Hon. Rose Jackson: Collective punishment.

The PRESIDENT: It is difficult to identify the members interjecting. Members will observe the standing orders. The Minister has the call.

The Hon. SAM FARRAWAY: What do commuters want? They want a rail network that works. They do not want the unions walking away from the negotiation table which would allow Transport for NSW to operate our transport network safely. This Government is committed to getting commuters from A to B as effectively and efficiently as possible, whether that is by way of the country Regional and Outer Metropolitan network, the intercity fleet, the XPT, the Endeavour, the XPLORER, or Sydney Trains. This Government is committed to getting commuters from A to B on our rail network and to doing it in the most cost-effective way. [*Time expired.*]

WILD DOGS IN NATIONAL PARKS

The Hon. MARK BANASIAK (12:16): My question is directed to the Hon. Ben Franklin, representing the Minister for Environment and Heritage. In the NSW National Parks and Wildlife Service Goolawah National Park, Goolawah Regional Park and Limeburners Creek National Park Draft Plan of Management, a strategy is being introduced to allow wild dogs to fulfil the natural ecological role of the dingo. How does the National Parks and Wildlife Service's plan to contain wild dogs within the invisible borders of our national parks fit with the NSW Wild Dog Management Strategy, the NSW Biosecurity Strategy 2013-2021, the New South Wales Biosecurity Act 2015 and the NSW Invasive Species Plan?

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (12:17): I thank the honourable member for that extremely detailed question. While I have a great deal of sympathy for the member and his motivations, I will take the question on notice. I will ask my friend and colleague the Hon. James Griffin, the Minister for Environment and Heritage, to deal with that multifaceted question in a timely manner.

COVID-19 AND PEOPLE WITH DISABILITY

The Hon. DON HARWIN (12:18): My question is addressed to the Minister for Families and Communities, and Minister for Disability Services. Will the Minister update the House on what the New South Wales Government is doing to protect people with disability in supported independent living from COVID-19?

The Hon. NATASHA MACLAREN-JONES (Minister for Families and Communities, and Minister for Disability Services) (12:18): I thank the honourable member for his question. The New South Wales Government is committed to supporting all people with disability and ensuring that they fully participate in a more inclusive community. We know that people with disability in supported independent living and other residential settings often have higher support needs and are at greater risk of developing a serious illness if they acquire COVID-19. The use of rapid antigen tests can assist people with disability to remain safely supported in their home by their usual support workers. That is why the New South Wales Government has provided almost 300,000 additional rapid antigen tests for people in supported independent living and other disability residential settings.

The Government's contribution will support approximately 9,000 people, who are some of the most vulnerable people in New South Wales. That is an interim measure for the immediate future, while the Commonwealth Government ramps up further supplies. We have worked with NSW Health to identify supported independent living providers, who will receive the tests through a partnership with their NSW Health local health districts. I thank the many health and disability support workers who have been busy unpacking and repacking the tests, which is a task that can be challenging given that many of the kits arrive in bulk and need to be customised so that they can be effectively and appropriately distributed to those in need. Having seen firsthand the distribution of tests across the district, the feedback has been extremely positive. The fact is that the tests are making a real difference to people's lives.

Since the start of the COVID-19 pandemic, the Government has committed to supporting vulnerable people with disability in New South Wales to stay COVID-safe in a number of ways, including establishing the New South Wales disability outbreak management oversight group, with senior representatives from State and Commonwealth agencies; developing protocols and incident action plans to support joint management of a COVID-19 outbreak in disability residential settings; providing frontline responses by local health districts and other agencies through outbreak management teams; advocating for shared Commonwealth vaccination data to assist in planning and implementation of vaccination promotion campaigns and targeted outreach; establishing public health orders requiring vaccination of workers in a range of disability sectors; providing materials on the NSW Health website specifically for disability service providers and people with disability, including in video and easy-read formats; establishing vaccination clinics adapted to meet the needs of people with disability; and developing approaches to ensure that all people with disability in New South Wales who want to be vaccinated can get vaccinated.

The Government continues to work to anticipate and adapt to the COVID-19 environment. One in five people in New South Wales live with disability, which equates to almost 1.4 million people. I am committed to listening to the concerns of people with disability, their families, advocates and service providers. I am proud to be part of a Government that is committed to providing services and support to ensure people with disability in New South Wales can participate fully in their lives.

ERARING POWER STATION CLOSURE

The Hon. ROBERT BORSAK (12:21): My question without notice is directed to the Leader of the Government and Minister for Finance, representing the Minister for Energy in the other place. Is the Minister aware that the early closure of Eraring Power Station will put 400 people directly out of a job, whilst the net zero emissions target will cost the Hunter region 10,000 jobs? Does the Minister agree that the closure will have zero impact on global temperatures but will increase electricity prices and lower reliability, forcing customers into "third-world-style programs to manage consumers", to quote *The Daily Telegraph*? Given that our regions are already struggling with housing affordability and the increased cost of living, will the Minister guarantee that there will not be third-world-style electricity supply conditions with the premature closure of Eraring Power Station? What guarantee will the Minister provide that electricity prices in this State will not increase?

The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:23): The question contains a lot of conjecture and argument. However, notwithstanding that, I will not give commentary on energy policy given the extensive nature of it. The part of the question about how many jobs will be lost is all significant conjecture. It asks me to respond to an article in *The Daily Telegraph*. However, I am happy to take it on notice and ask the Minister for a response.

TRANSPORT ASSET HOLDING ENTITY

The Hon. DANIEL MOOKHEY (12:23): My question without notice is directed to the Leader of the Government and Minister for Finance and Employee Relations, in his own capacity and in his capacity representing the Treasurer. How much more in interest will New South Wales pay as a result of the Government's decision in December to authorise a $1.1 billion bailout of the Transport Asset Holding Entity [TAHE] using borrowed money?

The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:24): There we go. We thought that question might arise.

The PRESIDENT: Order! The Minister has the call.

The Hon. DAMIEN TUDEHOPE: It is a policy-free zone on Labor's side of the House. Budget estimates are next week. I am not sure when the Treasurer appears.

The Hon. Daniel Mookhey: On Monday.

The Hon. DAMIEN TUDEHOPE: He appears on Monday, so there is a great opportunity to ask the Treasurer then. I will say that the Auditor-General gave TAHE an unqualified set of accounts.

The Hon. John Graham: After you gave it $1 billion.

The Hon. DAMIEN TUDEHOPE: No. TAHE has a set of unqualified accounts. The problem for those opposite is "What do we do now? We have invested so much in trying to destroy this organisation. We have invested so much in trying to establish that TAHE"—

The PRESIDENT: Order! With members wearing masks it is a little difficult to work out exactly who is interjecting, but I am working it out pretty quickly. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: I think there were over six hearings in relation to—

The Hon. Daniel Mookhey: Point of order: My point of order goes to direct relevance under Standing Order 65 (5). I asked a very specific question about how much extra interest we are paying as a result of the Minister's decision to authorise a $1.1 billion bailout. I did not ask for the Minister to account for six hearings of the Public Accountability Committee. The question was specific. I ask him to come back to it, given he is halfway through.

The PRESIDENT: I note that some of the Minister's comments were contextual and introductory, but I now urge him to come to the nub of the question.

The Hon. DAMIEN TUDEHOPE: The point that I was coming to before I was rudely interrupted was that in all those hearings the opportunity to explore this matter was raised. In fact, a key—

The Hon. Daniel Mookhey: That's not true; you announced it in December.

The PRESIDENT: Order! I call the Hon. Daniel Mookhey to order for the second time. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: Policy-free zone, mate.

The PRESIDENT: The Minister has the call. I encourage him to answer the question and not respond to interjections.

The Hon. DAMIEN TUDEHOPE: There was significant discussion between the Auditor-General and TAHE about how a proper return on assets was being delivered to legitimise the accounts that are the subject of the organisation. The reality is that through working backwards and forwards, as any agency does to satisfy the requirements of its accountants, arrangements were made to satisfy the accounts. At that point, there was utter failure of the whole case that those opposite tried to make to undermine a legitimate State-owned corporation in this State. Quite frankly, it has been disgusting. Having said that, I am happy to refer the balance of the question to the Treasurer.

WESTERN SYDNEY LIVABILITY

The Hon. SCOTT FARLOW (12:28): My question is addressed to the Leader of the Government. How will the New South Wales Government be driving improved livability in western Sydney through WestInvest?

The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:28): I thank the honourable member for his question. It is a great question because it gives me an opportunity to say that the investment the Government is making in western Sydney—

The Hon. Mark Latham: What's the song?

The Hon. DAMIEN TUDEHOPE: I am happy for the member to engage. The $5 billion WestInvest program will help build new and improved facilities for communities in western Sydney. After Labor left us with a $35 billion infrastructure backlog, we have been working nonstop to deliver. The $5 billion program is made possible by our successful WestConnex asset recycling strategy, with funding to deliver projects to improve livability in western Sydney. The projects include parks, urban spaces and green space. They enhance community infrastructure, such as local sporting grounds; modernise local schools; create and enhance the arts and cultural facilities; revitalise high streets; and clear local traffic. Some $3 billion will be made available to New South Wales government agencies to deliver transformational projects that will benefit local communities, while $2 billion will be reserved for priority community projects, which includes $400 million directly allocated to the 15 local councils to advance local projects.

The Hon. John Graham: What about the Hornsby Quarry?

The Hon. DAMIEN TUDEHOPE: I do not think that is one of the councils, by the way. Some $1.6 billion will be allocated through a competitive round of grants open to non-government organisations, including community groups, not-for-profits, local Aboriginal land councils and local councils.

The PRESIDENT: I know the Minister is enjoying this, but perhaps Opposition members could lower the volume. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: It is so predictable. I do not know what it is, Mr President, but I have this effect on members opposite. Every time I start to talk the volume goes up. Anyway, I am sure that there is some medicine they can take. I am thrilled to say that the "Have your say" consultation is now open until 31 March 2022, when the official application process will get underway. I look forward to those members opposite who live in western Sydney going online to have their say. With apologies to Pet Shop Boys:

(Together) We will make our plans
(Together) We will start life new
(Together) Change our pace of life
(Together) This is what we'll do
(Together) We will find a place
(Together) Make more open space

(Invest west) Life is peaceful there
(Invest west) In the open air
(Invest west) Where the skies are blue
(Invest west) This is what we're gonna do.

The PRESIDENT: Ms Abigail Boyd has the call. I am not sure how she will follow that.

Ms Abigail Boyd: The Minister has wrecked yet another song for me for all time.

NATIONAL DISABILITY INSURANCE SCHEME FUNDING

Ms ABIGAIL BOYD (12:31): My question is directed to the Minister for Families and Communities, and Minister for Disability Services. Given the recent cuts to Federal National Disability Insurance Scheme funding for people with intellectual disability and autism, and recent reports about individual advocacy services for people with intellectual disability and autism being overwhelmed as a result, what is the New South Wales Government doing to represent and advocate for New South Wales people with disability in relation to NDIS funding?

The Hon. NATASHA MACLAREN-JONES (Minister for Families and Communities, and Minister for Disability Services) (12:32): I thank Ms Abigail Boyd for her question and her advocacy in this portfolio. In her time as a member of this House, she has been a strong advocate and made strong representation. The New South Wales Government has been investing and working with the Federal Government to provide support for people with disability, particularly in representative advocacy, which is similar to the systemic advocacy support defined specifically as for people with disability and their carers. We also seek to promote and represent the views and the interests of its members and other people with similar disabilities. I will take on notice the question regarding the specifics of further work on transitional advocacy funding in relation to the Federal Government.

TRANSPORT ASSET HOLDING ENTITY

The Hon. SHAOQUETT MOSELMANE (12:34): My question without notice is directed to the Minister for Finance. Is the Government providing the Transport Asset Holding Entity with the extra $4.1 billion that the Auditor-General says is needed by the end of this decade to stop her from qualifying the State's accounts?

The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:34): I am delighted in the interest in the Transport Asset Holding Entity, which has been given a clean bill of health by the Auditor-General. There is an agreement relating to the return that the Transport Asset Holding Entity should be seeking. I expect arrangements will be made to ensure that the return is met in terms of the assets that are held. I note that there will be opportunities to interrogate the issue further in budget estimates. The chair and the CEO of the Transport Asset Holding Entity will be there to answer questions about how they anticipate the return on the assets is made available, as members would expect. I welcome those opportunities.

To the Hon. Shaoquett Moselmane's question, that will play out through an arrangement that has been reached between the Transport Asset Holding Entity and Transport for NSW. I look forward to the opportunity to further explore that in budget estimates. The member may have to wait until he has the opportunity to talk to the CEO and the chair of the Transport Asset Holding Entity. I hope the honourable member comes along because I think it would add significantly to the personnel who will be there.

The Hon. John Graham: Aren't you the finance Minister? Shouldn't you know some of these things? Shouldn't you actually be able to answer some of these questions?

The Hon. DAMIEN TUDEHOPE: This is a supplementary question, is it?

The PRESIDENT: No, I think it is just a casual interjection. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: I look forward to the Hon. Shaoquett Moselmane's participation in the—

The Hon. Shaoquett Moselmane: Is that a yes?

The Hon. DAMIEN TUDEHOPE: I am on next Friday.

The Hon. Shaoquett Moselmane: I'll be there with my colleague.

The Hon. DAMIEN TUDEHOPE: No, I don't think you will be. I think you will be with the Minister for Transport, who will be on at the same time as me—for which I am very thankful!

CLOSING THE GAP

The Hon. DON HARWIN (12:37): My question is addressed to the Minister for Aboriginal Affairs. Will the Minister provide the House with an update on the community engagements being led by the NSW Coalition of Aboriginal Peak Organisations on Closing the Gap in New South Wales?

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (12:37): I start by once again acknowledging my predecessor, the Hon. Don Harwin, who was passionate, committed and genuine in that space. It is critical for all members in this place to give their heartfelt and genuine commitment to close the gap in a real way for Aboriginal and non-Aboriginal Australians. We are working in partnership with the NSW Coalition of Aboriginal Peak Organisations, better known as CAPO, that represent essential services in Aboriginal communities, such as health care, education, legal advice and representation, the LGBTQIA+ community, family and community wellbeing, and teaching and sharing culture and history.

CAPO is pivotal in ensuring that we elevate the voices of Aboriginal people and organisations to close the gap. It is most appropriate that CAPO leads the consultation with Aboriginal people and communities across New South Wales as part of the joint commitment to regular and ongoing engagement with Aboriginal communities. That is expected under the National Agreement on Closing the Gap, signed by the New South Wales Government in July 2020, and that is what we are doing. I am advised that throughout March this year CAPO will lead community consultations on the next stage of Closing the Gap in 34 locations across New South Wales.

I also understand it will be the most inclusive and comprehensive approach to engaging with Aboriginal communities on Closing the Gap of all jurisdictions across the country. Those engagements are not only planned for the big cities and regional centres; they will be held in places that often miss out but play an essential role within our State. Some of those towns and places include Dareton, Balranald, Wilcannia, Cowra, Condobolin, Bega, Deniliquin, Bourke, and Lightning Ridge. I am looking forward to hearing directly from the community on what is currently working and how we can do things differently to ensure that we as a Government are delivering tangible and effective programs in our regional and urban communities. There is also opportunity for the community to provide input and feedback via the New South Wales Government's Closing the Gap "Have Your Say" web portal.

The engagement strategy will provide the opportunity for as many Aboriginal people and organisations as possible to have their voices heard. Importantly, the input from Aboriginal people across those consultations will help to guide and inform the next NSW Implementation Plan on Closing the Gap. As part of our commitment to doing things differently, those consultations are occurring prior to the drafting of the NSW Implementation Plan to ensure maximum input from Aboriginal communities is included. Aboriginal leaders are urging all of us to make sure that we do not pay lip service to what Aboriginal communities are saying, but rather to embed different approaches that appropriately respond to Aboriginal community needs and aspirations. That shows our commitment to Closing the Gap in New South Wales and assists in achieving real and lasting improvements to the lives of Aboriginal people in New South Wales through listening to and being guided by Aboriginal people.

DUNOON DAM

Ms CATE FAEHRMANN (12:40): I direct my question to the Minister for Aboriginal Affairs. In response to my question on Tuesday regarding the proposed Dunoon dam, the Minister said:

> ... it is critically important that appropriate, genuine and substantial consultation and collaboration happens with Indigenous people, particularly the traditional owners of the lands on which those infrastructure projects—

meaning water infrastructure projects—

take place.

Given that, has the Minister attempted to meet with the Widjabul Wia-bal people to hear their concerns about the impending destruction of their sacred sites should the Dunoon dam go ahead?

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (12:41): I thank the member for her question. It was lovely for her to have a fly-in, fly-out visit to the part of the world where I live. It was terrific that you could visit the community. You were there with the Hon. Catherine Cusack, and I know you have a genuine interest and commitment in this space. The short answer is that I have not met with them yet. I do not think they have reached out to ask for a visit. I may be wrong, but I do not think that is the case. Of course, I would be happy to meet with them. I am happy to meet with any Aboriginal organisation or community across this State as much as I possibly can if my diary will allow.

The point that I made in my previous answer was that there must be genuine engagement with Aboriginal communities. We must genuinely collaborate and listen to their aims and ambitions and concerns in order to address them effectively. Can we do that in every situation? No, because there are a range of competing interests within government and they must all be balanced. But I make the commitment that I am happy to meet with them, and I would be delighted to speak with the member after question time to ensure that we can make that connection happen.

Ms CATE FAEHRMANN (12:42): I ask a supplementary question. Will the Minister elucidate his answer where he said he would listen to and address their concerns? They have said that they do not support the Dunoon dam project, as it would destroy 25 sacred burial grounds. How would the Minister address those concerns of the Widjabul Wia-bal people?

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (12:43): I will obviously not address the potential outcomes of any of those conversations. I am the Minister for Aboriginal Affairs and I have specific focus on those issues. But I am also a very proud resident of the Northern Rivers region of New South Wales and member of the National Party. As such, I understand the critical importance of building water infrastructure as well. While I hear the member's concerns, I reiterate the point I made in question time on Tuesday, which is that we must look at what we need to do to build water and other infrastructure in this State, but we must also be incredibly sympathetic to the concerns of Aboriginal people. I will not pre-empt the outcome of those conversations, nor will I pre-empt how we can work to ensure that their concerns addressed. That would be idiotic of me to do so in this place without having actually met with them and heard their concerns firsthand.

I will obviously listen respectfully, appropriately and genuinely. I will do all I can to take those concerns back to the Government and advocate for them. That is critically important for Aboriginal people across the State and for the Government, when it is balancing up those interests, to decide how it will proceed. The other point is that there is no plan on the table for the Dunoon dam, though there has certainly been discussion, and a different position has been promulgated by Rous County Council after the recent local government elections, which may lead to other actions. At the moment there is no plan on the table for the Government's consideration. When there is one, obviously that will need to be considered.

MINISTERIAL BOARD APPOINTMENTS

The Hon. WALT SECORD (12:45): My question without notice is directed to the Minister for Metropolitan Roads. Given community concerns, what steps has the Minister taken to ensure integrity and merit-based appointments to boards and committees in her current portfolios, given that appointments made in her previous portfolio are now the subject of a review by the new Minister?

The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:45): What an entirely predictable question from the honourable member. I stand by all my appointments. They are made in accordance with the Premier's Memorandum M2021-07, which is in place to ensure a robust process around appointments. It was my great privilege to serve as Minister for Sport, Multiculturalism, Seniors and Veterans. All board appointments made during my time in those portfolios were made in accordance with the memorandum, and I stand by those. They were made on merit, with each appointee chosen for their strong and diverse backgrounds in ageing and seniors. I am very proud of those appointments.

They include Councillor Barbara Ward, Councillor Sally Betts and Dr Anthony Virtue. Those members bring a wealth of experience and skills and they will undoubtedly be strong additions to the NSW Ministerial Advisory Council on Ageing. I absolutely stand by them, as does the current Minister. A number of members of the Ministerial Advisory Committee on Ageing had their terms expire at the end of 2021. Those members had all

served for at least two terms on the council. It was entirely appropriate and in accordance with good governance practice for those roles to be refreshed. I thank those longstanding members for their service.

The Hon. WALT SECORD (12:47): I ask a supplementary question. Will the Minister elucidate that part of her answer where she alluded to the nominations of Barbara Ward and Sally Betts? She did not refer to the appointment of Kathryn Greiner, who is chairing the board. Why did the Minister not refer to her?

The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:47): It is not a new appointment.

The Hon. DANIEL MOOKHEY (12:47): I ask a second supplementary question. Will the Minister please elucidate by explaining, firstly, whether or not the three people that she made direct reference to were chosen through a merit-based selection process? Secondly, if so, was there a public call for applications?

The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:48): I refer to my earlier answer. All of those appointments were made in accordance with the Premier's Memorandum M2021-07. The board was replaced and refreshed and all board appointments are open for application on the Government's websites.

HIGHER SCHOOL CERTIFICATE FIRST IN COURSE CEREMONY

The Hon. SCOTT FARLOW (12:48): My question is addressed to the Minister for Education and Early Learning. Will the Minister please update the House on the success of the 2021 HSC and the First in Course?

The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (12:49): I thank the member for his question. As we have talked about in this House many times, the HSC class of 2021 faced many hurdles. Indeed, there were times when some people were calling for the exams to be cancelled entirely. But we are lucky they were not because over 400,000 individual exam sessions were held successfully. It was my priority to ensure that the 69,000 students who completed the HSC last year, or the 76,000 students who participated in at least one HSC exam, had the opportunity to demonstrate the culmination of what they had learnt in their courses. The class of 2021 demonstrated incredible resilience and academic excellence after a tough year which tested the best of us.

Over a four-week period last year, students sat 110 exams across 750 exam venues. Against all the challenges of 2021, our HSC students truly achieved. If their results are an indication of future capability then New South Wales will be in good hands. We had 1,476 students recognised on the All Round Achievers list for results in the highest possible band across 10 units of study, while 786 students were featured on the Top Achievers list for earning one of the top places and a result in the highest band. Some 17,820 students received at least one band six to be recognised on the Distinguished Achievers list. In January I was fortunate to attend the First in Course ceremony to celebrate the 139 students who achieved First in Course in last year's HSC, nine of whom topped more than one course. I also had the opportunity to inform some of those students that they had come first in their HSC, which is an amazing and lovely thing to be able to do.

I call out a couple of those students. I spoke to Abram Liddell from Narromine, who was shocked when I called to tell him that he had topped the State in electrotechnology. I would repeat what he said but it is probably unparliamentary language. He did say to me that he thought he went alright in that exam and I said, "Yes, you did okay!" Interestingly, he was considering becoming a pilot but has decided to pursue a career as an electrician. He started an apprenticeship so that he can stay in the regions in Dubbo and he knows that he will always find work. He is a great young man and I think he would be quite fun to have a beer with at the pub one day. I also acknowledge Jadzia Wolff from Kingscliff, who topped drama. Jadzia was a member of my Minister's Student Council, known as DOVES—the Department of Student Voices in Education and Schools. She was a member of the initial steering committee and an integral part of the process in establishing that group. She is an amazing young woman so I was excited to see her success as well. Each of our students—

[*Interruption*]

Sorry, Siri on my smart watch didn't like that. She just told me to try again!

The Hon. Daniel Mookhey: Try again.

The Hon. SARAH MITCHELL: The students do not need to try again—they did well enough. As I was saying, every one of our students who completed the HSC last year did an amazing job. I congratulate them and all of the families, teachers, our staff at the NSW Education Standards Authority and everybody who made the exams go off without a hitch in a challenging year.

PRINCES HIGHWAY UPGRADE

Mr JUSTIN FIELD (12:52): My question is directed to the Minister for Regional Transport and Roads. In regard to the Princes Highway upgrade between Jervis Bay and Ulladulla, Transport for NSW has apparently rejected requests from Shoalhaven City Council to invest in higher standards of fauna-sensitive road improvements. Will the new Minister direct Transport for NSW to reconsider that decision and look at opportunities to best protect wildlife as those road improvements on the South Coast are undertaken?

The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (12:52): I thank the member for his question. I acknowledge that the Princes Highway is critical to a thriving South Coast and that the upgrade program is a critical piece of work that I am committed to. I am happy to progress with a consultation with the local communities. With respect to the member's specific question, and as part of the REF—the review of the environmental factors—for that project, I am advised that Transport for NSW does consider the impacts to fauna, including the connectivity. The Jervis Bay Road to Ulladulla section of the Princes Highway upgrade program will make those considerations. In addition, I am happy to facilitate a briefing with Transport for NSW for the member if he wishes. My door is always open to any community concerns from the South Coast about the Princes Highway project.

Mr JUSTIN FIELD (12:53): I ask a supplementary question. Has that consideration and review of environmental factors included engagement with Shoalhaven City Council, and has Transport for NSW already rejected the council's request for additional fauna protection along that section of the road through that process?

The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (12:54): I thank the member for his supplementary question. With regard to the REF and Shoalhaven City Council, I will take that part on notice because I am unaware of the dialogue between Transport for NSW and Shoalhaven City Council. With regard to the review of environmental factors, I am advised that those considerations of the impacts to fauna are included, but I will also take it on notice and provide the member a written answer.

QR CODE DATA BREACH AND DOMESTIC VIOLENCE

The Hon. MARK BUTTIGIEG (12:55): My question is directed to the Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence. Following the QR code data breach in which sensitive details of domestic violence shelters were made public, and given that a domestic violence victim support advocate said the leak "could be a matter of life and death", what is the Minister doing to protect the lives of the women the Government has now potentially endangered?

The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:55): I thank the member for his important question. Women's safety is of paramount importance and I recognise the distress that has been caused by this matter. Upon first hearing of the incident, I immediately contacted both Minister Dominello and my department to understand what actions had been taken to remedy the release of that information, particularly in relation to women's shelters and family and domestic violence service providers. I am advised that service providers were invited to upload a COVID-safe plan for their organisation to obtain a QR code from Service NSW. I am advised that the usual practice for those mostly Specialist Homelessness Services is to provide a phone number rather than a physical address. I am also advised that upon becoming aware of the incident, the Department of Communities and Justice [DCJ] and the Department of Customer Service contacted all of the impacted parties.

Following being contacted, a risk assessment was undertaken by the impacted parties in consultation with the relevant agencies. I am advised that following the risk assessment, those service providers advised the Department of Communities and Justice that there were no issues as a result of the incident. As Minister Dominello indicated in the Legislative Assembly last week, that view is also held by the Information and Privacy Commissioner, who has indicated that they are satisfied with the actions taken to contain, respond to and remediate the incident. However, as the Premier said, it is an incident that should not have occurred. The New South Wales Government apologises to those providers that were impacted. Since becoming aware of the incident last week, I have made additional inquiries. I asked DCJ to follow up with any impacted women's shelters to ensure all measures have been put in place to ensure the ongoing security of all those sites.

The Hon. MARK BUTTIGIEG (12:57): I ask a supplementary question. I thank the Minister for her answer. I ask her to elucidate on the part where she detailed to the House that a risk assessment had been undertaken. Presumably, that risk assessment deemed that the information that was on the website for a certain amount of time could have perhaps been downloaded by someone but that the risk is apparently so low that there is no further action necessary. Is that the view of the Minister and the Government?

The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:58): It is a good question. No, that is not my

understanding. My understanding is that there was no impact. I can take the particulars of that on notice and get more information on that specific aspect for the member. The briefing I have had today is that the inquiries made at the time were subsequently followed up and they have come back and said that there is nothing arising. I am happy to ask that specific question in addition but that is not my understanding.

RURAL AND REGIONAL HEALTH WORKER HOUSING

The Hon. CATHERINE CUSACK (12:58): My question is addressed to the Minister for Women, Minister for Regional Health, and Minister for Mental Health. Will the Minister update the House on how the New South Wales Government is assisting our health workforce with appropriate residential support in rural and regional New South Wales?

The Hon. BRONNIE TAYLOR (Minister for Women, Minister for Regional Health, and Minister for Mental Health) (12:59): I thank the Hon. Catherine Cusack for her question. With COVID and the shift to working from home we are really seeing what I would like to call the regional renaissance—Sydneysiders swapping the big city to make a life in regional New South Wales. However, as we see more people move we see increases in property prices. Sometimes finding affordable housing can be more of a challenge, particularly for our new and visiting health workers. That is why the New South Wales Government has stepped in. We are taking positive steps to address the housing stress faced by local and visiting frontline health workers.

Recently I joined the Deputy Premier, Paul Toole, and the member for Monaro-elect, Nichole Overall, to announce that modern and sustainable health worker accommodation will be built at the Cooma hospital and at other locations in southern New South Wales. This announcement is part of the $500 million funding boost for rural and regional health services announced by the New South Wales Government in November last year. The $45.3 million has been allocated to deliver modern and sustainable accommodation for health workers in three rural health districts—the Southern NSW, Murrumbidgee and Far West local health districts.

We have found that this builds on the $30 million pledged late last year for health worker housing for the Hunter and western New South Wales. We have seen this work really well in different parts of the Southern NSW Local Health District, particularly in the Western NSW Local Health District as well. It is really important that we pave the way for people to come to the regions and that we can provide housing when they are there so that we make sure that we are making that transition as easy as possible for people to specialise in rural and regional health medicine.

The Cooma hospital's new director of nursing and midwifery, Michelle Esler, shared her struggles of being able to attract things into that community and to attract housing. By doing this we know that if we could provide that housing we can provide that ability for health workers to come into our area and have that security. I was talking to one of the registered nurses who had moved from Sydney recently. She said that it was just fantastic to be working in Cooma. She wanted to see more people take up those opportunities. She felt that her scope of practice was really wide, really rewarding and something that she absolutely was enjoying. That is what we want to see. We want to see people coming into the regions, make their home there and understand the incredible benefits of being part of the NSW Health workforce in rural and regional New South Wales.

I do not like to talk about myself but when I look back on what I did and the opportunities that came to me from working in a rural setting in health, they have been absolutely endless. I encourage anyone out there to come and get a job in the regions. We want you and we want you to work in our health system.

The Hon. DAMIEN TUDEHOPE: If there are any further questions, members should place them on notice.

Supplementary Questions for Written Answers

TRANSPORT ASSET HOLDING ENTITY

The Hon. DANIEL MOOKHEY (13:02): My supplementary question for written answer is directed to the Leader of the Government and Minister for Finance. Will he elucidate his answers in respect to the Transport Asset Holding Entity? How many times has he met with the chair and/or CEO of the Transport Asset Holding Entity this year and on what dates?

The Hon. Damien Tudehope: I'm happy to answer it.

The Hon. Daniel Mookhey: Good.

Questions Without Notice: Take Note

TAKE NOTE OF ANSWERS TO QUESTIONS

The Hon. DANIEL MOOKHEY (13:03): I move:

That the House take note of answers to questions.

GOVERNMENT FEES AND CHARGES

TRANSPORT ASSET HOLDING ENTITY

RURAL AND REGIONAL HEALTH WORKER HOUSING

The Hon. DANIEL MOOKHEY (13:03): Many aspects of the answers given by the Minister for Finance today were most offensive, particularly his choice to reach into the oeuvre of the Pet Shop Boys and distort what was a great song. I make the observation, having listened to his answers on cost of living and the Transport Asset Holding Entity, Westinvest, that another great Pet Shop Boys song comes to mind and that is *What Have I Done to Deserve This?*

If a working family in New South Wales was told yesterday by the Australian Bureau of Statistics that each year since this Government has come to power their real wages growth has gone down, down and down, by listening to the answers given by the Minister for Finance they would take absolutely no hope whatsoever from them. The Opposition asked the Minister whether he intended to go on collecting record levels of taxes and tolls from the working families of New South Wales. The one part of the answer that he was eager to elude was that precise question. What we can infer from that is that there is no change in the plans of the Government when it comes to the key issues affecting working families across all of New South Wales, including regional New South Wales, western Sydney and our great cities of Wollongong and Newcastle.

