

## LEGISLATIVE COUNCIL

**Thursday 14 March 2024**

**The PRESIDENT (The Hon. Benjamin Cameron Franklin)** 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.

### *Motions*

#### **INTERNATIONAL DAY TO END VIOLENCE AGAINST SEX WORKERS**

**Ms ABIGAIL BOYD (10:02):** I move:

- (1) That this House notes that:
  - (a) Sunday 17 December 2023 was the International Day to End Violence Against Sex Workers, which is held annually for sex workers and allies to honour victims of violence and discrimination, and to demand fierce action from all levels of society to protect the right of all sex workers to live and work in peace, safety and with dignity;
  - (b) sex work is not inherently exploitative, but like any job under capitalism the working conditions and structures determine how exploitative it is;
  - (c) sex workers face incredibly disproportionate rates of violence compared to other professions, which is perpetuated by criminalisation and discrimination, and sex workers who are people of colour, First Nations, LGBTQIA+, migrants or living with disability face amplified intersecting discrimination and violence; and
  - (d) ending violence against sex workers cannot be achieved without fully decriminalising sex work and implementing robust anti-discrimination and anti-vilification protections.
- (2) That this House affirms that sex work is work, and every person deserves to be safe, protected and free from discrimination at and outside of their place of work.
- (3) That this House calls on the Government to commit to working to end violence against sex workers by taking urgent action to protect the dignity and safety of all people regardless of their profession.

**Motion agreed to.**

### *Documents*

#### **TRANSPORT FOR NSW TRANSITION OFFICE AND COORDINATOR GENERAL**

##### **Tabling of Documents Reported not to Contain Personal Information**

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

- (1) That, in view of the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, KC, dated 7 March 2024, on the disputed claim of personal information regarding the Transition Office and Coordinator General, Transport for NSW, this House orders that the Cabinet Office produce within seven days of the passing of this resolution, documents received by the Clerk on 15 January 2024, considered by the Independent Legal Arbiter not to contain personal information that should not be made public, subject to the redaction only of personal information explicitly listed in Standing Order 52 (7) (e) (i) to (vi).
- (2) That on receipt, the redacted documents be published.

**Motion agreed to.**

### *Motions*

#### **COPTIC ORPHANS' BOARD OF DIRECTORS GALA**

**The Hon. MARK BUTTIGIEG (10:03):** I move:

- (1) That this House notes that:
  - (a) on 5 November 2023 the Coptic Orphans' board of directors held its 2023 gala, which the Hon. Mark Buttigieg, MLC, was honoured to attend and make a speech representing the Premier, the Hon. Chris Minns, MP;
  - (b) the gala marked 35 years of Coptic Orphans' work supporting children and young people in Egypt and the broader Coptic community, including providing quality education, financial support and mentorship to those in need;
  - (c) underpinning this important work are the core Coptic Christian values of giving, love and generosity;

- (d) Coptic Australians have made huge contributions to the community, and the gala honoured two such people, Associate Professor Amany Zekry, an accomplished gastroenterologist, hepatologist and clinical academic at the University of New South Wales' St George and Sutherland Clinical School, and Dr Daniel Nour, who established a mobile medical service for people struggling with homelessness in New South Wales; and
- (e) the gala included a fantastic performance by multi-instrumental classical duo, the Ayoub Sisters and was very well attended, with guests including:
  - (i) Her Excellency the Hon. Margaret Beazley, AC, KC, Governor of New South Wales;
  - (ii) His Excellency Mr Mahmoud Zayed, the then Ambassador of the Arab Republic of Egypt to Australia;
  - (iii) His Excellency Ambassador Mohamed Khalil Morsi, Consul-General of the Arab Republic of Egypt in Sydney;
  - (iv) the Hon. Mark Speakman, SC, MP;
  - (v) Mr Mark Coure, MP;
  - (vi) Mr Edmond Atalla, MP;
  - (vii) Mr Nick Kaldas, APM, Chair of the Multicultural NSW Advisory Board, Chair of the Royal Commission into Defence and Veteran Suicide, former Deputy Commissioner and Assistant Commissioner of the NSW Police Force, who also served multiple senior roles in the United Nations; and
  - (viii) Mr Charles Casuscelli, RFD, former member for Strathfield, CEO of the Western Sydney Regional Organisation of Councils [WSROC].
- (2) That this House congratulates the Coptic Orphans' board of directors, Australia, for conducting the event.
- (3) That this House recognises the importance of Coptic Orphans' ongoing work to support those in need.

**Motion agreed to.**

#### *Documents*

### **TRANSPORT FOR NSW EMPLOYEE WORKPLACE SAFETY**

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

**The Hon. SAM FARRAWAY (10:04):** I seek leave to amend private members' business item No. 848 as follows:

- (1) In paragraph (1) omit all words after "this House orders" and insert instead "that the Cabinet Office produce, no later than Friday 15 March 2024, documents received by the Clerk on 20 December 2023, considered by the Independent Legal Arbiter not to be privileged, subject to the redaction only of personal information explicitly listed in standing orders 52 (7) (e) (i) to (vi).
- (2) In paragraph (2) insert "redacted" before "documents".

**Leave granted.**

**The Hon. SAM FARRAWAY:** Accordingly, I move:

- (1) That, in view of the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, KC, dated 5 March 2024, on the disputed claim of privilege regarding alleged incidents on the Coffs Harbour bypass project, this House orders that the Cabinet Office produce, no later than Friday 15 March 2024, documents received by the Clerk on 20 December 2023, considered by the Independent Legal Arbiter not to be privileged, subject to the redaction only of personal information explicitly listed in Standing Order 52 (7) (e) (i) to (vi).
- (2) That on receipt, the redacted documents be published.

**Motion agreed to.**

#### *Committees*

### **REGULATION COMMITTEE**

#### **Reports**

**The Hon. NATASHA MACLAREN-JONES:** I table the report of the Regulation Committee entitled *Delegated Legislation Monitor No. 1 of 2024*, dated 14 March 2024.

#### *Business of the House*

### **POSTPONEMENT OF BUSINESS**

**The Hon. PENNY SHARPE:** On behalf of the Hon. Daniel Mookhey: I postpone Government business notice of motion No. 1 until a later hour of the sitting.

**The Hon. PENNY SHARPE:** I postpone Government business notices of motions Nos 2 and 3 until the next sitting day.

*Bills*

**ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SEA BED MINING AND EXPLORATION) BILL 2024**

**Second Reading Speech**

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (10:24):** I move:

That this bill be now read a second time.

The Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Bill 2024 proposes amendments to the Environmental Planning and Assessment Act 1979 to prohibit the carrying out of seabed petroleum and mineral exploration and recovery. The New South Wales Labor Government is moving decisively to protect our beautiful beaches and coastal environment. If passed, the bill will make New South Wales the first State in Australia to prohibit seabed petroleum and mineral exploration and mining. Under the EP&A Act, a person will be prohibited from undertaking those activities in the coastal waters of the State. Importantly, the bill exempts coastal protection works and certain dredging activities that are not related to mineral exploration and recovery.

The bill will also prohibit other development anywhere within the State, including in the State's coastal waters, for the purposes of seabed petroleum or mineral exploration or recovery. In practice, this will mean that the prohibition could hinder or add significant costs to any exploration and mining projects which are undertaken in the offshore area of New South Wales beyond the limits of the coastal waters of the State. Contravention of the prohibitions will result in a tier 1 penalty under the EP&A Act—the highest penalty available under that Act. The bill additionally restricts the grant or renewal of authorisations under the Offshore Minerals Act 1999 and the Petroleum (Offshore) Act 1982, which I will refer to collectively as the Offshore Acts, for a prohibited purpose.

The New South Wales Government does not support offshore mineral or petroleum exploration or mining for commercial purposes either in or adjacent to New South Wales coastal waters. I acknowledge that many members have raised that issue in this place, and I consider the concerns of the members are reflected in the Government's position as outlined in the bill. The impacts of seabed exploration and mining are significant. They are a threat to our State's sensitive marine environments, coastal areas and Indigenous heritage. Offshore mining activities can have a devastating impact on our marine fauna and their habitats, including the release of harmful or toxic materials, the removal of habitat and the creation of harmful sediment levels.

The Government's policy on offshore mining is outlined in the Offshore Exploration and Mining Policy, which was first published in February 2022. I note that the previous Government published this policy. However, there is currently no legislative prohibition on those activities and no limitations on development within the State for the purposes of offshore mineral or petroleum exploration and mining. The bill is intended to give certainty to our communities and industries about the Government's position on offshore exploration and mining by giving legislative effect to the Offshore Exploration and Mining Policy. The legislation is a responsible and balanced approach to banning seabed mining and protecting our coastline and waters. It will give certainty to the community and industry by ensuring that any move away from the prohibition on these activities would require a future Act of Parliament.

It is possible that petroleum or mineral exploration could occur in the offshore area beyond the New South Wales jurisdiction. However, the bill will ensure that no development can be undertaken in our State to support that activity. It is a powerful message about this Government's policy. In effect, the bill will ban not only exploration and mining in the coastal waters of New South Wales but also ensure that development in New South Wales does not support exploration and mining projects in the offshore areas of New South Wales which are beyond the limits of our State.

I turn now to the details of the bill. Schedule 1 to the bill proposes a new schedule 10 to the EP&A Act, entitled "Sea bed petroleum and minerals development". Clause 2 (1) (a) prohibits seabed petroleum or mineral exploration and recovery in the coastal waters of the State. This prohibition is intentionally limited to mining and exploration activities in New South Wales coastal waters only—that is, up to three nautical miles from the coastline. That is the region of the New South Wales coast over which the New South Wales Parliament has legislative authority and proprietary rights in relation to seabed minerals and petroleum. The proposed clause does not seek to apply to the offshore area of New South Wales, which is the responsibility of the Commonwealth.

Proposed clause 2 (1) (b) of schedule 10 further prohibits other development within the State for the purposes of seabed petroleum exploration or recovery, or seabed mineral exploration or recovery. The application of subclause (1) (b) is further clarified in clause 2 (3), which provides that the provision applies to seabed mineral and petroleum exploration and recovery whether within the coastal waters of the State or elsewhere. In practice, this will mean that no pipelines can be built in our coastal waters to pipe petroleum to shore in New South Wales. It will also prohibit the development of any other facility in New South Wales that is intended for the purpose of supporting offshore mining.

I turn now to the exceptions from the prohibition, which are provided for in proposed clause 2 (2) of schedule 10. The bill provides for two important exceptions. Firstly, it exempts coastal protection works as defined under the Coastal Management Act 2016, including beach nourishment. Beach nourishment is the practice of removing sand for the purposes of placing it onto the shoreline to compensate for natural erosion. The exception also covers beach scraping, which involves removing a layer of sand from the foreshore and transferring it to a different location on that same beach, rather than bringing sand in from another location.

The bill exempts certain dredging activities, provided that they do not require an authorisation under the Offshore Acts, meaning that they will not involve mineral exploration or recovery. Dredging is a routine practice with environmental and economic benefits. It is important to ensure that some dredging practices can continue and remain subject to existing regulatory regimes—for example, to ensure that vessels can access a port or marina or to provide for anchorages or berthing areas. The bill also provides additional flexibility for exceptions in the form of a constrained regulation-making power in proposed clause 3 of schedule 10. This section was amended by agreement in the Legislative Assembly during yesterday's debate. This will accommodate other limited exceptions that offer an environmental or public benefit, and which are deemed necessary through the implementation of the bill. Regulations would only be made on the recommendation of the Minister administering the EP&A Act following consultation with the Minister administering the Protection of the Environment Operations Act 1997.

Finally, proposed clause 4 of schedule 10 will also prevent the grant or renewal of certain authorisations under the Offshore Acts that relate to the development which is prohibited under the schedule. This will ensure prevention of ineffectual "zombie" authorisations. The bill will ban offshore mining and exploration in New South Wales permanently and unequivocally. There is no place for harmful seabed mining in our precious State. The bill will ensure that commercial interests cannot prevail over the protection of our coastal waters for future generations. The bill will also reduce the viability of any exploration and mining projects in the offshore area of New South Wales to the extent possible within the jurisdictional limits of the New South Wales Legislature. I am thankful for the discussions that have taken place on the bill. I understand that some amendments will be moved during the Committee stage. I will explain the Government's position on those when we deal with them. I commend this important bill to the House.

### Second Reading Debate

**The Hon. SCOTT FARLOW (10:31):** I lead for the Opposition in debate on the Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Bill 2024 and confirm that the Opposition will support the bill. Overwhelmingly, the people of New South Wales do not want to see offshore mining and drilling in our waters. The current petroleum exploration permit 11, known as PEP 11, licence would involve offshore drilling as close as a few kilometres off the coast of Australia between Newcastle and Sydney. A private member's bill was brought by the member for Pittwater, Rory Amon, which suddenly galvanised the Government into action. But it moved at glacial speed, and it has taken a whole year to get to this point. Did the Government choose to delay the member for Pittwater's bill so that it could produce a version of its own and claim it as a win? Only Government members know. But we commend the Government for taking this action off the back of the member for Pittwater's bill and the leadership of Kellie Sloane, the member for Vaucluse and shadow Minister for Environment.

The Minns Labor Government is the passenger here. The community and concerned stakeholders know that the Coalition has led the charge. It is better late than never, and the Minns Labor Government has been dragged to this position by the Coalition Opposition. I am thrilled that we are still delivering for the community during our short stay on this side of the Chamber. One of Australia's greatest economic assets is also its greatest environmental asset: the ocean. More than 85 per cent of Australians live within 50 kilometres of the sea, but Australia's ocean economy extends well beyond New South Wales coastal communities. Australia's national marine industries contribute significantly to the economy by generating more than \$110 billion in output, adding \$105 billion in value to the GDP, whilst supporting 462,000 full-time-equivalent jobs.

The purpose of the bill is to prohibit seabed and subsoil petroleum and mineral exploration, recovery and related development to ensure that development for those purposes cannot be undertaken in New South Wales. While New South Wales does have an offshore exploration and mining policy introduced by the former Coalition

Government that explicitly states that the New South Wales Government does not support offshore mineral, coal or petroleum exploration or mining for commercial purposes or adjacent to New South Wales coastal waters, it is still possible for these activities to take place.

The bill sends a clear directive to those energy companies. Offshore mining and exploration authorisations may still be granted and renewed under the Offshore Minerals Act 1999 and the Petroleum (Offshore) Act 1982, and developments may currently still be undertaken in accordance with the Environmental Planning and Assessment Act 1979. The bill proposes to insert new schedule 10 into the Environmental Planning and Assessment Act to prohibit the carrying out of seabed and subsoil petroleum or mineral exploration and recovery in the coastal waters of the State and other related developments in the broader State. The new schedule also prevents the granting or renewal of certain authorisations under the offshore Acts relating to development prohibited under the schedule.

The Legislative Assembly dealt with amendments to address provisions in the original drafting that in our view weakened the bill. The provisions essentially gave the Minister for Planning and Public Spaces power to override many of the regulations, and indeed the Act itself, through a Henry VIII clause. I commend the crossbench for those amendments to address that in the other place and also the Government for accepting them. We welcome the tightening up of the clause and the collaboration with members from various parties to bring this legislation more in line with the private member's bill of the member for Pittwater.

To give a quick history lesson, we must remember that PEP 11 was given life in 2001 by the former Carr Labor Government. Had that not been welcomed by Bob Carr, this whole project, debate and fiasco could have been avoided in the first place. So let us remember who the architect of PEP 11 was in the first place: the Carr Labor Government. The legacy of the Carr Labor Government still gets worse by the day almost two decades on. The reality is that Labor has had years and has done nothing federally. Two years after being elected, all the Albanese Labor Government does is blame the former Government. Because of the complete inability to deal with this at a Federal level, despite a promise from the Prime Minister in November 2021, it has had to be dealt with at a State level. The Albanese Labor Government has had plenty of time but has done nothing on this matter. The former Coalition State Government rejected PEP 11 twice, which was the right thing to do because that is what the people of New South Wales expected. Thankfully, we are ruling a line under the issue now in this place.

It is great that the bill has bipartisan support. It is sad that we have seen unnecessary delay and fear about PEP 11 among communities along the coast for more than 12 months, which could have been avoided if the member for Pittwater's bill had been supported. As shadow Minister for the Central Coast and the Hunter, I know the people of the region have made it clear, in no uncertain terms, that they do not accept offshore exploration projects like PEP 11 in such a beautiful area. At the moment, the Central Coast is at the top of that list. The Central Coast will ensure that it is still a great region by 2061. We are aware of the dangers that our coastal communities face, and we all know that we need to look at long-term solutions for managing coastal erosion. That will encompass everything on the table, including regular sand nourishment, no matter where it is along the coastline.

People who walk along any of the beaches of the Central Coast or the Hunter, or look at drone footage, will witness the value of the coastal life that our State has. The credit for this achievement belongs to the hardworking community advocates and organisations, many of which have engaged with the conservative side of politics for the first time on this issue. It is a great Coalition achievement, and from opposition no less, to help put the nail in the coffin of PEP 11 once and for all. May we all agree it is pleasing that we have finally come to a conclusion on this. Hopefully, with the passage of this legislation, PEP 11 will be dead and buried.

**Ms CATE FAEHRMANN (10:37):** As The Greens spokesperson on healthy oceans and mining I support the Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Bill 2024. In doing so, I flag that I will seek to move two amendments in Committee that aim to strengthen and safeguard the bill. I say unequivocally that banning offshore mining and exploration is a win for climate advocates, traditional owners and coastal communities who have fought hard for years in a bid to protect our oceans and avoid irreversible damage to the climate.

Offshore drilling can devastate the coastal ecosystem, including the whale migration route along the New South Wales coast. The exploration and use of extracted gas causes 84 times more climate harm than carbon dioxide. Two-thirds of Australia's gas production is exported; in 2019 Australia was the largest exporter of gas in the world. It should be the case that it is an offence for a person to carry out seabed exploration or recovery—or development for those purposes—in New South Wales coastal waters, and it should be the case that the planning Minister cannot grant or renew an offshore minerals licence or a petroleum exploration permit.

Petroleum exploration permit 11, or PEP 11, is an active exploration permit held by Asset Energy off the coast of Newcastle and Sydney. In December 2010 the first offshore petroleum exploratory well off the coast of New South Wales was authorised to be drilled under PEP 11. Despite the destructive consequences of these

exploration activities, PEP 11 was extended in 2016 and again in 2018. In March 2022, then Prime Minister Scott Morrison intervened to reject a further extension of the permit, but the decision was invalid due to Morrison appointing himself to multiple ministries. It is shameful that multibillion-dollar oil and gas corporations continue to be granted licences that risk already vulnerable marine ecosystems to extract resources. The people of New South Wales want us to take genuine action on climate, and the bill's passage through the lower House is evidence that their sustained pressure, protest and grassroots action has worked.

On behalf of The Greens I will move two amendments. An amendment was passed in the lower House that leaves schedule 3 in place, removing potential exemptions relating to fossil fuels but allowing for their possibility otherwise with respect to minerals. Our view is that the clause should go entirely. I will speak about that more during the Committee stage. If schedule 3 is to remain in a modified form, it should be amended to prescribe that the environment Minister should have concurrence powers rather than simply a requirement to be consulted.

With the provisions we have raised, The Greens will support the bill because we believe in protecting our environment, ensuring that our oceans and marine life remain healthy and safeguarding against overreach. It is important to note that the work does not stop with this bill. All other States must have the ability to resist the influence of big oil and gas companies and follow this State's lead on banning oil and gas exploration. It is encouraging that the Parliament has ensured that, regardless of the Henry VIII clause, there will not be any moves to see coal and gas mining and exploration. That is a little step but a good step. Let us see where we go from here. It is fantastic to see all members working together to introduce legislation in this place that will have a big impact on the environment and climate. Let us hope we see more bills like this in the coming years.

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (10:42):** In reply: I thank the members for their contributions to debate on the Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Bill 2024: Opposition member the Hon. Scott Farlow and The Greens member Ms Cate Faehrmann. It is a good day when the New South Wales Parliament takes a clear and strong stance on environmental protection for our marine environment. This is a good bill with a long history. I will not quibble with some of the assertions made by the Opposition, other than to take the win and accept that this is a good bill that will do good things for communities in New South Wales.

The bill will also protect our oceans. The people of New South Wales, particularly the 80 per cent who live right near the coast, have a deep and abiding love affair with our oceans and the environment that we are so lucky to live in. The bill sends a clear message that the Government and the Parliament do not support offshore mineral or petroleum exploration for mining or for commercial purposes, either in or adjacent to New South Wales coastal waters. I understand that we will deal with a couple of amendments in Committee. I commend the bill to the House.

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

**Motion agreed to.**

### **In Committee**

**The CHAIR (The Hon. Rod Roberts):** There being no objection, the Committee will deal with the bill as a whole. I have two sheets of amendments: The Greens amendments Nos 1 and 2 on sheet c2024-021B and The Greens amendment No. 1 on sheet c2024-022A.

**Ms CATE FAEHRMANN (10:48):** By leave: I move The Greens amendments Nos 1 and 2 on sheet c2024-021B in globo:

**No. 1      Exemption regulations—consequential amendment**

Page 3, Schedule 1, proposed Schedule 10, section 2, lines 41–42. Omit ", other than section 3".

**No. 2      Exemption regulations**

Page 4, Schedule 1, proposed Schedule 10, section 3, lines 1–11. Omit all words on the lines.

These amendments will fix a fundamental and obvious flaw with the bill. Clause 3 is what is known as a Henry VIII clause. This is a clause where, so to speak, the tail gets to wag the dog. The long title of the bill says that the bill is "to prohibit the carrying out of seabed petroleum and mineral exploration and recovery". The bill actually does this very well—that is, up until we get to clause 3. The clause allows for exemptions to be made to the prohibitions proposed in the bill simply on the say-so of the Minister, although they need to consult with the Minister for the Environment—not make a decision in concurrence with the environment Minister; simply consult them. I will deal with that in the next amendment. In other words, the Executive can, at its whim, completely subvert the intention of the bill and allow the very thing it is supposed to be prohibiting: no parliamentary scrutiny; just the Minister's say-so.

I note that amendments were passed in the other place making it clear that such exemptions cannot be made in the case of fossil fuels, petroleum, coal and oil shale, but the field is left open for any and all other minerals. The Government will tell us that such a clause is necessary to cater for unforeseen circumstances at some point in the future, when something good and sensible that we might like to do might unfortunately and inadvertently fall under the classification of minerals extraction and/or recovery, for the purposes of the Act, and we cannot do it because of the strictures that the Act places on us.

However, the Parliamentary Counsel's Office [PCO] warns about the dangers of a Henry VIII clause. That came from the PCO's submission to the Regulation Committee's inquiry into the making of delegated legislation in New South Wales. The PCO states:

... almost all modern legislation involves delegations to the executive of power to make delegated legislation. A standard regulation-making power is included in most Acts, in the following terms—

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

...

The issue is whether the power exercised in the delegated legislation is properly executive or legislative in nature, and whether it should receive the enhanced scrutiny and debate that characterises legislative enactments.

The inquiry recommended the following in recommendation 4 of its report:

That, to foster greater transparency in the use of delegated legislative power, the NSW Government ensure that explanatory notes to bills:

- highlight the presence in the bill of any Henry VIII clauses, shell legislation or quasi legislation
- include an explanation as to why such a broad delegation of legislative power is considered necessary.

As I understand it, that was not done. In his second reading speech, the Minister said:

The bill also provides additional flexibility for exceptions in the form of a constrained regulation-making power in clause 3 of proposed schedule 10. This will accommodate other limited exceptions that offer an environmental or public benefit, and which are deemed necessary through the implementation of the bill.

Let us be clear: The clause in the bill allows for possible exemptions, again, entirely at the Executive's whim for any kind of mineral recovery or extraction—something that is completely antithetic to the purpose of the bill. Let us not forget exactly what we are talking about when we are dealing with seabed mining. As the Minister himself said in his second reading speech:

The impacts of seabed exploration and mining are significant. They are a threat to our State's sensitive marine environments, coastal areas and Indigenous heritage. Offshore mining activities can have a devastating impact on our marine fauna and their habitats, including the release of harmful or toxic materials, the removal of habitat and the creation of harmful sediment levels.

Beyond that, the Minister also said quite clearly that the bill "will give certainty to the community and industry by ensuring that any move away from the prohibition on these activities would require a future Act of Parliament". On the one hand, the Minister wants to provide certainty around prohibition, but, on the other hand—and not really being up-front about it, I have to say—provides a massive back door, a huge "get out of jail free" card for himself, the Government and future governments, for that matter. No Act of Parliament will be needed for a change in clause 3; just a bit of a chat with the environment Minister—which, hopefully, we will deal with in the next amendment—and the Minister can sign off on whatever mineral-related extraction or recovery he likes. That is simply not good enough. It is completely, again, antithetical to the purpose of the bill and what the community was promised. The clause needs to go. I commend The Greens amendments to the Committee.

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (10:54):** I will deal with the Government's response to the two sheets of amendments that The Greens are dealing with in Committee. I realise the second sheet of amendments has not yet been moved, but Ms Cate Faehrmann touched on it during her contribution. Once passed, the bill will have the effect of immediately prohibiting a broad range of mineral and petroleum exploration and recovery activities and related development in New South Wales coastal waters. It is important that this prohibition is thorough. However, it is also important that the prohibition does not unintentionally prohibit activities that are of environmental, economic or any other benefit to the State.

As is clear from the exemptions provided for in the bill, a number of activities could technically fall within the prohibition that are clearly not damaging our coastline and must be exempted. That includes the critical coastal protection activities under the Coastal Management Act 2016, including the recovery of sand for beach nourishment works to protect our beaches from the impacts of erosion; exploration for beach nourishment, which is a necessary precursor to identifying a suitable source and location from which to recover minerals for the

purpose of beach nourishment; and beach scraping, which involves removing a layer of sand from the foreshore and transferring it to a different location, rather than bringing sand in from another location, which allows the upper part of the beach to be strengthened to prevent dunes and cliff systems from erosion. It also includes certain dredging activities, which are important routine activities and includes the dredging of sand, silt and mud to prevent the accumulation of pollutants and keep our waterways clean and our coastal systems healthy; and dredging to maintain or increase the depth of navigation channels, anchorages or berthing areas, which is an important and routine practice of our coast, which is a vital economic zone.

If those practices were to be unintentionally prohibited, there would be significant and immediate impacts on our New South Wales coastal zone and the complex mix of carefully balanced activities which take place within our State waters. If the Parliament agrees to imposing a broad prohibition on seabed mining, it is appropriate and only sensible that there is a means to make sure that activities that are unintentionally caught by the prohibition can be considered, assessed and, if appropriate, exempted from the prohibition as quickly as possible, without the need for a further Act of Parliament. It is highly possible that there are well-accepted and beneficial practices in the area of environmental protection, industrial and commercial activity, tourism or recreation which will require a regulation to be made, particularly in the future as the impact of climate change takes its toll on our coastline. It also means that we may have to modify other coastal processes in terms of hazards and risks. That is what this regulation-making power is about.

I also remind the member that regulations are actually disallowable instruments; they are not at the stroke of the pen from the Ministers. The Government does not support the amendment that seeks to get rid of the regulation-making power altogether. We will, however, support the amendment that gives me, as the Minister for the Environment, a concurrence power on whether any of those regulations need to be made. Members should be clear that this is a strong bill that sets out to ban all of those activities, which people are broadly in support of. There is no trick here. We are not trying to find some back doorway; we are supporting a strong bill. But we do not want unintentional consequences, and I am happy to have a concurrence power to make sure that that is the case.

**The Hon. SCOTT FARLOW (10:58):** In the interest of time, I will also comment on both sheets of amendments. The Opposition joins with the Government in opposing the amendments with respect to regulation-making powers. The member for Wakehurst, Mr Michael Regan, moved an amendment in the other place, which we believe satisfied our concerns about the latitude of those powers, and we are happy to give the Minister for the Environment the concurrence powers in the legislation. That is in the interests of good governance.

**The CHAIR (The Hon. Rod Roberts):** Ms Cate Faehrmann has moved The Greens amendments Nos 1 and 2 on sheet c2024-021B. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes .....6  
Noes .....31  
Majority.....25

**AYES**

Boyd  
Buckingham

Cohn  
Faehrmann (teller)

Higginson (teller)  
Hurst

**NOES**

Buttigieg  
Carter  
D'Adam  
Donnelly  
Fang  
Farlow  
Farraway  
Franklin  
Graham  
Houssos  
Jackson

Kaine  
Latham  
Lawrence  
MacDonald  
Maclaren-Jones  
Martin  
Merton  
Mihailuk  
Mitchell  
Mookhey

Moriarty  
Munro  
Murphy  
Nanva (teller)  
Primrose  
Rath (teller)  
Sharpe  
Suvaal  
Taylor  
Tudehope

**Amendments negatived.**



**The CHAIR (The Hon. Rod Roberts):** According to sessional order, it being after 11.00 a.m., I shall now leave the chair and report progress.

**The PRESIDENT:** The Committee reports progress. Further consideration of business before the Committee is set down as an order of the day for a later hour of the sitting.

Order! According to sessional order, business is now interrupted for questions. Questions will run until 12.09 p.m.

*Questions Without Notice*

**STATE BUDGET AND GOODS AND SERVICES TAX**

**The Hon. DAMIEN TUDEHOPE (11:09):** My question is directed to the Treasurer. In the deal agreed to by him on behalf of this State at the National Cabinet meeting on 6 December 2023, the extension of the GST "no worse off" guarantee was only conceded by the Albanese Government in exchange for the States taking on an additional share of the costs of the National Disability Insurance Scheme, as well as costs for new foundational supports. What will be the total cost to the New South Wales budget of these trade-offs to secure the continuation of the guarantee?

**The Hon. DANIEL MOOKHEY (Treasurer) (11:10):** On the 183rd day, he shall get a question! It has been 183 days since the shadow Treasurer last asked me a question. I ask for the indulgence of the House because I want to savour this moment, in case another 183 days pass before I get the next question. I applaud the shadow Treasurer for his annual question. I am pleased that today he has managed to muster the courage to do his job in this place. I again extend my enthusiasm—

**The Hon. Damien Tudehope:** Point of order: If the Treasurer does not know the answer, he should sit down. To engage in this sort of performance is totally outside the ambit of the question. I ask you to direct him to answer the question. Treasurer, if you don't know, sit down.

**The PRESIDENT:** That is not a helpful debating point from the Leader of the Opposition. Nonetheless, I have substantial sympathy with the point of order. The Treasurer will answer the question.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr President. I was just trying to establish the grounds upon which the shadow Treasurer might be able to ask me a supplementary question. But I am so thrilled he has asked me a question. I point out a few things. He had 183 days to ask this question but he managed to get it factually wrong. The National Cabinet consists of First Ministers. I think what he is referring to is the Council on Federal Financial Relations [COFFR], which is the gathering of State and Federal Treasurers that took place prior to 6 December. I make that point of fact.

He is quite right in saying that the other State Treasurers and I managed to get the Commonwealth to extend the "no worse off" guarantee for an additional three years. That is a good piece of news. He is quite right in saying that at the National Cabinet, the Premier succeeded in getting the Commonwealth to finally take seriously its responsibilities—of adding funding to our health system. That is a good thing. Right now New South Wales gets only 39 per cent of the 45 per cent that it was promised. That is not the fault of Anthony Albanese; that is the fault of Scott Morrison. It is a credit to the Premier of New South Wales that in our first year he has managed to get more movement in seven months than those opposite got in 12 years.

But the shadow Treasurer asked a very important question about the proposition to do with the NDIS. The Commonwealth has to spell out what it expects the States to do. That is where we are up to in the conversation about the NDIS. We have made it clear to the Commonwealth that the clue is in the name—it is a national scheme. We do not think that a person's access to quality disability services should turn on whether or not they live in New South Wales, Queensland, Tasmania or Victoria. We want the Commonwealth to spell out precisely what it wants the States to do in foundational support schemes and it is yet to do so. We will be having a meeting about it tomorrow at the COFFR, which is where the State Treasurers meet with the Federal Treasurer. I look forward to the shadow Treasurer's supplementary question.