But as offensive as it is for working families who are dealing with declining real wage growth year after year under this Government, the question is: What is the Government doing with the record levels of taxes it is raising from these families? That brings us to the questions that deal with the Transport Asset Holding Entity. Rest assured that as a result of the incompetence of this Government and this Premier over the past few years the additional money that is coming in revenue is having to be fed to the Transport Asset Holding Entity to bail it out. Working families are paying more. This State is going further into debt. We are paying much more in interest because this Government tried to pull a budget scam and it blew up in its face—a $1.1 billion bailout just in the next three years.

As my colleague the Hon. Shaoquett Moselmane noted, a further $4.2 billion will hit the budget by the end of the decade. This is money that cannot be used to assist the nurses and other health professionals who are seeking accommodation in regional New South Wales. It cannot be used to deal with the record levels of backlog when it comes to maintenance in public housing. It certainly cannot be used to deliver better services in our schools. This Government is taxing at high levels. Tolls are at record levels and every additional dollar that has been raised is being wasted on the other around from this accounting sham gone wrong.

WESTERN SYDNEY LIVABILITY

The Hon. MARK LATHAM (13:06): I take note of the answer given by the Minister for Finance about Westinvest. I too believe he had the wrong song. For western Sydney it is a case of *Roll Out the Barrel*, you've got a barrel of pork. What we are going to see is a massive slush fund of pork-barrelling by this Government as it continues its pattern of failing to address the real needs of western Sydney. How do we know that? Look at health care. The Government is planning to bring 1.3 million people to live in western Sydney, west of the M7 without the allocation of land, let alone buildings, for a new public hospital. The Government had the opportunity with the aerotropolis to allocate land and build a public hospital for that vast population spanning from Penrith to Camden. Instead, the Government's argument is to rely on the existing Liverpool, Penrith and Campbelltown hospitals, which are already at breaking point

No new hospital at Bringelly and the aerotropolis means increased pressure with huge population growth putting unacceptable pressure on the Penrith, Liverpool, Camden and Campbelltown hospitals. That is a disgrace in itself from a Government that builds new hospitals in its own electorates in country New South Wales and the North Shore of Sydney, but nothing of that vital healthcare asset and service for western Sydney. When we come to rail services, all the data and cost-benefit studies show that the best rail allocation for western Sydney would be to extend the Leppington line to the Badgerys Creek airport, not only providing a link into the centre of Sydney from the new international airport Badgerys Creek but also servicing that population growth from Austral out to Bringelly. Instead the Government has gone down the path of pork-barrelling for the electoral benefit of the marginal seat of Penrith to do the Badgerys Creek to St Marys metro. There is a cost-benefit analysis on that showing that for every dollar of expenditure, there is only 15c of public transport benefit from the western Sydney Metro and the extraordinary $11 billion allocation of funding.

For every dollar of expenditure in public transport all we get back is 15c. The major benefit, over 50c in the dollar, goes in land values for companies like Celestino and its ghost science park, where nothing is happening, and the Government has allocated a metro station at Luddenham. Again, it is a misallocation of resources. It is

pork-barrelling for the benefit of the marginal seat of Penrith at the cost of servicing the huge population corridor from Bringelly to Leppington and through to Liverpool, with no allocation of land—let alone buildings—for a new public hospital that is desperately needed in that part of outer western Sydney. The Government can sing songs about WestInvest, but it is just another case of pork-barrelling and another slush fund, and western Sydney has far higher priorities.

BUS SAFETY WEEK

The Hon. PENNY SHARPE (13:09): I take note of the answers given by the Hon. Sam Farraway in his role as the Minister for Regional Transport and Roads. He took a dixer today on bus safety, and he was leading with his chin, given what has happened with bus safety, not just this week but over several years. Let us be clear, the Minister was too excited beating up on workers and others during his answer than actually dealing with what occurred on Monday. Let us be clear, the Government shut down the network. The Minister was asleep. He told the House this week that he woke up at 6.00 a.m. and heard it on the media like everyone else, and then today he tells the House that he is satisfied with the briefings. What is the point of having a regional transport Minister if he is not even on top of the impact of closing down the network?

The Minister is very happy to talk about the XPT, but let us talk about the intercity trains. The new member for the Upper Hunter and the member for Terrigal will not be thanking the Minister because of his lack of attention to what it means for commuters from the Hunter, the Central Coast, the Blue Mountains, the South Coast and the Illawarra when the rail network shuts down. It is a significant issue. The fact the entire network was stopped meant that people could not get to school, to university, which started this week, or to their jobs. We have reports of nurses having to pay hundreds of dollars to try to get to work that day because of the shutdown. It was not an insubstantial matter. The willingness and desire of the Minister to play to his colleagues on the backbench and talk about unions rather than caring about the consequences when the rail network goes down is a real problem.

Secondly, in relation to bus safety, the Minister spoke about deaths, which is obviously extremely important. But let us look at the Government's record on school buses and seatbelts. In 2013 the Government promised that within 10 years all buses that carried school kids would have seatbelts installed. They have crab walked that back. By 2019, only 65 buses had been done. Last year, the new Minister said there was going to be a review, and then said, "By the way, we might do another 150." Let us be clear, the Government has absolutely walked away from one of the key safety issues that it could deal with, which is seatbelts on school buses. For the Minister to suggest that Labor does not understand or care about that matter is a joke. My last issue is, what has the Government done about the buses that have been catching on fire because of gas problems? It has been promising to fix that too, and it still has not.

CROWN SYDNEY CASINO

Mr JUSTIN FIELD (13:12): I take note of the written answer by the new Minister for Hospitality and Racing, Kevin Anderson, to my supplementary question relating to the status of the implementation of the 19 recommendations from the Bergin inquiry report into the allegations of links to organised crime and money laundering at the Crown Casino. The Government's response is interesting. It said:

> The Government is developing proposals to implement the recommendations in the Bergin Inquiry Report and anticipates introducing legislation to implement the recommendations later in 2022.

The concept of "developing proposals" is interesting because that report was quite detailed and provided quite specific recommendations to the Government about how it could address the issues at Crown Casino. This is something we should be watching very closely. In the ministerial reshuffle last year, the Minister who had carriage of pushing for reforms in this space to address bad corporate behaviour, which was allowed to knowingly occur in the casino and which was criminal in many instances, and who was supporting the inquiries, the Hon. Victor Dominello, lost his job in this space. That is important because the Bergin inquiry recommendations have not been dealt with.

A similar investigation is now happening into the Star Casino after a second *60 Minutes* story uncovered similar behaviour there. Many will remember that we had a third investigation by *60 Minutes* and Nine newspapers into the links between money laundering and organised crime and poker machines in New South Wales clubs and pubs. I raised these issues in the House last year. Why is there a triple standard? Why does Crown get a royal commission-style inquiry and the Star gets one, but pubs and clubs are largely ignored?

The Premier squibbed it. He had an opportunity to address this issue straightaway. He dillydallied. I congratulate the NSW Crime Commissioner, who stood up at the end of last year and said, "We will investigate what is going on in terms of money laundering and the links with organised crime in our clubs and pubs." He has identified that $85 billion was gambled in poker machines in clubs and pubs last year, and made the case that when so much money is involved, it is reasonable to suspect some level of criminal activity. I highlight that the

Government has known that for a long time. Whistleblower Troy Stolz has shown that the level of compliance into money laundering at New South Wales clubs and pubs is dismal. We have known that for a long time. The Government has not acted; the Crime Commission will. Let us see what it comes back with. There needs to be urgent reform in this space.

MINISTERIAL BOARD APPOINTMENTS

The Hon. WALT SECORD (13:16): I take note of an answer given by the Minister for Metropolitan Roads relating to her seven-month stint as the Minister for Sport, Multiculturalism, Seniors and Veterans. Before honourable members jump at that, the Hon. Natalie Ward answered the question in the Chamber in response to a review undertaken by her successor, Mark Coure. The review relates to her appointments to the NSW Ministerial Advisory Council on Ageing. This is extraordinary. Governments often review appointments made by previous Governments, but it is extraordinary for a sitting Minister to review the appointments of another sitting Minister in the same Cabinet.

The appointments that the Hon. Natalie Ward made in that seven-month period read like a Sunday morning champagne breakfast at her home. It involves her friend Sally Betts, former mayor of Waverley, who has no experience in this area. If being a "senior" is experience in this area, then maybe she does qualify. It also involves Barbara Ward, the Ku-ring-gai mayor, and Toni Virtue, the Manly Liberal branch president. An incoming Minister has concerns about the appointments made by his predecessor. Minister Ward said that the appointments adhered to the Premier's memorandum; I am sure they did. The Opposition will be looking very closely at the appointments Minister Ward makes in the future. We know that past behaviour is an indicator of future behaviour. We already know that one of her last appointments was putting former Minister for Finance and Services Greg Pearce on Venues NSW. The Hon. Natalie Ward has a pattern of putting her mates in positions. It is extraordinary that one of her colleagues has concerns to review that.

HIGHER SCHOOL CERTIFICATE FIRST IN COURSE CEREMONY

The Hon. SCOTT FARLOW (13:18): I take note of an answer given by the Hon. Sarah Mitchell relating to the 2021 Higher School Certificate courses and the First in Course ceremony. It was a little bit of a walk down memory lane for me. I had some nice memories. When I went through the Higher School Certificate I did not come first in course, but my girlfriend at the time did. She was first in course for both English Advanced and English Extension II. She actually took out two First in Course awards.

The Hon. Courtney Houssos: Penny is watching—watch out.

The Hon. SCOTT FARLOW: I know, it is always—

The Hon. Walt Secord: Former girlfriend.

The Hon. SCOTT FARLOW: Former, very former. I remember her getting the call that night from the then Minister for Education, John Watkins. I remember the excitement that she had when she got that call. It made me think of the excitement that all of those students across New South Wales would have had when they got the call from the current Minister for Education and Early Learning informing them that they were the first in their course. Of course, coming first in courses is not just about one exam; it is about all the work that goes through not just the 12 months prior in the HSC year but the 13 years of education and those very serious years of higher education. The students who were first in course this year went through, in some cases, droughts, floods, pandemics and learning from home.

My next-door neighbour is a high school teacher and she said that what her year 12 students had to go through to be able to do the HSC was like no other year before. To be first in course is sensational and is not just down to the work of the student. The work of family, friends, classmates and study groups helps to get them there. They are a credit to the dedication and talent of those students. I join all members in the Chamber in congratulating all of the students on being first in course. We are proud of them, but, of course, their family and friends—who mean much more to them—are also very proud of them. In 2021 about 76,000 HSC students sat at least one exam, and 149 certificates were presented to 139 students, with nine topping more than one course. While I might not have been first in course, I did hit the HSC all round achievers list when I did my HSC—just boasting!

The Hon. Walt Secord: You are not one to brag about it.

The Hon. SCOTT FARLOW: Not to brag, but I thought I would inform the Chamber. While I did not get to meet John Watkins on that occasion, I did get to meet Bob Carr, who presented the award to me. Unfortunately, the camera broke at the time. As an 18-year-old I had to make awkward conversation with him for 10 minutes, and the only thing that I could say was that I went to school with Michael Costa's son.

The Hon. Walt Secord: What year was that?

The Hon. SCOTT FARLOW: It was 2001.

The Hon. Walt Secord: I was with him that day. I remember! I remember that!

The Hon. SCOTT FARLOW: There was 10 minutes of awkward conversation as they tried to fix the camera.

REGIONAL DISCOUNTED TRAIN FARES

COVID-19 AND PEOPLE WITH DISABILITY

The Hon. MARK BUTTIGIEG (13:21): I take note of two questions that were answered. The first was from the Minister for Regional Transport and Roads regarding his awareness of the rail shutdown and whether or not he has asked Transport for NSW to extend the reported upcoming Sydney discounted train fares to regional communities. The answer was that it is all contained in the briefing. He said, "I've read the briefings; it's all in there. I am in constant contact with the department." When I took a point of order on relevance, he immediately switched to bashing the unions. In other words, it is more important for this Government, instead of doing its job, than extending those discounts to regional communities. It was a quasi no—let us face it—because he failed to answer the question directly and immediately reverted to type; that is, let us bash the unions and blame the rail workers for that disgraceful, contrived shutdown of the rail network the other day.

The Government is in crisis mode, whereby it engineers a catastrophe in an attempt to influence an industrial negotiation. Instead of trying to do something about it and compensate the people who it affected, the Government persists in pursuing the narrative that it was the fault of the workers and the unions, when everyone knows it has been called out on it. As I said yesterday, these industrial actions are planned weeks, if not months, in advance and are vetted by the Fair Work Commission. There is an agreement with both parties. The idea that this Minister did not know the night before a major shutdown beggars belief. We anxiously await the return of the papers that we requested last night to see who knew what.

The other question I take note of is the question I asked the Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence about the data breach whereby, by virtue of registering for the QR code, people's business details, in particular domestic violence advocates and victim support groups, were on a website. She attempted to answer the question—I give her that—but it is concerning that we could not get an undertaking that that data had not been downloaded by people and the risk assessment did not provide an analysis of whether or not that data was 100 per cent secure. The Opposition looks forward to pursuing that in due course. But it is very concerning that the Minister is still not aware whether or not any of that data has been breached and downloaded by people for pernicious reasons.

TAKE NOTE OF ANSWERS TO QUESTIONS

The Hon. LOU AMATO (13:24): I take note of answers to questions. I thank disability services Minister the Hon. Natasha Maclaren-Jones and the New South Wales Government for its commitment to ensuring the safety of people with a disability who live in funded disability residential settings, and the staff who support them. Key to that support is access to rapid antigen tests. The Commonwealth has primary administrative responsibility for the National Disability Insurance Scheme participants and their providers, and has announced a national rollout of rapid antigen tests. The supply constraints are well known, and it is acknowledged that it will take time for the Commonwealth to ramp up its supply chain to providers. That is why the New South Wales Government has stepped in to provide almost 300,000 additional rapid antigen tests in the immediate term for approximately 9,000 people in New South Wales in supported independent living and other disability residential settings.

That is not all the New South Wales Government has been doing to support people with disability during the COVID-19 pandemic. For example, New South Wales has established the disability outbreak management oversight group, which consists of senior representatives from various New South Wales and Commonwealth departments. This group meets to address and escalate issues relating to COVID outbreaks in disability settings in New South Wales, and to establish protocols around collaboration, responsibilities of each agency or jurisdiction, and information-sharing. The protocols and plans developed under this group have been guiding the outbreak response since the first wave in New South Wales, particularly the frontline response of outbreak management teams.

I acknowledge the great work of the Leader of the Government, the Hon. Damien Tudehope, and the New South Wales Government for the creation of a $5 billion fund to be used to improve infrastructure and facilities in western Sydney. It will fund transformational projects that support community amenity and economic recovery, making a real difference to life in the 15 local government areas of western Sydney. This investment will deliver better local facilities, more open spaces and convenient services, all close to home. It will help to improve local communities, revitalise high streets and improve parks, with new sporting fields, more pools, better

local traffic flow and active transport links, plus so much more. I also note that the Minister referred to "Have your say" consultation, which is open until 31 March, for input from residents of western Sydney. The consultation invite on the website states:

> As a resident of Western Sydney, you know best what will make a difference to you, your family and your local community. We invite you to put forward ideas for community enhancing projects that would improve and enhance your communities. This information will help ensure all ideas are captured and we fund the projects that truly make a difference.

This is a government that is committed to improving livability throughout the State and listening to the great ideas of the people of New South Wales about how we can achieve that goal together.

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

Motion agreed to.

Written Answers to Supplementary Questions

SCHOOL CROSSING SUPERVISORS

In reply to **the Hon. WALT SECORD** (23 February 2022).

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

> This question should be referred to the Hon. Natalie Ward, Minister for Metropolitan Roads.

CLOSURE OF COAL-FIRED POWER STATIONS

In reply to **the Hon. MARK LATHAM** (23 February 2022).

The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations)—The Minister provided the following response:

> The closure of power stations is a decision to be made by the owners of the power stations. The Government has not been advised of any decision that has not already been publicly announced.

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

Personal Explanation

REGIONAL SENIORS TRAVEL CARD

The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (15:02): By leave: I wish to make a personal explanation. Yesterday I provided an answer updating the House on the success of the regional seniors travel card. While we have seen the highest number of individual applications from the Central Coast, I correct the record: the number of applications received from the Central Coast is over 26,000, not 62,000 as I stated yesterday.

Matter of Public Importance

GOVERNMENT SCHOOLS PERFORMANCE MEASURES

The Hon. MARK LATHAM (15:04): I move:

> That the following matter of public importance be discussed forthwith:
>
> The Government's failure to implement a consistent, rigorous and enforceable set of performance measures in New South Wales government schools.

I am surprised that the Government does not just bring the motion on and instead wants to have a 10-minute debate about whether or not the matter of public importance [MPI] proceeds. I am happy to facilitate that. I am not so used to giving lengthy speeches, but I will take my 25 minutes on this all important matter of public significance concerning the School Excellence program and Strategic Improvement Plan. The MPI is needed first and foremost to allow members to reflect on the information I brought to question time yesterday that there is clearly a cultural problem inside the Department of Education. The director of educational leadership at Lithgow, Debbie-Lee Hughes, compiled notes regarding what it will take to move students from band four to band five in each HSC course at Lithgow High School. The answer given was "Better breeding." Many members were stunned by that and shocked that such a thing could be said.

Billions of dollars are spent on some highly paid so-called school leaders and professionals. In a very important part of the State like Lithgow, and in a very important cluster of schools like Lithgow High School, they have sneered and reflected unfairly and nastily upon the people of Lithgow. They have said that the breeding

is inadequate and the answer to school improvement is better breeding. I thank the Minister for what I understand now to be an investigation into that by the Department of Education.

It sends a powerful message to every parent in New South Wales, a powerful message to anyone interested in school education in our State and powerful message to this Parliament—do not be fooled by school propaganda. Do not be fooled by their propaganda about inclusion, all the woke values they say they have, and all the guides about inclusion and respecting diversity and all that sort of language. When you drill into the reality of what is happening on the ground you find out there is nothing inclusive about their leader's condescending remark that in Lithgow they need better breeding. Do not be fooled by the propaganda and the facade that the department tries to present, but understand that there are some people involved in the education system at high levels who clearly should not be there.

I acknowledge the important role of the Hon. Courtney Houssos in bringing the Standing Order 52 to the Parliament. That took an overall view of what the School Excellence policy documents would show, but also importantly in an amendment that I was able to move on case studies. We did case studies on about 10 schools and what it meant in detail. It is an unfortunate circumstance but indeed a service to the people of Lithgow to uncover that particular remark about better breeding. No community should be subject to that kind of slur, let alone a working class community in New South Wales. That sort of language and attitude must be weeded out of the New South Wales education system.

Furthermore, the MPI is needed to look at some of the case studies I mentioned. Are we getting mandatory, uniform, rigorous performance targets that are accountable to parents in New South Wales schools? The key to improve school performance is twofold—support plus pressure. The support for our school system is manifest. The rivers of gold of Gonski funding means that some schools have so much money available that they do not know how to spend it, and some of it is not being spent effectively. There are plenty of resources and supports going into the school system, but where is the pressure, accountability and transparency to ensure a laser-like focus on lifting up student academic growth?

The Government promised a lot with the Strategic Improvement Plan. This is a chance for the House to drill into the case studies and not be fooled by the propaganda and the language from Mark Scott and Georgina Harrisson at budget estimates. They said, "Oh, yes, those improvement plans and targets will remake the system." They and the Minister have been saying that those targets for school performance will remake education in New South Wales. Do not be fooled by it because some very worrying material from the case studies was turned up in the Standing Order 52.

I will move on to Ashcroft High School. I have told the House previously that you essentially need to dig out the Rosetta Stone to decipher what the school was on about in putting out its targets to parents. At estimates the Minister looked at them like they were hieroglyphics and said, "Maybe there is a plain English version that has gone out to parents from Ashcroft High School." There is no such version. I know Ashcroft well. I lived there for nearly 20 years and I am a regular return visitor. My three sisters went to Ashcroft high. I know the district well, and am very disappointed that there is no plain English, simple to understand way for the parents in that needy working-class community.

These parents, who want their children to get the best start in life through education, would not be able to understand the material that the principal has produced. The principal, I have to say, has gone off on a tangent, turning a high school into a community health centre. It is a very different institution to one with a laser-like focus on student academic growth. The material that has gone out to parents and the broader community in the strategic improvement plans is substandard. It is so confusing, verbose and dense that no regular person in the community could understand it. If parents cannot understand what is happening at Ashcroft high there is very little chance of the school being held to account.

Furthermore, the SO52 turned up feedback of the strategic improvement plan prepared by the director of education leadership at Ashcroft high. Under strategic direction number one in the section labelled "Improvement measures, system negotiated targets", it says "partially". The comments in the follow-up state, "The system targets were entered as success criteria. This was by negotiation for what otherwise would have been omission of them completely. The principal will not use the system targets as the driver of improvement but only as an indicator given the school's own measures."

Against the rhetoric of Mark Scott, Georgina Harrisson and Minister Mitchell, at Ashcroft high this turns out to be an opt-out system. Adopting these targets, it turns out, is voluntary. The school is not obliged to adopt the system-wide targets developed by the Department of Education—no, just opt out. I will repeat this for members, because it blows apart the whole facade of the Government's argument about the School Excellence Policy and targets. It states, "The principal will not use the system targets as the driver of improvement but only as an indicator given the school's own measures." Under strategic direction number two it states, "NA"—not

applicable. Again, the principal has opted out. Basically, the principal has given the old royal Australian salute to the Department of Education, snubbed his nose at the education officials and said, "No, Ashcroft high is an island. We will do our own thing. We will put out the hieroglyphics to the parents", which nobody can understand—

The Hon. Damien Tudehope: Point of order—

The Hon. MARK LATHAM: —"and ultimately not be accountable at all." No wonder the Government is upset about it. The Government has failed.

The PRESIDENT: The Minister has taken a point of order.

The Hon. Damien Tudehope: While this debate is really part of the matter of public importance [MPI] the Hon. Mark Latham is seeking to make out, his contribution does not go to why it is important to debate this motion today. It is the substance of what he wants to argue, not a rationale that he is making out about why this Chamber should debate this MPI today.

The PRESIDENT: I ask the Hon. Mark Latham to draw his contribution back to why this matter is important and why it should be the subject of further debate.

The Hon. MARK LATHAM: The MPI is critical to examine and debate the documents presented in the SO52. No wonder this Minister is so opposed to transparency—so upset, so red in the face and sweating with anger that we move SO52s in this House and the Mookhey library is looking so ample in its proportions. It is the mechanism for holding the Government to account. The Parliament needs to consider this MPI to look at the material that has been produced here. It is absolutely critical for the future of education, starting in the fine suburb of Ashcroft where the high school has opted out of what are supposed to be the system-wide measures of improvement.

The Hon. Damien Tudehope: Point of order: Mr President, I should be the last one ever to quibble with your rulings. However, I say that the member is again traversing that territory in the material he is now presenting. He is cleverly trying to dress it up another way, but I think he has probably addressed the reason why he thinks it is important. He says, "I have got documents that I think need airing." That, I think, is the rationale.

The Hon. MARK LATHAM: To the point of order: My comments are totally in order. It is the purpose of the matter of public importance to examine these documents. I am giving just the summary; I will come to it at greater length and in greater detail in the 15-minute contribution, if I am able to. But I am giving members just a thumbnail sketch of what sorts of documents are available for parliamentary debate. I put it to you that it is totally in order.

The PRESIDENT: I believe the Hon. Mark Latham's comments are in order. I note his time has expired.

The Hon. MARK LATHAM: I shall return.

The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (15:14): I had hoped the Hon. Anthony D'Adam would seek the call. I am sure he will support the Hon. Mark Latham in relation to this matter of public importance [MPI]. Having heard the subject matter, he will be bounding to his feet to support the continuation of the MPI. Members will wait and see whether he is in fact a supporter of the material he has just heard of from the Hon. Mark Latham. I say this: There is a whole day where members can bring private members' material before the House.

The Hon. Mark Latham: Point of order: The obligation of the Minister is to explain why this MPI—not motions on another day under another parliamentary forum—should not be debated. He has to stick to the question of whether or not the MPI is debated before the House. It is not relevant to say I should have raised it in an adjournment debate or a private member's statement, or something yesterday or the day before or, "Come back next time." It has to be relevant to the MPI.

The PRESIDENT: I will give a bit more information in that regard. The Hon. Mark Latham is right—to a point—that it is not a question of urgency but whether the matter is of public importance. While issues around other matters might be more in context as to whether something is a matter of urgency, this debate relates to whether the matter is one of public importance or not. The ruling of President Ajaka on 11 April 2018, referring to that of President Willis on 15 September 1993, makes it very clear. It states:

> Both speakers need to delve into aspects of the motion in order to determine whether it should be discussed. However, the whole contribution should not be based on the subject matter of the motion. There must be a nexus between what is being said and why the matter is or is not of public importance.
>
> ...
>
> Members should not simply state why it is urgent but also base the urgency on the public interest.

I make those few comments. The Minister has the call.

The Hon. DAMIEN TUDEHOPE: And that is the whole point: The member has not demonstrated any urgency why this matter needs to be addressed today. He may be able to say this is an important matter which needs to be ventilated in the public arena. The Government says there are plenty of opportunities for this to be done and for these issues to be raised. In fact—

The Hon. Mark Latham: Point of order: The Minister is clearly defying your ruling. You explained very clearly that the Minister's role is to explain why this is unimportant right now in the Chamber, not other occasions on which it could have been debated. The Minister is defying your ruling and should be called back to order—or just cease his comments.

The PRESIDENT: The Minister is in order at this stage. I ask him to continue his contribution.

The Hon. DAMIEN TUDEHOPE: The basis of the material the member outlined being found in documents in a Standing Order 52 application is not of itself sufficient to say this matter needs to be debated today. Next week the Hon. Mark Latham will have the education Minister before a budget estimates committee and can ask as many questions as he likes regarding those documents he says he has found and in relation to the subject matter of which he now complains. In fact, he can interrogate officials from the Department of Education in relation to those very documents.

The honourable member insists that the subject matter must be ventilated today, but there was ample opportunity for debate yesterday, there will be time for debate next week in budget estimates or he may wish to make another speech at some other time. In fact, he may also talk about it on *Sky TV*—though I am sure he has already done so. The honourable member is taking up the time of the House today when he has not demonstrated that this is truly a matter of public importance that must be debated today. The Government says we ought not proceed with debate on the motion.

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

The House divided.

Ayes 19
Noes 17
Majority.....2

AYES

Banasiak	Hurst	Pearson
Borsak	Jackson	Primrose
Buttigieg (teller)	Latham	Searle
D'Adam (teller)	Mookhey	Secord
Donnelly	Moselmane	Sharpe
Graham	Nile	Veitch
Houssos		

NOES

Amato	Field	Mitchell
Boyd	Franklin	Shoebridge
Cusack	Harwin	Taylor
Faehrmann	Maclaren-Jones	Tudehope
Farlow (teller)	Mallard (teller)	Ward
Farraway	Martin	

PAIRS

Pair not provided	Fang
Moriarty	Poulos

Motion agreed to.

The Hon. MARK LATHAM (15:31): This matter of public importance is an opportunity for this House to look at important documents produced under Standing Order 52, and what they have established in the sample of just 10 schools where the material was produced. We found one that has opted out of what was supposed to be a mandatory statewide rigorous system of performance targets. Ashcroft High School has basically said it will not

participate. The Director, Educational Leadership, has conceded that point, and the Government's claim of a system-wide set of performance targets that are uniform and mandatory has fallen apart. If we can find one school in the sample of 10, imagine how many there would be in the 2,200—

The DEPUTY PRESIDENT (The Hon. Catherine Cusack): Order! There is too much audible conversation in the Chamber. Members who wish to have conversations will continue them outside the Chamber.

The Hon. MARK LATHAM: In the sample of 10, one school is opting out. Imagine how many there would be in the 2,200 government schools around New South Wales. Furthermore, in the material produced under Standing Order 52 we can see the submission that was made by the principal of Ashcroft high as to what he thought about the number one improvement target: student growth and attainment. His submission states, "This is not a direction. In fact, it is inexplicable." The principal of a high school in New South Wales is saying that student growth and attainment is inexplicable. He asks, "What does this mean? Determining whether a level of achievement has been achieved, what specifically are we supposed to be improving?" The Minister must face the reality that at least one principal is asking what they are supposed to be improving about student growth and attainment.

We are supposed to be uplifting results for growth in student academic attainment. Surely that is education leadership 101. Surely that is high school management 101. That principal is asking, "What is it we are supposed to be improving? How, at what level and what is it worth? Does it match an objective? Is it just, in fact, a measure?". Of course it is a measure. He says, "Is it NAPLAN?" If a principal has opted out of the system and snubs his nose at the whole idea of student growth and attainment and says that it is not a valid objective for a school, what sorts of schools are we running? It is like some sort of Hare Krishna commune.

When we read the comment in the other part of the submission from Ashcroft high, it says the school objective is space and place. It is spaced out alright. The document states, "All humans start and historically begin at a place"—I did; I began in Ashcroft—"all relationally attached to space." The objective of getting a public education in Ashcroft is to get good results to go to a good high school and go on to university. For most of us in that suburb, it was to be the first generation in our family to go on to higher education to leave something better for our children so they could all go on to higher education and have a better life than, say, my mother, who worked in a box factory. That is the Ashcroft story. I find reading this material completely devastating because the education department has tolerated a school that is opting out. There are obviously more than one. If we looked at the 2,200 around New South Wales, what would we find?

A principal who does not accept that growth in academic achievement is a legitimate role for a government school in a disadvantaged area is simply appalling. For the Department of Education to tolerate that and for the Minister to say these are system-wide, rigorous, mandatory targets is plainly wrong. The School Excellence policy has been exposed as an absolute joke. Then we come to another document produced under Standing Order 52, the school and students employment pathway program [EPP] update in May 2019. That is when they were starting up. It is instructive to see that when the Centre for Education Statistics and Evaluation [CESE] was involved the targets were going to be a lot more rigorous than the ones that have now been developed. The CESE seems to have dropped off. There was an attempt to measure the performance of schools against the family occupation and education index. What level of performance should a school be at given against its family occupation and education index?

This document shows us that one school in New South Wales is 30 per cent below the predicted level of performance, 29 schools are 20 per cent below and 290 are 10 per cent below. So we have 320 substandard schools in New South Wales and the objective was to lift them up by 15 per cent, 12.5 per cent and 10 per cent. That has fallen away and I will come to how unambitious those targets have turned out to be. It is simply unacceptable that what started in theory as a rigorous system now has unambitious targets with schools opting out. In fact, in May 2019 the department spoke of this being a step towards school-based student level targets. That has fallen away and the role of CESE has regrettably also been sidelined. It spoke of value-adding in literacy, which did not happen. Portfolio Committee No. 3 – Education recommended value-added indicators in those performance measures, which has not happened.

We then come to page 45 of the document, which indicates that assessments at the excelling level indicate perceived areas of strength. What is it that schools thought they were doing well? Only a small number of schools—just 4 per cent—thought that they were measuring student performance quite well. Further into the document a table shows that across the system schools strongly prefer to focus on some elements than others to inform their school planning. It turns out that only 3 per cent of schools in that survey thought that student performance measures were important, and 86 per cent of schools thought the main thing they needed to do was wellbeing. Are schools predominantly for wellbeing or to lift students up with improved performance so they have better opportunities in life? I find it distressing that so many schools would have so little regard for student performance measures and think that their primary role is wellbeing. It is easier to do the wellbeing because they

have a survey. What do you say? The kids are happy. Everyone is in favour of happy kids but that is not the purpose of a school. The purpose of a school is to enhance life opportunities and achievement.

Clearly there is a cultural problem in the New South Wales Government education system where schools—not surprisingly, given these findings—do not look at performance targets as something that they should be doing. They would rather have the happy kids wellbeing agenda. But we are not funding those institutions with billions of dollars for that. I will tell you one thing: You can be happy and disadvantaged, but you will be a lot happier if you have a decent education and a better start in life. Disadvantaged schooling must be about ending disadvantage. For a lot of young people in this State, their only ladder to a better life is the local government school. If the schools do not take that seriously, if they think it is only about wellbeing, we will leave a lot of disadvantaged people behind in New South Wales.

I mentioned some of the problems in the methodology. In the material produced through the Standing Order 52 motion for Pennant Hills High School we finally have some baseline data. One of the deficiencies in the rigour of the system developed by the Minister and the department is that nobody knows the baseline. How can we know whether it is a valid level of improvement in the target if we do not know the starting point? What is the baseline? At a place like Pennant Hills High School the baseline in secondary percentage of students achieving expected growth in numeracy is 66.3 per cent, but the target is only to lift up by 4 per cent. Surely we should be more ambitious than that. For literacy, the percentage of students achieving expected growth is 68 per cent, which is not great because 32 per cent of students are not achieving the expected growth in literacy. Again, the target is minimal: 3½ per cent.

Shouldn't we be trying to lift up with ambition and hope for students? I find it distressing that in a place like Pennant Hills 32 per cent of students are not achieving their expected level of growth in literacy and numeracy, and all the Government wants to do is change that by 3 per cent. Shouldn't the uplift be 10 per cent or 15 per cent for a community like that to get up into the 80s and 90s as a starting point? The targets are not uniform. They are not mandatory and are not being enforced. There is an opt-out system. There is actually a cultural problem in accepting the importance of student academic growth. Yet we have schools off a baseline with very unambitious targets to lift them to a higher level of performance.

In the material produced under Standing Order 52 there is a very interesting document. I am pleased to note the presence in the Chamber of the Hon. Anthony D'Adam, the Hon. Courtney Houssos and the Hon. Scott Farlow, who are members of Portfolio Committee No. 3 - Education. In our inquiries we heard a lot about the Targeted Assistance program and that it would be the equivalent of a new disadvantaged schools program to really lift the schools up, end the disadvantage and get higher academic performance in the schools that need it most. The document that has been produced is from November 2017, when the Targeted Assistance program began. When Georgina Harrisson was the deputy secretary she waxed lyrical about what the assistance program was supposed to do for schools, yet on page 5 of this document we find that a school development review is not an investigation of performance or inspection. It is a mechanism to provide a school with developmental support. Again there is no emphasis on student academic growth.

Further on in the document, in relation to the Targeted Assistance program, there is the comment that it is not an investigation or inspection. It is a mechanism to provide a school with developmental support. Examples of terms of reference could include compliance with department policies. This is really a compliance mechanism or a sort of checklist in a disadvantaged school. Are they complying with departmental policy? The document also mentions a self-assessment strategy implemented as part of the annual reporting process. That is not doing anything to lift up students' academic performance and hope. There is mention of teaching correct content, which we would expect anyway. We expect them to be teaching the right material out of the syllabus. There is also mention of adherence to and compliance with the School Excellence policy and management of accreditation processes for staff. Both of those should be automatic. Inevitably, we come to student wellbeing in the wellbeing framework for schools—happy kids. Well, there is no happy life unless you can lift yourself out of disadvantage.

The document also refers to procedures for student discipline, but there is nothing on academic improvement. There are clear statements in the document that principals are not going to be held to account. It is not only the Schools Excellence policy that turns out to be a fraud, hopelessly inadequate and full of holes but the targeted assistance program also is not what we were told on several fronts. I come back to that core message: Don't believe the propaganda of the Government and the Department of Education about what they are doing. After all that language about inclusion, what about the "better breeding" comment at Lithgow? All that language about mandatory, rigorous, system-wide performance targets is not the reality. We know it is not happening, at Ashcroft High School at least. As far as the targeted assistance program implementing something like a disadvantaged schools program is concerned, that is not it at all. It is a compliance checklist—again with an emphasis on wellbeing.

On so many fronts we have a problem of a lack of ambition and a lack of consistency in the way this policy is being implemented. I cannot see how the policy will turn the ship around. In New South Wales we know there is a massive problem. Even Geoff Masters, who is the Government's self-selected curriculum reviewer, said that New South Wales schools have the fastest falling academic results anywhere in the world—not just in Australia but anywhere on the planet. Every single member of this place should treat that with absolute urgency. Everyone should take that seriously. Discussing this matter of public importance is important to scrutinise all the things the Government promised to solve the fundamental problem of falling results over 20 years—much-vaunted and touted programs described as wonderful, which we now find out to be compliance checklists that under-deliver, show lack of ambition and are inconsistent and full of holes. This is a complete fraud on the students, the parents and the public—the taxpayers of New South Wales.

I am so pleased that the call for papers has provided this information. It is really a treasure-trove of material that a fighting Opposition party would use in developing better policy. Transparency is all important. I look forward to the Minister addressing these difficulties. It may well be that the Minister is unaware of what has been produced under Standing Order 52, which makes it all the more important to raise these matters in the parliamentary forum so she can be accountable for what has gone wrong. How did we land on this spot? Surely, with the fastest falling school academic results in the world, the improvement targets needed to be 100 per cent effective in the targeted assistance program. There was no room for schools opting out; no room for a principal saying, "No, that's rubbish"; and no room for schools saying, "We really don't want to do that. Let's just focus on wellbeing." We must do a lot better. The students, parents and taxpayers of New South Wales deserve a lot better than this Government. Unless the Government can turn the ship around quickly, it will continue to go in the wrong direction.

The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (15:46): I appreciate the opportunity this discussion presents to put some facts and information on the record, particularly about the Government's approach to school improvement and student success, and about some of the work we are doing around performance measures, which is the main topic of this Matter of Public Importance [MPI] discussion. Members would know, because I have mentioned it in the House many times since its inception, that this Government has brought in what we call the School Success Model [SSM]. What the SSM does is detail a range of ambitious targets for schools and the public education system more broadly. These build on the Premier's Priorities in education and also reflect a shared commitment to continuous school improvement.

I feel as though I talk about this a lot, but I think it is worth acknowledging the significance of this SSM reform, as well as how recent it is. It is something that I have brought in during my time as Minister. Under the School Success Model and through our focus on school excellence, all of our schools—for the first time ever in New South Wales—have been given targets that have been benchmarked against similar schools for a range of measures: HSC attainment, student growth, phonics, attendance, NAPLAN results, wellbeing, Aboriginal education and pathways. It is not opt-out. It is for all schools and, like I said, this is the first time that we have had such a comprehensive range of measures. We have worked with our schools to set those targets to see exactly what we all want, which is improved student growth and better student outcomes. There is no question about that.

When we announced this policy we made it clear that the targets would all be in place from this year. Some captured data—obviously, we needed a starting point—was available throughout 2021. This is an exciting year for the School Success Model as we see our work on school improvement come to fruition. Developing these targets has not been a simple undertaking. It has required extensive data capture and analysis, consultation, and collaboration between schools, communities and the education system more broadly. Some members would be familiar with our Scout dashboard, which provides teachers, principals and our executive staff with real-time data on how their school is performing. If schools are not on track, the dashboard now gives the department the ability to step in and provide strategic support on everything from professional development all the way through to resources and programs that the school is using. Hundreds of schools have already received that support this year.

Remaining targets are still being finalised this year, but the strategic improvement plans will also set out strategic goals for schools. The School Excellence Policy, which the Hon. Mark Latham referred to in his initial remarks, was updated in 2020 and implemented fully only last year, and it requires all New South Wales public schools to develop a strategic improvement plan [SIP]. A SIP is informed by authentic evaluation and aligned to purposeful resource allocation. All aspects of the School Excellence Policy are informed by the School Excellence Framework. The School Success Model has only been in place for one year, but we have made huge strides in a very rapid time frame.

The Hon. Mark Latham spoke about turning the ship around, and it is a big ship to turn. The State has 2,200 public schools; it is the biggest education system in the Southern Hemisphere. I acknowledge that we are on a big journey, but we are seeing reform and a dedication and focus on student outcome and growth that we have never seen before. I think that is important. I think that is what families expect, and that is certainly my

expectation as Minister. School improvement is a continuous process; it is about maximising the outcomes for all our students and sustaining that improvement over time. That is what matters, and the Government is committed to continuing that.

I do not want to go into the specifics of certain schools. I know the Hon. Mark Latham has mentioned some in this MPI. I am sure there will be opportunities to talk about them. I suspect that some of them might be on the member's list next week at estimates. I will mention a couple of things about Ashcroft. As the Hon. Mark Latham would be well aware—and I think he alluded to it in his remarks—Ashcroft is a school that serves a very diverse community, but I know it has the attention to furthering the learning and wellbeing outcomes of its students, despite some of the challenges within its local environment.

A few good examples of school achievements at Ashcroft include an increase in the percentage of students in the top two NAPLAN bands in reading, and the year 9 NAPLAN results also achieved greater than the State average over the past three years. Last year, Ashcroft's HSC Advanced Mathematics results well exceeded the State average. Good things are happening at Ashcroft and indeed across all schools in New South Wales. In relation to Ashcroft's strategic improvement plan, it has recently completed an external validation of its self-assessments. As part of the School Excellence Policy, following an external validation process, the school is now in the process of revising or developing its new strategic improvement plan that will consider the findings or outcomes of that external validation.

I will talk about how strategic improvement plans work. Every SIP has three strategic directions, which are linked to school-based targets. Schools which have ongoing cohorts of students must have student growth and attainment as their first direction. Under those strategic directions, the SIPs have improvement measures which include system-negotiated targets and may also include school-based targets. System-negotiated targets are specific targets aligned to the Premier's Priorities and relate to numeracy, reading, attendance, and Aboriginal student achievement and HSC attainment, where appropriate. Obviously if it is a primary school, the HSC attainment is not relevant.

The system-negotiated targets have been established consistently to reflect a uniform approach, but the exact uplift desired for each school is determined by their current and previous trajectory compared to like schools. In practice, that means schools will have varying degrees of uplift across their targets but that the base targets are consistent. Within the 2021 SIPs, 95 per cent had a target for reading, 97 per cent had a target for numeracy, 97 per cent had a target for attendance and 96 per cent had a target for wellbeing. That process has consistency. While the majority of the targets have a 2022 time frame, due to the specific nature of the Premier's Aboriginal HSC retention target and schools not completing NAPLAN tests in 2020 due to COVID, both the HSC attainment and expected growth targets will be reported on in 2023.

The second part of the improvement measures is the school-determined targets, which are framed by the principal in consultation with the school community and developed through their processes and through ongoing conversations with the director. All schools' SIPs are published on their websites. They recognise that schools are diverse and complex places; no two schools are alike. The blend of SIP performance targets is designed to reflect that complexity. That is how we need to measure performance because not all schools will have the same uplift in targets nor should all school-determined targets look exactly the same. No two schools are the same and we have to make sure we have the right measures in place to really capture the growth, and that is the way that system has been set up. It is about trying to have performance measures and targets that are comprehensive, rigorous and fair but that also acknowledge the diversity and the complexity of the more than 2,200 schools across the State.

Setting system- and school-based targets for New South Wales public schools reflects our aspiration that all students and all schools improve every year. That is the expectation. I make no apologies for the fact that we have created the School Success Model, put targets in place that are ambitious and challenging, and have had very frank and honest conversations with principals about what our expectations are because we have high expectations for students and staff. The targets cover critical outcomes, making sure we have better student results and better achievements.

We have lifted educational standards and have seen overall improvements in attainment towards targets which have been set for 2022 and 2023. The 2019 NAPLAN results showed that the previous Premier's Priority to increase the proportion of New South Wales students in the top two bands for reading and numeracy by 8 per cent was achieved. Our aim is to build on that success and increase the proportion of New South Wales public school students in the top two NAPLAN bands for literacy and numeracy by 15 per cent by 2023. There were 137 schools included in the original Bump It Up targets when we first started working on targets in schools. More than 65 per cent of them improved the share of students in the top two NAPLAN bands between 2015 and 2019. There has been some good progress which shows we are heading in the right direction.

I will be honest; we are not exceeding or on track for all our targets, which is why there is more work to do. We have some way to go, and I acknowledge that openly. But the evidence-based reforms that the Government is implementing are about seeing real and tangible improvements that should not be understated or ignored. We have a bold reform agenda and record funding, as highlighted in this year's budget, and we are driving a focus on school improvement in each and every school like we have never seen before in this State. It is significant.

Regarding accountability and what we expect of our schools, the heart of the School Success Model is about embedding a greater sense of shared accountability for school improvement and student success across everyone working in education. Whether it is a director of educational leadership [DEL] or a leader of one of the corporate department teams, student success should be everyone's core business across the New South Wales education sector, not just the job of principals and teachers. While we have worked with principals to set ambitious performance targets around student attainment, the same targets and accountability for student success have been set for our system leaders and corporate support staff. Under the School Success Model, schools that do not meet their targets will get targeted support in school improvement from the department in order to lift outcomes. Let me be clear: When schools continue to underperform, serious discussions will be had about school leadership, from the principal and the DEL all the way through to the senior executive at the Department of Education. Accountability needs to be shared to improve student outcomes.

The other central tenant of the School Success Model is tailored support for schools who need it most. The model uses evidence from different aspects of school performance to tailor support to schools more effectively. All schools are getting greater access to evidence-based guidance and resources to help them achieve their performance targets. For schools where improvement outcomes are more challenging to obtain, they are receiving extra support and direction. An example of that support is the new reading and numeracy hub for teachers, which allows all of our teachers from across New South Wales to access quality-assured, evidence-based teaching resources to improve the literacy and numeracy skills of our students. Since releasing the hub earlier this year, there have been over a quarter of a million page views for accessing the resources. We have a number of schools across New South Wales who are making significant progress on improving reading and numeracy.

New South Wales is leading the nation with the setting of contextual and individualised targets for our schools. No other State has done that. It should come as no surprise that many other States have taken notice. Education Ministers from a few other jurisdictions have reached out wanting to know more about the work that we are doing in this space, because there is a collective agreement that when you have the right performance-based measures in place that see student outcomes improve, that is a discussion that we need to have at a national level.

The Government is lifting educational standards in New South Wales with record levels of funding. The initiatives, which are reaching each and every student in the classroom, will continue to drive the improvement agenda. That will be done through an unwavering direction of accountability, support, evidence-based practice and policy. I am not afraid of the fact that this is an ambitious reform but it is important reform, and nothing that is worth doing is easy. Some of this will be challenging to achieve, and I am happy to admit that. This Government is driving reforms and investment to ensure that every student can be the best they can be and that every student has every opportunity for the best life outcome possible—no matter where they live or which school they go to. That is this Government's commitment, and that is what we will keep focusing on to make sure that we deliver for the students, families and people of New South Wales.

The Hon. COURTNEY HOUSSOS (16:00): I lead for the Labor Opposition on this matter of public importance, which is the Government's failure to implement a consistent, rigorous and enforceable set of performance measures in New South Wales government schools. I will summarise what we heard from the Minister by saying that what the Minister has just said shows the clear gap between what is happening in our schools. Do not take it from me, take it from the documents that were produced for this House under the call for papers that showed how this Government's policy is working in practice. It is not improving things for students in New South Wales.

Let me jump back a few years. In 2001 New South Wales topped the world, along with the Australian Capital Territory and Finland. Our kids were at the top of the international rankings. This was not a coincidence; this was after five years of a Labor government with a Premier, Bob Carr, who dedicated resources and focused on prioritising education because he understood the transformative power that education can have on lives. We had smaller class sizes, one-to-one instruction for kids who were struggling and a focus on understanding the importance of education being placed at the centre of government. Twenty years later and after a decade of the Liberals and The Nationals, in 2019 we failed to reach the OECD average in maths for the first time. It gets worse. It was the biggest ever drop by an Australian State in reading and science. And, between 2012 and 2018, on this Government's watch we dropped from fourth to sixth in reading, third to fifth in maths and third to fifth in science.

Our own NAPLAN testing results—the annual assessment of children in years 3, 5, 7 and 9 in numeracy, reading and writing—remain stagnant. The results in writing are appalling. Some 17 per cent of year 9 students are falling short of national standards. It is not just that we are slipping compared with the rest of the world or that we are slipping in comparison with other States. A year 9 student in 2019 in New South Wales was the equivalent of five months behind the same year 9 student in 2011. That is the legacy of the Liberals and The Nationals in New South Wales. Even the Government's own preferred consultant said in their curriculum review:

> … since the turn of the century, New South Wales has the fastest falling school academic results in the world.

This is a crisis that requires direct intervention and prioritisation by this Government, but what we have heard today is more bureaucratic language, more slogans and more media releases, and nothing changes. Those NAPLAN results were before a global pandemic that shut down schools, with children learning from home for almost three terms. The Grattan Institute tells us that disadvantaged students suffer disproportionately from remote learning. A socially disadvantaged year 9 student can be up to 2½ years behind a more advantaged student in the same year, and that is before we start to look at the effects of learning from home.

The next Programme for International Student Assessment assessments are not until 2022, but we have already seen the NAPLAN results from last year, which were taken before the longer lockdown. They show that disadvantaged students in year 3 are two years and five months behind in reading, with the gap stretching to five years and four months in year 9. In numeracy, the gap stands at one year and eight months in year 3. By the time they get to year 9, it is four years and nine months—nearly five years behind their counterparts. This week *The Guardian* reported that New South Wales has perhaps the most segregated education system in the world, where we have a concentration of the most disadvantaged students in the most disadvantaged schools. There have been enough diagnoses of the problems; it is time for solutions. But what did the Minister say about these NAPLAN results? She responded chirpily to say that New South Wales students continued to be Australia's best spellers, achieving the highest or equal highest mean score of all jurisdictions through the history of NAPLAN. That is something we should be cheering about!

There are serious problems in our schools, and they are directly related to the policies implemented by this Government when it came into power in 2012. Under the great spin of devolving decision-making, introduced in 2012, the Local Schools, Local Decisions policy cut thousands of jobs across the department, increasing the workload on teachers and pushing administration onto principals. Angelo Gavrielatos of the NSW Teachers Federation reminded me that we have a schools system in New South Wales, not a system of schools, despite what happened in 2012. I commend him for the research that he commissioned, also known as the Gallop report, which showed the effects of the increasing intensification of work. It specifically found that there were 800 key education support positions—literacy experts, numeracy experts, curriculum experts, student welfare support experts—that provided expertise and guidance to our teachers that were cut by this Government. Is it any wonder that dedicated teachers, who turn up each and every day to try to make a difference for their students—and I pay tribute to them—are battling on their own because this Government cut the key supports who are still available to the independent and private sectors, but our students and teachers in public schools continue to suffer?

Time is running out, so let me touch on the other two key challenges that are facing our education system: we are running out of teachers and we are running out of classrooms. Documents produced to this Chamber show that we will run out of teachers in the next five years, that 8 per cent of the department's teachers are due to reach retirement age by 2024 and that 5 per cent of teachers are leaving to do other things each year. Is it any wonder that late last year, for the first time in nearly a decade, they went on strike? They cannot cope with the increasing intensification of work and the pushing down onto teachers from the department. We need to provide them with the supports that they used to have who used to allow our children to thrive and prosper.

On the question of classrooms, do not take it from me. The Auditor-General found that in his report, released in early 2020, the current funded infrastructure program will not meet forecast classroom requirements for 2023 and beyond, and that there are around 34,000 teaching spaces that will require upgrading to be fit for purpose. The school infrastructure inquiry will be looking into that question of overcrowding in our schools, but we know that if we do not have a teacher and we do not have a classroom then how can we expect things to change?

The Government's response to this series of key challenges for our children, and for our school and education systems, has been talk about the problems and the great solutions. There has been a never-ending supply of media releases and slogans and talk, but nothing is changing. I acknowledge the Hon. Mark Banasiak has entered the Chamber. I look forward to his contribution, because time and time again he has told this Chamber that nothing is changing, nothing is new, and that this is simply history repeating itself. But something has to change for our children, something has to change for our teachers and something has to happen so that our education system can again be the best in the world.

The papers that have been produced show that is not the case under the School Success Model and that it will not change outcomes for students, particularly for our most disadvantaged students. Rather than an ambitious plan for success, it is just more of the same—more media announcements and more media slogans, but no actual solutions. This Government's legacy in school education is a decade of decline, and there is no real plan to fix it. Our students are slipping further behind, we are running out of teachers and classrooms, and it is only going to get worse. That is quite a legacy from the New South Wales Liberals and The Nationals.

The Hon. MARK BANASIAK (16:09): I was not intending to contribute to debate on the matter of public importance. I do not like talking about education issues too much! I will be short and sweet because it is a Thursday and there are other bills to get through. I will simply say that I refer all members to my previous speech on this matter of public importance because the documents show that nothing has changed and nothing has been learnt by this Government.

The Hon. ANTHONY D'ADAM (16:10): I contribute to debate on the matter of public importance. While there is not a lot the Hon. Mark Latham and I agree on, I do agree that the School Success Model is a failure. Ultimately it is a failure for different reasons. We disagree on the reasons why. The Minister made the observation and my colleague the Hon. Courtney Houssos touched on the point that we have a school system of 2,200-odd schools. It is complex and it is large. It is not a simple structure and it is not the kind of structure that is amenable to a management approach that looks for uniformity and consistency across the board. That is not what we are talking about in terms of our system.

We also need to consider that it is a complex adaptive system—a system that does not respond to a command-and-control approach, which really underpins the kind of thinking that is embedded in the School Success Model. There is the idea that somehow we take a Starbucks kind of approach, where all the schools are the same and the same kind of metrics are applied across the board. If you want to change a complex system, you need to provide nudges in the right place. It is not something that is amenable to a directive approach.

One failure in the approach of this Government is that it is not prepared to persuade. It is a system with a lot of agents in it. There are a lot of people, a lot of opinions and a lot of different views. The people who make up the system are all committed to the benefit of delivering quality education to the children of New South Wales, but they do not necessarily agree on the methods. The Government has failed to persuade the people in the system. That is a major problem and flaw. To build a system based on metrics is going in completely the opposite direction to that which is needed to reform a complex system like our education system. The autonomy and judgment of educators need to be emphasised.

Mark Latham nor the Minister nor the Secretary of the Department of Education are educators. Ted Noon at Ashcroft High School is an educator. He is trying to deal with the complexity of the school environment that he faces at Ashcroft in the best way he can, with the most sincere and genuine commitment to improve the lives of children and the community that he serves. He may disagree with the direction that is being pushed by other elements of the department, but we need people like that. That kind of disagreement, debate and pushback is important for innovation. If we took the approach that the Hon. Mark Latham advocates, we would be stomping on that innovation, crushing rather than encouraging it. That is the place where we find truth and new approaches that serve to improve the system overall.

I was grateful that the Hon. Mark Latham pointed me in the direction of the documentation that came out of that Standing Order 52 call for papers. I came across a request in 2017 that the school measures—which the department put in place—take into account parental engagement and student voice. There was a note on one of the briefings where the Minister has asked, "Where's the measure on student voice? Where's the measure on parental engagement?" That disappeared from the system. If you have any experience with the education system, you would know that there is a lot of rhetorical talk about parental engagement but there is not much substantive commitment to it. If that is something that we genuinely think is important, then that is something we should try to measure and take account of. But that is absent in the approach adopted by the department.

I also say that instead of focusing on NAPLAN results and HSC results, we should be focusing on improving lives. We could improve the NAPLAN results in a school or in a community and not change a single life. The problem with over-focusing on the metrics is that we lose sight of that objective. The measure is just a tool. Unfortunately, with the approach that is embedded in the School Success Model, the metric becomes the purpose and we lose sight of the actual purpose of education, which is improving lives.

The Hon. JOHN GRAHAM (16:16): I contribute briefly to debate on the matter of public importance. Many members in the Chamber are far more engaged in this discussion than I am. I particularly recognise the members of the education committee. I am certainly not an educator. I make that disclaimer, which is an important one. But I thank the Chamber for having this important discussion. I cannot think of many other matters that should be discussed before this matter. I thank the honourable member for bringing it forward for a couple of

reasons. This is probably the key economic leader that the State controls but, as members have said, it is much more than that. It is not just about driving our State economy into the next leap forward but it is about the leap forward for the individual lives that this shapes. Members have already run through the rankings, so I will not repeat the closer analysis statistics—the fastest falling in the world.

In modern parlance, this is an education emergency, a productivity emergency and a working-class emergency. There are people who will not achieve their potential as a result of what is happening now and whose lives will be wrecked because the system is failing them. It is an emergency, and we should deal with it in that way. I agree with the direction of my colleague the Hon. Courtney Houssos. In my view, the Government came to power with one big idea for education—Local Schools, Local Decisions. The Minister looked honestly at it and said that it has not worked. I commend her for that. That is a brave decision. The problem is that nothing has replaced it; there is nothing there as this Government's driving philosophy, other than a very long manual of education speak that does not make any sense to parents, kids or the system.

You cannot inspire a complex system to change by way of a manual the Minister just pulled off the wall. That is going to fail. That is the problem. Having abandoned Local Schools, Local Decisions, without another goal, another philosophy, from this Government, there is nothing to replace it. This is going to get worse before it gets better. That is the real issue here. I reject one statement that the Minister put forward very strongly. She said, "These efforts are reaching each and every student in classrooms across the State." That is flat-out wrong. There is a long list of trials, promising starts, and plans to fund progress. These efforts are not reaching every kid, and that is the problem. The whole approach of trying to tackle this problem is the exact opposite of that.

Finally, I make two quick observations. What upsets me most is that for some kids, this is their one chance. A lot of kids will move through the system and will actually do fine; their wellbeing will be happily attended to. They will have great lives and do well. They will reach their potential. But there are other kids for whom it will be a disaster. They are given a whole lot of soft words that they will get many chances in their lives, but not all of them will. This is their one chance to turn that around. Members have talked about a couple of different answers. I am not sure we got the answer in this discussion, but I do think it is exactly the right question that this Chamber should be asking.

The Hon. MARK LATHAM (16:21): In reply: I thank each of the members who contributed to the discussion. As the Hon. John Graham pointed out so clearly, it is a critical debate, not just for social opportunity and the equality of our society but also for the reason he expressed—an economic and productivity emergency—which is also true. We cannot drive forward prosperity and opportunity without a successful education system. This education emergency is the most important problem in New South Wales. It must be solved because it affects every part of our society and economy. The discussion has been useful in that regard.

I make one conclusion. Clearly the Minister is unaware of what is happening on the ground. It is okay to for her to say that in general everything is great, and read out notes provided by her office or the Department of Education. But any sensible analysis of the documents produced is that they show enormous gaps, enormous inconsistencies and enormous problems. The Minister needs to get her hands dirty in fixing that straightaway. The emergency is not going to go away; it is getting worse. The Minister must acknowledge that the system's targets are not mandatory and not ambitious enough, and that a lot of schools do not like the targets. We do not even have baseline data out there, so parents are not aware of how valid those targets might be for their children. That is just hopelessly inadequate.

Clearly in at least one school—and you would expect, across a big system, many, many more—the principal has said, "Department, go away. We're doing our own thing." The department has basically conceded to schools that they can go down their own pathway here rather than following the statewide policy of improvement. If a Minister and a head of a department are not willing to use the strength of the system to find improvement, then what is the point of the policy? That vacuum has been left. I say to them, either make the policy work or find something better.

With this Minister, there is a lot of talk, a lot of press releases and a lot of propaganda, but not the results or the systems in place that would turn around our failing school academic results. The impact on the ground is horrendous for disadvantaged students. If a person grows up in a disadvantaged suburb, no-one knocks on their door and says, "Your uncle's got a job for you" or "Our family's going to leave something to you". All they have got as a pathway to a better life is that government public school down the road. If it is failing them, we are failing those kids. That is the importance of this debate.

Discussion concluded.

Committees

PARLIAMENTARY COMMITTEES

Message

The DEPUTY PRESIDENT (The Hon. Catherine Cusack): I report receipt of the following message from the Legislative Assembly:

MR PRESIDENT

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

That:

(a) Pursuant to clause 2 of Schedule 2 of the Advocate for Children and Young People Act 2014, Melanie Rhonda Gibbons and Leslie Gladys Williams be appointed to serve on the Committee on Children and Young People in place of Robyn Anne Preston and Dugald William Saunders.

(b) Pursuant to section 68 of the Health Care Complaints Act 1993, David Robert Layzell be appointed to serve on the Committee on the Health Care Complaints Commission in place of Gurmesh Singh.

(c) Pursuant to section 66 of the Independent Commission Against Corruption Act 1988, Peter Bryan Sidgreaves, Lee Justin Evans, David Robert Layzell, Leslie Gladys Williams and Raymond Craig Williams be appointed to serve on the Committee on the Independent Commission Against Corruption in place of Justin Paul Clancy, Mark Joseph Coure, Tanya Davies, Dugald William Saunders and Wendy Margaret Tuckerman.

(d) Pursuant to section 31D of the Ombudsman Act 1974, Leslie Gladys Williams and David Robert Layzell be appointed to serve on the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission in place of Mark Joseph Coure and Dugald William Saunders.

(e) Pursuant to section 6 of the Legislation Review Act 1987, Nathaniel Gerard Smith be appointed to serve on the Legislation Review Committee in place of Robyn Anne Preston.

(f) A message be sent informing the Legislative Council.

Legislative Assembly
24 February

JONATHAN O'DEA
Speaker

Business of the House

SUSPENSION OF STANDING AND SESSIONAL ORDERS: ORDER OF BUSINESS

The Hon. MARK BANASIAK: I move:

That standing and sessional orders be suspended to allow private members' business item No. 1653 outside the order of precedence to be called on forthwith.

Motion agreed to.

Documents

FIREARMS LICENCES AND INSPECTIONS

Tabling of Documents Reported to be Not Privileged

The Hon. MARK BANASIAK: I move:

(1) That, in view of the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, on the disputed claim of privilege on papers regarding firearms inspections and licensing, dated 8 December 2021, this House orders that the following documents considered by the Independent Legal Arbiter not to be privileged be laid upon the table by the Clerk of the Parliaments:

(a) NSW Police Force document Nos (a) 1, (b) 74 to (b) 81, (c) 82, (d) 83 and (d) 84;

(b) NSW Police Force document Nos (a) 3 and (a) 4 as per the proposed redactions included in the additional privileged documents received by the Clerk on 1 December 2021;

(c) NSW Police Force document No. (a) 9, subject to redactions of personal information and email addresses; and

(d) NSW Police Force document No. (b) 73 with the exception of the annexed Crown Solicitor advice.

(2) That this House orders that the Department of Premier and Cabinet produce, within seven days of passing of this resolution:

(a) the redacted versions of the documents referred to in paragraphs (1) (b) and (1) (c); and

(b) a copy of the document referred in paragraph (1) (d) with the exception of the annexed Crown Solicitor advice.

(3) That, on tabling, the documents are authorised to be published.

Motion agreed to.

Bills

ENVIRONMENT LEGISLATION AMENDMENT BILL 2021

Second Reading Speech

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (16:26): I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Environment Legislation Amendment Bill 2021.

Environmental legislation needs to be continually improved to ensure those that commit crimes pay for them, and innocent landholders, communities and the environment are protected from the impacts of those crimes.

When current environment protection laws were first established, they were used as the benchmark across and beyond Australia.

Over the past two decades, these laws have successfully reduced harmful air and water emissions, ensured legacy contaminated sites are made safe and promoted the beneficial management and reuse of waste.