**The Hon. DAMIEN TUDEHOPE (11:13):** I ask a supplementary question. Will the Treasurer say whether he has done any modelling on what it might cost the people of New South Wales? This was the condition in return for the "no worse off" guarantee. How can he say that we will be no worse off in the circumstances when he does not know how much it will cost New South Wales to extract that guarantee?

**The Hon. Daniel Mookhey:** Point of order: I am not exactly sure what the shadow Treasurer asked me to update. What have I modelled? Is he asking me whether I have modelled the "no worse off" guarantee continuation? I would appreciate clarity about precisely what additional modelling I am being asked to confirm.

**The Hon. DAMIEN TUDEHOPE:** I will clarify it. It is extraordinary that the Treasurer would seek clarification on that because it clearly indicates he does not know. I would like the Treasurer to—

**The Hon. Courtney Houssos:** Point of order: That is an imputation on the Treasurer. The Treasurer has taken a point of order to seek clarification on a question that was asked. The question was a bit befuddled and we would like more clarification. Saying that the Treasurer does not know is inaccurate. The Treasurer has asked for clarification.

**The PRESIDENT:** I uphold the point of order. There have been some comments from members on both sides of the Chamber that have not been helpful. Members will allow the Leader of the Opposition to clarify the question and the Treasurer to then answer it.

**The Hon. DAMIEN TUDEHOPE:** I put it this way: Does the Treasurer know or can he confirm how much he has signed New South Wales up for in relation to its commitment in respect of the NDIS scheme?

**The Hon. DANIEL MOOKHEY (Treasurer) (11:15):** I thank the shadow Treasurer for the supplementary question. That is pretty good—two questions in one day! He asked me whether or not we have modelled a proposition that we have not yet agreed to. The first point is that if he had read the bottom of the communicate that was issued in respect to the National Cabinet, he would know that what the National Cabinet agreed to was for the State Treasurers, the Commonwealth and the First Ministers to reconvene in April as we work through the detail.

The second point is that if he read the communicate, he would also know that we obtained a commitment from the Commonwealth to cap the costs to all States. Equally, he would know that the third aspect the National Cabinet agreed to was that when it comes to the question of foundational support—which, dare I say, is important if one happens to be a person with a disability, and particularly if one happens to be a child who is seeking assistance—a lot turns on it. He would know full well, if he had read the communicate, that we are consulting with the sector. That is the point.

For the benefit of the shadow Treasurer, when it comes to modelling I would like to go back to 101. The first thing that one needs to do is to know what one is modelling. The answer to that is to reach a policy framework. Equally, when one is doing this at a mature level between governments, with everyone focused on each other's citizens, one works through the detail carefully, methodically and painstakingly, which is what we will do. I am pleased that in the first 12 months of our tenure in government we have more movement on health than that lot opposite got in 12 years. That is the foundation for further improvements. We will fight at the table for more education and more housing. [*Time expired.*]

**The Hon. MARK LATHAM (11:17):** I ask a second supplementary question. In his answer the Treasurer mentioned the meeting of Commonwealth and State Treasurers that he is attending tomorrow and the matters on the agenda. Will he elaborate on whether he will argue on behalf of New South Wales for an end to the 2018 Scott Morrison arrangement for an artificial per capita floor in GST distribution, which massively favours Western Australia and very much harms New South Wales?

**The Hon. DANIEL MOOKHEY (Treasurer) (11:18):** That is how one asks a question. I appreciate the second supplementary question from the Hon. Mark Latham. I am going to go further than that. The point I will be making at the COFFR meeting tomorrow is the same point made by Treasurers Perrottet and Egan: The entire system by which we decide to allocate the GST pool is absurd and we are better off having a system that distributes on a per capita basis, leaving it to the Commonwealth, through the rest of its grant system, to achieve the principles of horizontal fiscal equalisation. That has been a bipartisan position in New South Wales since the introduction of the GST. I can confirm that I will be making that point tomorrow. As I also said to the media prior to question time, I do not expect that to be a quick win, nor do I expect an imminent result from us arguing the case to entirely upheave the way we distribute GST.

But I make the point—and I suspect I will be making the point a bit later in question time as well—that the reason is New South Wales should not be short-changed. The fact that we are now exporting 14¢ out of every dollar to other States is a position that is not sustainable. I appreciate the fact that today we got clarity from the Leader of the Opposition in the other place as to which side he is on. I am pleased that he agreed with me when he said we should not be sending money to Victoria and to other States. I would now like the Federal shadow Treasurer to follow suit. I would like Opposition members to pick up the phone to Angus Taylor and tell him to act like a leader that respects the entire Commonwealth, not just one part of it. The Federal Liberal Party is right now saying to the people of New South Wales that a vote for Dutton is a vote to take more money out of New South Wales and send it to other States. [*Time expired.*]

## WESTERN SYDNEY ROAD INFRASTRUCTURE

**The Hon. BOB NANVA (11:20):** My question without notice is addressed to the Minister for Roads. What is the New South Wales Government doing to improve roads in Western Sydney?

**The Hon. JOHN GRAHAM (Special Minister of State, Minister for Roads, Minister for the Arts, Minister for Music and the Night-time Economy, and Minister for Jobs and Tourism) (11:20):** I thank the Hon. Bob Nanva for the question. Last week, there I was enjoying estimates. That will come to an end at some point, but I was enjoying estimates at the time. One of the issues I was being pressed on by Opposition members was when will I open roads and cut ribbons in Western Sydney. The shadow Minister had the great misfortune to ask me that immediately before I was about to head out there. In fact, the only thing standing between me and opening a road was the shadow Minister, although I pay tribute to her diligently doing her job by holding the Government to account.

But it was early next morning that I was out there. I was very lucky to be joined by the member for Leppington, Nathan Hagarty, and the member for Werriwa, Anne Stanley, to open a new upgraded section of Elizabeth Drive on the doorstep of the Western Sydney Airport. The Government is really opening up that airport precinct by constructing kilometres of new road. Since Monday, motorists have been driving on this road—using this smooth run into the city right near the Western Sydney Airport—which was opened the morning after I was questioned. The next stop was Riverstone to talk to Warren Kirby about Garfield Road East.

**The Hon. Sarah Mitchell:** Wow. You did all that in a year—funded it, designed it, planned it, built it. That's amazing. Everything should be delivered in 12 months!

**The Hon. JOHN GRAHAM:** Why is the Deputy Leader of the Opposition opposing this work? I am astonished that there is some objection to this good news about the people of Western Sydney getting these roads. I worked with Warren Kirby to look at the safety improvements along Garfield Road East that will rapidly unfold. This is part of a wider upgrade that was promised at the election, with delivery starting very soon. In Penrith, in the electorate of the newly elected member Karen McKeown, we discussed the Russell Street entry onto the M4 and Transport for NSW is committed to investigating driver concerns there. I then went to Prospect to meet Hugh McDermott and councillors to talk about the Toongabbie Bridge, and I thank the member for Prospect. I also thank the Hon. Peter Primrose for his advocacy on this project. I then went to Guildford Road to meet with the member for Granville, Julie Finn, and councillors who have been campaigning to install right-turn green arrows for traffic in both directions turning into Woodville Road.

One of the hazards of being a roads Minister going to Western Sydney to inspect these sites is that it can get a bit dangerous. As we were standing there, there were nearly two crashes, one after the other, at what turned out to be quite a dangerous intersection. I thank members of the community for campaigning for it. The Government is committed to changing it and I could see why, as cars came to a halt in the middle of the intersection and nearly collided with each other. I then went to Fairfield, Cabramatta and East Hills. I do not quite have time to elaborate, but I thank Opposition members for asking me about it. I will be happy to update further.

**The PRESIDENT:** I welcome to the Parliament year 10 commerce students from St Joseph's College in Lochinvar, who are participating in the How the Legislature Works program conducted by the parliamentary Communications, Engagement and Education team. You are all very welcome today. I also welcome Valentina Diaz, who is a student at the University of Sydney and who is an intern in the office of the Hon. Aileen Macdonald. You are very welcome.

## REGIONAL YOUTH CRIME

**The Hon. SARAH MITCHELL (11:24):** I also welcome the students who are here today. My question is directed to the Minister for Regional New South Wales in her own capacity but also representing the Minister for Police and Counter-terrorism. How many young people who have been charged with committing an offence in regional New South Wales over the past 12 months were also suspended from school at the time of their arrest?

**The Hon. TARA MORIARTY (Minister for Agriculture, Minister for Regional New South Wales, and Minister for Western New South Wales) (11:24):** I thank the Deputy Leader of the Opposition for the question. In this House this week we have had a lengthy discussion about the Government's approach to tackling youth crime in our regional communities. It is a very serious issue. The Government has outlined a package of work that we will be undertaking to address those issues. We know that this is a significant issue in our regional communities and we are listening to those communities about the best ways to address these issues and to make sure that we have the right settings and services in place to deal with the problems that regional communities are facing.

As I often do, I acknowledge the incredible work of our police in our regional communities. They are on the frontline of these issues and they are addressing the issues of crime immediately and successfully to the limits of their responsibilities. The Government is working across the whole of government and, as we have seen this week, is being ably led by the Premier in a whole-of-government response to how we deal with these issues—unlike the National Party which is trying to collect data and circumvent the work of the police.

**The Hon. Sarah Mitchell:** Point of order: I have listened to the Minister for over a minute. My question was extremely specific. It was about the number of young people who have been charged with committing an offence while they were suspended. I appreciate the Minister's preamble, but I would like to have an answer to my question.

**The PRESIDENT:** I uphold the point of order. The question is incredibly narrow in its scope, one of the most narrow we have had in the past 12 months. The Minister will come back to the question.

**The Hon. TARA MORIARTY:** Thank you, Mr President. I will take your advice. In relation to the specific nature of the question, of course I am talking broadly about my responsibility and my role as the Minister for Regional New South Wales. In that role I do not have specific data that the police and the police Minister would have about the numbers of people who have been charged. In that role, I do not collect or have specific data about school suspensions and students who might be on suspension from their schools. I am engaging quite genuinely in my approach because we know this issue is serious from my perspective as the Minister for Regional New South Wales. I acknowledge the question asking for specific details, which I will seek from the relevant Ministers, the Minister for Police and Counter-terrorism and the Minister for Education and Early Learning, and I will come back to the House with the details.

**The Hon. Damien Tudehope:** Point of order: I also acknowledge the girls from St Joseph's at Lochinvar as my wife is an alumnus of that school.

**The PRESIDENT:** That is not particularly a point of order, but I will allow it on this occasion.

#### ERARING POWER STATION

**The Hon. MARK LATHAM (11:28):** My question is directed to the Treasurer. How much will it cost the taxpayers of New South Wales to keep the Eraring Power Station open, noting that the former Treasurer, Mr Kean, said it would cost \$239 million for two years? Given that the Treasurer, the Hon. Daniel Mookhey, supported and voted for the electricity road map that caused the early closure of Eraring next year, will he now on behalf of the Government apologise to the taxpayers of New South Wales for the extraordinary payment to Origin Energy needed to keep our household lights on and industry and small business in New South Wales viable?

**The Hon. DANIEL MOOKHEY (Treasurer) (11:28):** I thank the Hon. Mark Latham for his question. I also take this opportunity to welcome the students who have joined us here today and say that, if it is the case—and I believe him—that the shadow Treasurer's wife is an alumnus, then they are standing in some very good stead and in some very good company as well. With respect to the question, I make three points. First, the member makes reference to a claim by the former Treasurer about the costs. I am not sure that the member's recollection of the former Treasurer's claim is accurate because I believe he said it would cost \$3 billion and not \$239 billion. Second, when the former Treasurer made that statement, Labor requested detail on precisely where he got such an estimate because members in the previous Parliament would recall that at no point did the former Treasurer provide that number to the Parliament and the Parliament interrogated it at some length. Again, I say to the former Treasurer and those who rely on his statements that it would be helpful if they were to precisely clarify the basis on which they obtained that information.

Third, the member who asked the question attributes the Eraring situation to the passage in the previous Parliament of the energy legislation, which was bipartisan; that is not accurate. We need to have conversations with the private owners of the Eraring Power Station because the previous Government privatised it. That is why such a decision is made by the new private owners of the Eraring Power Station instead of an elected government that answers to the people of New South Wales. I recount the nature of that privatisation, which the Government might have more to say about next week. That power station was sold for \$50 million. Last year, as I recall, Origin reported a profit from that power station of an order of magnitude of about \$554 million; that was from just one year. That is the result of the privatisation of that power station. That is why the Government finds itself in this position.

One might think that is a one-off, but I recall the sale of the Vales Point Power Station, which was sold for \$1 million and then resold for \$200 million a few years ago. Equally, and in a different context, privatisation of the tollways means that instead of government making decisions about the future of tolls, private owners do. When the Government makes the point that privatisation surrenders the prerogatives of the public, exhibit A is Eraring,

exhibit B is Vales Point and exhibit C is the tolls. The Government will continue to engage in conversations with the private owners of Eraring Power Station, but it is disappointing that we find ourselves in this position in the first place.

**The Hon. MARK LATHAM (11:31):** I ask a supplementary question. Will the Treasurer elaborate on his answer and advise whether, in his negotiations with Origin, the company has actually said to him that Eraring is closing early next year because it owns the station due to privatisation, or whether it has said to the Treasurer, as it has publicly, that it is because of the electricity road map and its impact on the profitability of that facility?

**The Hon. DANIEL MOOKHEY (Treasurer) (11:32):** I can confirm neither. Firstly, to be fair to the owners of the Eraring Power Station, I am yet to see the private owner of a business—who picked it up for a song—cheer about the fact that they managed to extract so much value as a result of privatisation. The ordinary behaviour of private owners of formerly public assets is to be coy about it. Secondly, Origin has not said that it attributes its decision to close the power station to the passage of the energy road map legislation. Thirdly, the energy road map gives us the opportunity to create jobs as we travel the road to net zero; that is the basis for bipartisanship on this issue.

Additionally, Origin can make its own decisions about the outlook of the energy market. It answers to its shareholders; the Government answers to the public. We would much prefer a government to decide when to shut down a power station than the private owners of a formerly public asset. Eraring is just one of about four stations that have been privatised. As the Government is doing across the board, it will responsibly make sure that it has those conversations and will strive to protect the taxpayers' interests throughout. But the Government is bitterly disappointed that we are in this position in the first place.

### ENVIRONMENTAL PROTECTION

**The Hon. STEPHEN LAWRENCE (11:33):** My question is addressed to the Minister for the Environment. Will the Minister update the House on actions the New South Wales Government is taking to increase the penalties for environmental crimes?

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (11:33):** I thank the member for his question. The Government went to last year's election promising the people of New South Wales that we would give them an Environment Protection Authority [EPA] that had teeth and that it would be a tough environmental cop on the beat to protect human health and the environment into the future. That is exactly what the Government is doing. The Government will introduce the biggest boost to environmental protection since the creation of the EPA in 1991. We are making history in protecting our environment for the future. Our reforms will directly improve the protection of human health, the environment and the community. During 12 years of the previous Government, environmental regulation and penalties stood still. Fines for pollution have not been increased since 2005 and have not even kept up with inflation. Too many bad operators factor in fines as the cost of doing business. Members of the Opposition sat on their hands when in government, but the Government is not going to do the same.

The current criminal investigation into asbestos-contaminated mulch highlights the need to address loopholes and give the EPA more investigative powers, and that is what the Government will do. The Government will double penalties to deter repeat offenders and make polluters pay. The Government is also boosting the powers of the EPA. The Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Bill will be introduced in the Legislative Council next week. I inform the House of some of the changes that will be in the bill. The bill will double the maximum penalties for tier 1 serious offences. Instead of a \$1 million fine for individuals, it will be \$2 million; instead of \$5 million for companies, it will be \$10 million. For tier 2 offences relating to asbestos, the Government will double individual fines from \$500,000 to \$1 million; fines for companies will increase from \$2 million to \$4 million.

The Government will crack down harder on illegal dumping. The number of people who raise the issue of illegal dumping in Sydney and in the regions is increasing. I do not think there is a member of Parliament who has not written to me about that issue. The Government is introducing a specific higher penalty for small-scale illegal dumping on sensitive land, such as schools and national parks, as well as new arrangements to make it easier for local councils to deal with that. The Government is introducing new product recall powers for materials that may be contaminated with harmful substances and establishing a name-and-shame process to issue public warnings about poor performers. The Government is also setting up a new waste accreditation scheme that targets the source of contamination to stop it happening in the first place.

Those are just some of the reforms the Government is introducing. I ask the Parliament to get behind them. They will be a down payment on Labor's election commitment to strengthen environmental protections in New South Wales. I look forward to introducing the bill to the House. I thank local government and those in the

waste industry who have spoken to me about their desires to get rid of dodgy operators and clean up the Environment Protection Authority Act for those who are doing the right thing, to ensure that we move to a circular economy and are able to recycle everything, and to tackle the problem we have experienced in the asbestos mulch issue—as one example.

### ENVIRONMENTAL PROTESTS

**The Hon. TANIA MIHAILUK (11:37):** My question is directed to the Leader of the Government. Given revelations in *The Daily Telegraph* today that the taxpayer is funding, through the so-called Environmental Defenders Office, the defence of alleged criminals engaged in civil disobedience and radical environmental activism, will the Leader of the Government ensure that protesters trying to game the Legal Aid system and avoid paying their own legal defence be required to pay for their own lawyers like anyone else?

**The Hon. Jeremy Buckingham:** Point of order: The question is out of order under Standing Order 65 because it contains argument and epithets. The question ascribes an attribute to persons contained within the question and so it should be ruled out of order.

**The Hon. TANIA MIHAILUK:** To the point of order: I do not agree with the Hon. Jeremy Buckingham's point of order. I am referring to parts of an article in a newspaper, and I do not see why there is any concern with how I have asked the question. I seek the President's guidance on that.

**The PRESIDENT:** Using the term "so-called" before "Environmental Defenders Office" is—

**The Hon. TANIA MIHAILUK:** I am happy to remove that.

**The PRESIDENT:** I was about to instruct the member to do so. Those words will be disregarded. Other than that, I am happy for the question to be answered. The Leader of the Government has the call.

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (11:38):** I thank the member for her question. I make a couple of points. The question probably should have been directed to the Hon. Daniel Mookhey because he represents the Attorney General in this House, but I have some information. The Environmental Defenders Office receives some New South Wales government baseline funding as part of the Community Legal Centres program, which is administered by Legal Aid NSW.

There are a range of different community legal centres throughout New South Wales: There is an HIV/AIDS one, the Inner City Legal Centre and the Women's Legal Service. The Environmental Defenders Office is no different. The idea is to provide support to those who cannot afford legal representation on a whole range of matters, and there are obviously some legal services that do incredible work in very specialised areas. The second point I would make is that the EDO notes on its website that the State's grants make up less than 10 per cent of its funding. It is mostly funded via other sources. The current funding that was allocated until June 2025 was awarded under the previous Government, so support for community legal services is bipartisan.

**The Hon. TANIA MIHAILUK (11:40):** I ask a supplementary question. Will the Minister elucidate and provide some information on whether the contractual funding agreement arrangements with the EDO are means tested as cases are brought forward to defend individuals?

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (11:40):** I am happy to take that on notice. As I said, this is really a question for the Attorney General. I am not in charge of those arrangements, but I am very happy to get the information and provide it to the member.

### MOREE YOUTH CRIME

**The Hon. NATASHA MACLAREN-JONES (11:40):** My question is directed to the Minister for Youth. Why was the Minister not included in the media announcement about the Moree regional crime pilot? Was she consulted on the design of the pilot and what role, if any, will she play in the implementation and assessment of its impact?

**The Hon. ROSE JACKSON (Minister for Water, Minister for Housing, Minister for Homelessness, Minister for Mental Health, Minister for Youth, and Minister for the North Coast) (11:40):** I thank the honourable member for her question. I am deeply involved in the Government's attempts to try to address the issues not just in Moree but also elsewhere across regional New South Wales. I visited Moree a couple of weeks ago, and it revealed a couple of things to me. First, the concerns of the community about youth crime and safety are deeply felt and genuine. The council and others whom I met made it clear how much the community was anxious and fearful about some of the experiences that people there have had. Second, it was also very clear to

me from meeting local youth organisations like Miyay Birray, which the Hon. Natasha Maclaren-Jones and other members may be familiar with, how much those organisations want to partner with the Government to deliver the services that divert young people from the activities that they are currently engaging in.

When I was on the ground in Moree I met not only with the council and people who talked to me about the community safety impacts but also with youth organisations, which talked to me about the types of programs that they would love to partner with the Government on. It was clear to me in those meetings, and in the subsequent conversations that I have had directly with the Premier, that all of the issues that he has been talking about repeatedly—the lack of coordination between services and the amount of money as a whole that the Government is putting into these communities—are limiting our ability to assess the impact of these services on the ground. I saw and felt all of that and was told about it by the organisations I met with. I have talked directly to the Premier about my experiences from my trip to Moree, and I know that he took my views and feedback into account as he developed the package that was put together.

I was not included on the press release because other Ministers were on it. It is not about being on a press release or turning up to a press conference. I have had direct meetings on the ground and direct conversations with the Premier. I passed on to him the concerns I heard, and they have been reflected in the language he is using. I will be involved in the rollout of programs in Moree and other communities, as I have historically been and as I have full confidence I will in the future. This Government is a team. We do not give a crap who is on the press release or who is at the press conference. We work together, we talk together, we go to communities and then we reflect what we hear to each other all the time.

**The Hon. NATASHA MACLAREN-JONES (11:43):** I ask a supplementary question. I note the comments the Minister made about consultation with the community and discussions she had with the Premier. Did she have any conversations with the Attorney General regarding the amendments to the Bail Act before the announcement?

**The Hon. ROSE JACKSON (Minister for Water, Minister for Housing, Minister for Homelessness, Minister for Mental Health, Minister for Youth, and Minister for the North Coast) (11:44):** I absolutely talked to all of my colleagues about the suite of measures involved in this package. I have also engaged in conversations with the Premier, the Attorney General, the Minister for Youth Justice and the Minister for Regional New South Wales individually at Cabinet. Obviously I am not going to detail those private conversations with other Ministers in the Cabinet. This team of Ministers, who care deeply about these matters, talk to each other privately and in Cabinet, and we will continue to do that. I made clear to them that there is a genuine community safety issue in Moree. I am not denying that.

When I went there and met with the council and others, they articulated clearly to me that people in those communities are anxious and fearful about the impact of crime. I do not deny or shy away from that. They also said to me that they welcome the opportunity to partner with the New South Wales Government to do better on wraparound services and diversion. As the Minister for Youth, Minister for Housing, Minister for Homelessness, and Minister for Mental Health, I welcome the opportunity to do that better.

I am so excited to be part of a government that has leant deeply into the challenging work of helping young people who have been victims of poverty, intergenerational trauma, hundreds of years of racism, discrimination and bigotry, and low expectations. We are saying to them, "We, as a government, believe you can do better. We will spend the money required to do that and we will deliver these services, co-designed and in partnership with you." I know I will have a seat at that table. My colleagues will hear my voice, as they always do, and I am fully confident that we will stick with those young people for the long term.

#### STATE BUDGET AND GOODS AND SERVICES TAX

**The Hon. GREG DONNELLY (11:46):** My question without notice is addressed to the Treasurer. What is the Treasurer's response to recent calls to change the way that GST is allocated between the States?

**The Hon. DANIEL MOOKHEY (Treasurer) (11:46):** I thank the member for his question. As I alluded to earlier in question time, there is a better way to distribute GST revenue between the States. At its core is a really simple proposition: GST should be allocated according to the number of people in each State and then the balance of Federal-State relations should be used to correct for the service delivery challenges that all States face. It is a much simpler, fairer system that ensures equally that, regardless of which State or Territory people live in, they have access to world-class public services.

The Government advocates for that position because it allows each State to plan properly for the future while also providing targeted assistance for the States that need it most in the areas they need it most. I make it clear that this does not mean that New South Wales—as the premier State in the Commonwealth, the biggest State, the most resilient State, the State with the biggest economy and the State whose economy is the most

diverse—will give up its responsibilities to support the smaller States. The Government recognises and embraces its obligation, as the leader of the Federation, to do that. South Australia, the Northern Territory and Tasmania should absolutely expect aspects of support from New South Wales, but a system that sees money move from New South Wales to Victoria and Western Australia, who now have pretty big and robust economies, is absurd.

As I said earlier in question time, this bipartisan view has been shared by both sides of the House and advocated by multiple governments for many years from the moment GST was introduced, and it should continue that way. The last time New South Wales had its funding share cut was during the treasurership of former Treasurer Perrottet, who was right to call it out and advocate for his position, which he did with the support of the then Labor Opposition.

Again, I do not expect that we will have many friends in this particular fight, but we have to start by telling the truth to the people of New South Wales about what this system means for them and their access to quality services. I point out that it is not like Moses came down from the mountain and said, "Thou shall distribute GST through obscure processes via horizontal fiscal equalisation as determined by the Commonwealth Grants Commission." We have agency over this matter. Someone can be in my job for a long time or be new to my job, but the reality is we have a responsibility and the ability to make a change if we so choose. There is nothing sacrosanct about the way we do it. We can do it better.

#### NSW POLICE FORCE MEDIA ADVISERS

**The Hon. ROD ROBERTS (11:50):** My question is directed to the Minister for Agriculture, representing the Minister for Police and Counter-terrorism. Karen Webb was appointed as the Commissioner of the NSW Police Force on 1 February 2022. In the 23 months of being commissioner, she has dismissed three public affairs executive directors: Mr Grant Williams, Mr Alex Hodgkinson and, more recently, Ms Liz Deegan. Will the Minister advise what the cost has been to New South Wales taxpayers regarding any termination, redundancy, separation, disengagement or severance payment for each of those former directors?

**The Hon. TARA MORIARTY (Minister for Agriculture, Minister for Regional New South Wales, and Minister for Western New South Wales) (11:50):** I thank the honourable member for the question that has been asked of me in my capacity representing the police Minister. The Government supports the work that the police commissioner is doing. She is very successful in that role, and we certainly support her to continue in that role. I acknowledge the detail of the question in relation to particular decisions that have been made within the police department, and I will undertake to get specific answers for the member and bring them back to the House.

#### REGIONAL YOUTH CRIME

**The Hon. BRONNIE TAYLOR (11:51):** My question is directed to the Minister for Regional New South Wales. Other than Moree, will the Minister advise which regional communities are the most impacted by crime?

**The Hon. TARA MORIARTY (Minister for Agriculture, Minister for Regional New South Wales, and Minister for Western New South Wales) (11:51):** I thank the member for the question. As I and other Government members have outlined all week—ably led by the Premier—we know that there are concerns about youth crime in regional communities across New South Wales, which we take seriously as a government. While we have announced and outlined the Premier's pilot program and the particular interest that he has taken in addressing the issues in Moree in conjunction with the leadership of that community, including the local member, the mayor and other groups, we know that issues are facing other communities, including in the Central West and Dubbo, as has been in media reports today. We have resources in those places and police are doing a successful job. We support the work that they are doing, but we acknowledge that this issue needs to be grappled with.

One reason we started with Moree is we know that hundreds of millions of dollars have been poured into community services there but there is no accountability for how any of that has been working. It is the same in other regional communities. We are starting in Moree to assess how that can be better tracked and accounted for and to see what is working and what is not. We will continue to do that across regional communities through working with local leadership, local mayors and local members to find the best solutions.

**The Hon. Bronnie Taylor:** Point of order: I am grateful to the Minister for her start to the answer, but my question was specific. It asked which regional communities are being most impacted by crime. I ask you to draw the Minister to the detail of the question.

**The PRESIDENT:** The Minister is being directly relevant to the question. The Minister has the call.

**The Hon. TARA MORIARTY:** We know that this is an issue across a number of our regional communities. I said that at the start of the answer. We know that. We are taking this seriously from every perspective. Moree is one example, which we have outlined plans for today. I have referenced the example of Dubbo that we have read about in media reports today. I have spent a lot of time in the Central West, and I have



heard directly from people. As my colleague the Minister for Youth outlined, we hear directly from local leaders across regional communities about the specific issues that they face in their towns and regions. We also hear their ideas for solutions. We want to work closely on local solutions with each local leader, whatever their politics. There is no politics in this. The National Party and the Opposition should refrain from playing politics with this issue that we are taking seriously. We are engaging with affected people and communities to find the right solutions.

**The Hon. BRONNIE TAYLOR (11:54):** I ask a supplementary question. In her answer the Minister mentioned Moree. She also mentioned another place, being Dubbo. Will the Minister inform the House of when the pilot will be extended to Dubbo?

**The Hon. TARA MORIARTY (Minister for Agriculture, Minister for Regional New South Wales, and Minister for Western New South Wales) (11:55):** As we have outlined repeatedly this week, the Premier has taken the lead on a pilot in Moree. We have outlined a significant suite of measures that will allow us to see what works. As I just outlined in my previous answer, hundreds of millions of dollars are going into that community but we cannot track any of the results. That is not acceptable. That was what happened for 12 years under the previous Government's watch.

**The PRESIDENT:** Order! Members will cease interjecting.

**The Hon. TARA MORIARTY:** Opposition members are trying to whip up politics with this issue, which is a very serious one. Local representatives and local mayors, regardless of their politics, and sensible local members of Parliament who do not want to play politics are very happy to engage with the Government on working through solutions. That is exactly what we should be doing. There should be no politics. We are getting on with the job of finding the right solutions to clean up the mess left after 12 years of inaction by members opposite. It is pretty arrogant and outrageous of them to try to ignore that situation now.

**The Hon. Emily Suvaal:** Point of order—

**The PRESIDENT:** Order! The Minister will resume her seat. There are too many interjections. I have refrained from calling members to order this week, but I will not restrain myself any longer. Members have been very good this week. Let us get through to the end of question time with decorum. The Minister has the call.

**The Hon. TARA MORIARTY:** Whatever people's politics, we are working with local leadership to work through local solutions. That is exactly what regional communities expect us to do. They are engaged and happy to partner with us to find solutions for these issues.

**Ms SUE HIGGINSON (11:57):** I ask a second supplementary question. The Minister referred to investment and money. Will the Minister elucidate what part of the \$26.2 million, which was coupled with her Government's recent announcement, goes towards measures that are not directly related to the incarceration of young people?

**The Hon. TARA MORIARTY (Minister for Agriculture, Minister for Regional New South Wales, and Minister for Western New South Wales) (11:57):** I thank the member for the question. It is a good question. The point of the suite of measures is to try to address this from a holistic perspective. Yes, some parts of those measures will require legislative change to amend the bail rules for young people in certain circumstances. I know that Ms Sue Higginson probably has feelings about and objections to that. I understand that is part of the conversation that we will have with the community. As I outlined this week, when I visited Moree recently, I also met with the mayor, the local member, Aboriginal Elders and local Aboriginal youth groups to hear solutions from every perspective. Part of the suite of measures will include support services to engage with young people. In Moree, most of the support services close at five o'clock in the afternoon. There are no activities occurring at night.

**The Hon. John Graham:** Point of order: I admire an expert, but the Deputy Leader of the Opposition must stop interjecting.

**The PRESIDENT:** I remember when the Deputy Leader of the Government was Deputy Leader of the Opposition. He also had some form in this area. Nonetheless, it is as true now as it was then that interjections are disorderly. The Deputy Leader of the Opposition will cease interjecting. The Minister has the call.

**The Hon. TARA MORIARTY:** This is an important question that I will engage on. We are ensuring that we are considering services not just from a law and order perspective but also that will improve and intervene in the lives of young people who are in trouble. That is a part of this package for a reason. We will engage with local leadership and local services about what initiatives can be engaged, particularly after hours and at night-time when there has been a lack of services. That will be a big part of it because there is a significant gap and, based on the

information that we have, it seems to be the time when most people are causing trouble. It is important to deal with these issues from a whole-of-government perspective and that is what we are doing.