Since 2012, these laws have been used to successfully prosecute nearly 680 polluters, making them pay over $12 million for their crimes.

It is time our environment protection laws are updated to address evolving criminal behaviours, new and emerging environmental issues and to ensure that they continue to set robust penalties and enforcement powers that are effective at preventing, enforcing, managing and remediating environmental crimes.

As a consequence of changing criminal behaviours, there are businesses and individuals knowingly breaking the law to profit from their crimes.

In the last three years alone, these changing criminal behaviours have resulted in the government or innocent landholders being left with substantial clean-up costs, with one site alone costing the New South Wales Government $20 million.

Criminals have illegally disposed over 132,000 tonnes of contaminated waste, sterilising land from productive use, and removing over $20 million in waste levy revenue.

This Government is committed to ensuring the protection of the environment and the people of New South Wales, and is taking steps to ensure our environment protection Acts remain modern, powerful, effective and innovative, and that New South Wales continues to set the benchmark.

The bill will ensure businesses that set up and then dissolve companies to deflect accountability pay for their crimes and their clean up.

It will increase penalty amounts to deter criminal activity and reflect the true cost of those crimes.

It will expand regulatory powers and enforcement tools to ensure those responsible for the pollution clean it up and manage it into the future.

This bill is an important reform to ensure that our environmental laws continue to keep the people of New South Wales safe from activities that can harm our community, economy and the environment.

I now turn to the provisions of the bill.

The bill makes changes to:

- the Protection of the Environment Operations Act 1997
- the Contaminated Land Management Act 1997
- the Pesticides Act 1999
- the Radiation Control Act 1990
- the Protection of the Environment Administration Act 1992
- as well as consequential amendments to other Acts to give effect to these changes.

[Protection of the Environment Operations Act]

The Protection of the Environment Operations Act 1997 is the State's key piece of environment protection legislation.

It sets out the framework to prevent and manage pollution to the air, land and water, and provides strong investigation powers and compliance tools to enforce environmental crimes.

The bill proposes amendments to the POE0 Act to improve its efficiency and effectiveness and enforce the polluter pays principle.

[Holding directors and related bodies corporate to account]

Some industry sectors, businesses and individuals have established practices that enable them to deflect accountability and avoid enforcement, clean-up and compliance costs by setting up complex corporate structures.

Parent companies deliberately set up smaller companies for each licensed entity, and often will deregister them to avoid enforcement action for illegal activities at those sites.

These arrangements impact on the EPA's ability to hold offenders in the parent company to account and recover any monetary benefit they obtain for their crimes.

These evolving corporate structures are becoming more prevalent.

To address this, the bill proposes several amendments to break through these unscrupulous business models.

The bill will expand existing licensing, offence and notice provisions to hold current and former directors, managers and related companies to account for environmental offences.

This includes enabling the EPA to direct related entities to take clean-up action if a company fails to comply with a clean-up notice.

These powers ensure those responsible for causing contamination, or benefitting from it, are held responsible for its costly clean-up or long-term management.

The bill will ensure that the EPA can take into account multiple and systemic offences of related individuals or companies when determining if a licensee or applicant are 'fit and proper persons'.

The bill ensures that where there has been a pattern of significant non-compliance by related parties, the EPA can refuse, suspend or revoke a licence. This is a significant step in preventing future contamination.

Additionally, the bill will expand the reach of prohibition notices to ban a class of persons, or activities at a class of premises, from carrying out specified activities. This will prevent those who repeatedly commit crimes from moving to different premises and continuing their bad behaviour.

[Monetary benefits orders]

Monetary benefits orders strip offenders of the financial advantage they gained from breaking environmental laws.

Currently, a court can only make such an order against the party that was successfully prosecuted, not a related party that has benefited from the crime.

In a recent court case, a monetary benefits order could not be sought against a parent company that financially benefited from the non-compliance of its subsidiary. This issue exposes the risk that evolving corporate structures are now being used to profit from crimes for financial gain and competitive advantage.

The bill proposes to amend several environment protection Acts to make it an offence for current and former directors, managers, and related corporate bodies of a convicted offender to have received monetary benefits from that crime.

This will enable the recovery of the proceeds of that crime in separate civil or criminal court proceedings.

The bill also broadens the EPAs powers, enabling them to obtain restraining orders in situations where a monetary benefits order is likely to be sought.

This will ensure that once prosecutions have commenced, related parties will not be able to dispose of the proceeds of that crime before the case is finally determined.

[Illegal dumping]

Illegal dumping continues to be an issue in New South Wales, as criminals are constantly seeking ways to exploit the law.

As a consequence, the EPA cannot always take successful regulatory action or require their clean-up.

Criminals who test the bounds of the law are disposing contaminated waste illegally at vacant properties, neighbourhoods, parks and forests, or rent warehouses and properties - then just walk away.

These crimes often result in the New South Wales Government or innocent landholders being left with the cost of remediating these sites, which can be over millions of dollars.

This bill proposes amendments to disincentivise illegal dumping and ensure the polluter pays.

There have been numerous cases where multiple people have undertaken a series of illegal dumping incidents at the same location.

The EPA is currently limited to issuing a clean-up notice to the person who 'caused' the pollution, not to the multiple people who were involved in, or contributed to, the pollution.

This often results in the landowner, council or the Government paying to clean up the waste as determining who caused the pollution cannot be proven to the required evidentiary standard.

The bill will address this issue, and amend the POEO Act to enable the EPA to issue a clean-up notice to all persons reasonably suspected of having 'contributed' to a pollution incident.

Currently, the EPA can only take regulatory action against drivers of vehicles used for illegal waste disposal, not the vehicle owner.

However, proving who was driving that vehicle at the time is challenging.

There have been several recent cases where multiple trucks were observed disposing of asbestos-contaminated waste. The registered owner of the vehicles denied culpability by claiming they leased out the trucks and had no records of who was driving the vehicles.

The EPA was unable to successfully take enforcement action for these crimes, and the high cost of cleaning up these sites have now fallen to innocent landholders.

The bill amends the POEO Act to enable the EPA to act against owners of vehicles used to illegally dump waste.

This amendment will strongly discourage illegal dumping and improve the ability to take regulatory action against those individuals and companies that so boldly commit these crimes for financial gain.

[Transfer of surrender notices and imposition of covenants]

Increasingly, former industrial land is being remediated and sold off for residential or commercial development.

However, not all contamination can be removed and instead it is contained and managed on site in perpetuity.

It's critical that such contamination is undisturbed, managed and monitored into the future to ensure the ongoing protection of human health and the environment.

This bill provides the EPA several new powers to ensure the management of ongoing contamination is allocated to the entity in charge of the site on a day-to-day basis.

The bill will allow the EPA to transfer the conditions of surrendered, suspended and revoked licences to ensure the ongoing management of contamination at a site.

It will also enable the EPA to impose a restriction on use, or a public positive covenant on land subject to a licence with or without the agreement of another person.

This ensures recalcitrant landowners, lessees or mortgagees who seek to avoid responsibility for the ongoing management of the site can be subject to enforcement or clean up action where they fail to monitor and maintain the legacy contamination.

[Financial assurances]

Cleaning up pollution and remediating contamination is expensive, often far outweighing the value of the business which caused the pollution.

Businesses unable to pay for remediation often go into liquidation, leaving this cost to the New South Wales Government. It can also result in toxic legacies that impact the environment and the community for long periods of time.

An example of this is the industrial premises "Truegain" near Maitland. The New South Wales Government has already incurred over $10 million to prevent toxic contaminated groundwater from leaving the site and entering waterways after its owner claimed not to have the financial capacity to manage the site.

The Government will now have to spend an additional $10 million to remediate the site.

While the EPA has discretionary powers to require a financial assurance, these powers are limited.

The bill proposes to expand financial assurance powers to require the EPA to consider the financial capacity of a person or company when determining if a financial assurance should be required.

This amendment will enable the EPA to secure access to funds before liabilities significantly increase and before a company goes into liquidation.

[False and misleading information offences]

The EPA has seen increasing instances where individuals or corporations provide false or misleading information to avoid enforcement action or delay an investigation.

Currently, it is only an offence for a person to provide false or misleading information if it has been required by legal notice.

However, there is no offence if such information is provided voluntarily.

The bill addresses this issue, and amends the POEO Act to introduce a new general offence of voluntarily providing false or misleading information.

This bill also seeks to address inconsistencies in the maximum penalties available to the courts for false and misleading information offences across several environment protection acts.

It increases maximum penalties to that of comparable offences, differentiates the penalty amount between strict liability and knowledge offences, and introduces imprisonment as an option for knowledge offences where this is not already provided for.

[Protection for authorised officers]

This bill amends the POLO Act to ensure authorised officers can safely undertake their duties without fear of harm or intimidation.

This responds to an increasing number of incidents where EPA officers have been physically threatened on the job - including one officer who was shot at with a nail gun and another who was unwillingly detained at a premise.

While the NSW Police can take action under their legislation, there are limitations that often prevent those threating EPA officers from being held to account.

This bill proposes to address this by creating a strict liability offence for threats made against authorised officers who are simply doing their job.

The maximum penalties for all offences relating to conduct against authorised officers will also be increased, and will differentiate between wilful and other offences.

[Contaminated Land Management Act]

[Immediate actions to manage contamination]

The Contaminated Land Management Act 1997 establishes the framework for assessing and managing significantly contaminated land.

Currently, the Act limits the EPA's ability to take action until after land has been declared to be significantly contaminated. Often this process takes several months.

The bill amends the CLM Act to enable the EPA to issue a clean-up notice to a responsible person while contaminated land assessments are underway.

This amendment ensures a rapid response to managing and remediating active pollution to reduce its spread and impact on the community and the environment.

[Financial assurances]

As I have already outlined, the EPA has discretionary powers to require financial assurances.

However, the CLM Act does not enable the EPA to require a financial assurance from a person responsible for the long term management and monitoring of residual contamination.

If a person or company lacks the financial capacity, the Government often is required to step in to fund the management of outstanding environmental liabilities at the site.

This bill seeks to address this current gap, and amends the CLM Act to enable the EPA to require a financial assurance for sites under an ongoing maintenance order or a public positive covenant.

[Penalty amounts and court orders]

This bill also increases the maximum penalty amounts for contaminated land offences to make them consistent with other environmental Acts.

Some of these penalties have not increased since the Act commenced in 1997, and these changes ensure they reflect the true cost of the crime and provide a deterrent to non-compliance into the future.

[Pesticides Act and Radiation Control Act]

The bill also makes amendments to the CLM, Pesticides and Radiation Control Acts to make available to the Court all orders currently available under the POEO Act.

This ensures there is a broader suite of orders available to prevent, manage and enforce crimes under these Acts.

This includes orders relating to publication, notification, payments to the Environmental Trust, restorative justice activities, financial assurances and recovery of monetary benefits.

The bill will also modernise the process for making of pesticide control orders.

The EPA will now be able to make these orders to facilitate a more independent and expedited process to ensure the safe use and disposal of restricted pesticides in New South Wales.

[Protection of the Environment Administration Act]

The Protection of the Environment Administration Act establishes the EPA as an independent statutory authority governed by a Board.

The bill makes administrative changes to this Act to implement the New South Wales Government's commitment to review the governance arrangements for the EPA in response to the Portfolio Committee Review into the Performance of the NSW EPA in 2015.

The Chair and CEO roles were administratively separated in July 2019, and the bill seeks to formalise this separation.

The bill clarifies that the CEO is responsible for the day-to-day management and control of EPA operations, subject to the policies and decisions of the EPA Board and the directions of the Minister.

The Chair will focus on the EPA's strategic management - including ensuring the independence of the Board and oversight of the EPA's performance.

The bill modernises future Board appointments to ensure greater diversity of collective skills and experience — including expertise in human health and Aboriginal cultural values.

The bill also proposes amendments to strengthen the EPA's independence by further limiting the Minister's general power to direct the EPA.

The bill will ensure the EPA remains a modern and independent regulator.

The bill seeks to ensure environmental laws keep pace with evolving criminal behaviours and provide a strong deterrent to environmental crimes that put New South Wales residents, the economy, and our environment at risk.

The passing of this bill into legislation will send a clear message that this Government will not tolerate crimes against the environment and human health, that rogue operators will be found out and punished and that businesses cannot profit from the proceeds of crime by hiding behind complex corporate structures.

I commend the bill to the House.

Second Reading Debate

The Hon. PENNY SHARPE (16:26): On behalf of the Labor Opposition I speak in debate on the Environment Legislation Amendment Bill 2021. I note that it is really an omnibus bill. It contains lots of small changes that have been a long time coming, in many cases, and Labor welcomes them. The main focus of this bill, though, is to deal with contaminated land management and the difficulties that have been experienced by the

NSW Environment Protection Authority [EPA] over time in prosecuting and holding accountable those who do the wrong thing. We have significantly contaminated land throughout New South Wales. Contamination seeps into our water systems and not only affects drinking water but also threatens delicate ecosystems and endangers our biodiversity. There should not be loopholes when it comes to the contamination of land, air and water, and the price of remediation should be paid by those who do the damage.

In the second reading debate on this bill in the other place, my colleagues have described at length the very real consequences of environmental laws that are too weak and a regulator that is too under-resourced to enforce them. The member for Port Stephens spoke of the callings for innocent landholders in Millers Forest who are forced to contend with fill dirt full of asbestos under their new home. The member for Maitland spoke about PFAS contamination from the Royal Australian Air Force base at Williamtown—something that this House has dealt with a lot over the years—and the former Truegain oil factory at Rutherford. The member for Newcastle spoke of the contamination at the BHP site in Newcastle, where Jemena spent $11.5 million remediating contamination it had nothing to do with.

The member for Granville spoke about the peninsula of Camellia in Parramatta, where the groundwater is contaminated with hexavalent chromium from the old James Hardie site. The member for Canterbury described the illegal dumping that occurs along Canterbury Road and in the Cooks River. Many other members spoke in the other place about illegal contamination and dumping in their communities, which has had lasting and serious consequences for those who live and work there. Meanwhile, too many of those responsible for this pollution have been able to get away with it. That is why Labor supports the bill before the House today.

The environment legislation bill will not only increase the financial consequences for polluters but it will also protect innocent landholders and communities from having to pick up the bill for other people's waste and negligence. Some contamination sites can cost up to $20 million to remediate, and often the financial burden falls on the taxpayers. While Labor welcomes the reforms in the bill, the New South Wales Government must do more to be truly effective. The EPA must be properly staffed so that it can effectively deliver on its promise. While the extra staff it received last year was a step towards recovering from the Government's 2020 staff cuts, many of those new employees were temporary workers. To respond quickly and enforce the law, EPA workers must have certainty in their roles. Also there have been issues with the way the EPA has forced a lot of people to become generalists rather than specialists in their area. This is a very complicated part of the law and expertise has been built up over time.

I have spoken with EPA workers who want to do a good job. They take their roles very seriously, in trying to keep New South Wales clean and in pursuing the role, which we ask of them, of policing environmental matters. Those outstanding matters must be dealt with. I turn now to the provisions of the bill. The bill will update and modernise our environmental laws by ensuring that those who commit crimes against our environment are held to account and by ensuring that innocent communities and landholders are protected from the health and financial implications of contamination and waste. By amending various Acts, the bill extends the powers of the EPA to enforce environmental laws and impose larger penalties with meaningful consequences on the companies that are responsible for environmental crimes.

First, the bill amends the Protection of the Environment Operations Act 1997 by extending regulatory requirements and considerations to current and former directors and related corporate bodies. Further assurance that contaminated land is maintained by those responsible will be created by enabling suspended, revoked or surrendered licences to be transferred and enforceable. It also stops polluters from passing the blame onto their employees by extending liability for illegal waste dumping to vehicle owners, rather than just drivers, which means those who are responsible for illegally contaminating land are held fully responsible. People who do the wrong thing have worked their way around the laws over time. They know the loopholes that exist and they have actively pursued them to do the wrong thing by the environment, like dumping asbestos or other hideous materials. That has been a particular issue in western Sydney and regional areas, as my colleagues in the other place have mentioned.

The amending bill also increases protection for the environmental officers who are on the front line investigating those offences. By amending the Contaminated Land Management Act 1977, the bill makes it possible for the EPA to issue a clean-up or prevention notice as soon as the contamination is discovered. Any information given to the EPA that is false or misleading in a material aspect will also be made an offence, while additional offences and increased maximum penalties will reflect the true cost of those crimes. Amendments have also been made to the Pesticides Act 1999 to further empower the EPA by giving it the right to create a pesticide control order without ministerial approval. The Act needed to be updated so that court orders were in line with legislation, creating a wide range of laws to prevent, manage and enforce pesticide crimes.

Across all three of those Acts, the amendments have been designed to be strong but fair. They make it an offence for current and former corporate bodies to financially benefit from environmental crimes, but they also

require the EPA to consider the financial capacity of a person when providing financial assurance. There have been a series of cases in the past where organisations have closed themselves down, only to phoenix elsewhere, and no-one is held accountable for horrendous pollution and contamination. Finally, the bill formalises the separation of the EPA's chairperson and CEO. With redefined and clear-cut roles we will improve the independence of the EPA board and diversify the board's skills.

The reform is truly overdue. Labor has been talking about that governance issue for at least eight years, so we are glad that the Minister is addressing it. I acknowledge the Minister for Environment and Heritage, who is seated in the gallery. I thank him for his presence during the debate. We must give the EPA the tools to enforce the laws that we expect them to enforce. Many regulations deal with dangerous and other materials, but people have exploited loopholes in those regulations over time. The bill seeks to deal with those loopholes, which Labor supports.

Ms CATE FAEHRMANN (16:34): On behalf of The Greens I contribute to debate in support of the Environment Legislation Amendment Bill 2021, and I welcome the new environment Minister, James Griffin, to his very important portfolio. It is one of the most important portfolios in the Government. I look forward to working with him on solutions to some of the urgent environmental challenges in New South Wales. The bill amends the Protection of the Environment Operations Act 1997, or the POEO Act; the Contaminated Land Management Act 1997; and the Pesticides Act 1999 to strengthen the powers of the Environment Protection Authority [EPA] to prosecute individuals who are engaging in illegal waste dumping and who are currently exploiting a number of loopholes to avoid prosecution. The changes are positive because they will reduce the amount of waste that is currently being dumped—but they are long overdue. The Greens have long been advocates for strengthening the powers of the EPA. The changes within the bill are a positive step.

I turn now to some of the elements of the bill that we particularly support, though we support the bill overall, and I note The Greens will seek to move one amendment. The bill amends the Protection of the Environment Administration Act 1991 to give effect to the separation of the roles of the chairperson and the chief executive officer of the EPA. That has come about as a result of a recommendation from the 2015 upper House inquiry into the performance of the EPA which, to be honest, should not have taken seven years to implement. It is concerning to hear that some industry sectors, businesses and individuals are deflecting accountability and avoiding enforcement clean-up and compliance costs by setting up complex corporate structures that allow them to deregister certain companies in the blink of an eye to avoid enforcement action for illegal activities at certain sites. I do not envy the EPA having to prosecute, issue penalties or recover any monetary benefit that those companies may have obtained for their crimes. We support the reform in the bill that enables stronger prosecution.

In her second reading speech the Parliamentary Secretary for the Environment on behalf of the former environment Minister stated that those evolving corporate structures are becoming more prevalent. The Greens support the expansion of existing licensing offences and notice provisions to hold current and former directors, managers and related companies to account for environmental offences. It is important that those who are responsible for or who benefit from contamination are held to account for the costly clean-up or long-term management. It is very encouraging to see the strengthening of several environment protection Acts to make it an offence for current and former directors, managers and related corporate bodies of a convicted offender to receive monetary benefits from that crime, and to enable the recovery of the proceeds of that crime in separate civil or criminal court proceedings. The Greens also support the amendment of the POEO Act to enable the EPA to issue a clean-up notice to all persons reasonably suspected of having contributed to a pollution incident.

The Government has used the example of several recent cases where multiple trucks were observed disposing of asbestos contaminated waste. The registered owners of the vehicles denied culpability by claiming they leased out the trucks and had no record of who was driving the vehicles. The EPA was unable to successfully take enforcement action for those crimes, and the high cost of cleaning up those sites has now fallen to innocent landholders. Clearly that is unacceptable. Sarah Ndiaye, Greens Deputy Mayor of Byron Shire Council, shared with me a few examples of illegal dumping in her shire. The council has spent over $150,000 on clean-up costs over the past few years.

The sort of waste that is dumped throughout the Byron shire includes asbestos, construction waste and household waste. Clean-ups can cost between $1,000 and $4,000 on average per incident, with many investigations going unresolved due to the exact loopholes the bill seeks to close. The bill also amends the POEO Act to enable the EPA to act against owners of vehicles used to illegally dump waste. It is heartening to see that the bill goes further in regulating the containment and management of contaminated land. The bill provides the EPA with several new powers to ensure the management of ongoing contamination is allocated to the entity in charge of the site on a day-to-day basis.

The bill will allow the EPA to transfer the conditions of surrendered, suspended and revoked licences to ensure the ongoing management of contamination at a site. We also support the amendments to the Contaminated

Land Management Act to enable the EPA to issue a clean-up notice to a responsible person while contaminated land assessments are underway. It was nonsensical that the EPA could take action only once the land had been declared significantly contaminated. We also support the increase in penalties broadly for contaminated land offences. The bill will enable the EPA to secure access to funds before a company goes into liquidation. That is critical because it happens all too frequently when the cost of clean-up can be prohibitive and some companies prefer to make the money from the polluting activity or illegal waste dump and then liquidate and walk away.

The Greens strongly support the amendment to the Protection of the Environment Operations Act, which will ensure that authorised officers can safely undertake their duties without fear of harm or intimidation. Increasingly, environmental compliance officers, including EPA officers, are being physically threatened on the job. That is completely unacceptable to every member in this place and, indeed, in the community. In the second reading debate on the bill in the other place, examples were given of one officer who was shot at with a nail gun and another who was unwillingly detained at a premise. It was noted that while the police can take action, limitations often prevent those persons threatening EPA officers from being held to account. It is heartening, therefore, that the bill addresses that by creating a strict liability offence for threats made against authorised officers who are simply doing their job. The bill also seeks to increase the maximum penalties for all offences relating to conduct against authorised officers. I note at this juncture that The Greens do not support the Shooters, Fishers and Farmers Party amendments to deal with that issue.

However, much broader reforms are necessary for the EPA to effectively monitor and police pollution in New South Wales. The EPA has long been understaffed and under-resourced to do its job effectively. In 2015 the Baird Government decided to strip $5.4 million from the EPA over four years. I note that in his speech the Minister said that employment is growing within the EPA. I hope that it grows substantially as it is more than clear that the EPA lacks the resources to be an effective environmental regulator in the face of growing waste and pollution problems in New South Wales. Many high-profile cases of pollution by industry in recent years have been detected not by the EPA but by citizens whose work has brought it to the EPA's attention.

An example of that is Western Sydney University Professor Ian Wright, who was responsible for drawing the EPA's attention to multiple environmental disasters resulting from projects that gained State and Federal approval. Some would say that at times he is singlehandedly doing the EPA's job for it. For example, research by Ian Wright and his team exposed Clarence Colliery mine in the Blue Mountains releasing heavy metal contamination causing severe ecological damage to more than 20 kilometres of the supposedly protected World Heritage Wollangambe River. Ian's research and discovery directly led to the NSW EPA imposing more effective restrictions on the release of toxic pollutants from the mine in 2017. The work of people like Professor Ian Wright is invaluable, but it should not be up to individuals like him to do the policing work of the EPA.

I echo the comments of my colleague in the other place Jamie Parker, the member for Balmain, who said that the EPA must have a much stronger involvement in the development process, particularly in State-significant developments, which are granted far too much leeway to avoid environmental protections. The EPA should be involved in the early stages of environmental impact statements for projects that are a serious risk to the environment or the community. Having said that, The Greens support the bill and appreciate voting on a Government bill in this place that actually strengthens environmental protections rather than weakens them.

The Hon. ROBERT BORSAK (16:43): The Government introduced the Environment Legislation Bill 2021 to the Legislative Assembly on 23 November 2021. The bill has been received with much joy by The Greens and Labor. I welcome the Minister and remind him how he and his party have abandoned business in New South Wales. No-one seems concerned that the Environment Protection Authority [EPA] and the Government did not care to consult with regulated stakeholders, those who are impacted by the bill—that is, small and large businesses across the State, including mines, farms, small industrial businesses, quarries, cement plants and many others.

None of the businesses that keep New South Wales running, growing, building and employed have been consulted about whether the bill might have unacceptable impacts on them or whether the powers extended to the EPA to regulate and penalise businesses are an overreach. No-one in the Government thought that it was worth checking with businesses whether there might be unintended consequences of the legislation written by the State's eco cops. Two days after the legislation was introduced into the Parliament, the EPA website was updated to include a Better Regulation Statement. It includes a section on consultation, which would have been more accurately entitled "Consultation failure", or maybe "Consultation with people who agree with us". In this section, the EPA reassures us:

> … consultation with the regulated community or businesses has not occurred as only those not complying with existing legislation will be impacted by the proposal.

Can members believe that? The Government will not consult with people because it will only deal with those who do not comply. How do we tell the difference at this stage? It is absolutely amazing. It is simply not correct. The

legislation introduces new offences and new requirements that will impact on companies, businesses and individuals who are doing the right thing, both now and in the future. It is a ridiculous statement. It is difficult to believe that it was made by the same organisation whose regulatory strategy states that it is committed to "bringing community, government, industry and other stakeholders together to solve problems". It is amazing stuff. As an aside, the EPA allowed a generous seven weeks for stakeholders to provide feedback on its motherhood statement-laden Regulatory Statement.

Who did the EPA consult with? It consulted with government stakeholders, including government environment protection licence [EPL] holders and those owning land. On their advice it made reasonable adjustments to address any unintended consequences. Why? Surely by the EPA's own reasoning if those government agencies were complying with the existing law they would not have been impacted by the proposed changes and would have no unintended consequences to identify. Now we understand that the EPA's statement on consultation is just nonsense. It hoped not to consult and to rush the bill into Parliament under the cover of Christmas, the holidays and a ministerial reshuffle. It hoped no-one in the real world would notice, but it has been noticed. A number of new and insidious changes are being sought to give the EPA far-reaching powers. Those changes in the legislation impact corporations, directors, occupiers and landowners.

Members should not be fooled into thinking by the corporate legalese that only the big end of town will be impacted by the changes; they will impact small business owners, farmers and many others as well as company directors. What are the changes and how do they overreach? Let us start with the new offence of providing false or misleading information to the EPA. It is a serious offence, with a fine of up to $250,000 for individuals and an environmental record to boot that could prevent a convicted person from being granted an environment protection licence, which might be fundamental to their business. But the EPA does not have to prove that the person knew that the information was false or misleading. It is a defence to the charge that the person took all reasonable steps to ensure that the information was not false or misleading, but it must be proven by the defendant.

That effectively reverses the burden of proof. What offences are so heinous that they require a reverse burden of proof? They include terrorism charges, child sex offences, serious drug offences and now giving misleading information to the NSW EPA. How terrible is that? What else? Right now, regulatory authorities can issue clean-up notices to persons reasonably suspected of causing a pollution incident. That is proposed to be changed so that a clean-up notice can be issued to anyone who has contributed to a pollution incident. That is fair enough if the person is required to clean up proportionate to their contribution to the pollution. But, no, the overreaching changes would allow the authorities to require that even a minor contributor be responsible for the entire clean-up. Their only option to recover the additional costs would then be to sue the other contributors who, if they have not been tracked down and made to clean up by the authorities, are likely to be elusive. This could break businesses trying to do the right thing.

The clean-up should be proportional to the contribution. The bill also provides that where a corporation has not complied with a clean-up order, the authorities will be able to issue supplementary orders to current or former directors or related parties. Clearly, it is grossly unfair for former directors to be responsible for the clean-up of a pollution incident if they were not a director at the time of the incident. And there is more, so they say. The EPA imposes a fit and proper person test in considering whether to grant an environment protection licence. The changes propose that the EPA would be able to consider whether former directors of the licensee, and former directors of related parties of the licensee, are fit and proper. This requirement will set up an endless stream of bureaucracy checking on former directors. It makes no sense. It is entirely disproportionate to the risk posed and should be limited to directors from the previous three years.

I have outlined four of the six significant issues with the legislation brought to my attention by industry—that is, people owning and operating real businesses in the real world and providing real jobs for many thousands of real people in real employment. They in fact pay the taxes that run this Parliament. Can members believe that? Inevitably, some individuals and businesses seeking to do the right thing will be caught up in the proposed changes, if the bill is passed unamended. That will break some businesses. These changes are a classic case of regulatory overreach—sought by bureaucrats, straight out of the *Yes Minister* playbook in a way Sir Humphrey Appleby would be proud of. The amendments that the Shooters, Fishers and Farmers Party is seeking to the bill are needed to remove the risk to those acting in good faith or reduce the risk of penalty to minimal. These amendments preserve the Government's claimed intent of the bill, but wind back the overreach to prevent unintended consequences that would target people acting in good faith. Fancy this Government acting in good faith.

It is a shame the EPA did not simply ask industry for some feedback. The Government could have done what it professes to be committed to: listened to industry to solve problems, rather than just bowl up this bill to their Minister with some nonsensical justification and, no doubt, some doublespeak on the consultation that did, or rather did not, occur. It is also woeful that this Government did not insist on the EPA seeking feedback from

industry—the very people this bill is likely to impact the most. Then again, this Government does not care about business anymore.

At a time when we are supposed to be working towards economic recovery, the Government needs to listen more to those that are front and centre of the economic contribution that will be required, and less to those in their agencies seeking to make sweeping legislative changes, without consultation, under the cover of environmental protection. We have listened and are now able to move several modest amendments to the bill. We are seeking to amend the bill's proposed new section 167A of the Protection of the Environment Operations Act 1997. These are the provisions I referred to earlier about providing false or misleading information to the EPA.

We propose that section 167A (1) in schedule 5 item [45] to the bill, which makes it an offence to provide false or misleading information to the EPA and includes a defence that the person took all reasonable steps to ensure that the information was not false or misleading, be deleted. We propose that new section 167A (3), which makes it an offence to give false or misleading information to the EPA knowing it is false or misleading, be amended so that a person is guilty if they knew the information was false or misleading, or the person was reckless as to whether the information is false or misleading.

This would resolve the issue of the burden of proof being on the defendant. We are also seeking to move amendments to section 91 of the Protection of the Environment Operations Act 1997, which extends clean-up powers to contributors to pollution incidents. The amendment would clarify that the clean-up actions required of a contributor to a pollution incident would be proportionate to their contribution to ensure that the response is fair and not excessive. Also related to clean-up and response to pollution incidents is that we are seeking amendments to proposed new section 91A of the Protection of the Environment Operations Act 1997.

Our amendment would prevent the EPA from issuing a supplementary clean-up notice to former directors where that person was not a director of the corporation at the time the pollution incident occurred. How absolutely revolutionary is that? We will set it up to punish people who were not even there at the time it occurred. Unreal! The EPA is also seeking to extend the power to issue prevention notices to former directors through new section 96A. We seek to amend new section 96A of the Protection of the Environment Operations Act 1997 so that it applies only to former directors if they were a director at the time the activity to which the prevention notice applies. How revolutionary is that?

Similarly, the EPA is seeking to extend prohibition notices to former directors through a new section 101A of the Protection of the Environment Operations Act 1997. We are therefore also seeking to limit application of the new section to former directors who were directors at the time that the prohibition notice was given. We are also seeking to amend changes to the fit and proper person test in section 83 of the Protection of the Environment Operations Act 1997 for an environmental protection licence that will extend the test to related bodies corporate and former and current directors of the licensee and its related bodies.