### WATER BUYBACKS

**The Hon. PETER PRIMROSE (12:00):** My question without notice is addressed to the Minister for Water. Will the Minister inform the House of the New South Wales Government's alternatives to buybacks?

**The Hon. ROSE JACKSON (Minister for Water, Minister for Housing, Minister for Homelessness, Minister for Mental Health, Minister for Youth, and Minister for the North Coast) (12:00):** I thank the honourable member for the question. Members will be familiar with the fact that this Government has partnered with the Commonwealth to extend the deadlines for delivery of projects under the Murray-Darling Basin Plan, and we did that for two reasons. The first reason is that hundreds of millions of dollars are now flowing from the Commonwealth to this State to support the delivery of valuable and important water infrastructure projects in regional New South Wales. They are good for our environment, for local communities, jobs and projects on the ground. The second reason is that, imperfect as it is, the Murray-Darling Basin Plan is our best shot to try to protect this incredibly valuable ecosystem into the future. All of the basin States and the Commonwealth are coming together to plan the sharing of the precious water resources that are not infinite—they are finite. Particularly in dry times, it is very difficult for us to balance all of the competing interests and we have to try to do that together. It is not easy; it is hard. But we have to try to do it together and the plan is the best way to do that.

The Commonwealth has indicated that it is looking at voluntary water buybacks. We have been clear in New South Wales that we do not support that option as a tool to recover water in our State. But it is not just talk. I have not said that we do not support it—I have said that many times, but I have not said only that. We have done the Commonwealth's homework for it. We have written and submitted an alternative plan, which is publicly available. We have worked with all of the stakeholders. Farmers, irrigators, communities and councils have welcomed our plan. It is a detailed piece of work to say to the Commonwealth, "You don't need to engage in water purchase in New South Wales. We can deliver the environmental, water recovery and community outcomes that we both want to see without using this tool."

Our plan includes things like changing the rules to water recovery, on-farm efficiency programs, the Restoring Murray Waterways project from Murray Irrigation, regulators, crossings, and how we manage northern basin flows into the Menindee Lakes. That is the kind of work that is included in the plan. I bring the plan to the attention of the House because it is out there now. We have done the Commonwealth's homework for it; we have put this plan to the Commonwealth. In a bipartisan way, we should all get behind New South Wales communities to say, "There is an alternative and we've put it to you." We expect the Commonwealth to consider that option instead of water buybacks. *[Time expired.]*

### STATE BUDGET AND GOODS AND SERVICES TAX

**The Hon. JOHN RUDDICK (12:04):** My question is directed to the Treasurer. The Commonwealth Grants Commission has penalised New South Wales for our relative thrift and reduced our GST funding by \$1.65 billion. Victoria, on the other hand, has been rewarded for its sloth, with an increase of \$3.8 billion. That blatant unfairness is inevitable when the centralised Commonwealth dominates revenue collection and it is precisely what the Federation sceptics who dominated this Chamber in the 1890s feared centralisation would lead to.

**The Hon. Chris Rath:** Secession.

**The Hon. JOHN RUDDICK:** Thank you, yes. Is NSW Treasury considering—

**The Hon. Penny Sharpe:** Let's get rid of the Federation!

**The Hon. JOHN RUDDICK:** I second what the Leader of the Government just said. Let's get rid of the Federation.

**The Hon. Bronnie Taylor:** Abolish the upper House!

**The Hon. JOHN RUDDICK:** No, let's not do that.

**The PRESIDENT:** Order! The clock will be reset to 30 seconds because of the disorder in the Chamber.

**The Hon. JOHN RUDDICK:** Is NSW Treasury considering becoming an advocate for returning to the Federation era ideal of the States being exclusively responsible for raising their revenue?

**The Hon. DANIEL MOOKHEY (Treasurer) (12:05):** I thank the leader of the Libertarian Party for his fine question. It is fair to say that when I picked up the Commonwealth Grants Commission report my immediate

instinct was to think, "What would Henry Parkes do?" That was my first response. Then I turned to the book of Reid and thought, "How did George Reid handle this problem a century ago?" I promise I will continue to study the attitudes of that generation of politicians on this particular question. The member made reference to the idea that New South Wales should take over all the other States. I have to say, I was asked last night on *The Project* whether that was an option. As I said then and as I say now, should the call come, we are ready to seek.

The substance of the member's question is are we now inclined to recover the full suite of our taxation powers like we had in 1891 and 1901? I will make a few points. Just like I am not intending to ask our essential workers to cut their wages to pay for the mistakes of the Commonwealth Grants Commission and just like I am not intending to ask small businesses to pay more taxes in response to the Commonwealth Grants Commission, I am not inclined to rush to reintroduce an income tax in New South Wales. I will be honest and straightforward with the member about that.

The House should be aware that a few developments have occurred since 1901. In 1942 we had the uniform tax cases. I am sure the barristers and lawyers in the Chamber would have studied it a great deal at law school. Those cases made it quite clear that many of the powers that were given to the Commonwealth for the purposes of conducting the Second World War stay with it. Equally, we have had a few decisions made about excise tax, which means that we no longer have the power to put a tariff on goods coming into New South Wales from Victoria or Queensland. I will leave others to debate the merits of whether that was a good idea. It is fair to say that that was a constitutional hurdle that we had to encounter and navigate. The capacity for the States to issue their own currency—which is a concurrent power usually with taxation—sadly, is no longer with us either. I cannot issue the New South Wales dollar anymore. I will continue to study the question and I will always look to the contributions made from that Federation era, but I am not rushing to take Henry's advice.

### ROAD TOLLS

**The Hon. CHRIS RATH (12:08):** My question is directed to the Minister for Energy. Noting the Minister's statement that this Government absolutely recognises that private investment is vital to driving the energy transition and the response of Infrastructure Partnerships Australia to the toll review report, warning that "The threat of tearing up contracts sets a dangerous precedent—one we can't afford when we need to roll out billions to support the energy transition. A sure-fire way to make investors pause over the dotted line is to theatrically rip up one contract as we ask them to sign another", will the Government rule out overriding contracts by legislation as proposed by the toll review?

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (12:09):** I am happy to answer the question. I like the fact that I have been asked a question; I do not get that many from members opposite, so that is terrific. I thank the honourable member for his question.

**The Hon. Sarah Mitchell:** I asked you one this week, thank you very much.

**The Hon. PENNY SHARPE:** I always welcome a question from the Hon. Sarah Mitchell. I make the point that the person the member really needs to speak to, who has this very large toll report and is across all the detail, is the Hon. John Graham. It is not the intention of this Government—

**The Hon. Damien Tudehope:** The energy contracts are yours.

**The Hon. PENNY SHARPE:** We are not tearing up energy contracts.

**The Hon. Damien Tudehope:** There is the answer; there you go.

**The Hon. PENNY SHARPE:** Yes, very clearly. Of course we are not doing that. We are working carefully through the way in which we will transform the energy grid in New South Wales. I have always welcomed the bipartisan nature of that undertaking, although occasionally I am not quite sure of the position of some of the National Party members. We are doing the work. I stand by what I have said in the past because it is true. Private investment in the transition is extremely important and it is well underway. The good news is that we are almost getting close to half of the generation that we will need. It obviously has to be built, but in terms of the contracts and the projects that are locked in, we are getting there. The road map is also doing well. We are getting things moving. In particular, we have wind farms that are finally being approved through the planning system. We had two that were approved in the past six months; Minister Scully and I are working really hard on that. It had been over 2½ years since the last one was approved.

I do not want to debate the question too much, except to say that I am not quite sure of the bow or the gotcha moment that the member is trying to get as a result of this question. We are doing the work that is necessary. We recognise and welcome the private investment that is happening as a result of that. I think the point has been made several times today, and I will make it again, that the transition of the electricity system has been made

twice as hard—in fact, probably much harder—as a result of the privatisation undertaken by members opposite. Every single part of the transition is harder. As my colleague the Hon. John Graham is finding, dealing with toll roads and unwinding the mess, the patch work and the unfairness that exists, is also as a result of poor privatisation and privatisation of the roads network. That is what we are left with and that is the mess that we are fixing. In the way that we are also getting the road map back on track to make sure it is delivered in a timely fashion—at the least cost to consumers—we are working well with private industry to make that happen and we will continue to do so.

**The Hon. CHRIS RATH (12:12):** I ask a supplementary question. I thank the Minister for her response. The Minister has definitively ruled out ripping up contracts in the energy sector. Will the Minister do the same with the tolling companies?

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (12:12):** I think that is a restatement of the previous question, which I have answered. That is not what we are talking about in terms of the tolling review. If the member wants to ask the question in relation to that, as I said, my colleague the Hon. John Graham is right here. Any decisions that have been made have been made by Cabinet; I would not even want to pre-empt those. It is not the case that this Government wants to rip up contracts. We want to fix the toll roads for the people of New South Wales.

The time for questions has expired. If members have further questions I suggest they place them on notice.

#### *Supplementary Questions for Written Answers*

#### **MOREE YOUTH CRIME**

**The Hon. SARAH MITCHELL (12:13):** My supplementary question for written answer is directed to the Minister for Regional New South Wales. Will the Minister advise how much funding has been allocated specifically for out-of-hours activities in Moree as part of the regional crime pilot?

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

#### **TAKE NOTE OF ANSWERS TO QUESTIONS**

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

That the House take note of answers to questions.

#### **STATE BUDGET AND GOODS AND SERVICES TAX**

**The Hon. DAMIEN TUDEHOPE (12:13):** I take note of the answers to questions given today by the Treasurer during question time. The Treasurer is a late convert to batting on behalf of this State. This Treasurer would rather be a comedian than an advocate for the people of New South Wales. Anthony Albanese was in Western Australia, signing the arms of activists for ensuring that Western Australia retained the floor under its GST receipts distribution. We must ask this: Where was the Treasurer then, complaining about the concessions given by the Prime Minister guaranteeing Western Australia that not one cent would it lose to GST distributions? Where was the Treasurer complaining then? That was the time to call out the Federal Government. That was the time to call out Albanese. That was the time to call out Chalmers and say, "Hello, this is a circumstance where New South Wales is being treated unfairly." What did we hear? Not a word—crickets. The Treasurer then said, "We are now scandalised because New South Wales has not gotten its fair share." In the circumstances, it is a bit late to join the party. He goes down and enjoys the largesse of Canberra for his Treasurers' meeting, as he has told us today.

**The Hon. Daniel Mookhey:** It's online.

**The Hon. DAMIEN TUDEHOPE:** It is online. He goes along to the largesse supplied by Treasury while he engages. In fact, the engagement has to be called into question, because what did he achieve for the State of New South Wales? Extra commitments. In return for ensuring that we got a guarantee in relation to the GST provisions—the "no worse off" provisions—guess what he signed? The Premier, on his behalf, signed another agreement to commit New South Wales to a share of the NDIS payments. The Treasurer cannot quantify the "no worse off" in this Chamber today. He cannot tell us what that commitment will be. He tells us that we will talk about it some time in the future. He could have come to the Chamber today and said, "We guarantee that New South Wales will be no worse off in relation to those receipts." That is what a good Treasurer does. When Perrottet went to Canberra and negotiated with Morrison and Turnbull, he extracted an unconditional "no worse off" guarantee, not a conditional one like this Treasurer has signed us up for. This Treasurer will not do his job. [Time expired.]

### NSW POLICE FORCE MEDIA ADVISERS

**The Hon. ROD ROBERTS (12:16):** I take note of the answer provided by the Minister for Agriculture, representing the Minister for Police and Counter-terrorism. I am a realist. I asked the earlier question knowing that I will unlikely receive a full answer. Severance payments may well be covered by a confidentiality provision. I still asked the question, though, for one simple reason: I want to highlight the fact that in 23 months the commissioner has burned through three chief media advisers and is now about to commence with a fourth. What is this costing the taxpayers of New South Wales? More importantly, I also question why Karen Webb needs a team of media spin doctors and advisers. Surely the sole communication responsibility of the commissioner is to soberly inform the public of the facts relating to specific crimes and significant events—factual; no spin or media polish required. Straight out facts.

Whether the commissioner wants to accept it or not, leading from the front, taking interviews and regularly facing the cameras is an integral part of the job. People rightly expect their police commissioner to be a calm, present and authoritative voice during difficult times. I expect that Karen Webb would have known this is a requirement of the job when she applied for it. After 23 months in the job, though, many within and outside of the Police Force are questioning her ability. Where is the Government in all this mess? Surely the Premier notices that there is a common denominator in those three terminations and that is clearly the commissioner. The police Minister continues to blindly support the commissioner and seems to have no concerns about Karen Webb's poor public performances. Perhaps that is because the Minister is not highly regarded in the art of turning up to give a competent public statement. With an absent Minister and a quiet commissioner, the public is right to question the current state of affairs: a commissioner who always defers to one of her deputies and a Minister who is kept away from cameras by the Premier.

Let me be clear: My comments are not about hate. I do not hate Karen Webb—quite the opposite. Whilst I have never worked with her, I firmly believe that she is a good-hearted person and a good police officer and was well regarded as a deputy commissioner. I simply believe—and this is quite apparent, as her performance has shown us—that she has failed to transition one extra step to police commissioner. I say such things because it is my job to hold the Government and appointed officials to account. It is my job to ensure that public money is spent wisely and efficiently. I am simply doing my job. I call on Chris Minns and Yasmin Catley to do theirs.

### ENVIRONMENTAL PROTECTION

**Ms SUE HIGGINSON (12:19):** I take note of the answer provided by the Leader of the Government in this House to a bizarre question about the funding of the Environmental Defenders Office [EDO], an institution close to my heart and one that I know intimately.

**The Hon. Daniel Mookhey:** Declare an interest.

**Ms SUE HIGGINSON:** I did. It is important for members of this House to understand what it is we are talking about. The EDO is an incredible civil society organisation that was formed in about 1985. The first solicitor of that organisation providing community legal services was the now Chief Judge of the Land and Environment Court—none other than Brian Preston, one of the greatest environmental legal minds of this world and of our time. It is important to understand that it provides access to justice. Without that organisation, many communities, people, farmers, community organisations and individuals would be left without any access to one of the most complicated areas of law in New South Wales, namely environmental and administrative law. That organisation is about helping communities hold governments to account. Why did the member ask a question about the funding of that organisation? Let us be real about that. It does not even receive funding from the New South Wales Government. It receives a very small amount of funding from the Commonwealth in comparison to the services it provides.

Interestingly, in the late 1990s and early 2000s the Public Purpose Fund, which is a Law Society driven board, determined that the Environmental Defenders Office was the golden child of how to provide community legal services. It was an organisation that pioneered multidisciplinary provision of legal services, including through litigation where necessary and as a last resort to come to the aid of community members standing up for their local environment and the health of their communities; policy and law reforms to assist governments and decision-makers on how to make law better; and community legal functions. Those lawyers are literally out there with farmers, advising them on how to understand the environmental laws that impact them on a daily basis. All of that, of course, intersects with the complexity of the science of our natural environment. I commend the Minister for acknowledging the longstanding bipartisan support for the Environmental Defenders Office and its important functions. I am very proud that I was once a very small part of it.

### ENVIRONMENTAL PROTESTS

**The Hon. TANIA MIHAILUK (12:23):** I take note of the answer given by the Leader of the Government to the question I asked about why the Environmental Defenders Office [EDO] is funding and supporting individuals who protest and cause an incredible amount of social upheaval and economic vandalism. I acknowledge that the Minister made clear that the State Government does provide some funding to the EDO, albeit 10 per cent of the overall funding that it receives. Of course, it also receives a larger amount from the Federal Government. I note that was reinstated last year by the Federal Labor Government. For 10 years the EDO did not receive Federal funding. However, contrary to what The Greens member just stated in the House, it did receive and has been receiving some funding from New South Wales for a number of years now.

It is important to understand that judges in a number of recent cases have made it very clear that there needs to be a review of the EDO and the manner in which it conducts its cases. I note the Santos case. Justice Charlesworth, in slamming the EDO evidence, said that it was "so lacking in integrity that no weight can be placed" on it. She said there was "a significant degree of divergence" in the evidence given by the witnesses that the EDO brought forward in that case. The EDO is now self-reviewing. The organisation acknowledges there are some problems. But the problem that I would like this House and the Government to consider is how much taxpayer money is going to the EDO to defend certain individuals.

The Government is now going to be a little tougher on people putting their crimes on TikTok and social media. I do not think there is much difference between those people and the serial offenders who are tying themselves to rail corridors, stopping coal trains in the Hunter, stopping traffic on the Harbour Bridge and travelling from State to State causing major upheaval to business and communities. That is why I asked the supplementary question about whether the legal aid is means tested. We expect legal aid to be means tested. There is no evidence at this stage to ascertain that. There is no question that those individuals who are part of those protests—they are probably rich school kids—are relying on taxpayer funding to defend their cases. A number of cases have already been cited and referred to, where people have been charged and have sought assistance from the EDO. It is a timely opportunity for the Government to review the funding agreements between the New South Wales Government and the EDO.

### STATE BUDGET AND GOODS AND SERVICES TAX

**The Hon. JEREMY BUCKINGHAM (12:26):** I take note of the answer given today by the Treasurer regarding the carve-up of GST and the Commonwealth Grants Commission. It has been remiss of me not to have turned my attention to the Commonwealth Grants Commission prior to today's debate. It is a fascinating area of public policy once one looks into it. The Commonwealth Grants Commission came out of the push for new federalism in the 1970s. The composition of the Commonwealth Grants Commission is an interesting issue that I want to raise because the Commonwealth Grants Commission is just a three-person body: one chairperson and two appointees by the Governor-General—I guess at the suggestion of the Treasurer or a Minister of the Commonwealth.

Its website says its work "is a key plank of Australia's Federal financial relations"—that is true—"with an impact on Australians' wellbeing". Isn't that a fact? The interesting point for me is that the Commonwealth Grants Commission in its recent update said that—and this is part of its remit—it is effectively withholding GST from the States because we have a capacity, in its words, to raise mining royalties. That is a pretty proactive body forcing the State into a policy position on land tax and royalties. I am not an expert on land tax, but I have paid particular attention to coalmining royalties. An unelected body in Canberra is saying to the States, "You have to push up coal royalties otherwise we'll punish you in the billions of dollars."

**The Hon. Mark Latham:** The State has.

**The Hon. JEREMY BUCKINGHAM:** The State has to some extent, but the commission is continuing to say that we should go further. It did the same to Queensland, but the Queensland Treasurer is not screaming blue murder because he is already getting rivers of gold from its super profits from coalmining royalties. It is an interesting area of public policy in that an unelected body is proactively pushing prospective policies on New South Wales, although upping coalmining royalties is one that I welcome, because there is still a lot of coal going out of Newcastle. Yancoal and the Minerals Council know they are making a lot of coin. But it is an interesting point and I think an area that needs reform to make sure it is more representative and reflects the best interests of the people of New South Wales.

### ERARING POWER STATION

**The Hon. MARK BUTTIGIEG (12:29):** I participate in the take note of answers debate. In particular, I take note of the answer given by the Treasurer to the Hon. Mark Latham's question regarding the implied closure of power stations because of the energy road map. It reminded me of how badly New South Wales has fared as a

result of the obsession with privatisation by members opposite. Even if one believes that these things should be run by the private sector—that is, electricity networks, electricity generation, toll roads—and even if one believes things should be manufactured overseas, one would think that, notwithstanding ideology, when one was selling these things they would try to get a good deal on behalf of the public. The Treasurer reminded us just how bad it was.

Let us forget about the litany of failures—the overseas-manufactured trains, light rail and ferries. Yesterday members spoke about the toll roads. The people of New South Wales are on the hook for \$123 billion until 2060. What a great deal that was! To paraphrase Kerry Packer, these private companies must have looked at the Coalition Government and thought, "You only get one Coalition government in a lifetime." The Vales Point Power Station was sold for \$1 million by the previous Government in 2015 and then on sold by new owners Delta for \$200 million in 2002, topped up by \$130 million in dividends to the private owners in the three years leading up to 2022. What a deal it was for these people. It makes a mockery of the New South Wales taxpayers.

I come to the subject of my take-note debate contribution today, Eraring Power Station. In 2013 it sold for \$50 million, with \$300 million paid on broken compensation contracts and then \$550 million in dividends, as the Treasurer told us, just in the last year. Not only do we have this philosophy of a monopoly controlled by private owners taking away control from New South Wales taxpayers, represented by their Government, but on top of that members opposite could not even manage a transition whereby when they were selling these things off, the public at least got a decent deal. It is an indictment on not only that whole philosophy but also the inability of members opposite to manage money at a basic level and get a decent deal on behalf of New South Wales taxpayers. We should never, ever revisit privatisation again.

### ERARING POWER STATION

**The Hon. MARK LATHAM (12:32):** I take note of the answer of the Treasurer regarding the early closure of Eraring Power Station and put on record the truth of the matter. The Labor position in the debate about the Electricity Infrastructure Roadmap, stated in hundreds of contributions and hundreds of votes, was that the coal-fired power stations should close and New South Wales go to 100 per cent renewable energy as quickly as possible. Ownership made no difference to the Labor Party. The position articulated by its then leader and spokesperson, the Hon. Adam Searle, was that whether these are publicly or privately owned coal-fired power stations, they will close as quickly as possible under Labor Party policy.

When Origin Energy CEO Frank Calabria announced the early closure of Eraring, scheduled for August next year, he said it was because of the rise of renewable energy making coal-fired power stations uneconomical. In New South Wales, the fastest rise of renewable energy was what is described as the bipartisan support for the electricity road map in November 2020 to create 100 per cent renewable energy in this State. It is a paradox—a nonsense, in fact—for the Treasurer to say the real villain is privatisation when the Labor Party policy was that whether they were publicly or privately owned, we would close them—they are all gone. The position was that all the coal-fired power stations would go as quickly as possible and New South Wales would move pronto to 100 per cent renewable energy.

The villain in bringing forward the early closure of Eraring was the electricity road map and the move to go quickly to 100 per cent renewables in New South Wales, supported down the line by the Labor Party and the now Treasurer, the Hon. Daniel Mookhey. He should apologise to the people of New South Wales both for that foolhardy rush to 100 per cent renewables and what will be the enormous cost of trying to keep Origin Energy's Eraring Power Station open so we can keep the lights on in New South Wales and keep our enterprises viable. It is true that there was confusion by former Treasurer Matt Kean as to what the cost might be. He said that up-front there could be a cost of \$239 million for two years to keep Eraring open. Then he said the long-term cost might be \$1 billion and then he said the long-term cost might be \$3 billion. He was not the most astute Treasurer around and he did not always have accurate figures. However, whether it is any of those three amounts, it is a lot of money.

Let us be honest: It is five minutes to midnight. This facility, which provides 25 per cent of the New South Wales electricity supply, is slated to close in August next year. Mr Calabria had said, I suppose sensibly enough, that for maintenance planning Origin would need some 18 months to two years notice as to whether or not Eraring needs to stay open. We are right on schedule now for the Government to make a decision. It will be costly. The Treasurer should apologise for the fact that in supporting that road map, Eraring is closing early and it will cost a mint to keep it open.

### ROAD TOLLS

**The Hon. Dr SARAH KAINE (12:35):** I take note of the question and the answer given about tolling contracts. I note my surprise at the rhetorical approach taken by the Hon. Chris Rath in using his question about

the interim toll report as the basis to jump off into a seemingly unrelated question. It is most interesting that he chose that approach rather than dealing with the substantive issues that were revealed by that report and, in fact, canvassed in some detail in this House yesterday. Yesterday members spoke about the inequitable distribution of the cost of toll roads across Sydney and the disproportionate impact on west, north-west and south-west Sydney—particularly of that WestConnex part of the network—and the large amounts of revenue that has generated for the operators of those toll roads.

The report also talks about the deterrence effect of the tolls. While the toll roads were meant to improve the flow of traffic, the inadvertent effect of them has been to divert drivers from those toll roads onto non-tolled roads. We have seen that exacerbate local traffic congestion issues through trucks taking local roads to avoid the tolls, which often they cannot recoup from the clients and customers they work for. Indeed, other issues were raised that were still not addressed in those questions or acknowledged by the Opposition. The report referred to there being no unified system of tolling. It noted that determining the toll for each tollway had been dependent on economic, commercial and political considerations without considering efficiency or traffic flow on those roads, which members would imagine to be the crux of it.

The approach of Opposition members is in contrast to that of Government members. We are engaged in thinking about this issue but also, as the Minister for Roads mentioned, looking at the non-tolled local roads that are an important part of our system. Government members raised this in the debate yesterday as well as in answers today. We are listening to local communities about the impact of non-tolled roads and local roads, and considering the issues raised by them to improve safety and traffic flow. Indeed, that is what the Opposition should be focused on rather than rhetorical questions with tangential relevance to the Minister.

### ENVIRONMENTAL PROTESTS

**The Hon. CAMERON MURPHY (12:38):** I did not intend to speak in this take note of answers debate. However, I was moved by the comments of the Hon. Tania Mihailuk regarding the Environmental Defenders Office to take note of the answer by the Leader of the Government. I have some experience in this area. I had a quick look and, on my count, I have appeared for at least 126 protesters who have been charged with offences following their efforts on climate change. In most of those, I was briefed by the Environmental Defenders Office.

The point I want to make is that I was never paid. I never sought any payment from the Government for that work because, as a barrister, I was acting pro bono—for the public good—in representing people who had been charged. I take this opportunity to commend members of the legal profession who do this important pro bono work. It is work that assists the court. It results in efficiencies. When somebody is represented, it is a much smoother process. It ultimately saves the Government money because the court system runs effectively and efficiently. In terms of means testing and the issue raised around that, I had one single matter when there were more than 75 individuals who had been charged as a result of two protests over consecutive days involving a similar organisation and a similar group of people. In that matter it would have been absurd to go through a process of means testing people.

If someone is appearing in court and dealing, effectively, with the same set of facts at the same event and they have, as I had in that case, everybody bar one person pleading guilty, then it would have taken more time and effort to means test people than to simply represent their pleas in mitigation on sentencing in those matters. As I say, a lot of this work is done by members of the legal profession in their own time at their own expense. It is valuable and important work that saves the court system money and it saves the State money in turn. I commend them for their work. I hope the Environmental Defenders Office, members of the bar and solicitors keep up the good public interest work that they do.

### TAKE NOTE OF ANSWERS TO QUESTIONS

**The Hon. DANIEL MOOKHEY (Treasurer) (12:41):** It is good that we had question time and it is good that we took note of the answers.

**The ASSISTANT PRESIDENT (The Hon. Peter Primrose):** The question is that the motion be agreed to.

**Motion agreed to.**

*Written Answers to Supplementary Questions*

### MINING IMPACTS INQUIRY DRAFT REPORT

In reply to **Ms CATE FAEHRMANN** (13 March 2024).



**The Hon. COURTNEY HOUSSOS (Minister for Finance, Minister for Domestic Manufacturing and Government Procurement, and Minister for Natural Resources)**—The Minister provided the following response:

I am advised my office did not provide the Resources Regulator with a copy of the draft report.

Please refer to pages 64 and 65 of the uncorrected transcript of Budget Estimates, Portfolio Committee No. 1, Thursday 7 March, for the evidence given by Department of Regional NSW officials relating to the draft report.

Deliberations in relation to reports of Legislative Council inquiries are ultimately voted on by those committee members.

The New South Wales Government response to the inquiry will be tabled in the near future.

### **MOREE YOUTH CRIME**

In reply to **the Hon. SARAH MITCHELL** (13 March 2024).

**The Hon. TARA MORIARTY (Minister for Agriculture, Minister for Regional New South Wales, and Minister for Western New South Wales)**—The Minister provided the following response:

Out of hours activities will be designed and delivered in partnership with Moree Plains Shire Council, in consultation with the community, as soon as practicable having regard to local needs.

**The ASSISTANT PRESIDENT (The Hon. Peter Primrose):** I shall now leave the chair. The House will resume at 2.00 p.m.

### *Bills*

## **ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SEA BED MINING AND EXPLORATION) BILL 2024**

### **In Committee**

**Consideration resumed from an earlier hour.**

**Ms CATE FAEHRMANN (14:02):** I move The Greens amendment No. 1 on sheet c2024-022A:

No. 1      **Exemption regulations**

Page 4, Schedule 1, proposed Schedule 10, section 3(2), line 8. Omit "consult with". Insert instead "obtain the concurrence of".

The amendment essentially amends clause 3 (2) of the bill, changing the requirement for the Minister for the Environment to simply be consulted and instead requiring that the planning Minister obtain the concurrence of the environment Minister. It is vitally important that we ensure the bill does what it intends to do. Banning seabed mining and petroleum exploration also means establishing safeguards against delegated legislation that could override or interfere with the legislation as it stands. I have explained much of this already in my contribution to the second reading debate, but the requirement to consult simply leaves too much room to allow for exemptions to the prohibitions the bill proposes.

The bill does not provide that the Minister must discuss and come to a decision in concurrence with the environment Minister but must simply consult. In the process of granting exploration permits and approving projects, we know the word "consult" is often used to steamroll community concerns and expedite the process of approval. "Consultation" can be interpreted very vaguely. Consultation could essentially mean a chat in the lift, or an email. In other words, the Executive can entirely redefine the substantive intent of the bill. I thank the planning Minister's office and the environment Minister for their discussions on the amendment. They very quickly came to agreeing to this change, which really improves the bill.

**The Hon. PENNY SHARPE (Minister for Climate Change, Minister for Energy, Minister for the Environment, and Minister for Heritage) (14:03):** The Government supports The Greens amendment. As I said, the intention of the bill is to ensure that we cannot have seabed mining or petroleum exploration. The Government has a different view to The Greens about whether the regulatory power needs to exist. We do not want any unintended consequences, and we think things are changing over time. We are comfortable with that and are happy to support the amendment, which makes sure the environment Minister has concurrence on any regulations.

**Ms SUE HIGGINSON (14:04):** I commend my colleague Ms Cate Faehrmann for such an important amendment and initiative. The concurrence in the amendment is important. Ms Cate Faehrmann identified the difference between consultation and concurrence, which is very important to distinguish. Concurrence is an important feature in administrative law and in the functions of the Executive. The idea that independent bodies and officers sit within ministries is a vital component. It is a feature of environmental legislation that came through in the 1990s. We have since left that feature behind a little bit.

Concurrence is such an important symbol, as well as function, for communities to know that there is rigour, accountability and collegiality. Most importantly, it allows communities to know that disagreement can happen in earnest and concurrence may not be achieved for various important merit-based reasons. Concurrence provides the community with deep understanding and more accountability about the way we reach decisions, particularly between the Planning and Environment portfolios. As I said, that was a feature of legislation we have moved away from. I commend the Government for recognising that concurrence is really important to our system of decision-making.

**The CHAIR (The Hon. Rod Roberts):** Ms Cate Faehrmann has moved The Greens amendment No. 1 on sheet c2024-022A. The question is that the amendment be agreed to.

**Amendment agreed to.**

**The CHAIR (The Hon. Rod Roberts):** The question is that the bill as amended be agreed to.

**Motion agreed to.**

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

That the Chair do now leave the chair and report the bill to the House with an amendment.

**Motion agreed to.**

### **Adoption of Report**

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

That the report be adopted.

**Motion agreed to.**

### **Third Reading**

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

That this bill be now read a third time.

**Motion agreed to.**

## **EMERGENCY SERVICES LEVY AMENDMENT BILL 2024**

### **First Reading**

**Bill introduced, read a first time and ordered to be published on motion by the Hon. Daniel Mookhey.**

**The Hon. DANIEL MOOKHEY:** According to standing order, I table a statement of public interest.

**Statement of public interest tabled.**

### **Second Reading Speech**

**The Hon. DANIEL MOOKHEY (Treasurer) (14:12):** I move:

That this bill be now read a second time.