There is no time limit on former directors, which will lead to a huge uncertainty and burden on business, and could result in a licence being refused for many years because of the conduct of someone unrelated to the business. We propose that the section be amended to allow only former directors from the past three years to be considered. New section 307A of the Protection of the Environment Operations Act 1997 will empower the EPA to register a restrictive or public positive covenant on the land title under section 88E of the Conveyancing Act 1919 to enforce any outstanding licence conditions, including conditions of a surrender, suspension, or revocation of an EPL.

Currently the EPA would need landholder's consent to register such a covenant. The covenant would run with the title of the land. The lack of any requirement to consult with landholders is disturbing and given the EPA's tendency for overreach could end up with land being unnecessarily fettered. We propose to amend the section so that the EPA is required to give notice to the landholders, allow them a period to comment, and take those comments into consideration in making their final decision. The EPA can currently seek a monetary benefit order against a convicted corporation to deprive the offender of any financial advantage obtained from breaking environmental laws. New section 167B and part 8.3A of the Protection of the Environment Operations Act 1997 make it an offence for current and former directors and related bodies corporate of a convicted offender to receive monetary benefits from the commission of an offence and allows proceedings to recover monetary benefits.

As proposed, there is no requirement for the current and former directors and related bodies corporate of a convicted offender to have any knowledge that the benefit was gained because of the commission of an offence. So you gain something, you do not even know that an offence occurred that got you that gain, but guess what? You are still guilty. For instance, individuals who have a salary or a bonus linked to a production target that is reached because of conduct, of which they have no knowledge whatsoever, could be guilty of this offence. This is a serious offence that should not be extended in this way. We will be seeking to amend the new provisions to

require that the directors and former directors would need to have knowingly obtained financial benefit before it can be taken off them. I do not commend the bill to the House.

The Hon. EMMA HURST (16:58): I shall speak briefly to indicate that the Animal Justice Party does not oppose the majority of the Environment Legislation Amendment Bill 2021. However, obviously I am foreshadowing amendments that the Animal Justice Party will put forward. We are concerned by the bill's amendment to water down the current oversight process related to the use of 1080 poison, which is extremely dangerous both to humans and animals. Oversight of this poison should never be reduced. But I will save my contribution on that for the Committee stage.

The Hon. SHAYNE MALLARD (16:59): I speak in support of the Environment Legislation Amendment Bill 2021 and will focus on one component of the bill. Our environmental laws need continual improvements to ensure that they adequately deter the illegal dumping of contaminated waste and that those who commit waste dumping offences are made to pay for their crimes. The amendments in the bill will address that issue. Over the past three years, more than 132,000 tonnes of contaminated waste has been illegally dumped. Members of the House would be familiar with that because of the committee inquiries into energy from waste and the dumping of material in our communities. As a councillor, I was very familiar with the dumping of waste in my community and I worked at Liverpool City Council where a lot of waste is illegally dumped in the bushland and on the roads and verges at night at a cost to taxpayers and ratepayers.

Illegal waste is being dumped on vacant properties, in parks and forests, in rented warehouses and even on the middle of neighbourhood roads. While some illegal waste dumping is conducted opportunistically, most commonly it is being conducted by several repeat waste offenders undertaking a series of illegal waste dumping events at the same location. That is driven by illegal profit. Illegal waste dumping not only has the potential to harm human health and the environment, it also costs the New South Wales Government millions of dollars each year in avoided waste levy revenue and in its clean-up. Illegal waste dumping also impacts the people of New South Wales. Often the costs of illegal waste dumping on private land are left to innocent landholders to clean up. Additionally, where contaminated waste remains on site, while responsibility for its clean-up is disputed, the local community is exposed to potential contamination risks.

Illegal dumpers are smart and know the limitations of current environmental laws and have found ways to deflect accountability for their crimes. The Environment Protection Authority [EPA] has discontinued several investigations due to limitations in the Protection of the Environment Operations Act relevant to illegal dumping crimes. Recently the EPA and members of the public collected evidence showing multiple trucks illegally disposing of contaminated waste in Millers Forest in the Hunter region. Despite having video and photographic proof of the crimes being committed, the registered owner of the vehicles claimed they leased the trucks and had no records of who was driving the vehicles. It is hard to believe that the EPA was unable to require the vehicle owners to clean up the contaminated waste or take any enforcement action for those crimes. The cost of clean-up has fallen to the innocent landowner, resulting in asbestos-contaminated waste being left on the site for a prolonged period.

In another case, in 2019 over 400 tonnes of contaminated and toxic waste was illegally dumped on private properties in Riverstone in a series of events. Multiple parties were identified as being involved in illegally dumping the waste, but the EPA was unable to pursue them to clean up the waste and dispose of it correctly due to the limitations of the Act. The innocent landholder who has had waste dumped on their property was left with nearly $2 million in clean-up costs. The bill seeks to improve existing regulatory powers and tools to deter such crimes and ensure those responsible for causing contamination and pollution are held to account for its clean-up or management into the future.

The bill expands existing offences to ensure they align with how illegal waste dumping evidence is collected. Most evidence of illegal waste dumping is undertaken covertly to ensure the safety of EPA officers and the public and because most dumping occurs when people do not think they are being watched. In Liverpool, CCTV cameras have been installed in trees in areas of regular illegal dumping to capture evidence. This means video and photographic evidence of vehicle registration numbers is the most available source of evidence.

Currently the Act limits the EPA to only taking action against the driver of a vehicle involved in illegal waste dumping, not the vehicle's owner. Serial illegal dumpers are aware of this limitation. It is now common for vehicle owners to deny responsibility for alleged offences or refuse to disclose or deny knowledge of who was driving their vehicles. Importantly, the bill will enable the EPA to take action against owners of vehicles used to illegally dump waste instead of proving who was driving the vehicle. Vehicle owners will be required to take responsibility for crimes committed with their vehicles, including being liable for the cost of cleaning up illegally dumped waste.

The bill will also improve how illegal dumping is cleaned up. Currently, if there are a series of illegal waste dumping incidents on a property by different people, the EPA is limited from taking action if it cannot prove to the required standard who is responsible for each portion of the illegally dumped waste. The EPA is also limited to issuing notices to people who caused the pollution, not where multiple people contribute to illegal waste dumping at a site.

Given those limitations, it is becoming increasingly common that innocent landowners, local councils or the New South Wales Government are left paying to clean up the illegally dumped waste. The bill addresses those issues and ensures that those who pollute will pay. It will enable the EPA to take action against multiple people who contributed to an illegal waste dumping crime. The EPA and councils will be able to issue a clean-up notice to all persons who are reasonably suspected of having contributed to a pollution incident. The bill is an important reform to deter illegal waste dumping and ensure that those who commit environmental crimes pay for them. I commend the bill to the House

The Hon. DON HARWIN (17:05): I am pleased to speak in support of the Environment Legislation Amendment Bill 2021. The bill will ensure that communities and the environment are protected from contamination caused by individuals and businesses that wilfully commit environmental crimes for financial and commercial gain. The bill improves existing environmental laws so that the New South Wales Government or innocent landholders are not left footing the bill for cleaning up contaminated sites. It also modernises these laws to ensure that when potential contamination is identified, the Environment Protection Authority [EPA] can act quickly to prevent further contamination from occurring and direct its immediate clean-up by those that caused or contributed to it.

Currently, the EPA is limited in how quickly it can respond when notified of contamination under the Contaminated Land Management Act. The EPA's main powers to address the contamination only apply if and when the land is formally declared to be significantly contaminated. That process can take many months. However, if the contamination source is still active, or where contaminated groundwater or vapours are impacting nearby landholders, the EPA must be provided with the ability to take immediate action to manage and clean up the contamination.

In December 2019 the EPA was notified that underground petroleum storage tanks had contaminated the groundwater used for domestic purposes by a small regional New South Wales town, potentially impacting the health of the local community and their agricultural businesses. Due to limitations in the current laws, the EPA was unable to immediately act to require the landholder to clean up the site and manage the offsite contamination. This resulted in the contamination source further polluting the site and groundwater, and has resulted in extensive government support and cost so the community can access clean water. That support is continuing to this day.

The bill will now enable the EPA to issue prevention and clean-up notices to operators of a site while assessing whether the contamination is significant enough to warrant regulation by the EPA. That change will enable swift action to stop any active source of contamination from impacting human health or the environment and for the site's clean-up to be expedited. That is a very good change and I welcome it. It is one of many reasons why the legislation should be supported.

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (17:09): In reply: I thank all the honourable members who contributed to the debate on the Environment Legislation Amendment Bill: the Hon. Penny Sharpe, Ms Cate Faehrmann, the Hon. Robert Borsak, the Hon. Emma Hurst, the Hon. Shayne Mallard and the Hon. Don Harwin. I also thank the many members in the other place who spoke in support of the bill and acknowledge the role of the Treasurer and former environment Minister, the Hon. Matt Kean, in championing these laws in the first place. I thank the Hon. Penny Sharpe and Ms Cate Faehrmann for confirming that Labor and The Greens will support the bill.

I acknowledge the importance of the Environment Protection Authority [EPA] governance reforms. These changes will strengthen EPA governance to complete the final steps in a series of changes to separate the roles of the chairperson and the chief executive officer, which has been the subject of past parliamentary inquiry recommendations. I thank Ms Cate Faehrmann for calling out the importance of the changes that will make vehicle owners responsible for waste dumping. This will significantly improve the ability of the EPA and local councils to respond to that issue. I also acknowledge The Greens comments in support of amendments that improve protections for authorised officers. Tackling waste crime exposes EPA officers to elements of organised criminal enterprises. These measures will ensure that the EPA can respond to incidents and show zero tolerance for incidents that intimidate or endanger EPA and council-authorised officers.

I will also respond to observations about EPA staffing. I am proud of the Government's strong track record in resourcing the EPA, which currently has a stable workforce of over 720 full-time employees and is in the process of increasing its workforce further. The EPA has also recently restructured to ensure the agency can better

respond to environmental incidents and increase its regulatory presence. These new laws, combined with the EPA increasing its workforce and operational agility, will ensure that it is a strong, credible and effective regulator now and into the future.

I will move on to the contribution of my friend the Hon. Robert Borsak. I reject the Shooters, Fishers and Farmers Party characterisation that the bill penalises business. The bill implements changes that support businesses that take responsibility for complying with EPA notice powers. The many examples provided in the other House gave real-life examples of the wide impact of illegal waste dumping on families and small businesses that are duped by waste criminals. The bill will crack down on those who seek to profit from illegal waste dumping and take advantage of innocent landholders.

Phoenixing of companies needs to be stamped out, and the bill makes important changes to deliver increased corporate accountability. I am also advised that the bill has received positive feedback from waste industry stakeholders, who are keen to see dodgy operators appropriately penalised and reward lawful operators who are being undercut by those who cut corners. I also note that a number of amendments have been proposed. I look forward to debating each of them in detail. I thank all the members for their contributions to the debate.

The DEPUTY PRESIDENT (Ms Abigail Boyd): The question is that this bill be now read a second time.

Motion agreed to.

In Committee

The TEMPORARY CHAIR (The Hon. Catherine Cusack): There being no objection, the Committee will deal with the bill as a whole. I have three sets of amendments: Animal Justice Party amendments on sheet c2022-014D; Shooters, Fishers and Farmers Party amendments on sheet c2022-017A; and The Greens amendments on sheet c2022-015B.

The Hon. EMMA HURST (17:15): By leave: I move Animal Justice Party amendments Nos 1 and 4 on sheet c2022-014D in globo:

No. 1 **Prohibition on sale, supply, use or possession of particular restricted pesticides**

Page 14, Schedule 3. Insert after line 8—

[1A] Part 2, Division 4

Insert after section 17—

Division 4 Offences relating to particular restricted pesticides

17A Possession or use of 1080 pesticides

A person must not possess or use a chemical product containing sodium monofluoroacetate (also known as 1080).

Maximum penalty—

(a) for a corporation—$550,000, or

(b) for an individual—$110,000 or imprisonment for 2 years, or both.

17B Sale or supply of 1080 pesticides

A person must not sell or supply a chemical product containing sodium monofluoroacetate (also known as 1080) to another person. Maximum penalty—

(a) for a corporation—$550,000, or

(b) for an individual—$110,000 or imprisonment for 2 years, or both.

No. 4 **Revocation of particular pesticide control orders (to be moved with Amendment No. 1)**

Page 18, Schedule 3. Insert after line 18—

21 Revocation of 1080 pesticide control orders

The following pesticide control orders are revoked—

(a) the *Pesticide Control (1080 Ejector Capsules) Order 2015*,

(b) the *Pesticide Control (1080 Ungulate Feeder) Order 2016*,

(c) the *Pesticide Control (1080 Bait Products) Order 2020*,

(d) the *Pesticide Control (1080 Felixer Cartridge Trial) Order 2020*.

These amendments to the Pesticides Act would ban the possession, use, sale and supply of 1080 poison in New South Wales. They would also repeal existing pesticide control orders that authorise the use of 1080, which is a shockingly cruel and inhumane poison. The New South Wales Government continues to drop millions of 1080 baits every year. Any animal that ingests 1080 will suffer a slow, agonising death that starts with vomiting, anxiety, disorientation and shaking and followed by frenzied running, screaming fits and seizures that can last up to 48 hours before their eventual death. The poison 1080 is not only incredibly inhumane, it is also indiscriminate in the carnage it creates. Anybody who claims to be dedicated to protecting native animals needs to hear this. Extensive research has shown that native species are not immune to 1080 and those in south-eastern Australia are especially vulnerable to the poison.

Threatened species such as the quoll are often killed by 1080 baiting programs. Companion animals are also at risk. I regularly get calls to my office from devastated families who have lost dogs to 1080. Families describe the pain and suffering that their dog endured in their final hours and the trauma experienced by the dog's family. The poison 1080 can also pose a risk to humans, particularly small children. In 2014 a New Zealand man publicly threatened to spike baby milk formula with 1080. Thankfully it turned out to be a hoax, but it raised significant alarm because 1080 poison is colourless, odourless and tasteless. There is no antidote, and research suggests that only a tiny amount—less than one milligram—can kill a small child. I met a nurse some years ago who was the full-time carer for a man who had picked up and played with a 1080 bait when he was a young child. He is now permanently disabled and unable to live a normal life. This is the reality of 1080 poison that is rarely spoken about, and it is one that this Government has continued to ignore.

The terrifying reality is that there is no antidote to 1080 poison. If a small child ingests a lethal dose of 1080 or if a dog or a threatened animal ingests 1080, there is nothing that can be done to save their life. This is an incredibly dangerous and irresponsible poison, which is why it is banned or simply not used in most places around the world. Australia is one of the last places in the world that still uses 1080. It has even been considered a potential weapon of mass destruction in warfare. There are alternatives to using 1080 poison. There is no reason to continue to use this poison, given the dangers to human and animal life and the suffering it causes. It is time that Australia joined the rest of the world and banned the use of 1080 poison.

I urge all members to support these important amendments. I encourage the members in this place who vote against the amendments to go online and watch a video of an animal dying from 1080 poison. I warn you, it will be one of the worst animal cruelty videos that you have ever seen. We have a duty in this place to know what our voting will continue to allow. Members who vote to allow the continued use of this poison should be fully knowledgeable of the effect it has on animals. This is an important issue and not one that should be voted on blindly.

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (17:19): The Government opposes Animal Justice Party amendment No. 1. The proposed amendment seeks to effectively ban the use of 1080, PAPP and the other main pesticides in New South Wales, and revoke the pesticide control orders that effectively regulate the safe use of those products. The poison known as 1080 is a cornerstone product for feral animal control programs in all Australian States and Territories. In Australia, the use and supply of 1080 is strictly regulated. It is a restricted chemical product and can only be supplied to persons authorised to use it under the laws of each State or Territory. Banning the possession or use of those products would bring the current vertebrae pest control program in New South Wales to a standstill, with far-reaching negative impacts on agriculture, national park estate, biodiversity and biosecurity. That could increase the number of threatened and extinct native species in New South Wales, and result in greater stock losses for our farmers.

The Government also opposes Animal Justice Party amendment No. 4. That amendment would revoke the existing pesticide control orders currently in place for the use of 1080 and other pesticides in controlling feral animals. The pesticide control orders underpin safe pesticide use and disposal. New South Wales users can only use those restricted pesticides if authorised to do so by the orders. They must follow strict conditions set by the orders and must comply with specified mandatory training requirements. Removing existing pesticide control orders would severely impact feral animal control programs in New South Wales, with far-reaching negative impacts on our native species and agriculture industry. It could also result in the unsafe use and disposal of pesticides in New South Wales, putting human health and the environment at risk.

The Hon. PENNY SHARPE (17:21): Labor does not support the Animal Justice Party amendments, but I note its sincere and long-running campaign in relation to these matters. When dealing with pest species in particular, we need to look at humane methods. There is no doubt that 1080 is a very blunt tool to deal with pest control. However, we do not support the removal of it at this point in time. The honourable member would also be aware that I have previously met with dingo conservation groups and there are issues with wild dogs and the way they are treated under our laws. However, I understand what the Animal Justice Party is trying to do.

Labor does not believe in simply removing 1080 by way of a blanket ban in the bill without a lot of serious consideration about the management of other pest species, the impact on farmers and the impact on other native wildlife. We do not believe that it is appropriate or the right timing. There is a lot more work to be done and a lot more thought to be put into how to do it. Labor does not support the amendments. We note that the Animal Justice Party is very sincere in its pursuit of this issue. I know it will continue to talk about it for a long time, but now is not the time. There is a lot more work that needs to be done to ensure that farmers and native animals are not impacted by simply pulling the rug out and prohibiting the use of this pesticide.

Ms CATE FAEHRMANN (17:23): The Greens put on the record that we have extremely significant concerns about the use of 1080. As a party, we do not support its use and we do support more research into humane measures. I listened to what the Hon. Emma Hurst said about the extraordinary cruelty and agonising deaths as a result of using those pesticides. However, there is a difference between our approach to biodiversity and the environment in New South Wales and the Animal Justice Party's approach, that is, that we definitely support the control of feral animals. The extinction crisis in this State is very real, and one of the key threats to mammalian extinction is feral animals. That is a hard road to walk to find a solution.

The intent of the amendments is very honourable, but we share the Labor Party's concerns about the actual impact on the ground of a blanket ban straightaway. I was made aware of the amendments very late, so I have not spoken to stakeholders about the impact. While The Greens support the intent of removing 1080 from the landscape and think there needs to be more conversations about it, we cannot support the two amendments moved by the Animal Justice Party at this time.

The TEMPORARY CHAIR (The Hon. Catherine Cusack): The Hon. Emma Hurst has moved Animal Justice Party amendments Nos 1 and 4 on sheet c2022-014D. The question is that the amendments be agreed to.

Amendments negatived.

The Hon. EMMA HURST (17:25): By leave: I move Animal Justice Party amendments Nos 2 and 5 on sheet c2022-014D in globo:

No. 2 **Prohibition on sale, supply, use or possession of particular restricted pesticides**

Page 14, Schedule 3. Insert after line 8—

[1B] Sections 17C and 17D

Insert after section 17B as inserted by this Act—

17C Possession or use of particular restricted pesticides

A person must not possess or use any of the following restricted pesticides—

(a) a chemical product containing 4-aminopropiophenone (also known as PAPP),

(b) a chemical product used for the purpose of bird control that contains 4-aminopyridine or alphachloralose or fenthion,

(c) a chemical product containing pindone that is a concentrate and for which the relevant label instructions require further mixing with carriers before it is ready to use as a bait,

(d) a chemical product containing rabbit haemorrhagic disease virus (RHDV) (also known as rabbit calicivirus) that is in injectable form and requires mixing with carriers such as oats or carrot before it is ready to use as a bait.

Maximum penalty—

(a) for a corporation—$550,000, or

(b) for an individual—$110,000 or imprisonment for 2 years, or both.

17D Sale or supply of particular restricted pesticides

A person must not sell or supply any of the following restricted pesticides to another person—

(a) a chemical product containing 4-aminopropiophenone (also known as PAPP),

(b) a chemical product used for the purpose of bird control that contains 4-aminopyridine or alphachloralose or fenthion,

(c) a chemical product containing pindone that is a concentrate and for which the relevant label instructions require further mixing with carriers before it is ready to use as a bait,

(d) a chemical product containing rabbit haemorrhagic disease virus (RHDV) (also known as rabbit calicivirus) that is in injectable form and requires mixing with carriers such as oats or carrot before it is ready to use as a bait.

Maximum penalty—

(a) for a corporation—$550,000, or

(b) for an individual—$110,000 or imprisonment for 2 years, or both.

No. 5 **Revocation of particular pesticide control orders (to be moved with amendment No. 2)**

Page 18, Schedule 3. Insert after line 18—

22 Revocation of particular pesticide control orders

The following pesticide control orders are revoked—

(a) the *Pesticide Control (Avicide Products) Order 2010*,

(b) the *Pesticide Control (Pindone Products) Order 2010*,

(c) the *Pesticide Control (Rabbit Haemorrhagic Disease Virus) Order 2017*,

(d) the *Pesticide Control (PAPP) Order 2021*.

These amendments would ban the possession, use, sale or supply of a number of other cruel, lethal control methods, including PAPP, several poisons used to kill birds, pindone and rabbit haemorrhagic disease virus, also known as rabbit calicivirus. Each are currently subject to a pesticide control order authorising their use in New South Wales, which these amendments would repeal. Each of those products causes significant suffering and death to animals. Pindone, for example, is lesser known than 1080 but its effect is even more cruel.

Pindone interferes with the body's ability to blood clot. The slow-acting anticoagulant will cause an animal to suffer for 10 to 14 days before they eventually succumb to the poison. During that time they experience tremendous pain as their internal organs haemorrhage and blood drains from their anus, nose, mouth and eyes. They will literally bleed from the inside out. Pindone is not supported by the RSPCA, and the code of practice for the humane control of rabbits even describes it as "inhumane". It is even worse than 1080 poison, yet it is still authorised for use in New South Wales by this Government. Pindone can also kill non-target species because sick and dying animals are more vulnerable to predation, meaning predators who kill an animal that has been poisoned are at risk of secondary poisoning.

Rabbit calicivirus also causes significant harm to wild rabbits and companion rabbits, who are inadvertently infected and become sick or even die as a result of the virus, particularly given several strains of the virus have no approved effective vaccine in Australia. I am regularly contacted by people who are concerned about the risk this virus poses to their companion animals. Governments often announce releases of these viruses, with no safeguards to people with companion rabbits, risking the lives of much-loved house rabbits. The idea of intentionally releasing any virus into the environment should be reconsidered, given the past couple of years we have just had and the difficult lessons learnt from viruses spread from non-human animals to humans. These cruel lethal methods are not supported by the community, and should be banned.

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (17:28): The Government does not support Animal Justice Party amendment No. 2 or amendment No. 5 for the reasons I previously outlined in my first contribution in Committee and also for the potential negative implications for feral animal control should they be effectively banned.

The Hon. PENNY SHARPE (17:28): Labor will not be supporting the amendments for the same reasons I outlined in my earlier contribution.

Ms CATE FAEHRMANN (17:29): Similarly to the sentiments I expressed in relation to the previous amendment of the Hon. Emma Hurst, when talking about why rabbit numbers need to be controlled and how that is done, from a biodiversity protection and conservation point of view we control rabbits because they compete with our native animals for grazing and habitat. Rabbits have been responsible for sending species such as the yellow-footed rock-wallaby and the bilby close to extinction because those animals literally do not have their habitat as a result of grazing animals like rabbits. These issues are very important to consider but I do not think this is the bill to address them at such a rushed time. In terms of banning pesticides, let us have a bigger conversation about that. The Greens are happy to look at what that looks like, but not with this bill and not in this way.

The TEMPORARY CHAIR (The Hon. Catherine Cusack): The Hon. Emma Hurst has moved Animal Justice Party amendments Nos 2 and 5 on sheet c2022-014D. The question is that the amendments be agreed to.

Amendments negatived.

The Hon. EMMA HURST (17:30): I move Animal Justice Party amendment No. 3 on sheet c2022-014D:

No. 3 **Making of pest control orders**

Page 14, Schedule 3[2] and [3], lines 9–13. Omit all words on those lines.

This amendment seeks to remove the new provisions that would enable the Environment Protection Authority [EPA] to make pesticide control orders without ministerial approval. It is seriously concerning that the New South Wales Government is attempting to water down the current oversight processes surrounding the use of these lethal poisons, opening the door for the EPA to approve the use of even more cruel poisons against vulnerable animals in an even greater range of circumstances. In speaking to my previous amendments I described how dangerous these poisons are. Today the Government is proposing amendments to the Act that threaten to loosen the restrictions on the use of these dangerous poisons and to potentially make these poisons more readily and easily available.

The Government wants to reduce oversight on these dangerous poisons, including a poison that has the potential to kill babies and small children, by removing the requirement for ministerial approval. This is a poison that is banned in other countries around the world because it is so dangerous. We should not be cutting red tape on these processes. Oversight is there for a reason. While I strongly believe these poisons should be banned, I move this amendment because the last thing we need to see is laws relaxed on the use of and access to these cruel and dangerous poisons. This is a critical area that is literally life or death. It demands the highest level of oversight and accountability from the Minister and from the New South Wales Government.

The rationale behind the Government's amendment is very unclear. It does not seem that the task of approving pest control orders is particularly onerous for the environment Minister. In fact, if members go onto the EPA website, there are only 12 pesticide control orders in force in New South Wales right now. It begs the question: Why is the Minister trying to get rid of this responsibility? As I have highlighted, these pesticide control orders authorise the use of some cruel and inhumane poisons, including 1080. Each year these pesticide control orders will result in the death of millions of animals and the suffering of those animals. It is an incredibly serious order that should not be made lightly. I encourage all members to support this amendment to retain government oversight and control of and responsibility for the use of these poisons.

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (17:33): The Government does not support Animal Justice Party amendment No. 3. The amendment seeks to revert the making of pesticide control orders to the status quo, which requires them only to be made by the Minister. The change the Government is proposing to the Act is to enable the EPA to also be able to make pesticide control orders along with the Minister. This will provide for a more streamlined process to ensuring safe pesticide use and disposal in New South Wales. New South Wales users can only use high-risk restricted pesticides if authorised to do so by the orders. They must follow strict conditions set by the orders and they must comply with specified mandatory training requirements.

The Hon. PENNY SHARPE (17:34): Labor also does not support Animal Justice Party amendment No. 3. We do think that there needs to be a rigorous process. We believe the process is rigorous and the proposed change to the Act is not a watering down of the current arrangements.

Ms CATE FAEHRMANN (17:34): The Greens do not support this amendment, for reasons similar to those of the Government and the Opposition. We believe there are sufficient measures in place to ensure that the EPA can also prescribe pesticides with enough oversight.

The TEMPORARY CHAIR (The Hon. Catherine Cusack): The Hon. Emma Hurst has moved Animal Justice Party amendment No. 3 on sheet c2022-014D. The question is that the amendment be agreed to.

Amendment negatived.

The Hon. ROBERT BORSAK (17:35): I move Shooters, Fishers and Farmers Party amendment No. 1 on sheet c2022-017A:

No. 1 **Fit and proper persons**

Page 29, Schedule 5. Insert after line 21—

[24A] Section 83(5)

Omit the subsection. Insert instead—

(5) In this section—

former director, of a corporation or of a related body corporate, means a person who was a director of the corporation or the related body corporate at any time during the previous 3 years.

other relevant legislation means any legislation declared by the regulations to be other relevant legislation for the purposes of this section.

(6) For the purposes of subsection (5), definition of *other relevant legislation*, the regulations may declare the following—

(a) legislation that has been repealed, or

(b) legislation of a place outside the State.

This amendment seeks to amend changes to the fit and proper person test in the proposed amendment to section 83 of the Protection of the Environment Operations Act 1997 for environmental protection licences. The proposed amendment will extend the test to related bodies corporate and former and current directors of the licensee and its related bodies. There is no time limit on former directors, which will lead to uncertainty and a huge burden for business that could result in a licence being refused for the conduct of someone unrelated to the business for many, many years. Currently the EPA must consider whether a person is fit and proper when granting, suspending or revoking an environment protection licence. The EPA currently cannot consider related entities in this test.

The bill would enable the EPA to consider whether bodies corporate—for example, a parent company—related to the licensee and former and current directors of the licensee and its related bodies corporate are fit and proper persons. The proposal is too broad and has no time limits. It could create an enormous vetting bureaucracy and make it impossible for companies to have any certainty about licensing. Therefore, our amendment proposes that the bill be amended to consider only those former directors of corporations or related bodies corporate for the previous three years.

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (17:37): Shooters, Fishers and Farmers Party amendment No. 1 seeks to time-limit the period where the EPA can consider the prior history of a director of a company in determining if they are a fit and proper person. The amendment seeks to restrict the application of this provision to only the preceding three years rather than it being unbound. Restricting this provision to only the preceding three years may result in matters still under investigation or pending compliance action being considered if determining a person is unfit. The effect of this amendment would mean that a person with a history of flagrant noncompliance can be found to be a fit and proper person to hold a licence after the expiry of this three-year period. This would undermine the purpose of the new provision, which is to prevent unfit people from obtaining a licence or continuing to operate a licensed activity and to ensure there are greater protections in place for the community and environment.

The Hon. PENNY SHARPE (17:38): Labor will also not be supporting this amendment. The reality of these issues—and members in the lower House have had a lot of experience with this—is investigations often go over many years. We wish that they were dealt with in three years. That would be welcome to everyone—and I again refer to my comments in relation to resourcing. However, the point about this amendment is that we are concerned about the issues under investigation. There are examples of people who have shown chronic noncompliance for a very long period of time. I do not think they get to wipe the slate if it is outside the three-year window.

Ms CATE FAEHRMANN (17:39): I intend with this speech to address all of the Shooters, Fishers and Farmers Party amendments on sheet c2022-017A. These amendments would water down the powers that this bill is giving to the EPA to empower it to charge those who are engaged in illegal dumping, contaminated sites and other forms of pollution. For example, Shooters, Fishers and Farmers Party amendments Nos 4, 5 and 6 would restrict the EPA to applying a clean-up notice to former directors who were directors at the time of the pollution incident. This sounds reasonable on the face of it, but it is a common tactic for companies that knowingly engage in illegal dumping practices to change to a new director before they commence illegal dumping. That new director is then later replaced again when they realise the EPA is on to them—that happens.

Similarly, amendment No. 12, which would introduce a requirement for the EPA to provide a written notice and consult with landowners whose land is to be the subject of a restriction or covenant, sounds reasonable, but landowners will commonly evade being served by the EPA. This allows landowners to avoid being served the notice as the EPA cannot claim to have met its consultation requirements in this time. The landowner can sell their land to an unwilling victim who is then served by the EPA. The Greens believe that these amendments undo the core of what this bill is trying to achieve. These powers may seem excessive, but the behaviour of serial offenders who have manipulated our legal system to avoid prosecution is really serious as well. The Greens will vote against these amendments.

The TEMPORARY CHAIR (The Hon. Catherine Cusack): The Hon. Robert Borsak has moved Shooters, Fishers and Farmers Party amendment No. 1 on sheet c2022-017. The question is that the amendment be agreed to.

The Committee divided.

Ayes 3
Noes 28
Majority.....25

AYES

Banasiak (teller)	Borsak (teller)	Latham

NOES

Amato	Graham	Moselmane
Boyd	Houssos	Nile
Buttigieg (teller)	Hurst	Pearson
D'Adam	Jackson	Primrose
Donnelly	Maclaren-Jones	Searle
Faehrmann	Mallard	Sharpe
Farlow (teller)	Martin	Shoebridge
Farraway	Mitchell	Veitch
Field	Mookhey	Ward
Franklin		

Amendment negatived.

The Hon. ROBERT BORSAK (17:51): By leave: I move Shooters, Fishers and Farmers Party amendments Nos 2 to 12 on sheet c2022-017A in globo:

No. 2 **Clean-up by occupiers or polluters**

Page 29, Schedule 5[26], line 27. Omit all words on the line. Insert instead— contributing to a pollution incident.

No. 3 **Clean-up by occupiers or polluters**

Page 29, Schedule 5[27], lines 35 to 39. Omit all words on those lines. Insert instead—

(1B) Without limiting subsection (1), in giving a clean-up notice to a person under subsection (1)(c), the appropriate regulatory authority must consider the nature and extent of the person's contribution to the incident and the clean-up actions required by the clean-up notice must be proportionate to the person's contribution.

No. 4 **Clean-up notices**

Page 30, Schedule 5[31], line 23. Omit all words on the line. Insert instead—

(b) a former director of the corporation, but only if the former director was a director of the corporation at the time the pollution incident occurred,

No. 5 **Prevention Notices**

Page 31, Schedule 5[32], line 23. Omit all words on the line. Insert instead—

(b) a former director of the corporation, but only if the former director was a director of the corporation at the time the activity was carried out,

No. 6 **Prohibition notices**

Page 32, Schedule 5[35], line 21. Omit all words on the line. Insert instead—

(b) a former director of the corporation, but only if the former director was a director of the corporation at the time the prohibition notice was given to the corporation under section 101,

No. 7 **False or misleading information**

Pages 33 and 34, Schedule 5[45], line 32 on page 33 to line 20 on page 34. Omit all words on those lines.

Insert instead—

(1) A person who gives information to the EPA that the person knows is false or misleading in a material respect, or is reckless as to whether the information is false or misleading in a material respect, is guilty of an offence.

Maximum penalty—

(a) for a corporation—$1,000,000, or

(b) for an individual—$500,000 or imprisonment for 18 months, or both.

(2) Proceedings for an offence against this section may be instituted only by the EPA.

(3) Despite section 215, proceedings for an offence under subsection (1) may not be dealt with before the Local Court.

(4) In this section—

give information includes cause or permit information to be given.

information includes a record containing information.

No. 8 **Receiving monetary benefits**

Page 34, Schedule 5[45], line 22. Insert "knowingly" after "who".

No. 9 **Recovery of monetary benefits**

Page 37, Schedule 5[63], line 31. Insert "knowingly" after "benefits".

No. 10 **Recovery of monetary benefits**

Page 37, Schedule 5[63], line 40. Insert "knowingly" after "person".

No. 11 **Recovery of monetary benefits**

Page 38, Schedule 5[63], line 2. Insert "knowingly" after "benefit".

No. 12 **Restrictions and covenants on land**

Page 40, Schedule 5[73]. Insert after line 18—

(4A) The EPA must not impose a restriction or covenant under this section unless the EPA has—

(a) given the owner of the land written notice that—

(i) includes details of the proposed restriction or covenant, and

(ii) invites submissions to the EPA about the proposed restriction or covenant and specifies a day (the *closing date*), being a day not less than 28 days after the day notice is given, by which submissions may be made to the EPA, and

(b) considered any submissions received by the EPA on or before the closing date.

I seek leave to have my speech in support of the amendments incorporated in *Hansard*.

Leave granted.

This amendment seeks to amend section 91 of the Protection of the Environment Operations Act 1997, so that it only applies to former directors if they were a director at the time the activity, to which the prevention notice applies, took place.

Clean-up orders can currently be issued to persons suspected to have caused a pollution incident. This amendment would allow the issuing of clean-up notices to those suspected of only contributing to a pollution incident.

The result of this change could be that a person who has only been a contributor to an incident could bear the whole cost of the clean-up and would be forced to take legal action against other contributors, which would be costly and could be unsuccessful, to recover the other contributors share of the costs.

The EPA should be required to take into consideration the nature and extent of a person's reasonably suspected contribution to a pollution incident in deciding whether to issue a clean-up notice, and in the extent of clean-up required by the notice.

This amendment we would clarify that the clean-up actions required of a contributor to a pollution incident, would be proportionate to their contribution to ensure that the response is fair and not excessive.

Ms Chair, I seek leave to move SFFP amendments Nos 4, 5 and 6 in globo appearing on sheets c2022-017A.

Ms Chair, also related to clean-up and response to pollution incidents, the SFF is seeking an amendment to proposed new section 91A of the Protection of the Environment Operations Act 1997.

As the bill stands, it will provide that where a corporation is issued with a clean-up, prevention, or prohibition notice, and does not comply, the EPA can issue a supplementary notice to a current or former director of the corporation, or a related body corporate.

While there are cases where this might be appropriate, as proposed there are no limitations on the power, and it could catch people who have not been a director of the company, or a related party, for many years and have no responsibility for the conduct that led to the notice. More worryingly, it includes any person in the management of the affairs of the corporation, which is broader than the Corporations Act definition.

Our amendment would prevent the EPA from issuing a supplementary clean-up notice to former directors where that person was not a director of the corporation at the time the pollution incident occurred.

I move SFF amendment No. 7 appearing on sheet c2022-017A.

Ms Chair, these are the provisions I referred to earlier in my second read about providing false or misleading information to the EPA.

Conviction of this offence has serious implications for individuals and corporations. As proposed, it is up to the person or corporation that did not know the information was false, to defend the charge by proving that they took all reasonable steps to ensure that the information was not false or misleading. The onus should be on the EPA to prove this very serious offence.

As such, we propose that section 167A (1), which makes it an offence to provide false or misleading information to the EPA and includes a defence that the person took all reasonable steps to ensure that the information was not false or misleading, is deleted.

We also propose that section 167A (3), which makes it an offence to give false or misleading information to the EPA knowing it is false or misleading, be amended so that a person is guilty if they knew the information was false or misleading, or the person was reckless as to whether the information is false or misleading.

This would resolve the issue of the burden of proof being on the defendant.

The EPA should be required to prove that the person or corporation knew the information was false or misleading or was reckless as to whether the information was false or misleading.

Ms Chair, I seek leave to move SFF amendments Nos 8, 9, 10 and 11 in globo appearing on sheets c2022-017A.

The EPA can currently seek a monetary benefit order against a convicted corporation to deprive the offender of any financial advantage obtained from breaking environmental laws.

The bill makes it an offence for current and former directors and related bodies corporate of a convicted offender to receive monetary benefits from the commissions of an offence and allow civil proceedings to recover monetary benefits.

As drafted, there is no requirement for the current and former directors and related bodies corporate of a convicted offender, to have any knowledge that the benefit was gained because of the commission of an offence.

For instance, individuals who have salary or bonuses linked to a production target that is reached because of conduct, which they have no knowledge of, could be guilty of this offence.

This is a serious offence that should not be extended in this way.

For the person to be convicted of the offence, the EPA should need to prove that there was some degree of knowledge that the benefit was accrued because of the commission of an offence, and this is what these amendments seek to do.

I move SFF amendment No. 12 appearing on sheet c2022-017A.

When an operation ceases and an EPL is surrendered, the EPA will now be empowered to register a restrictive or public positive covenant on the land title under section 88E of the Conveyancing Act 1919 to enforce any outstanding licence conditions, including conditions of surrender, suspension, or revocation of an EPL.

Currently, the EPA would need landholder's consent to register such a covenant. The covenant would run with the title of the land.

This proposal denies procedural fairness and could significantly reduce future uses and activities permitted on land. Those impacted by the decision should have an opportunity to comment and potentially reduce the impact on the future uses of the land.

The lack of any requirement to consult with landholders is disturbing and given the EPA's tendency for overreach could end up with land being unnecessarily fettered.

The owner of the land should be given notice of the EPA's proposal to register a covenant and an opportunity to provide comments which must be considered by the EPA before imposing a covenant and this is what this amendment seeks to do.

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (17:53): The Government opposes the Shooters, Fishers and Farmers Party amendment No. 2, which seeks to constrain how the EPA considers what proportion someone needs to contribute to pollution in requiring them to clean it up. It would undermine the expressed purpose of the provisions and would be challenging to prove. The bill seeks to address issues where multiple persons have illegally dumped waste or contributed to pollution where the EPA is unable to identify all persons who contributed to the incident and how much is directly proportional to each person. Consequently, the clean-up, in part or in full, has fallen to the innocent landholder. This amendment to the bill will directly respond to incidents like the Millers Forest matter raised during the debate in the Legislative Assembly. In the Millers Forest case, there was a risk of private landowners being left with a bill of $1 million to remove illegally dumped asbestos-contaminated waste from their property.

The Government opposes Shooters, Fishers and Farmers Party amendment No. 3, which would negate the intent of the new provision and mean that a person can only be required to clean up their portion of a pollution incident. This will result in the status quo applying, and innocent landholders not footing the bill for the crimes others have benefited from. The Government also opposes amendment No. 4, which limits clean-up notice provisions to directors at the time of the incident, and would exclude former directors that are appointed after an incident occurs. The proposed amendment is opposed as it attempts to unnecessarily fetter the ability of the EPA to take action against the most culpable party. In doing so, it would weaken the ability of the EPA to secure compliance with notices that the companies are ignoring and putting the environment and the community at risk.

For complex sites there is often a gap between when the incident occurs and when a clean-up prevention or prohibition notice is issued to a company. When EPA regulatory action is contemplated, the EPA often sees unscrupulous operators taking steps to move directors in and out of companies to avoid being subject to environmental laws, which is exactly what we are trying to deal with. The amendment would enable this behaviour to continue as it would exclude culpable former directors, such as those who are responsible at the time the company decided not to comply with the clean-up prevention or prohibition notice.

The Government also opposes amendment No. 5, which limits prevention notice provisions to directors at the time of the incident in the same way, and would exclude former directors that are appointed after an incident

occurs. It attempts to unnecessarily fetter the ability of the EPA to take action against the most culpable party. The Government opposes amendment No. 6 for similar reasons. The Government also opposes amendment No. 7 from the Shooters, Fishers and Farmers Party, which seeks to remove the strict liability offence for providing the EPA with false and misleading information. This would completely undermine the intent of the bill and enable criminals to continue to get away with providing false and misleading information to avoid responsibility for their crimes.

Some corporate operators are adept at covering their tracks and denying knowledge, so strict liability offences are required to close this loophole. It is common for excuses such as, "It was an honest mistake", "We blame the bookkeeper who was a rogue employee", "Our systems let us down", and so forth to be used in response to investigations. Those excuses have prevented the EPA from taking regulatory action, as the evidence required to prove otherwise is challenging. The Prevention of the Environment Operations Act and most modern legislation already have false and misleading offences with a strict liability—for example, section 66 (2) of the POEO Act. This amendment could result in a weakening of our current laws. The proposal constraining the offence to being reckless is also not supported. Similar issues in proving knowledge apply to proving recklessness.

The Government also opposes amendment No. 8, which would weaken the ability of the EPA to recover monetary benefits from those profiting from crimes. There is no knowledge element in the current monetary benefit provisions in the Act, so this proposal is opposed as it would significantly weaken existing laws that are insufficient to recover monetary benefits. Proving knowledge is challenging, as criminals can simply say they did not know that the benefit they obtained was from unlawful activities. This provides an element of doubt in legal proceedings and requires the EPA to collect extensive evidence to prove otherwise. The bill is instead making corporate entities undertake their due diligence in the management of subsidiary companies and the financial benefits they obtain from them. This would deter them from setting up these court veils to hide away the profits of their crimes. The proposed amendment would further constrain the ability to ensure that the polluter pays.

The Government opposes amendment No. 9 for similar reasons, as it does with amendment No. 10 and amendment No. 11. Finally, the Government opposes amendment No. 12, which introduces a consultation requirement when the EPA deals with the long-term management of contaminated land. The proposal in the bill is intended to address circumstances where recalcitrant landholders seek to evade liability, and this prevents the EPA from being able to act. The Government's proposals are intended to be a last resort to ensure that recalcitrant landholders appropriately manage and contain contamination on the site to protect human health and the environment particularly if land is being redeveloped or sold. It ensures that new landholders are aware of the contamination on their land before they purchase it and are not caught unaware. The EPA already has a policy of consulting landholders before placing restrictions on their land, and the use of a covenant is very rare. For those reasons the Government opposes all of the amendments.

The Hon. PENNY SHARPE (17:59): I thank the Government for its thorough response to each of the issues that are raised in relation to the amendments. I also thank the Minister's office for the briefing. Labor will not be supporting the amendments either.

The TEMPORARY CHAIR (The Hon. Catherine Cusack): The Hon. Robert Borsak has moved Shooters, Fishers and Farmers Party amendments Nos 2 to 12 on sheet 2022-017A in globo. The question is that the amendments be agreed to. Is leave granted to ring the bells for one minute?

Leave granted.

The Committee divided.

Ayes 2
Noes 28
Majority.....26

AYES

Banasiak (teller)	Borsak (teller)

NOES

Amato	Graham	Moselmane
Boyd	Houssos	Nile
Buttigieg (teller)	Hurst	Pearson
D'Adam	Jackson	Primrose
Donnelly	Maclaren-Jones	Searle
Faehrmann	Mallard	Sharpe

NOES

Farlow (teller)	Martin	Shoebridge
Farraway	Mitchell	Veitch
Field	Mookhey	Ward
Franklin		

Amendments negatived.

[*Business interrupted.*]

Visitors

VISITORS

The TEMPORARY CHAIR (The Hon. Catherine Cusack): I acknowledge the attendance in the gallery of the Minister for Environment and Heritage, the Hon. James Griffin, and thank him very much for attending. All members appreciate it when Ministers make themselves available during the Committee stage.

Bills

ENVIRONMENT LEGISLATION AMENDMENT BILL 2021

In Committee

[*Business resumed.*]

Ms ABIGAIL BOYD (18:05): I move The Greens amendment No. 1 on sheet c2022-015B:

No. 1 **Standards of air impurities**

Page 33, Schedule 5. Insert after line 5—

[38A] Section 128 Standards of air impurities not to be exceeded

Insert after section 128(1)—

(1AA) Despite subsection (1), the occupier of a power-generating plant using a coal or coal derived fuel must not carry on any activity, or operate any plant, in or on the power-generating plant in a manner that causes or permits the emission of an air impurity specified in the table to this subsection in excess of the standard of concentration specified opposite the air impurity.

Air impurity	Standard of concentration
Nitrogen dioxide (NO2) or nitric oxide (NO) or both, as NO2 equivalent	200 mg/m3
Sulfur dioxide (SO2)	200 mg/m3
Solid particles (Total)	20 mg/m3
Mercury (Hg)	1.5 µg/m3

(1AB) The standards of concentration specified in subsection (1AA) apply despite—

(a) any standards of concentration prescribed by the regulations, or

(b) any alternative higher standard imposed by a licence condition.

(1AB) However, subsection (1AA) does not apply to the occupier of a power-generating plant using a coal or coal-derived fuel if the plant has an expected closure year, within the meaning of the National Electricity Rules, of no later than 2027.

[38B] Section 128(1A)

Omit "Subsection (1) applies". Insert instead "Subsections (1) and (1AA) apply".

[38C] Section 128(2)(a)

Insert "or specified by subsection (1AA)" after "subsection (1)".

The object of the amendment is to once again remind this Committee that here in New South Wales we have five massive coal-fired power stations that are belching out dangerously high levels of over 30 toxic substances every day, far in excess of international standards. Their emissions have serious impacts on the communities that live near them, shortening life expectancies and increasing prevalence of heart attack, stroke, asthma, lung cancer and respiratory and cardiovascular disease, not to mention day-to-day irritations of the eyes, nose, throat and respiratory system.

This is not an intractable problem. Those dangerous emissions could easily be reduced by up to 85 per cent if New South Wales' coal-fired power stations adopted the emission control technologies that have been standard inclusions internationally for 50 years. Last year the House conducted an inquiry on The Greens' clean air bill that looked at that very issue. The inquiry report found, with cross-party support, that coal-fired power station air pollution exposure is responsible for diseases, illness and premature death in New South Wales. The report states:

> Coal-fired power stations in NSW are lagging behind their overseas counterparts in reducing their harmful health impacts due to comparatively relaxed regulation that has failed to drive the upgrading and installation of pollution control technology. The committee considers it timely that this is addressed and considers that the stricter thresholds for concentration of solid particles, nitrogen oxides, sulphur dioxides and mercury in the bill would achieve this objective. The current thresholds have not been revised in 25 years. While the NSW Government recently consulted on its draft *NSW Clean Air Strategy 2021–30*, this strategy includes no additional measures to address air pollution from coal-fired power stations.

During the inquiry, industry participants attempted to refute the scientific evidence presented and argued that the residents of New South Wales should not expect the same levels of protection from toxic pollutants in the air as residents in similar international jurisdictions enjoy. They also cited what they claimed were onerous financial impacts if they were to bring their outdated technology in line with the technology that is standard elsewhere. They told the committee those power plants are closing down soon anyway, so to ask them to invest in environmentally protective technologies now would serve no purpose since their emissions would soon be dropping to zero.

The power companies have demonstrated time and again that they have no consideration for the health and wellbeing of the communities surrounding them, in which their workers and their friends and families live, so long as it would impact on their bottom line. As noted in our inquiry report and in the Government's Clear Air Strategy 2021-30, the final version of which was released the earlier this week, the science has made it clear that the health impacts of coal-fired power generation are significant. Dr Ben Ewald's research into the health burden of fine particle pollution from electricity generation in New South Wales found:

> Air pollution from the five NSW power stations is estimated to lead to 279 deaths or 2,614 'Years of Life Lost' every year …

To put it another way, Origin's decision to bring forward the closure of the Eraring power station from 2032 to 2025 could directly save 600 lives or 5,600 years of life lost. While The Greens believe that the argument that a reduction in profit margin could be considered over and above government action to protect the health and wellbeing of the community is frankly offensive, we are a fundamentally pragmatic bunch. That is why this amendment has been written to impose new emission limits only on those coal-fired power generators with a scheduled decommissioning date later than 2027. It would thus not apply to power stations, such as Eraring or Liddell, that have indicated an earlier close-down time.

But then there is Vales Point. Arguably Australia's most urban power station, it is also one of the most polluting. Under the current regulation Vales Point was recognised as one of the oldest and most polluting class of generators and so is subject to stricter emission limits. However, Vales Point was granted a five-year reprieve from this obligation on the understanding that it would use the time to make the necessary technology investments. Needless to say, it did not. At the end of that five-year period it was immediately granted another five-year exemption and last year yet another five-year exemption, despite overwhelming public pressure on the Environment Protection Authority to act and enforce its own rules. For over 10 years already the owners of Vales Point have known what the community expects of them, and they continue to shrug off their obligations—after, of course, purchasing that power station for a steal.

Now the owners of Vales Point are in the media declaring that not only will they not bring forward its scheduled closure date in line with Eraring and Liddell, but in fact they have plans to extend its life for a further 20 years. Only time will tell what assurances from governments these favoured few have gleaned that could have them so boldly assert this environmentally reckless claim. But if we are to take them at face value, and Vales Point and its ilk continue to burn coal for fuel for another 20 years, then they should have no problem committing to invest in long-term, lifesaving pollution control measures. If left unabated and allowed to run for a further 20 years, the emissions from Vales Point Power Station would directly contribute to over 900 otherwise preventable deaths, or over 8,500 years of life lost. It is time for these power stations to finally clean up their act. This amendment would go some small way to holding them accountable for the externalised cost and damage they are inflicting on our communities as they fill their pockets. I commend the amendment to the Committee.

The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (18:11): Before I start my substantive contribution about the amendment, I correct the record in relation to pesticide control orders being issued by either the Environment Protection Authority or the Minister. The bill change will make this an EPA function only and recognises the EPA's role as an independent regulator. The Minister will retain the ability to make codes of practice on the recommendation of the EPA; these can adopt

standards and could be used instead of or alongside pesticide control orders. The Minister will also retain the ability to give general directions to the EPA about pesticide control orders.

The Government opposes this amendment, which seeks to impose a one-size-fits-all limit on certain emissions from coal-fired power plants. While improvements to the regulation of emissions standards frequently occur, imposing limits that require investment in new technologies must be balanced with ensuring affordable and reliable electricity and the timely transition to renewable energy. These amendments pose risks to energy reliability, affordability and the environment. Air quality in New South Wales is comparable to other Australian jurisdictions, with air pollution concentrations low by world standards. New South Wales already has a comprehensive and robust framework for managing air quality, including air pollutant emissions from coal-fired power stations. This framework is subject to continuous improvement.

The New South Wales Government has recently released the NSW Clean Air Strategy and will shortly begin consultation on improvements to the Protection of the Environment Operations (Clean Air) Regulation and the Protection of the Environment Operations (General) Regulation, which set the emission limits in New South Wales. It is important that setting emission limits for our aging power plants is done carefully and does not compromise our transition to renewable, low-emission technology. The New South Wales Government's Electricity Strategy, Net Zero Plan and the NSW Electricity Infrastructure Roadmap set out the Government's plans for transitioning to a reliable, affordable and sustainable electricity future that supports a growing economy, meets the Government's emission reduction targets and meets the challenges of climate change.

The Hon. PENNY SHARPE (18:13): Labor will not be supporting The Greens amendment. We note that Ms Abigail Boyd has been pursuing this through her own bill, and there has been an inquiry in relation to this. We will deal with that when we deal with that. At this point, Labor is not able to support the amendment. I note that the Minister has made a number of comments that the Government is going to be doing all these things and it is doing another review. There are a lot of reviews still outstanding from the Environment Protection Authority—load-based licensing, Minister, if you're listening. These things sit in abeyance, and there are promises and consultation rounds many, many times, but nothing actually moves forward. I understand the frustration of Ms Abigail Boyd, but Labor will not be supporting the amendment.

The TEMPORARY CHAIR (The Hon. Catherine Cusack): Ms Abigail Boyd has moved The Greens amendment No. 1 on sheet c2022-015B. The question is that the amendment be agreed to.

Amendment negatived.

The TEMPORARY CHAIR (The Hon. Catherine Cusack): The question is that the bill as read be agreed to.

Motion agreed to.

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

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. BEN FRANKLIN: I move:

That this bill be now read a third time.

Motion agreed to.

Documents

FIREARMS LICENCES AND INSPECTIONS

Tabling of Documents Reported to be Not Privileged

The CLERK: According to the resolution of the House of this day, I table documents identified as not privileged in the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 8 December 2021, on the disputed claim of privilege on papers relating to firearms inspections and licensing.

Bills

PUBLIC INTEREST DISCLOSURES BILL 2021

Second Reading Debate

Debate resumed from 14 October 2021.

The Hon. JOHN GRAHAM (18:19): I speak on behalf of the Opposition in debate on the Public Interest Disclosures Bill 2021. I recognise that New South Wales has been a leader in this field since the original Act was introduced in 1994. I recognise particularly the work of Minister Harwin, who introduced the bill. I recall fondly his second reading speech, and I hope other members of the Chamber do as well. I recognise in particular the Hon. Adam Searle from our team, who has been a leading reformer in this area and will be speaking in detail about the Opposition's position as we move through the debate. I also acknowledge Michael Daley, the shadow Attorney General, whose counsel we have taken on this bill. Finally, I thank Attorney General Speakman for his constructive engagement with the Opposition in the lead-up to this debate.

The Opposition does not oppose the bill. We do, however, foreshadow amendments. Our overall approach is that we want this bill in place. The bill is a step forward from the existing Act, but we believe that it could be improved. The Opposition believes that it is essential that public officials who make a disclosure exposing serious wrongdoing in a public sector organisation are adequately protected in order to ensure that government is transparent and accountable. We recognise that the bill is the first substantial change to the existing Act since its commencement in 1994 and that it takes serious steps to increase protections. The stated objective of the bill is to promote a culture in which public interest disclosures are encouraged. The Opposition believes that is essential to a democracy and a function of the public service.

Without adequate protections, we risk serious instances of corruption, maladministration or waste never being revealed or addressed. Those are the costs if the system does not work and, of concern, often those are hidden costs which are hard to detect when the system is not working. That is what this bill seeks to combat. The original Act, which although at the time of its enactment was a leading piece of legislation, was drafted before the age of information—back in 1994—before we were all flooded with information from so many sources and we had an ability to pick up the phone and find out immediately the answer to almost any question. As a result, the Act needs updating. The Act has become out of step with community expectations about what information should be available to anyone pursuing an inquiry.

The contrast to that is, at times, a government addicted to secrecy, and we seek to combat that as well. That is one of our concerns, and I have seen it most recently with the extreme secrecy applied by the Treasury to the commonsense question of how much drivers will be paying in tolls between now and 2060—a secret that the Treasury will not let leave the building, a number that no Minister will let pass their lips. It is out of step with this age of information and community expectation that such a culture of secrecy will be left behind us, now that we live in a more open age. They are the two poles of the context of this bill. But there is no question, given the massive change that has taken place since 1994, that the bill itself needs to move with the times and community expectations.

This bill is a product of multiple inquiries and many years of hard deliberation. In his second reading speech, the Minister referred to those previous committee inquiries, and I will not repeat that, but I thank the members who contributed to those committees. In the course of one of those inquiries the committee found that the existing protections are "too narrow and unclear" and that there is a "significant public interest in increasing the protections available to people" as the current lack of protection deters people from making voluntary disclosures, thereby standing in the way of preventing and exposing instances of corrupt conduct. That is a very clear statement of the problem. It is good to see that almost all of the recommendations from these two inquiries will be implemented by this bill. This bill is much clearer and less convoluted than the existing Act. The bill sets out a modernised legislative framework for managing information disclosed by public officers.

After the Minister introduced the bill, the Opposition supported referring the bill to a short committee inquiry of this House, conducted by Portfolio Committee No. 1, and, as I have mentioned, the Hon. Adam Searle led for the Opposition on that committee. It was clear from that committee's report that there remain existing concerns about the bill. Those concerns were well outlined in the report and they have informed the approach that we intend to take on this bill by way of amendments. Our amendments are in three categories. A number of the amendments are of a drafting nature and, we believe, would be happily adopted by the Government and the Chamber without changing the intent of the bill at all. The three amendments deal with the threshold for disclosures, particularly for members of Parliament and journalists, and that is probably the most substantive policy issue that we want to place before the Chamber. A number of our other amendments are of a detailed nature and the Hon. Adam Searle will speak to those.

I want to be clear: We want this bill to pass. It is a step forward, and we have heard that message from a range of the stakeholders and from that committee. We will be listening closely to the Minister in reply as to where this Opposition approach and these amendments leave the bill. We call on the Government at this stage to improve the bill and to back these amendments. The bill defines three categories of public interest disclosure: a witness public interest disclosure, which is a disclosure of information in an investigation of serious wrongdoing at the request of or in response to a requirement of a person or agency investigating the serious wrongdoing; a mandatory public interest disclosure, which is a disclosure about serious wrongdoing made by a public official while carrying out the official's ordinary duties, or under a legal obligation; and a voluntary public interest disclosure, which is a disclosure of information about serious wrongdoing made by a public official.

The bill specifies conditions under which a disclosure is a voluntary public interest disclosure—that is, where the person disclosing honestly believes on reasonable grounds that the conduct shows or tends to show serious wrongdoing. In those instances, the person disclosing will receive protections under this bill. Importantly, the definition of "public officials" is expanded in this bill to broaden who can make a voluntary disclosure by expressly including statutory officers as well as contractors, subcontractors and volunteers. Vitally, the bill makes it an offence to take detrimental action against a person based on the suspicion, belief or awareness that the person or another person has made a public interest disclosure, and protects persons who make public interest disclosures from detriment and liability in relation to the making of the disclosures.

The Minister has run through a range of other provisions in the bill, so I will not add to those. As I said, the bill responds to nearly all of the recommendations of the previous committees. It responds to all but one of the recommendations of the 2017 parliamentary Ombudsman committee. It is that one recommendation that the Opposition views as an area of serious concern: the threshold for making disclosures, which I referred to earlier. I will now refer at length to the Portfolio Committee No. 1 report, which I believe articulated these concerns very clearly. The report stated:

> Clause 26 (1) sets a threshold for making a public interest disclosure, stating that a disclosure complies with the bill if the discloser "honestly, and on reasonable grounds, believes the disclosure shows or tends to show serious wrongdoing." The NSW Bar Association described clause 26 (1) as "perhaps the most important aspect of the bill", and proposed that it may set too high a threshold for a voluntary public interest disclosure. The Bar Association suggested that while honesty is a basic requirement, a more appropriate test would be "honesty and good faith" or "honesty and reasonable grounds to *suspect* serious wrongdoing."

I encourage members to read the rest of that section of the committee report, which shows why Labor believes in this instance this threshold has been set, on balance, too high. New South Wales is the only jurisdiction in Australia with a substantial regulatory requirement, standing in sharp contrast to other States, Territories and the Commonwealth public interest disclosure laws. Even in the international sphere, best practice emphasises that the disclosure process must allow disclosures based on reasonable suspicion. One example is the United Kingdom Public Interest Disclosure Act. The threshold for disclosures made to members of Parliament and journalists stands in contrast to disclosures made to all other recipients specified in the bill.

Under section 26, other disclosures are classified as voluntary public interest disclosures if the person disclosing is doing so honestly and, on reasonable grounds, believes that the disclosure shows, or tends to show, serious wrongdoing. Honest and reasonable belief in that instance is a significantly lower threshold than substantial truth. The portfolio committee inquiry report recommended that removing that additional threshold so that an official who reports to the media will be protected, provided they believe honestly, and on reasonable grounds, that their disclosure showed, or tended to show, serious wrongdoing. Again, I encourage members to examine the report at that point. Further complicating the ability of public officials to make disclosures to the media is the requirement that a public official in New South Wales can make a disclosure to a journalist only if they have already made a disclosure through official channels at least six months prior, and no appropriate action was taken as a result. The report states:

> We are also concerned about the new requirement that previous internal disclosures not be anonymous, requiring a potential discloser to 'out themselves' internally before making an external disclosure. In the view of the committee and a number of inquiry participants, both these requirements could discourage important public disclosures of wrongdoing.

The Opposition's view is that these high thresholds and additional requirements do not meet the objectives of the bill as previously quoted in that they do not promote a culture in which public interest disclosures are encouraged. I foreshadow that the Opposition will move amendments Nos 6, 7 and 8 to change the bill to alter the threshold in line with the recommendation of that previous report and with the view the upper House committee took. Overwhelmingly, the impression given by stakeholders was an eagerness to pass the bill and streamline the disclosures process. Stakeholders were clear that they want this bill and its updated approach to disclosures, and Labor has heard that clearly.

I single out the NSW Council for Civil Liberties that expressed support for the threshold to be changed so that a disclosure to a member of Parliament or a journalist is protected on the provision that the discloser believes honestly, on reasonable grounds, that the disclosure indicates serious wrongdoing. Australia's Right to Know, a

coalition of leading Australian media outlets and organisations, also raised serious concerns about that external disclosures threshold. Its submission states:

> The Bill continues to restrict disclosures to the public via the media, leaving the public in the dark about what's really going on within the NSW government including but not limited to potential corruption and maladministration.

The Ombudsman also expressed concern that the "substantially true" threshold is too onerous. I direct members to the comments of the Ombudsman on this matter. For those reasons, the Opposition draws attention to that specific matter in the bill. We happily recognise that this bill, along with these stakeholders and the inquiry report of this House, is a step forward and we embrace it in that spirit. I place on record the support of the Opposition for one additional call made by the Ombudsman, the Information and Privacy Commission of New South Wales and other stakeholders that it is one thing to have the legislation in place but that adequate resourcing is also required for this bill to be implemented effectively.