The Government is pleased to introduce the Emergency Services Levy Amendment Bill 2024. Emergency services help people in their greatest time of need. They provide critical services to protect and preserve the lives and property of everyone. The disastrous bushfires, storms and floods in recent years have meant that the emergency services have been increasingly relied upon. With the total cost of flood and bushfire to the economy projected by Treasury to increase from \$7 billion in 2020-21 to up to \$24 billion by 2070-71, the need to ensure our emergency services are funded in a fair, efficient, simple and sustainable way has never been greater.

Currently, our key emergency services agencies—Fire and Rescue NSW, the NSW Rural Fire Service and the NSW State Emergency Service—are funded primarily through the emergency services levy on insurance companies. The emergency services levy represents about 73.7 per cent of emergency services agencies' annual funding needs, which in 2023-24 is budgeted to cost insurers approximately \$1.4 billion. This levy is a significant burden on households, since insurance companies generally recover their contributions by imposing a surcharge on policyholders' premiums, which increases the cost for households and businesses to insure their properties. This, in turn, sees some households and businesses underinsure and others not insure at all. In fact, 35 per cent of households in New South Wales do not have contents insurance and 5 per cent of home owners do not have building insurance, the highest rates of any State in Australia. Removing the emergency services levy on insurance would therefore reduce the cost of premiums and encourage a greater uptake of insurance. This is one of the

reasons the Premier announced at his Bradfield Oration last year the Government's commitment to remove the emergency services levy from insurance and instead to place a levy on property owners across the State.

To ensure the reform's goal of achieving a fairer, more efficient, simpler and sustainable funding system for emergency services, critical distribution analysis will be required to be performed in order to understand the impacts of a new replacement levy on our community. Notably, the Government does not intend to repeat the mistakes of the former Government as it attempted to reform emergency services funding during the past decade. The ultimately unsuccessful fire and emergency services levy faced criticism and fierce backlash for not having sufficiently considered the impacts on particular parts of the community. Early access to insurance data will therefore allow distributional analysis to be performed. This will, in turn, enable the reform to be designed in such a way that the new replacement levy does not unfairly impact any one group of property owners.

I now turn to the detail of the bill. The Government's emergency services funding reform does not currently fall within the scope of the Treasurer's current power to obtain information under section 47 (1) of the Emergency Services Levy Act 2017. Given the critical importance of the data for tax modelling and distributional impact analysis, the proposed amendments seek to grant the Treasurer the authority to require information, including unit record data of insurance policyholders, from insurers for the purposes of evaluating and implementing reforms to emergency services funding. To help ensure that insurers comply with the Treasurer's request, it is proposed that insurers that fail to provide the requested data be guilty of an offence and liable to a penalty.

Given the extent of the powers and nature of the data, the authority is proposed to be transitional only. The duration of the powers will be limited to a reasonable time during the reform and will extinguish by 31 December 2026. The Government also understands and respects that there will be privacy concerns regarding the personal information being held. To address these concerns, the bill includes a number of privacy protections, including the requirement that no personal information is disclosed outside of the Treasury and that any personal information collected through this process would not be retained by the Treasury beyond 30 June 2028. Treasury has also consulted the Information and Privacy Commission New South Wales in the development of the bill.

The bill seeks to enable the Treasurer to require insurers to provide important insurance data to inform the development of policy for the emergency services funding reform. This modelling and distributional analysis is critical to ensuring that the reform achieves the right outcomes for our community, and to ensure that New South Wales' emergency services are funded by a fairer, more efficient, simpler and sustainable system. The term "levy" also includes the obvious point about a charge, and the terms are somewhat substitutable with each other. I point this out as members digest the meaning on the bill and deliberate whether or not to vote for it. I commend the bill to the House.

**Debate adjourned.**

## **AGEING AND DISABILITY COMMISSIONER AMENDMENT BILL 2023**

### **Second Reading Speech**

**The Hon. MARK BUTTIGIEG (14:18):** On behalf of the Hon. Penny Sharpe: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Ageing and Disability Commissioner Amendment Bill 2023. The bill amends the Ageing and Disability Commissioner Act 2019. This Act commenced on 1 July 2019, establishing an independent agency of the New South Wales Government to promote to rights of adults with disability and older people and protect them from abuse, neglect and exploitation. The Ageing and Disability Commission performs a range of critical functions, including responding to reports about abuse, neglect and exploitation of adults with disability and older adults; raising public awareness about abuse, neglect and exploitation of adults with disability and older adults; coordinating the Official Community Visitors scheme in settings where adults with disability and older adults are in the full-time care of service providers as well as assisted boarding houses; and monitoring, assessing and reporting on the implementation of Australia's Disability Strategy in New South Wales.

Section 36 of the Act requires the Minister to commission an independent review of the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. An independent review was conducted by Mr Alan Cameron, AO, and was tabled in Parliament on 25 May 2023. I thank Mr Cameron for his excellent work on the review. The Government broadly supports the recommendations he has made, and the bill implements almost all of those recommendations. In doing so, it will make changes that strengthen the ability of the Ageing and Disability Commission to protect and promote the rights of adults with disability and older adults.

There are only two recommendations the Government is not seeking to implement in the bill. Those are recommendation 3 (b), which would have expanded the circumstances in which the commissioner can investigate

without the adult's consent, potentially undermining the right to privacy, and recommendation 11, which was to appoint a parliamentary committee to monitor and review the functions of the commissioner. The Government did not seek to implement this recommendation as the commissioner is already subject to parliamentary oversight through existing provisions in the Act and the committee process. However, we recognise this matter will be dealt with through amendments. The bill currently implements all other recommendations made in the statutory review.

The bill makes the following key changes. It allows the Ageing and Disability Commissioner discretion to refer relevant reports to other bodies, and to not refer reports if the adult does not wish the information to be reported. It extends the circumstances in which the commissioner may investigate allegations without the consent of the relevant adult to cover situations where the commissioner cannot obtain access to the person. It broadens information sharing with organisations and individuals that provide supports to adults with disability or older people. It permits Official Community Visitors to provide advice to the Department of Communities and Justice and the NDIS commissioner, in addition to the Minister, and to the Ageing and Disability Commissioner. It requires service providers to notify the Ageing and Disability Commission about contact details, and it requires that the Ageing and Disability Advisory Board to include two or more older adults.

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

### **Leave granted.**

I now turn to the detail of the bill.

### **Substantive changes**

The bill gives the Ageing and Disability Commissioner discretion to refer reports to other complaint bodies. Currently, section 13 (8) provides that if the commissioner is of the opinion that a report constitutes a complaint that may be made to certain other bodies, including the Health Care Complaints Commission and the Children's Guardian, the commissioner must refer the report to them.

Schedule 1 [3] gives the Ageing and Disability Commissioner discretion to refer reports to other complaint bodies. This will provide flexibility for the commission to not refer matters, for example where the reporter indicates they would rather separately contact another complaint body directly. In the statutory review report, Mr Cameron noted, "I am confident the commissioner will continue to report serious matters of which the relevant agencies should be aware with respect to which they may need to take action." I share that confidence and consider it appropriate that the commissioner have this discretion.

Similarly, schedule 1 [5] gives the Ageing and Disability Commissioner discretion to not refer reports to the police if the commissioner believes on reasonable grounds that the adult does not wish the information to be reported. This amendment, via a new subsection 13 (9A), aligns with one of the principles in section 4 of the Act, that adults with disability and older adults have the right to privacy and confidentiality. Notably, section 316 of the Crimes Act requires all persons to report serious indictable offences to appropriate law enforcement agencies, and the commissioner remains subject to this requirement irrespective of the proposed subsection 13 (9A).

Together, items [3] and [5] will implement recommendation 2 of the statutory review, and bring New South Wales into line with other Australian jurisdictions, none of which have mandated referral requirements.

The bill extends the circumstances in which the commissioner may investigate allegations without the consent of the relevant adult to cover situations where the commissioner cannot obtain access to the adult. This implements recommendation 3 (a) of the statutory review, and can be found in schedule 1 [6].

This amendment is intended to cover situations such as where the relevant adult cannot be contacted because an alleged perpetrator is blocking access, and where the adult cannot be spoken to in a safe and confidential setting to seek consent. Stakeholders considered that the commission's inability to gain access to some adults in abusive situations, in order to seek consent, was a significant issue affecting its ability to investigate.

The bill expands the Act's information sharing provisions to implement recommendation 4 of the statutory review. A new section 14A has been carefully drafted to balance the right to privacy with the practical need to facilitate service provision and enable the Ageing and Disability Commission to perform its protective functions.

Section 14 of the Act currently permits information sharing, but this is limited to sharing with "relevant agencies", which is defined to include government bodies and some health organisations. Section 14 does not apply to other entities that the Ageing and Disability Commission relies on in its day-to-day work of responding to reports and addressing abuse. This includes aged-care and disability service providers, private health practitioners, and private providers of financial and legal services.

The new section 14A, found in the bill at schedule 1 [8] will permit the sharing of relevant information with organisations and individuals that engage with or provide supports to adults with disability or older people.

Consistent with section 14 of the Act, the commissioner may share "relevant information" with an entity for the purpose of enabling the entity:

- to provide a service in relation to the safety of an adult with disability or older adult,
- to make an assessment in relation to the safety of an adult with disability or older adult, or
- to take action in respect of the safety of adults with disability or older adults generally.

Section 14A will also allow entities to disclose relevant information to the commissioner for the purposes of enabling or assisting the commissioner's handling of a report under the Act.

Ordinarily, privacy law only permits the disclosure of personal information with consent, unless an exception applies. Sections 14 and 14A are both exceptions to this general rule, to the extent that they potentially allow the disclosure of some personal information without the consent of the relevant person.

I note that the Legislation Review Committee has provided comment on these sections in *Legislation Review Digest No. 9/58*. I thank the committee for their comment. The committee's comments were addressed in detail by the Minister in the Legislative Assembly during the debate, as required by Sessional Order 188A. These sections appropriately balance the right to privacy with the need to make disclosures for the safety of vulnerable adults.

Although section 14A allows disclosure of personal information without consent, it is subject to reasonable and proportionate limitations.

First, it only allows the commission to disclose information to non-government entities in relation to the safety of adults with disability or older adults. This reflects Mr Cameron's comments in the statutory review that the expansion of information sharing powers, with limits, is consistent with facilitating the Act's objectives, but that information sharing should only be expanded in relation to safety issues.

Similarly, section 14A only allows non-government entities to provide relevant information to the Ageing and Disability Commission for the purposes of enabling or assisting the commissioner's handling of a report under the Act. Section 13 provides that to make a report there must be "reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation".

The new range of people and organisations with whom information may be shared under section 14A are reminded, via a note to the section, that unauthorised disclosure of information obtained under the Act is an offence under section 31. This offence protects the privacy of the older adults and adults with disability whose information is being shared.

The bill also expands the operation of the Official Community Visitor scheme. This change will allow Official Community Visitors to provide advice or information to the NDIS commission and the Secretary of the Department of Communities and Justice. This is in addition to their important function of providing advice or information to me, as Minister, and to the Ageing and Disability Commissioner, which is already permitted under section 22 of the Act. This change, made by items [10] and [11] of schedule 1, will ensure that the NDIS commission and the Secretary of the Department of Communities and Justice can also be given information about providers of concern, or trend and pattern information about providers and visitable services. The change implements recommendation 5 of the statutory review.

The bill requires disability service providers to notify the Ageing and Disability Commission of their contact details, any new visitable services, or location changes to existing visitable services they operate. This sensible, practical change is achieved through the new section 24A, which is inserted by schedule 1 [12]. This change ensures that the Official Community Visitor scheme is kept apprised of new services or changes to the addresses of services, so that they may be visited. It implements recommendation 6 of the statutory review.

The bill also adds an additional requirement about the diversity of members of the Ageing and Disability Advisory Board. This is an important board that advises the commissioner on any matter that the board considers appropriate or that is referred to the board by the commissioner.

The composition of the board must reflect the diversity of the community. The Act already specifies that its members must include two or more people with disability, representatives from relevant advocacy organisations, and at least one representative of the disability or aged-care service sector. Schedule 1 [17] amends section 29 to require that the board also includes two or more older adults. This implements recommendation 9 of the statutory review and reflects the commission's important functions in safeguarding both adults with disability and older adults.

Relatedly, the bill addresses internal inconsistencies within section 29 between the responsibilities of the Minister and the commissioner regarding membership of the Ageing and Disability Advisory Board. Currently, the responsibility under section 29 (4) to ensure the diversity of the membership of the board sits with me as Minister, whereas the commissioner is responsible for a range of other matters under section 29, including determining appointments, removals, fees and allowances. The statutory review noted the internal inconsistencies in these allocations of responsibility, as it is illogical for one person to be responsible for appointments and removals for the board, while another is responsible for diversity of the board, where these functions are inherently interlinked. Recommendation 10 of the statutory review was for these inconsistencies to be resolved.

The bill does this in schedule 1 [15] by allocating responsibility for ensuring diversity of the board to the commissioner instead of me, as Minister. Although these functions for other statutory boards often fall to the Minister, that is also because most statutory boards advise the Minister. In this case, the board advises the commissioner, and the commissioner is the most appropriate person to hold the appointment, removal and diversity responsibilities under the Act.

#### **Minor amendments**

There are also some minor amendments made by the bill, responsive to statutory review recommendations.

Schedule 1 [2] updates section 12 of the Act to reflect the fact that the National Disability Strategy has been replaced with Australia's Disability Strategy 2021-2031. This implements recommendation 1 of the statutory review.

Schedule 1 [13] repeals section 26 as a spent provision. This implements recommendation 8 of the statutory review.

#### **Conclusion**

This bill will strengthen the ability of the Ageing and Disability Commission to perform its important functions, including in relation to safeguarding adults with disability and older adults who are subject to, or at risk of, abuse, neglect or exploitation.

The final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recognised what an important function the Ageing and Disability Commission performs in safeguarding adults, particularly in responding to violence and abuse in the community. The royal commission went so far as to recommend that other States and Territories introduce similar bodies.

I thank all the stakeholders who made submissions to the statutory review, or the targeted consultation on the draft bill. Their recommendations were considered carefully and many have been implemented in this bill.

### Second Reading Debate

**The Hon. NATASHA MACLAREN-JONES (14:22):** I lead for the Opposition in debate on the Ageing and Disability Commissioner Amendment Bill 2023 and state that the Liberals and The Nationals support the bill. However, I will move an amendment in the Committee stage to establish a parliamentary joint committee to monitor and review the functions of the commissioner. The Ageing and Disability Commissioner Act was introduced by the Liberal-Nationals Government in 2019 and marked a significant milestone with the appointment of the first Ageing and Disability Commissioner. I acknowledge former Minister Gareth Ward for his role in introducing these reforms and I also acknowledge the commissioner.

This independent role, which commenced on 1 July 2019, was established with the explicit objective to protect and promote the rights of older people and adults with disability from abuse, neglect and exploitation. This followed reviews and inquiries, such as the Law Reform Commission review of the Guardianship Act that was conducted in 2018 and the New South Wales Parliament Legislative Council General Purpose Standing Committee No. 2 inquiry into elder abuse held in 2016. Both recommended a public advocate with investigative powers.

It had been identified that there were gaps in exiting mechanisms and that the safeguards did not go far enough to support older people or people with disability. For example, individuals with disabilities had limited recourse to the safeguards provided by the NDIS Quality and Safeguards Commission if they were not utilising services funded by the NDIS. Furthermore, these complaints were restricted to service providers and excluded family members. In addition, the Health Care Complaints Commission solely had jurisdiction over complaints against health practitioners. Therefore, the Ageing and Disability Commission [ADC] was established to address these gaps by empowering the commissioner to handle allegations related to the mistreatment of people with disabilities and vulnerable older adults, whether it occurs in their homes or community settings. Furthermore, the commission integrated the Elder Abuse Helpline and Resource Unit, renaming it the Ageing and Disability Abuse Helpline.