We all know that is true. It would be one thing to make this law but it needs to be resourced and rolled out. Many of the issues relate to cultural issues and there is a need to educate the agencies so they can spread the word so that people know the framework in which they are operating. I support that call. In conclusion, the Opposition supports the bill but it believes it can be improved. I ask the Government to indicate in its reply its view of our foreshadowed amendments, and we will listen closely to that response as we move towards to the Committee stage.

Mr DAVID SHOEBRIDGE (18:35): On behalf of The Greens I indicate our support for the Public Interest Disclosures Bill 2021 and indicate our preference for some significant amendments to the bill. The objects of this bill are to provide for the protection of persons who make public interest disclosures and to provide for how those disclosures are made and dealt with. The bill has been prepared in response to two critical reports. The first is the review of the Public Interest Disclosure Act 1994, which is dated October 2017—now 4½ years ago—by the Committee on the Ombudsman, Law Enforcement Conduct Commission and the Crime Commission.

A further report of the Joint Committee on the Independent Commission Against Corruption is dated November 2017, just one month later, but still almost 4½ years ago. It is entitled *Protections for people who make voluntary disclosures to the Independent Commission Against Corruption*. Four and a half years have gone by and we still do not have laws that are fit for purpose that protect brave whistleblowers, public servants or people who see something wrong, who have made efforts to fix it at an agency level and within their workplace but cannot fix it, and they have had the courage to step up and demand it be sorted. We still do not have laws fit for purpose to protect those people. They are key assets in any government, in any bureaucracy, in any democracy and they deserve the protection of Parliament.

The bill goes some significant way to implement those two reports. It proposes to repeal and replace the 1994 Public Interest Disclosures Act and put in place a regime that is significantly improved. It defines the categories of public interest disclosure and specifies conditions under which a disclosure is a voluntary public interest disclosure. It enables a public official to make a voluntary public interest disclosure to an agency, whether or not the agency has jurisdiction to investigate the disclosure—a kind of no-wrong-door approach. It makes it an offence to take detrimental action against a person, based on the suspicion, belief or knowledge that that person or some other person with whom they may be connected has made a public interest disclosure. It also protects people who make public interest disclosures from detriment and liability related to making disclosures, with some caveats, and I will come to that.

The bill also requires agencies to adopt policies setting out their procedures for dealing with voluntary public interest disclosures. It requires agencies to carry out training on the public interest disclosure scheme. It specifies how agencies are to deal with voluntary public interest disclosures and respond to findings of serious wrongdoing or other misconduct. The bill requires agencies to provide the Ombudsman with an annual return about the disclosures they receive. The bill makes some important consequential amendments to three other Acts: the Independent Commission Against Corruption Act, the Ombudsman Act and the Law Enforcement Conduct Commission Act.

The Greens have been calling for the Government to act on the recommendations of both of the 2017 reports since they were made. I credit my colleague Jamie Parker from the other place, the member for Balmain, who has been consistent on this and brought his own Greens legislation to seek to implement the cross-party recommendations that came out of the two committees. The recommendations were not from one narrow section of Parliament; they had support across the political spectrum. Reports from those committees were signed on to by members from a rainbow collection in the Parliament, but still the Government would not act upon the recommendations. This is now the third Parliament since the recommendations were made.

There have been significant critics of the draft bill, and I will not repeat contributions that have been made by my colleague Jamie Parker in the other place or by the Hon. John Graham. But I note the contributions and the

details that have been put on the record about the reservations from the Bar Association, from civil liberties groups and from law reform groups across the State. I draw attention to the careful critique of the bill from the NSW Council for Civil Liberties. It acknowledged quite frankly that the bill is a step in the right direction and adopts the great bulk of the recommendations from the 2017 reports, but noted the shortcomings:

> NSWCCL is concerned that some serious types of wrongdoing are not explicitly included in the Bill, notably:
>
> - an alleged crime or breach of the law
> - official misconduct
> - defective administration, which includes negligence or incompetence
> - any failure to perform a duty that could result in injury to the public

One would think those core things would be expressly included in a public interest disclosure law, and I hope that we can address some of that through amendments in the Chamber today. The Council for Civil liberties also notes:

> As noted in the Ombudsman's Special Report, unlike other Australian jurisdictions, the Bill does not expressly extend to conduct that endangers health, safety or the environment.

One could read that into some of the terms in the bill; one could stretch the interpretation of some of the definitions in the bill. But why is there no clear, express coverage of matters like that? If a bureaucrat or an official sees conduct that endangers health, safety or the environment, surely they should be covered by the Public Interest Disclosure Act. If they cannot get their agency to respond and if the conduct continues then we want them to speak out and step up, but the bill unfortunately fails to expressly include that. The submission also acknowledges that under the definition in the bill, serious maladministration would likely exclude a disclosure such as a sexual harassment claim, which is certainly a matter of public interest and should be expressly protected in the Public Interest Disclosure Act. I hope we can address some of those shortcomings in the Committee debate.

One of the widely acknowledged deficiencies in the bill is in relation to external disclosures. There are many occasions when somebody within an agency or department has information and if they take it to their superiors, those superiors may well be the people engaging in the conduct that is contrary to the public interest. The superiors have power over them in the workplace, or it may be somebody even more powerful. It may be a Minister; it may be a Deputy Premier; it may be a Premier. Let us be clear: They feel that if they go to their agency through the usual chains and formal disclosure procedures, they will be squashed like a bug and their career will be ended. For many people, the tragic history is that that is an altogether too accurate concern.

Those people often need to have an external avenue for disclosure to blow the whistle and say what is really going on. That is often a member of Parliament or a journalist. Provided there is a genuine basis for the concern, they should be entitled to do that and be protected by the public interest disclosure law. That is what the joint parliamentary committee recommended. On the review of the bill, they recommended having that set as the test. That is pretty much the uniform recommendation of all of the agencies that have looked at it, with the minor exception of the Ombudsman who, while supporting that basic structure, has a slightly nuanced approach to it. I will briefly read from the Ombudsman's special report from the end of last year. Dealing with the drafting of section 28 of the draft bill and recommendation 11 of the committee's review of the bill, which are about external disclosures, the Ombudsman states:

> We agree with the Ombo-LECC Committee that the current threshold of 'substantially true' before an external disclosure may be made as a PID is too onerous and puts public officials who are seeking to make disclosures that are genuinely in the public interest at risk.

That is a pretty hard finding: that the test in the bill before somebody can go to a member of Parliament or a journalist—that they have to be able to prove in a court of law that it is substantially true—puts the brave people stepping up and making disclosures at risk. The Ombudsman further states:

> However, while we support the recommendation of the Ombo-LECC Committee, we also understand some of the Government's reservations about removing the threshold entirely …
>
> In particular, if an agency has completed an investigation and made findings that the allegations are not substantiated, it would seem unfair (particularly to the person who was the subject of those allegations) if the original reporter could still make those allegations public on the basis of the much lower threshold of their own honest and reasonable belief.
>
> The reporter may honestly believe the investigation got it wrong, but if they decide to risk the reputation of others by disputing that finding publicly, it seems reasonable to require them to be able to demonstrate a very solid basis in fact for doing so.
>
> However, as the Ombo-LECC Committee pointed out, in other cases (such as where an agency has simply ignored their report of wrongdoing) it seems obviously unfair that the reporter is put to that higher standard of proving the allegations are true in fact. An honest and reasonable belief should be sufficient in those circumstances. The reporter does not have the capacity to investigate the allegations themselves in order to establish truth with complete certainty – that is the agency's job.
>
> The Ombudsman therefore suggests an alternative approach, which may represent somewhat of a compromise between:

a. the Ombo-LECC Committee's recommendation – that the threshold of 'substantially true' be removed entirely in favour of the standard 'honest belief on reasonable grounds' test, and

b. the Government's concern that, at least in some circumstances, that lower threshold may be too low to avoid unfair damage to the reputation of those who are the subject of allegations.

The approach we suggest would be, in effect, to retain the substantially true threshold but only in one particular scenario: where the allegations have been tested through an investigation and found not to be substantiated. In that case, the higher threshold for an external disclosure would be required and the person wishing to air the allegations publicly would need not just to have an honest and reasonable belief in them, but would need to show that they are right (the allegations are true) and that the investigation was wrong.

In all other cases, the threshold would be the standard one under section 26(1): 'honestly, and on reasonable grounds believes' the disclosure shows or tends to show serious wrongdoing.

They then suggest some drafting for it. If we cannot get to what the committee recommended, the honest and reasonable belief test—which I put on the record as The Greens' preferred outcome for all disclosures—then perhaps through the course of the Committee stage we can get to the alternative drafting proposed by the Ombudsman. If we cannot do that tonight, I put on the record that The Greens will be looking for every available opportunity between now and when this Parliament ends—or when the next Parliament starts—to change the law to set a standard that protects the brave people who speak up on behalf of all of us. With those observations, we look forward to the debate in Committee.

The Hon. ADAM SEARLE (18:49): I make a contribution to debate on the Public Interest Disclosures Bill 2021 and associate myself wholly with the comments, observations and contribution made by the Hon. John Graham. This is extremely important legislation and it has taken some time to get to this stage. As has been mentioned, the bill has been prepared in response to at least two parliamentary inquiries, the first report being the review of the Public Interest Disclosure Act 1984, in October 2017, by the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission. I was part of that committee; I still am. I was part of that inquiry. I acknowledge the work of that committee and that inquiry in making 38 far-reaching recommendations for root-and-branch reform of the law in this area. I also acknowledge the work of former shadow Attorney General Paul Lynch on that committee and, of course, the work of the Hon. Trevor Khan, as his Honour then was.

To pick up the comment made by Mr David Shoebridge, the recommendations of that committee were not the subject of partisan dispute. That committee listened to the evidence of experts and stakeholders, looked at the legislation then in place and formulated very well-reasoned and well thought-out propositions. There was a subsequent report on the inquiry into protections for people to make voluntary disclosures to the ICAC, dated the same year, the following month, by the Joint Committee on the Independent Commission Against Corruption. Although I am now also part of that committee, I was not on that occasion. It also made reform recommendations, and it is a matter of record that the vast majority of the recommendations of both of those inquiries have now been embodied in this legislation—with some variations, because it is a complete rewrite. It is not merely an amending of the 1994 legislation; it is a thorough reworking of the concepts and the provisions in a wholly new piece of legislation which hopefully will be far reaching.

It is a matter of record that the Public Interest Disclosures Act 1994, now in place, arose at particular point in time, as the Hon. John Graham picked up. Technology, expectations and even the structure of government have changed so much. They have changed out of all expectation, and the public expectation of probity, integrity and transparency is even higher than it was at the time. We also have to recall the circumstances in which this legislation was created. It was not brought forward by a bold reforming Minister or a government that thought the institution of government needed to be held to account. It occurred in the context of a hung parliament where the government of the day, the Greiner Government, no longer commanded a majority, and the three Independents were prepared to support the continuation of that government.

[*A member interjected.*]

Was it the Fahey Government? I will stand corrected. When the legislation went through it was the Fahey Government, but I think the charter with the Independents and the Coalition Government was signed by then Premier Greiner and committed the government to legislation of this nature.

The Hon. Shayne Mallard: It brought him down.

The Hon. ADAM SEARLE: I think it was the ICAC that brought him down.

The Hon. Shayne Mallard: It was corrected—overturned.

The Hon. ADAM SEARLE: Anyway, we digress. I think I am giving this speech; the Hon. Shayne Mallard can give a speech later, and he doesn't want to be wearing out his welcome with members of this Chamber, I am sure. The point is that the legislation was in a sense forced on the government of the day

by political exigencies and, although well intentioned, it is clunky, with indifferent to bad drafting, and very difficult to use in practice. In my former role as a commercially practising barrister, employees who were whistleblowers—who were genuine people not seeking glory but trying to discharge what was in the public interest—found it very difficult to come within the protections said to be conferred by the legislation. Nine times out of ten, it was unusable.

Protections for public officials who make disclosures exposing serious wrongdoing in public sector organisations are fundamental to transparent and accountable government, as the chair of the Portfolio Committee No. 1 inquiry, the Hon. Tara Moriarty, stated in her foreword. The need for reform to the legislation is beyond argument, and the legislation that has come forward goes a long way to doing that. We make no bones about it: This is a light-year's worth of improvement on the current situation. As the Hon. John Graham foreshadowed, the Opposition has lodged a number of amendments, which I will come to. They are inspired by and responsive to the evidence to the Portfolio Committee No. 1 inquiry and the views of stakeholders and the recommendations made. In some cases, they really are in the nature of drafting improvements to make clear the policy of the legislation. In a couple of cases, they are extending a policy direction said to be present in the legislation, and in a couple of respects there is a difference of opinion with policy in the legislation.

I warmly acknowledge the willingness of the Attorney General, the Hon. Mark Speakman, to engage with the Opposition in an open and frank way about the legislation; I think that will prove today to have been a very worthwhile undertaking for us all. The bill repeals and replaces the 1994 Act, defines the categories of public interest disclosure and specifies the conditions under which a disclosure is a voluntary public interest disclosure and when, therefore, a person can come within the protections. Again, the Opposition takes issue with the threshold. It does enable public officials to make voluntary public interest disclosures to an agency whether or not an agency has jurisdiction to investigate that disclosure; makes it an offence to take detrimental action against a person based on the suspicion, belief or awareness that the person or another person has made a public interest disclosure; and protects persons.

There are other aspects, which the Hon. John Graham and Mr David Shoebridge have gone to, which were specified in the Minister's second reading speech and which I will not dwell on. The issue is that, as the legislation was not willingly brought forward by government as an institution—that happened some 28 years ago, and the current Government has been maturely reflecting for four to five years on the recommendations of various inquiries—this may be the only substantial opportunity to effect legislative reform in this area. For that reason, the Opposition asked for this matter to go to an inquiry of Portfolio Committee No. 1, and it did so in a fairly short compass of time. There was a short, sharp inquiry, in order that the passage of the bill was still available late last year. The report was delivered to the Parliament but the Government did not at that stage respond. Opposition members were concerned that the Government might be having second thoughts, so we are very grateful that this legislation is now being brought forward again.

I acknowledge the submission of the New South Wales Bar Association; the time taken by Associate Professor Hugh Dillon, who spoke to its submission; and the recommendations made by the bar in terms of strengthening the framework of the legislation by putting in place strengthened objects in the legislation. Often when courts are evaluating or construing legislation they look to the objects to flesh out some of the provisions. And so, the submissions of the bar have not been taken up, but no doubt that is an area where the legislation could well and truly be improved. Clause 13 defines "serious wrongdoing", and both the Bar Association and the Council for Civil Liberties had some concerns that the definition may not be complete, that it might omit an alleged crime or breach of the law or official misconduct, defective administration or other things.

Professor Brown from Griffith University, who is an acknowledged expert in these probity and transparency matters, said that the legislation could well stand to be improved in this area. One of the amendments that the Opposition proposes, amendment No. 1, is to include a note, because although clause 13 goes a long way to covering many important aspects, it does not include a number of matters. Clause 13 (d) refers to serious maladministration. In the dictionary in schedule 2, "serious maladministration" is defined as:

> … conduct, other than conduct of a trivial nature, of an agency or a public official relating to a matter of administration that is—
>
> (a) unlawful, or
>
> (b) unreasonable, unjust, oppressive or improperly discriminatory, or
>
> (c) based wholly or partly on improper motives.

I believe that definition in the dictionary goes a long way to meeting the concerns of stakeholders. So rather than trying to rewrite the definition, we will seek to insert a note in the relevant part of clause 13 referring to the dictionary in order to assist courts, public sector managers and officials working with this legislation to have a better understanding of the full intent of the Parliament in enacting this legislation. That is the first important change that we propose to improve the legislation.

As both Mr David Shoebridge and the Hon. John Graham indicated, stakeholders were very concerned that in clauses 26 and 28 the threshold required for public sector disclosures was essentially set too high. In clause 28, in particular, there is the requirement for a disclosure to be substantially true. Of course, this will be beyond the ability of most whistleblowers to establish as they might be at a particular location in an agency and they may not have access to all of the information. We propose amendments to improve this because we would be the only State that has such a high threshold. The term "substantially true" has not been judicially considered and, therefore, its application would be uncertain. We prefer to embrace the Bar Association's recommendation of a disclosure made "believing honestly and on reasonable grounds that the disclosure shows or tends to disclose or show serious wrongdoing." That is the substance of Opposition amendments Nos 6 and 7; they are alternative formulations that address the same concern.

Amendment No. 8 deals with the requirement in clause 28 (c) that the previous disclosure was not anonymous. We are concerned about that requirement, but we understand the Government may have a proposal to address that aspect. With this legislation the Government is raising the bar beyond what is contained in the current defective law, but we believe that while 95 per cent or 98 per cent of this legislation is a massive improvement on the status quo, clause 28 represents a step backwards. We are concerned about that clause and, in good faith, we offer these amendments to improve that situation.

The legislation extends to include private sector bodies or persons employed by private sector agencies as public officials and coming within the remit of this legislation where they are providing government services or services to government. However, we are not entirely sure that this is as clear as it could be. We note clause 14 (f) and our amendments Nos 2 and 3 offer strengthening those provisions to make it very clear. The legislation provides a regulation-making power by which people can be declared to be public officials or not public officials, but we are concerned that, particularly given the mania with the government to contract out the provision of services, we want to make sure that the definition of "public official" is appropriately extended and that those persons can come within the protections of the legislation. That is a very important difference that we have with the Government on this matter.

Amendments Nos 5 and 6 relate to the exclusion in the bill in clause 26 where, to the extent that the information disclosed relates to a disagreement with government policy or to an employment grievance and those matters do not fall within the protections of the legislation, there will be a grey area. Often, whistleblowers make their disclosures internally; they have disagreements with managers and the matter escalates, but before they are able to go externally or to watchdog agencies, they get into trouble with their employer and they are the subject of disciplinary action. Discerning what is an employment grievance only or a disagreement with government policy and what is otherwise a proper public interest disclosure will be a matter of perspective, with public sector managers and government probably having one perspective and whistleblowers another. You can be making a legitimate public interest disclosure and, yes, you might have a difference of opinion with the Government as to policy or you might be the subject of management action, but that should not detract from the fact that your disclosure is legitimate and should be protected by law.

The DEPUTY PRESIDENT (The Hon. Catherine Cusack): I do not wish to constrain the Hon. Adam Searle, but the member will have an opportunity to give detail of his amendments at the Committee stage. For now, just referring to the amendments is sufficient.

The Hon. ADAM SEARLE: I understand. There is a purpose in this matter.

The DEPUTY PRESIDENT (The Hon. Catherine Cusack): My apologies.

The Hon. ADAM SEARLE: We offer amendments Nos 4 and 5, which address those policy differences with the legislation as it currently stands, and we hope that the Government embraces those amendments. Amendments Nos 9, 10 and 11 are matters of improving the drafting of the legislation; they do not represent any departure from the policy of the Government embodied in this legislation. We think there are matters of doubt caused by the way in which the bill is currently drafted and that these things could be improved in the way we suggest. We have given the Government these amendments well in advance so that it can consider them and respond to them in the Government's reply. As the Hon. John Graham indicated, we will be listening eagerly to what Government members have to say.

In conclusion, I join with my parliamentary colleagues in saying that we very much support this legislation. We very much want this scheme brought into law. We want it to be operative and we want these extended and improved protections for whistleblowers in the New South Wales public sector to be made a reality, after such a long wait. But that does not mean that we give the Government a blank cheque and a leave pass. We want proper consideration because the last time the Parliament considered this matter was 28 years ago and it may be another three decades before it is revisited. We want to make sure that this law is as good as it can be, and that is why we have brought forward these limited in number but well-reasoned and thoughtful amendments for the consideration

of the Government and this House. We should not let the perfect be the enemy of the good. We must make sure that a significantly improved new legislative framework for improved transparency and integrity in the public administration of this State passes this House and the Parliament this evening.

The Hon. NATASHA MACLAREN-JONES (Minister for Families and Communities, and Minister for Disability Services) (19:08): On behalf of the Hon. Natalie Ward: In reply: I thank the Hon. John Graham, Mr David Shoebridge and the Hon. Adam Searle for their contributions to debate on the Public Interest Disclosures Bill 2021 [PID]. At the outset, I note that on 19 October 2021 the NSW Ombudsman, Mr Paul Miller, PSM, tabled a report in Parliament entitled *Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021*. I refer members to that report, which provides a detailed assessment of the bill against the recommendations made by the Ombudsman committee and the ICAC committee in the respective October 2017 and November 2017 reports. The Ombudsman indicates that he is confident that the bill will better ensure that reports of wrongdoing are acted upon and that reporters will be safer and feel more encouraged to come forward, describing the bill as a "colossal improvement on the current PID Act."

I wish to thank and acknowledge the Ombudsman and his office for their careful consideration of the bill and preparation of the report. I also wish to acknowledge and thank Portfolio Committee No. 1 - Premier and Finance for its inquiry into the bill and its helpful report. I foreshadow that the Government will move amendments to the bill during Committee of the Whole in response to matters raised by Portfolio Committee No. 1 in its report. Before I deal with matters raised by members during the debate, I wish to address a number of other matters. First, Premier Fahey introduced the Whistleblower Protection Bill (No. 2) in late 1992. The Protected Disclosures Bill came later in 1994 and was introduced by the Fahey Government following a committee review of the earlier bill.

Secondly, I wish to clarify the intended scope of clause 14 (1) (f) of the bill, which provides that employees, partners or officers of an entity who are involved in providing the services under contract in whole or in part, or who are to exercise the functions of an agency, are public officials under the proposed Act. It is not intended that all employees, partners or officers of an entity that provides services on behalf of an agency or exercises the functions of an agency are public officials, and therefore are able to make a public interest disclosure. Rather, the definition of "public official" captures those employees, partners or officers who are involved in providing the services in whole or in part, or who are to exercise the functions. It is contemplated that this definition could relevantly capture certain employees who provide back office support functions that enable the services to be provided on behalf of the agency. For example, the definition could capture staff working in human resources, finance or other corporate roles in an entity that provides services to government where the work of those persons supports or relates to the contracted services that are being provided.

Thirdly, I wish to clarify a matter relating to clause 28 of the bill, which sets out the requirements for when a disclosure made to a member of Parliament or a journalist is a voluntary public disclosure under the proposed Act. Clause 28 of the bill, although drafted to reflect the different terms used in the proposed new Act, is not intended to change how the requirements under section 19 of the existing Act apply in practice, except in the following respects: first, to provide for the investigation period to be extended to 12 months in limited cases, in particular where there has initially been a decision that the internal agency disclosure was not a public interest disclosure and where that decision is subject to internal review; secondly, to modernise the definition of "journalist" to be consistent with the definition in the Evidence Act 1995; and thirdly, as explained in the second reading speech, to omit the requirement in section 19 (4) of the existing Act that the public official must have reasonable grounds for believing that the disclosure is substantially true. This requirement is being removed as it is not necessary, given there is already a separate requirement that the maker must have an honest belief, on reasonable grounds, that the disclosure shows or tends to show serious wrongdoing. That is a standard requirement that applies to all voluntary public interest disclosures.

Finally, I understand that some agencies have expressed concerns about the proposal in this bill to lower the threshold for the mental element of the detrimental action offence and are concerned that it would be difficult for a defendant agency to prove that the making of the public interest disclosure was not a contributing factor to the taking of detrimental action. I wish to make the following comments on the matter. Under the bill, agencies bear the onus of disproving detrimental action to the civil, rather than criminal, standard—that is, on the balance of probabilities—or, more likely than not, not beyond a reasonable doubt. There is no intention that the hypothesised operation of a person's subconscious or unconscious assumptions could be sufficient grounds for finding that something was a contributing factor to their actions. The Ombudsman will prepare guidelines providing detailed advice on this. I would like to advise the House that if any amendments the Government does not support are approved, the Government will not be proceeding with the bill.

I will now address matters that were raised during the debate. I refer to comments made by the Hon. John Graham and Mr David Shoebridge regarding the requirement in the bill, consistent with the current Act, that an external disclosure to members of Parliament or journalists is substantially true. As explained in the second

reading speech, unlike some other jurisdictions, New South Wales has a comprehensive array of integrity agencies established for the purpose of investigating serious wrongdoing in the New South Wales public sector, and they have been given strong investigative powers. The bill facilitates the making of disclosures within the Executive arm of government, including those integrity agencies, and will ensure that the disclosure is dealt with by the appropriate agency or integrity agency. If a public official decides that a disclosure has not been adequately addressed within the Executive, it is an appropriate safeguard to require the disclosure to be substantially true before conferring protections on a person disclosing what may be sensitive, confidential or defamatory matters outside of the Executive. The Public Interest Disclosures Steering Committee has indicated to the Government that:

> … although some of the members of the PIC Steering Committee are of the view that the PID Bill could be further improved … all are unanimous that the PIC bill as currently drafted is a positive reform and a significant improvement to the current PIC Act. The PID Steering Committee would support the PID Bill being passed in its current form.

The Government has made its position on this matter abundantly clear. The Government will not support a bill that omits the "substantially true" requirement for disclosures made to members of Parliament or journalists. I ask honourable members to weigh the overwhelming benefits of the bill for whistleblowers in the public sector and our community when considering this part of the bill. I note that the report of Portfolio Committee No. 1 - Premier and Finance explained that the Ombudsman suggested to the committee in evidence that given the significantly positive reforms in this bill, it would be unfortunate to delay it due to the impasse on this issue. I ask honourable members to consider those comments and support the position of the Public Interest Disclosures Steering Committee.

Further, I note the comments of the Hon. John Graham regarding funding to implement reform. I comment that the Government will work with the Ombudsman to ensure that his office receives appropriate resourcing. The Ombudsman's office has the Government's full support to do everything that is necessary to properly implement and operationalise these most important reforms. These matters will be properly considered as part of the process for the 2022-23 budget. I note that the funding arrangements for the integrity agencies generally are currently being considered by government. I also note that Mr David Shoebridge raised public interest disclosures being extended to cover damages to public health and safety or to harm of the environment. I note that expanding the scheme to capture disclosures about public health or harm to the environment was not a recommendation of the Ombudsman's committee. Furthermore, in his special report to Parliament, the Ombudsman indicated that he intends to recommend that the steering committee give consideration to expanding or simplifying the categories of serious wrongdoing before providing further advice to government.

The Ombudsman advises that this issue is complex and requires much more detailed consultation and analysis and that given the significant benefits of the Public Interest Disclosures Bill, the Ombudsman's Office would not like to see the passage or commencement of the bill held up as these matters are considered. The Government will carefully consider any advice of the steering committee regarding this issue. I would also like to note the comments of Mr David Shoebridge regarding whether the definition of "serious maladministration" should be expanded to expressly capture sexual harassment in the workplace.

In his special report to Parliament the Ombudsman referred to whether the definition of "serious maladministration" should be expanded to expressly capture sexual harassment in the workplace, noting the Ombudsman has received advice from the Crown Solicitor's Office that to constitute maladministration the relevant action or inaction must be administrative in nature. The Ombudsman advises that this issue is complex and requires much more detailed consideration and analysis and that given the significant benefits of the Public Interest Disclosures Bill the Ombudsman's office would not like to see the commencement of the bill held up while these matters are considered. The Government will carefully consider any advice of the steering committee. In conclusion, the bill will enhance the culture which supports reporting serious wrongdoing and other misconduct in the New South Wales public sector. I commend the bill to the House.

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

Motion agreed to.

In Committee

The TEMPORARY CHAIR (Ms Abigail Boyd): There being no objection, I shall deal with the bill as a whole. I have two sheets of amendments: Government amendments on sheet c2022-257A and Opposition amendments on sheet c2022-227B. I will begin with the amendments from the Government.

The Hon. NATASHA MACLAREN-JONES (Minister for Families and Communities, and Minister for Disability Services) (19:19): By leave: I move Government amendments Nos 1 to 4 on sheet c2021-257A in globo:

No. 1 **Anonymous disclosures**

Page 10, clause 24(2). Insert after line 5—

Note— The Dictionary in Schedule 2 defines *anonymous*, in relation to a disclosure, to mean that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

No. 2 **Anonymous disclosures**

Page 11, clause 28(1). Insert after line 30—

Note— The Dictionary in Schedule 2 defines *anonymous*, in relation to a disclosure, to mean that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

No. 3 **Anonymous disclosures**

Page 27, clause 59(5). Insert after line 23—

Note— The Dictionary in Schedule 2 defines *anonymous*, in relation to a disclosure, to mean that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

No. 4 **Miscellaneous**

Page 44, Schedule 2, line 31. Omit "judicial officer". Insert instead "***judicial officer***".

Portfolio Committee No. 1 - Premier and Finance, in its November 2021 report on the bill, indicated at paragraph 2.70:

> We are also concerned about the new requirement that previous internal disclosures not be anonymous, requiring a potential discloser to 'out themselves' internally before making an external disclosure.

That is a mistaken interpretation of the bill. Clause 28 (1) (c) of the bill provides that a disclosure made to a member of Parliament or a journalist is a voluntary public interest disclosure if, among other matters, the maker of the disclosure made substantially the same disclosure to an agency and that previous disclosure was not anonymous. The dictionary of the bill provides the following definition:

> ***anonymous***, in relation to a disclosure, means that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether or not the maker's name is known.

As in the existing Act, one of the circumstances where an external disclosure to a member of Parliament or a journalist can be made is where the agency that received the previous disclosure has failed to provide the maker of the disclosure with certain information at the end of the relevant investigation period. Consequently, the agency must have a means of communicating with the maker of the disclosure to provide the relevant information, regardless of whether the name of the maker of the disclosure is known. I am advised that it is not uncommon for disclosures to be made, for example, using an email address that does not identify the name of the disclosure maker but enables the agency to communicate with the disclosure maker.

The Government acknowledges that the definition of "anonymous" in the bill is different to its standard or widely understood meaning. To resolve any potential confusion, amendments Nos 1, 2 and 3 insert notes clarifying the definition of "anonymous" where the term is used at clauses 24 (2), 28 (1) and 59 (5) of the bill. I thank the members of Portfolio Committee No. 1 for raising that matter, and the proposed notes will assist readers in interpreting and understanding the bill. Amendment No. 4 corrects a typographical error in the dictionary of the bill. The amendment will ensure that the term "judicial officer" appears bold and italicised, consistent with other defined terms in the dictionary. I commend the amendments to the Committee.

The Hon. ADAM SEARLE (19:22): I indicate that the Opposition will be supporting the four Government amendments. They not only respond to the committee report at paragraph 2.70, as the Minister outlined, but also obviate the need for Opposition amendment No. 8, so Opposition members will not be moving that. We will support the four amendments proposed by the Government because they appear to clarify the mischief identified by the committee inquiry report.

Mr DAVID SHOEBRIDGE (19:23): The Greens support the amendments and are grateful the Government moved them.

The TEMPORARY CHAIR (Ms Abigail Boyd): The Hon. Natasha Maclaren-Jones has moved Government amendments Nos 1 to 4 on sheet c2021-257A. The question is that the amendments be agreed to.

Amendments agreed to.

The Hon. JOHN GRAHAM (19:23): By leave: I move Opposition amendments Nos 1, 4 and 5 on sheet c2021-227B in globo:

No. 1 **Serious wrongdoing**

Page 4, clause 13. Insert after line 36—

Note—The categories of serious wrongdoing mentioned in paragraphs (a)–(e) are further defined in the Dictionary in Schedule 2.

No. 4 **Content of disclosures—disagreement with government policy**

Page 10, clause 26(2), lines 20 and 21. Omit "to the extent that the information disclosed relates". Insert instead "if the information disclosed relates only".

No. 5 **Content of disclosures—employment grievances**

Page 10, clause 26(3), lines 25–28. Omit all words on those lines. Insert instead—

(3) A disclosure does not comply with this section if the information disclosed—

(a) concerns only a grievance about a matter relating to the employment or former employment of an individual, and

I move these amendments together and will then deal with the extraordinary, although not unexpected, comments from the Government in the speech in reply at the second reading stage. Supported by a number of inquiries, Opposition members went through in detail the important issues that we believe could improve the bill. The Minister essentially put the position—on advice, I am very happy to stress—that if the Opposition amendments are passed, the Government will simply not proceed with the bill. The bill, which all the groups have said is a major step forward and which Opposition members have said we are happy to cooperate to pass, will be left in suspended animation if this Committee takes the view that the amendments we put forward are worthwhile. It is extraordinary but not unexpected from the Government.

We are being forced to choose between sensible propositions to gently strengthen the bill, removing in particular the higher threshold for disclosures to journalists, or maintaining peace in this place or the other place. The Parliament is being forced to decide whether to support public servants who may choose to use the bill or to have the bill in place at all, so that the public may know that there is an appropriate and modern legislative framework. I am quite concerned that the bill is being held hostage to the amendments, simply because the Government is afraid to test support for the ideas the Opposition is putting forward. We would prefer to have this debate on its merits, to put forward these sensible ideas and have them judged on their merits by this Committee and by the other place. But that is the action the Government is seeking to block, in putting its extraordinary position. After all the work that has been done, as outlined by my colleague, the bill will be put aside if the amendments are passed.

Having said that, Opposition members are genuine in our belief that the bill is a significant step forward. We do not want to endanger the bill, but we do have real concern about the high threshold. We do not rule out coming back at another time or in another place to continue to pursue this issue, if that is the position of the Government. I commend these amendments to the Committee. I indicate that as a result of the Government's position, the Opposition will not be moving amendments Nos 2, 3, 6, 7, 9, 10 and 11.

Mr DAVID SHOEBRIDGE (19:27): In my time in this Chamber, I have not heard threats in a speech in reply from the Government. Yet that is what we got today: plain, unadulterated threats from the Government that if Opposition amendments Nos 6 and 7, in particular, were successful, then the Government would pull the bill, notwithstanding that everybody agrees that whistleblowers deserve vastly greater protection than they have today. I have never heard those threats made so overtly and openly in a speech in reply before. It is a fairly extraordinary approach to take when all parties in this place have been willing to sit down and engage constructively. Indeed, the amendments that are proposed to be moved are consistent with uniform recommendations from cross-party committees. That is what we are talking about here.

As the previous speaker said, I know that the Minister is speaking on direction from the portfolio holder. By all means, she can clear that up if that is not the case. It might be a frolic of her own, but I sense not. But never have I seen this before: literally threatening legislation that is 99 per cent agreed and that is essential for the protection of whistleblowers if we make it better by implementing cross-party recommendations that have been pretty much picked up by every key observer and every key player—apart from, it looks like, just over half of the Coalition party room. That is what we have been told.

On behalf of The Greens, I indicate that we will be supporting the Opposition amendments that have been put. They will make a marginal positive change and I am not trying to denigrate them. But it is with a sense of deep distaste at the behaviour of the Government that I note we will not be debating those other critical amendments that have such broad support. We are put in this position by a government that is behaving in a

manner which is threatening the public good to protect a narrow political interest, and I think that is pretty shameful.

The Hon. ADAM SEARLE (19:30): I speak in support of amendments Nos 1, 4 and 5, moved by the Hon. John Graham for the Opposition. In my contribution to the second reading debate I pretty much set out my thinking on these three amendments, plus the others that are not being moved. Amendment No. 1 is very much in the nature of avoiding mischief and ensuring that courts and public sector managers applying this legislation are not themselves misdirected in thinking that the term "serious maladministration" is very narrow. It is quite obvious that the concerns of stakeholders about it potentially not covering a wider array of matters, although genuine, may well have been mistaken. As I indicated, at page 45 of the bill in the dictionary at schedule 2, under "serious maladministration" the first definition includes the following:

> … conduct … of an agency or a public official relating to a matter of administration that is—
>
> (a) unlawful …

And there are other definitions there. Things such as breaches of work health and safety legislation, environmental legislation and acts of reprisal of people flowing from sexual harassment matters in the workplace would all be covered because they are all breaches of the law, but the definition goes on to capture actions that would be unreasonable, unjust, oppressive and improperly discriminatory.

I think the concerns the stakeholders expressed in the inquiry may well have been misplaced, and this first amendment really makes sure that those responsible for implementing the legislation do not take too narrow a view of the legislation as it stands. Amendments Nos 4 and 5 go to substantive concerns that whistleblowers who have a policy disagreement with the Government or who may in reprisal be the subject of disciplinary action do not find themselves without the protection of this legislation. Amendments Nos 4 and 5 are perhaps minor in their wording but are substantial improvements to the legislation, and I thank the Government for taking them on board.

The Opposition is concerned that amendments Nos 6 and 7, which go to the "substantially true" threshold, are not being agreed to. We will be the only State with such a high threshold. The Opposition does not rule out revisiting this matter, and again I wish to reflect upon the extraordinary proposition put by the Government. I will remind members of this: When we were dealing with the modern slavery legislation I said on behalf of the Opposition that, while it was groundbreaking and new and good, it was very weak. The Opposition—and also the crossbench, I am sure—had a number of thoughts about ways it could and should have been improved, but we kept our powder dry to maintain cross-party integrity and the support of the governing parties to make sure that the bill would pass in the other place. We held our fire on those matters of concern and the bill passed, but it still took more than three years before the Government brought it into force and effect, for reasons that I will not canvass here.

We are in a similar position now that if we do not hold our fire on these issues, the Government will not proceed with the legislation. My colleagues the Hon. John Graham and Mr David Shoebridge have characterised that in one way. I might characterise it in another way to make sure all opinions are canvassed. The original legislation was brought forward against the Government's own information by the political circumstances. I think it is a good thing and speaks well of our system of government that this bill has come forward at all. But clearly there remain divided opinions within the bureaucracy and the powerful political forces that contend within this Government as to whether or not these are good ideas or perhaps dangerous ideas.

You can see it as a threat, or you can see it as a government itself divided about the matters in the bill and whether those unresolved issues identified by the stakeholders should be resolved at this time. Clearly they will not be, because our highest priority is to ensure the passage and the implementation of this legislation, but this chapter will be written again. This adventure will no doubt continue, whether under this Government or the next government.

The Hon. NATASHA MACLAREN-JONES (Minister for Families and Communities, and Minister for Disability Services) (19:35): First of all, I would like to say that some of the comments were a little bit disappointing. Members and parties in this House put forward motions and bills, and if the final outcome of that motion or bill is not what the original intent was, it is certainly within the rights of the mover to withdraw their support. Having said that, I thank the Opposition for withdrawing its other amendments.

The Government will be supporting Opposition amendments Nos 1, 4 and 5. I briefly comment on comments made by the Hon. John Graham, the Hon. Adam Searle and Mr David Shoebridge about the matter of "substantially true". The Government has made its position clear and I will not repeat what I said in my reply, but I do say that the Government does not support a bill that will omit the "substantially true" requirements for disclosures to members of Parliament or journalists. I ask that members weigh that up when considering the benefits of the bill for whistleblowers in the public sector and community.

In relation to Opposition amendment No. 1, clause 13 of the bill sets out the categories of serious wrongdoing that may be the subject of a public interest disclosure, or PID. The categories of serious wrongdoing are as follows:

(a) corrupt conduct,

(b) a government information contravention,

(c) a local government pecuniary interest contravention,

(d) serious maladministration,

(e) a privacy contravention,

(f) a serious and substantial waste of public money.

The dictionary at schedule 2 provides definitions for "corrupt conduct", "government information contravention", "local government pecuniary interest contravention", "serious maladministration" and "privacy contravention". The category of serious wrongdoing in paragraph (f) of clause 13, "a serious and substantial waste of public money", is not defined in the dictionary as it is a term of art. The Opposition amendment would insert a note after clause 13 indicating that the categories of serious wrongdoing in paragraphs (a) to (e) are further defined in the dictionary. The amendment, which is inconsequential, appears appropriate and may assist readers in interpreting the bill, and I thank the member for bringing it forward.

The Government supports amendment No. 4. Currently clause 26 (2) provides that a disclosure is not a PID to the extent that the information disclosed relates to a disagreement with a government policy. The amendment would amend clause 26 (2) to provide that a disclosure is not a PID if the information disclosed related only to a disagreement with a government policy. I note that the Opposition amendment implements a suggestion from the 21 November report on the bill by Portfolio Committee No 1. The report states that the committee noted that the wording of clause 26 (2) could be clarified to ensure that disclosures are excluded if they only relate to a disagreement with government policy.

Finally, in relation to amendment No. 5, currently clause 26 (3) provides that a disclosure is not a voluntary PID to the extent that the information disclosed concerns a grievance about a matter relating to the employment or former employment of an individual. As with clause 26 (2) relating to a disagreement with government policy, which I explained previously, Portfolio Committee No. 1 indicated in its report that the committee noted the wording in clause 26 (3) could be clarified to ensure that disclosures are excluded if they only relate to the individual employment grievances. The Opposition amendment would amend clause 26 (3) to provide that a disclosure is not a PID if the information disclosed concerns only a grievance about a matter relating to the employment or former employment of an individual.

The TEMPORARY CHAIR (Ms Abigail Boyd): The Hon. John Graham has moved Opposition amendments Nos 1, 4 and 5 on sheet c2021-227B. The question is that the amendments be agreed to.

Amendments agreed to.

The TEMPORARY CHAIR (Ms Abigail Boyd): The question is that the bill as amended be agreed to.

Motion agreed to.

The Hon. NATASHA MACLAREN-JONES: I move:

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

Motion agreed to.

Adoption of Report

The Hon. NATASHA MACLAREN-JONES: On behalf of the Hon. Natalie Ward: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. NATASHA MACLAREN-JONES: On behalf of the Hon. Natalie Ward: I move:

That this bill be now read a third time.

Motion agreed to.

Adjournment Debate

ADJOURNMENT

The Hon. NATASHA MACLAREN-JONES: I move:

That this House do now adjourn.

CLIMATE CHANGE GRAND SOLAR MINIMUM

The Hon. LOU AMATO (19:41): Our communities are divided on almost every issue, including the weather. On one hand we are told we are moments away from igniting into a blazing fireball due to global warming, and on the other we have climate experts now confirming we are entering into a grand solar minimum. A grand solar minimum is a period of decreased sunspot activity resulting in a mini ice age. The last mini ice age occurred between 1645 and 1715 and was known as the Maunder Minimum. During the Maunder Minimum, Europe and North America experienced a deep freeze, extending alpine glaciers into fertile farmlands. The Arctic sea ice extended far into the reaches of the south, causing a substantial reduction in agricultural output. Many areas experienced heavy snowfalls and lengthy winters. Our knowledge of the effects in the Southern Hemisphere is not documented. If Australia's first peoples recorded the effects of the Maunder Minimum on our own continent, we have yet to uncover the records. Therefore, we have no idea what impact a mini ice age may have on our climate and agricultural production.

Some climate experts are in dispute over the scientific data and computer modelling, which appears to be clear: We are indeed entering a grand solar minimum. In fact, the grand solar minimum, according to scientific data, began in 2019 with decreased sunspot activity and the effects first being felt in 2020. To understand how a grand solar minimum occurs is rather complex and the onset is not noticed uniformly. During 2020 many locations still experienced higher than average temperatures, whilst in other locations the reverse was true. If a grand solar minimum is underway, the first area we would expect to experience extremely cold temperatures would be Antarctica. During 2020-21, Antarctica recorded the coldest winters on record. In fact, satellites detected some isolated areas experiencing temperatures as low as minus 98 degrees Celsius. The low temperatures resulted in the fifth largest build-up of ice on record during August 2021.

Why is Antarctica important in predicting a grand solar minimum? It is important because changes in ozone levels are more prominent in Antarctica. Stratospheric ozone is formed by molecular oxygen being bombarded by incoming solar ultraviolet radiation from the sun. Lower sunspot activity decreases incoming ultraviolet radiation, which decreases ozone production. The activity of ultraviolet radiation in the conversion of oxygen to ozone creates heat in the stratosphere. Some of this heat is radiated to the earth's surface. In addition, ozone absorbs upward infrared radiation from the troposphere, creating more trapped heat to be radiated back to the earth's surface. Lower levels of ozone results in less heat and reduced temperatures.

Are we at the beginning of a grand solar minimum and should we be concerned? The scientific data that we are indeed going into a period of much cooler weather is certainly compelling. Scientists who specialise in heliophysics have recorded a significant reduction in sunspot activity. Meteorologists have identified the reduction in ozone production and the cooler temperatures experienced in Antarctica, and we in New South Wales experienced the coldest November on record in 2021. Indeed, this summer has certainly been much cooler than our normal summer experience. If climate scientists are correct, the current grand solar minimum began in 2020 with global cooling starting in Antarctica and it is slowly spreading across the globe. What is of concern is, if the predictions are correct, we are in for much colder times that are expected to last until 2053.

Many people may ask what is the point of the above information. The point is that we as a nation, and indeed the global community, are racing to somehow control the earth's climate. Our control is motivated by many who believe we are about to ignite into a fireball from global warming. Maybe we are actually in the beginning of global cooling and our belief that we can control or fix the earth's climate is unrealistic. If we are indeed entering a substantial cooling phase, what is next?

THE HON. TREVOR KHAN

The Hon. PENNY SHARPE (19:45): It has been said that if you want a friend in politics, get a dog. I reject that notion tonight as I pay tribute to the political career of former Nationals MP, my friend Trevor Khan. Trevor Khan resigned from this place in January. He did so without fanfare and without a valedictory speech—although I do not think he would have wanted to make a valedictory speech even if he had the chance. He has now started at Campbelltown Local Court as a new magistrate. It says something about Trevor Khan that this appointment has been met with warm congratulations rather than political pointscoring on jobs for the boys.

On 9 May 2007, the newly elected Nationals MLC Trevor Khan got to his feet to deliver his inaugural speech in this place. As a member of The Nationals who was a little unexpectedly elected to the Legislative

Council, Trevor covered the usual ground in inaugural speeches: his love of his family, his thanks to the Nationals for preselecting him and thanks to those who had encouraged and supported him into Parliament. During his speech he also said three things that caught my attention. He quoted a mentor and friend of his in his inaugural speech, who said:

> You always gain the most satisfaction by fighting the fight you think you cannot win.

He revealed that he had dyslexia and spoke of the importance of teachers throughout his life who assisted him to overcome it, and he praised the importance of public education as a social good. That was all very interesting from this leftie's perspective, but I promptly then did not speak to him for months. But, in the way of this place, I did observe him. Trevor showed himself to be an articulate debater, willing to go into the trenches for the then Liberal-Nationals Opposition. He jumped into committee work and was a fierce advocate for the people of Tamworth, his home town. Chaffey Dam, Tamworth Hospital and regional health issues were common themes as well as the odd lesson in military history.

Trevor brought his experience as a practising lawyer to debates in this place on issues of bail, child protection, family law, crimes and sentencing—although he always described himself as a humble traffic court lawyer. It was the bill that changed the law to recognise lesbian parents on the birth certificates of their children—a bill that meant a lot to me because it meant that I would finally be able to be recognised as the legal parent of my children—that found me seeking him out to thank him for his contribution. We sat down for a chat, and so began a very unlikely friendship. Trevor went on to support relationship recognition of same-sex couples and adoption law reform that ensured that there were no arbitrary barriers to allow children to be adopted by same-sex couples.

While he tortured Labor Ministers at budget estimates, in opposition he established himself on the ICAC committee and on the Standing Committee on Social Issues. In government he was one of The Nationals' go-to people for select committees. Over six years ago Trevor was elected by this House to become Deputy President. It was an important role with big shoes to fill after the deft handling of Jenny Gardiner, who previously held the position. Trevor was a firm, fair and sometimes grumpy Chair, but he was someone who had the respect of the members in this Chamber and who made many a late-night sitting dealing with our democracy efficient and mostly good humoured, even when the issues being discussed were very challenging.

Trevor was a warrior for his side of politics. But his time in this place also demonstrated that he was someone who never ducked a fight. He was prepared to pursue often unpopular issues because he thought they were important. Trevor was often a pain in the neck for his own people because of his refusal to just stay quiet when he thought issues were important. Voluntary assisted dying was an issue he pursued for years, working across the Parliament to draft his own bill and to slowly chip away at the resistance to this reform. He showed himself to be a strong supporter of LGBTIQ+ communities, pursuing marriage equality and equality before the law. It was his work with Reverend the Hon. Fred Nile on provocation that assisted this Parliament to get rid of the gay panic defence from our statute books.

I pay particular attention tonight to the important legacy that Trevor Khan left behind when it comes to safe access to legal abortion in New South Wales. Safe access zones legislation was a joint project from me, Trevor Khan and the member for Port Macquarie, Leslie Williams. I have never really understood why a National Party bloke from Tamworth was willing to put so much time, energy and political capital into this issue, but I am very grateful he did. The people who use reproductive health clinics and the staff of those clinics are also extremely grateful. The success of safe access zones led to more conversations between members of Parliament about trying to decriminalise abortion in New South Wales. Alex Greenwich picked up and ran with this after the last election. It was one of the longest debates we have ever had in the place. I again acknowledge Trevor's role in passing these laws. No-one likes to see how the sausage is made, but I can attest that without the work of Trevor Khan the bill may never have seen the light of day.

Trevor Khan said in his inaugural speech, as I said earlier, "You always gain the most satisfaction by fighting the fight you think you cannot win." He lived that every day in this place. I wish Trevor well in the next chapter of his career and look forward to a quiet meal every so often to deconstruct, lament, argue and laugh about the issues of the day for many years to come.

COVID-19 AND HEALTHCARE WORKERS

Ms CATE FAEHRMANN (19:50): On Tuesday 15 February nurses and midwives in New South Wales went on strike for safe staff-to-patient ratios, better conditions and fair pay, including pandemic pay and bonuses. Ten thousand nurses, midwives and their supporters rallied out the front of the New South Wales Parliament, with tens of thousands more taking to the streets in their communities right across the State. On Thursday 17 February

paramedics followed suit, going on strike to call on the Perrottet Government to hire 1,500 more on-the-road staff, provide pandemic pay and bonuses and a fair pay rise beyond the paltry 2.5 per cent that has been offered.

Throughout this pandemic our frontline healthcare workers have been working around the clock to keep us safe and healthy. They have heard daily thankyous and have been told they are heroes repeatedly by the Premier and health Minister. But over the past two years nurses, midwives and paramedics have been given an effective pay cut by the New South Wales Government twice. Nurses received a 0.3 per cent pay rise in 2020 and a 2 per cent pay rise 2021. But in 2020 the consumer price index rose 0.9 per cent and in 2021 it rose an alarming 3.5 per cent. So nurses and midwives have seen their wages decrease by an effective 2.1 per cent in that time. I think people would be incredibly alarmed to hear that New South Wales paramedics are actually the lowest paid in the country. How is that for putting your money where your mouth is, Mr Perrottet?

Over the Christmas break hospitals were at peak capacity. In Tweed Hospital alone, 18 exhausted and overwhelmed nurses resigned. They did not actually leave the nursing profession, however. They just went to work across the border in hospitals in Queensland where the pay and conditions are better and the Queensland Government has legislated ratios. Our paramedics, too, are exhausted. Some are reportedly working up to 21 hours with no breaks, according to the Australian Paramedics Association.

In January 2022, as a result of all of this, I launched The Greens Nursekeeper campaign. Nursekeeper is an urgent measure to retain our nurses, midwives and paramedics and to entice those who have resigned to return to the workforce. It includes a pandemic payment of at least $60 per shift for nurses, paramedics and midwives and an immediate $5,000 bonus plus another in 12 months to entice workers who have recently resigned to return and to retain those who have been pushed to the edge. More than 15,000 people have emailed the Premier and the health Minister urging them to take action.

After questioning from journalists about Nursekeeper at recent press conferences over the past few weeks, the Premier has confirmed several times that he is in conversations with the Treasurer about pandemic pay and bonuses. At one point a couple of weeks back, the Premier said that his Government is looking at all options, including a program like Nursekeeper, to support frontline healthcare workers, to show them that they had the Government's gratitude and to keep them in the job. But we are still waiting. The pandemic has not been easy for anyone—we will all admit to that—but it has impacted us all in different ways. No-one has felt it harder than the dedicated nurses, midwives, paramedics and other healthcare workers within our public healthcare system. They deserve pandemic pay and bonuses. They deserve better working conditions and safe staff-to-patient ratios. And they deserve fair pay that recognises the difficult, stressful and essential work they do.

We also need mass recruitment and training of frontline healthcare workers so that, when the healthcare system is hit by something like we have just seen, it does not add unsustainable pressure to a system already at breaking point. As The Greens health spokesperson, I take this opportunity to express The Greens rock-solid support for striking nurses, midwives and paramedics. We support them 100 per cent in their calls for ratios and fair pay that reflects the bloody hard and essential work they do in keeping people safe. We also support pandemic pay and bonuses to get them through the next few months, or however long the pandemic is going to last.

Finally, I quote the President of the Australia Paramedics Association, Chris Kastelan, on why nurses and paramedics across New South Wales have taken the action they are taking. He said, "This Government will happily pay lip-service to thanking frontline workers, but when push comes to shove they aren't prepared to properly support us, or pay us what we're worth." I say to the Premier that thank you is not enough. Give our frontline healthcare workers Nursekeeper, fair pay and ratios now.

LOCAL GOVERNMENT ELECTIONS

The Hon. PETER POULOS (19:55): Via video link: Following the 2021 local government elections held late last year, I take this opportunity to congratulate those candidates who were duly elected to represent their respective communities. Councillors play an important role across New South Wales. They remain closely connected to their residents and ratepayers by championing local causes. I recognise a number of councillors elected across several and distinct local government areas. It is gratifying to note that Councillor John Dorahy was re-elected to ward 2 on Wollongong City Council. He is joined by his hardworking Liberal councillors Cameron Walters in ward 1 and Elisha Aitken in ward 3.

In my new role as Parliamentary Secretary for Wollongong and the Illawarra, I look forward to my ongoing engagement with Wollongong City Council, including with the Lord Mayor, whom I have had the pleasure of meeting. I congratulate Lord Mayor Councillor Gordon Bradbery, AM, together with Deputy Lord Mayor Councillor Tania Brown on their election with all their fellow councillors. The election outcome in Shellharbour City Council delivered a boil-over result. I commend Mayor Chris Homer on his stunning win. I have since had the pleasure of introducing myself to the new mayor. Similarly, I extend my congratulations to Deputy Mayor

Kellie Marsh and the other recently elected councillors. Moving forward, I welcome the chance to further work with the council. From Kiama Municipal Council, I congratulate Councillor Neil Reilly, who was elected mayor, together with Deputy Mayor Imogen Draisma. I am particularly pleased to observe that the energetic Councillor Mark Croxford was also elected and I wish him well.

Shoalhaven City Council saw Councillor Amanda Findley elected mayor. Amongst the many councillors is a rising star who remains a very effective community advocate. I am referring of course to Councillor Paul Ell. I congratulate Paul on his election to the council. In Sutherland shire, Mayor Carmelo Pesce and his Liberal team achieved a stunning overall result. I commend Mayor Pesce for his leadership and overall vision. He is joined by Deputy Mayor Carol Provan and together they are a formidable dynamic duo. I also acknowledge the election of Liberal councillors Marcelle Elzerman, Louise Sullivan, Kent Johns, Hassan Awada, Haris Strangas and Stephen Nikolovski. The shire Liberals are truly humbled by their success and are mindful that they have the rare opportunity to implement their agenda for the benefit of their community.

One of the most outstanding political comebacks was achieved on Liverpool City Council by Liberal councillor Ned Mannoun, who became the popularly elected mayor for the second time. Liverpool is a dynamic city with its proximity to the new Western Sydney Airport and is on the cusp of further greatness under the visionary style of Ned Mannoun. The refreshed Liberal team on Liverpool City Council also includes councillors Mazhar Hadid, Fiona Macnaught, Mel Goodman and Richard Ammoun. I also similarly celebrate that in the adjoining Campbelltown City Council my good friend Councillor George Greiss was elected mayor. I wish him continued success. I am thrilled that south-west Sydney can now clearly benefit from the leadership qualities, decency and ongoing local government experience as reflected by Ned and George.

At Georges River Council, Liberal councillor Sam Elmir together with his Liberal colleagues Nancy Liu, Sam Stratikopoulos, Nick Smerdely and Lou Konjarski were all elected. This will provide a more balanced approach for the new council. The Georges River Liberal councillors represent the diversity of their local area. They are genuine and strong proponents for preserving the unique character and the amenity at the heart of the St George region. I also recognise the work of outgoing mayor Kevin Greene and his distinguished service to the St George area over many years. I also congratulate the very affable Mayor Nick Katris on his recent promotion.

There had been some speculation about the imminent political demise of Councillor Michael Nagi of Bayside Council. Even with some changes to the ward boundaries, Michael was re-elected, and I am pleased that he will be able to shine a huge spotlight on the unique idiosyncrasies and inner workings of Bayside Council. The recent 2021 local government election results produced some eclectic outcomes, but that is our democracy at work. All new councillors will have less time under the truncated current term to achieve their aims and implement their agendas. They will need to move adroitly to make it so.

Finally, I am indeed heartened by the record number of Liberal-endorsed women who have been elected to local government. Before this election, the percentage of Liberal female councillors hovered around a paltry 22 per cent. Today 40 per cent of all Liberal councillors are women. Sure, there is more improvement to be made in that regard, but we have made massive inroads. I am proud of the role that Liberal women across the New South Wales division have undertaken to improve their own political pathways. As the chair of the local government oversight committee, I was very privileged to be able to support their laudable objectives.

COVID-19 AND STATE ECONOMY

The Hon. MARK BUTTIGIEG (20:00): I thank the workers who have been working extremely hard to get the people of New South Wales through the pandemic. That includes all of our health workers, paramedics, nurses, doctors, hospital cleaners and security, transport workers, retail workers, warehouse workers, manufacturing workers, teachers, local council workers and many more. Unfortunately, they were put under extreme pressure because Premier Perrottet refused to listen to expert health advice and did not plan or prepare. Despite being alerted in December to the risks and the added pressure the pandemic would bring to our health system, the Premier did not listen to the health advice and ditched the mask requirements, dropped the use of QR code check-ins and scrapped density limits. Now, as a result of ignoring our experts, there have been real consequences for our health system, and our overstretched health workers have been struggling. Without any planning from the Premier, we also saw our small businesses suffer immensely.

Making matters worse, the Perrottet Government has disgracefully wasted taxpayers' money. The Liberal Party and The Nationals sell themselves as the superior economic managers, when in reality they are absolutely incompetent. The Government was exposed for wasting $775 million buying worthless personal protective equipment that had to be thrown away as it was unusable, out of date or did not meet the Therapeutic Goods Administration standards. That is an enormous amount of taxpayers' money for the Perrottet Government to squander.

It is not the only money Premier Perrottet has been throwing away. He also set up the Transport Asset Holding Entity as a budget con, and now he is responsible for the worst economic mismanagement in our State's history, with taxpayers set to lose more than $13 billion by the end of this decade. To add insult to injury, he backed in the catastrophe he created by saying he absolutely stood by the entity. He is not even fazed that its management have been searching for new headquarters because they disliked the "vibe" of their Haymarket offices. Perrottet's reckless leadership method is a slap in the face to underpaid health workers, teachers, bus and rail workers and many more.

Perrottet has also spent time ensuring ministerial budgets will rise by $7.5 million, which is a blatant attempt to create a slush fund to employ an army of political staff before the next election. It comes at a time when our health workers are saying hospitals have not been coping and when schools are under-resourced, and yet the Premier is thinking more about Liberal Party politics than about our health and education systems. Do members know what could have been done with all the taxpayers' money that Perrottet has been wasting? How about funding our under-resourced schools and hospitals and reducing surgery waitlist times in New South Wales.

Our ambulance officers are the lowest paid in the country, and that money could have gone to paying them a proper wage. They have been working around the clock to help our residents. After working gruelling 13-hour shifts, they have been forced to take their ambulances home and be on call. Our regional, rural and remote ambulance services are very much in need of increased resourcing, too. Our health workers and our hospital security workers are under immense pressure. They consistently experience violence and have gone without adequate support from the Government during the pandemic. The Government should be providing them support rather than throwing money down the drain on a whim.

Small businesses are the lifeblood of our communities and have been crying out for support from December, with Labor backing their calls. They have only been able to apply for support in mid-February, and so many small business owners are saying it is inadequate and coming far too late. Perrottet's economic management style means that our city is the most tolled city on earth, while vital taxpayers' money is consistently wasted and residents are left with higher taxes and skyrocketing fines. Taxpayers are paying the price for Perrottet's incompetence, and it must stop.

PRINCES HIGHWAY UPGRADE

Mr JUSTIN FIELD (20:05): I put on the record my concerns about the lack of strategic planning, coordination, community consultation and environmental consideration for multiple road upgrades and bypass plans for the Princes Highway across the Shoalhaven. There are multiple major road upgrades, widenings and bypasses for the Princes Highway in some stage of discussion, planning or construction across the entire region, including a Nowra bypass, the Jervis Bay Road interchange, the Jervis Bay Road to Sussex Inlet upgrade and the Milton-Ulladulla bypass. Collectively, those projects represent billions of dollars in investment and will see the Princes Highway across most of the Shoalhaven under some form of construction for much of the next decade.

Let me say clearly that the local public will welcome the investment and improvements in road safety. Further, I acknowledge the improvements to the Princes Highway further north and the investment over the life of the Government in those projects. But it is also the case at the moment that the planning around the projects to the south seems to lack coordination. Consultation with the public is at best poor and in some areas non-existent. There are significant concerns about the environmental impacts of some of the projects, given the significant native vegetation that will be impacted, including national parks and State forests. Some of the projects have resulted in quite a bit of division within the community over the lack of consultation and the push by Transport for NSW for its preferred options, rather than engaging with the community in a more meaningful way.

This is a once-in-a-generation investment in road infrastructure for our region. Done well, it represents an opportunity to be a model for infrastructure improvements, providing world-class road safety whilst minimising disruption and community impacts; improving environmental outcomes, including targeted local biodiversity improvements and wildlife crossings; providing better connectivity to local villages; supporting improvements in active and public transport; and building connectivity as well for our wildlife. At the moment I am worried it is not being done well in terms of strategic planning, coordination, public consultation and environmental protection. I am calling on the Government to establish a Shoalhaven Princes Highway upgrade coordinating group, made up of government, council, community and business representatives, to provide strategic guidance to Transport for NSW and to develop plans for the upgrade of the local Princes Highway.

I would like to see the following principles guide their work. Information about the options, the impacts and the business case for the projects should be transparent and publicly released in a timely fashion. The community should be engaged and proactively consulted at all stages of the projects to ensure the best outcome for design and connectivity for communities between local roads and the highway and to minimise short-term disruption and long-term impacts. Any environmental impacts from the projects must be offset locally as part of

a strategic plan to improve overall biodiversity outcomes for the local area. In order to minimise wildlife interactions with cars and to improve connectivity with local bushland and national parks, the Government should employ a network of best practice wildlife corridors along the route, not just the minimum standards that are currently being proposed.

Where possible, the upgrade should provide for safe cycling and walking along the highway corridor and crossings and should ensure public and community transport links can improve access across our entire region. Working together, engaging the community and taking the time to plan properly, we can build a safer highway that maximises the benefits to the local Shoalhaven community while minimising the negative impacts. That is worth taking the time to do when billions of dollars will be spent over the next decade. I urge the new regional transport Minister to work with the community to make that happen.

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

Motion agreed to.

The House adjourned at 20:10 until Tuesday 22 March 2022 at 14:30.