In October 2022 the independent statutory review of the Act commenced to assess the continued validity of the policy objectives outlined in the Act and also to evaluate whether the terms of the Act were still suitable for achieving those objectives. The independent review was conducted by Mr Alan Cameron, AO, and was tabled in Parliament on 25 May 2023. I express my gratitude to Mr Cameron for undertaking this review and thank the individuals and organisations who made submissions. The review received 17 submissions in response to the discussion paper, which was circulated during the public consultation period. Additionally, the review considered feedback from an online survey, focus groups with individuals with lived experiences and direct stakeholders. The majority of submissions agreed that the objectives outlined in the Act remained valid and that the terms of the Act remained appropriate for accomplishing these objectives. The submissions also acknowledged the pivotal role of the ADC in protecting adults with disabilities and older people against abuse, neglect and exploitation.

The independent review made 11 recommendations including minor and technical amendments to the Act. The bill introduces the following key changes. It allows the Ageing and Disability Commissioner discretion to refer relevant reports to other bodies and to not refer reports if an adult does not wish the information to be reported, aligning New South Wales with other Australian jurisdictions, which do not mandate referral requirements. It widens the circumstances in which the commissioner may investigate allegations without the consent of the relevant adult to cover situations where the commissioner cannot obtain access to the person, such as where the relevant adult cannot be contacted because an alleged perpetrator is obstructing access or where the adult cannot be approached in a secure and confidential setting to obtain consent. It also broadens information-sharing with organisations and individuals that provide supports to adults with disability or older people, such as disability and aged-care providers, health practitioners, financial and legal services providers, thereby enhancing the ability of ADC to effectively respond to reports and address instances of abuse in its daily operations.

The bill also introduces change that permits Official Community Visitors to provide advice to the Minister, the commissioner, the Department of Communities and Justice and the NDIS commissioner through new section 14A, which will assist with the handling of a report under the Act and the flow of information about providers of concern or trend and pattern information about providers and visitable services. New section 24A requires service providers to notify the Ageing and Disability Commission about their contact details and any new visitable services or location changes to existing visitable services, so that the Official Community Visitor scheme remains informed about new services and changes to service addresses so that they may be visited. Finally, the bill adds an extra requirement about the diversity of members of the Ageing and Disability Advisory Board, requiring the board to include two or more older adults. This complements the existing mandate under section 29

of the Act, which already outlines the inclusion of two or more individuals with disabilities, representatives from relevant advocacy organisations and at least one representative from the disability or aged-care service sector among its members.

The Government has decided not to implement two of the recommendations, as was outlined earlier. One was recommendation 11, which was to "amend the Act to appoint or designate a parliamentary committee to monitor and review the functions of the Ageing and Disability Commission". I note in the comments made by the Minister in her reply speech in the other place that this was already subject to parliamentary oversight through the budget estimates process and also the annual report tabled in Parliament. However, a number of stakeholders do not share this position and support the recommendation to establish a separate mechanism for oversight, including the ADC and New South Wales Official Community Visitors, which I will address in more detail in the Committee stage.

I note the work of the ADC. On behalf of the Opposition, I extend our thanks to Mr Robert Fitzgerald, AM, for his work as the first Ageing and Disability Commissioner in New South Wales and for his unwavering commitment to protecting people with disabilities and older individuals from abuse, neglect and exploitation. I commend the commissioner's caregiver-inclusive strategy and supportive approach, and also the work he has done to raise awareness and educate people on reports of abuse and neglect. I wish him all the best in his new role. I commend the bill to the House.

**Ms ABIGAIL BOYD (14:29):** As The Greens disability rights and inclusion spokesperson, I contribute to debate on the Ageing and Disability Commissioner Amendment Bill 2023. The Greens support the bill, which will amend the Ageing and Disability Commissioner Act 2019 to implement all except two of the recommendations of the 2023 statutory review of the Act. The Ageing and Disability Commissioner, Robert Fitzgerald, has done an excellent job in leading the commission since its establishment in 2019, including through the Ageing and Disability Abuse Helpline, the Official Community Visitors [OCV] scheme and collaboration with other agencies to deliver outcomes for people with disability and older people across New South Wales.

The commission's demand has grown exponentially since it was established. Notably, in the first six months of the financial year, the helpline saw a 28 per cent increase in calls and the commission saw an approximately 17 per cent increase in the number of statutory reports. That increase in demand demonstrates the success in the commission's reach and influence and the significant number of vulnerable people in our community.

In each round of budget estimates I have had the pleasure of questioning the commissioner about the progress of the commission. The commissioner has put on record several times how severely underfunded the commission has been, and continues to be, to the extent that it is unable to fulfil its statutory duties. The commissioner has time and again affirmed that the commission was essentially set up to fail by the former Government, with such a woefully unsustainable budget. I recall being quite upset and concerned about the budget being proposed for the commission at the initial stages of discussing the ageing and disability bill, which is one of the first bills that I represented The Greens on. Continuing to underfund an important body indicates the priorities of the government of the day. I hope we see an improvement.

During budget estimates in 2022, the commissioner estimated that the funding shortfall was approximately \$9 million over the following three years. Since then, under the new Labor Government, that funding shortfall has remained. However, I note that in the 2023-24 budget, the commission's budget of \$4.5 million was supplemented by the Department of Communities and Justice by \$2.5 million. Unfortunately, that amount was only a one-off supplementary funding amount, which the commissioner has indicated will not fix the funding shortfall in the long term. The commissioner mused in budget estimates in February this year that 2024 might be the year that we finally rectify the funding shortfall, if we implement a demand-based model to keep up with the current demand and projected increases. I urge the Government to commit to adopting a demand-based funding model, in line with the repeated calls from the commissioner.

I also urge the Government to be far bolder in investing in the commission to not only allow it to fulfil its statutory duties but also to reach even more people with disability and older people in our communities needing support. The commission has fulfilled an essential role in supporting adults with disability and older people across the State. However, we know that 3.7 million people with disability in New South Wales are shouting out for help on so many issues, and the Government is just not listening. More robustly funding the Ageing and Disability Commission to allow it to flourish is one small aspect of how the Labor Government can and must improve the lives of people with disability in New South Wales.

The 2023 statutory review received written submissions from a range of disability advocacy stakeholders, including the Physical Disability Council of NSW, People with Disability Australia, the Council for Intellectual Disability and more. I note that many of the recommendations from those organisations included calls to further

strengthen the Ageing and Disability Commission, for example, by expanding the scope of the OCV by including general boarding houses; creating an accessible comprehensive guide to the Act for older people and people with disability; clarifying relevant factors to be considered when determining whether an individual has the capacity to consent; and clarifying whether to pursue a complaint without consent.

I note that there have also been discussions about whether the commission should be expanded to include servicing children and young people with disability, which was not considered in the 2023 statutory review. Two of the recommendations from the statutory review were not taken up, one of which we will discuss during Committee of the whole. I encourage the Labor Government to continue to improve the operations and capability of the Ageing and Disability Commission. The Greens support the bill.

**The Hon. EMILY SUVAAL (14:34):** I contribute to debate to support the Ageing and Disability Commissioner Amendment Bill 2023. I start by noting the unique situation we are in, with a reform-rich environment for disability policy on a broader scale. We have received significant recommendations from the disability royal commission and the NDIS review for governments to consider. I also note the upper House inquiry that is going on in this space as well and commend the chair of the inquiry. There has been a vast amount of New South Wales Government stakeholder engagement, and the Minister has held general and issue-specific consultation forums.

A number of disability policy forums have been held to date, including the initial disability royal commission recommendations forum and the Aboriginal and Torres Strait Islander forum. There will be future disability policy forums looking at issues such as housing, child protection and education. Vulnerable people all across New South Wales rely on Labor governments to provide opportunity and address disadvantage. Barriers still exist, including financial and language barriers, isolation and coercive control, and these all add to the vulnerability faced by older people, and particularly adults with a disability.

I join other members to acknowledge the tireless work and efforts of the Ageing and Disability Commission in New South Wales and thank the outgoing Ageing and Disability Commissioner, Robert Fitzgerald, who will be soon become the Federal Age Discrimination Commissioner. We wish him well. The Official Community Visitors program has been an amazing success. We thank everyone involved for their work visiting facilities and keeping an eye out for potential abuse. They visit accommodation services for children, young people and people with a disability.

The Ageing and Disability Commission receives over 14,000 calls a year, which is extraordinary. It has provided support 3,000 times to older people or adults with a disability. We know that women are more likely to be victims of abuse. There have been 62 investigations and 34 referrals to police from the commission. Many more referrals have been made to community supports, which is an important and welcome initiative. I commend Ms Abigail Boyd and the Hon. Natasha Maclaren-Jones for their work on the bill and the amendments to the bill, which we will work through, and also for their ongoing and tireless advocacy in this space. It does not go unnoticed. I commend the bill to the House.

**The Hon. STEPHEN LAWRENCE (14:39):** I speak in support of the Ageing and Disability Commissioner (Amendment) Bill 2023. The bill amends the Ageing and Disability Commissioner Act 2019 and follows an independent statutory review of the Act. I am certainly glad to see the implementation of the majority of the recommendations that allow the Ageing and Disability Commissioner discretion about whether to refer relevant reports to other bodies, and to not refer reports if the adult does not wish the information to be reported. It also extends the circumstances in which the commissioner may investigate allegations without the consent of the relevant adult, and that is to cover situations where the commissioner is not able to obtain access to that person.

The bill also broadens information sharing with organisations and individuals that provide support to adults with a disability or older people. It also permits Official Community Visitors to provide advice to the Department of Communities and Justice and the NDIS Commissioner, in addition to the Minister and the Ageing and Disability Commissioner. It also requires service providers to notify the Ageing and Disability Commission about contact details and also requires that the Ageing and Disability Advisory Board include two or more older adults. Certainly, the bill introduces a broad sweep of legislative amendments in light of that independent statutory review of the Act.

I will address in more detail the bill's implementation of the statutory review recommendations relating to the question of consent, which I have briefly addressed. Schedule 1 [6] extends the circumstances in which the commissioner may investigate allegations without the consent of the relevant adult to cover situations where the commissioner cannot obtain access to the person. This does not create a loophole, however, for investigating without the person's consent. Rather, the bill extends the circumstances in which the commissioner may investigate allegations without the consent of the relevant adult to cover situations where the commissioner cannot obtain access to the adult. This is an implementation of recommendation 3 (a) of the statutory review.



Although it does create an exception to the normal rule that an adult must consent before an investigation can commence, there is an important policy reason for this change. The amendment is intended to cover situations such as where the relevant adult is not able to be contacted because an alleged perpetrator is blocking access, and where the adult cannot be spoken to in a safe and confidential way to seek consent. Unfortunately, sometimes a carer of an older person or a person with a disability is also a perpetrator of abuse, violence or neglect. Stakeholders considered that the commission's inability to gain access to some adults in abusive situations, in order to seek consent, was a significant issue affecting its ability to investigate.

As to the question of the bill not implementing recommendation 3 (b), that recommendation would have introduced a concept of impaired capacity when assessing an adult's capacity to consent to an investigation by the commissioner. The Government did not accept this recommendation as it would allow the commissioner to investigate without an adult's consent more easily in some cases, and that would potentially undermine the right to privacy. Currently, section 13 of the Act requires the commissioner to obtain the consent of the adult with a disability or the older adult before investigating an allegation of abuse, neglect or exploitation of that adult. However, the adult's consent is not required in some cases, including if the commissioner is of the opinion that the adult is incapable of giving consent despite having been provided with the appropriate support for the purposes of making such a decision.

Recommendation 3 (b) of the statutory review proposed changing the test for capacity in this provision. It recommended introducing a test based on section 24 of the South Australian Ageing and Adult Safeguarding Act 1995. The recommendation stated that the Act should introduce a presumption of capacity; enable the commissioner to investigate without consent where capacity is relevantly and sufficiently impaired; and that the Act give guidance on when capacity is relevantly and sufficiently impaired. That question of capacity being relevantly and sufficiently impaired poses a lower threshold for assessing capacity than the test that is currently in the Act, which, of course is "incapable of giving consent".

Recommendation 3 (b) would, effectively, expand the number of adults whose situations could be investigated without their consent, since more adults have impaired capacity compared with those who are entirely incapable of giving consent. This would create a risk that the requirement to obtain consent may be easily overcome, with associated risks to privacy, as identified in the statutory review report. In conclusion, I commend the bill to the House. It further strengthens the ability of the Ageing and Disability Commission to respond appropriately to complaints that involve the abuse of older persons or adults with a disability.

**The Hon. BOB NANVA (14:45):** I am also pleased to speak in support of the Ageing and Disability Commissioner (Amendment) Bill 2023. It is abundantly clear that following the very good independent statutory review of the Ageing and Disability Commissioner Act that changes needed to be made, particularly the changes in the bill being debated today. The disability policy of parliaments across the country is perhaps among the most quickly evolving of policy areas. Responsible governments need to be agile in their response to the changing needs and pressures facing adults with a disability as well as older Australians. We are clearly in a reform-rich environment at the moment, having had many recommendations to consider from the disability royal commission and ongoing reviews into the NDIS. The bill, in particular, is one tranche of changes that governments can make to protect the dignity of older or disabled members of our community.

I particularly welcome the strengthening of the Ageing and Disability Commission's ability to respond to complaints that involve the shocking abuse of older persons or adults with a disability. It will do so, in part, by giving the Ageing and Disability Commissioner more discretion about whether a report made to it should be shared with other bodies or to not refer reports onward should the adult not wish that information to be reported. I welcome the fact that information can be shared with organisations and individuals that provide support to disabled adults or older people.

Among the other improvements that I welcome is the fact that the Ageing and Disability Advisory Board will include two or more older adults putting in practice a simple and important principle that a board which affects older Australians should reflect older Australians. These reforms not only respect the agency of older people and people with a disability; they broaden information-sharing to ensure that they will get better service, better protections and more assurance that their needs are considered. While there is clearly more to do in this space, these are incremental but important steps to ensure our disability support services will be fit for the twenty-first century. The disability royal commission pointed to the NSW Ageing and Disability Commission as best practice. The bill will seek to strengthen that even further, which is a very good thing. I commend the bill to the House.

**The DEPUTY PRESIDENT (Ms Abigail Boyd):** We welcome to the Parliament year 11 legal studies students from St Joseph's College in Lochinvar, who are participating in the Legal Studies and the Legislature program conducted by the Parliamentary Education and Engagement team. Welcome to the Parliament.

**The Hon. MARK BUTTIGIEG (14:49):** In reply: I thank the Hon. Natasha Maclaren-Jones, Ms Abigail Boyd, the Hon. Emily Suvaal, the Hon. Stephen Lawrence and the Hon. Bob Nanva for their contributions to debate on the Ageing and Disability Commissioner Amendment Bill 2023. The bill amends the Ageing and Disability Commissioner Act 2019 to implement a number of recommendations arising from the independent statutory review of the Act. I acknowledge the contributions of the Opposition and The Greens regarding the creation of a new joint parliamentary committee. The Government has been clear on that issue. We fundamentally believe in transparency and accountability. The Ageing and Disability Commissioner has several avenues to raise issues publicly: speaking directly with members of Parliament, appearing before budget estimates hearings multiple times a year and providing annual reports to Parliament.

The commissioner is an independent statutory officer, and no-one could reasonably suggest that the commissioner has been prevented from dealing with parliamentarians. Nevertheless, the Government understands the concerns raised by members opposite and the proposal for additional parliamentary oversight. There is no objection to the contributions that both the Opposition and The Greens have made. We will consider the amendments shortly. I note that the bill will strengthen the ability of the Ageing and Disability Commission to perform its important safeguarding functions, including protecting the rights of adults with disability and older adults to live free from abuse, neglect and exploitation. I commend the bill to the House.

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

**Motion agreed to.**

### In Committee

**The CHAIR (The Hon. Rod Roberts):** There being no objection, the Committee will deal with the bill as a whole. There are two sheets of amendments, being Opposition amendments Nos 1 to 3 on sheet c2024-015B and The Greens amendment No. 1 on sheet c2024-002C. I invite the Hon. Natasha Maclaren-Jones to move the Opposition amendments first.

**The Hon. NATASHA MACLAREN-JONES (14:55):** By leave: I move Opposition amendments Nos 1 to 3 on sheet c2024-015B in globo:

**No. 1 Parliamentary joint committee**

Page 3, Schedule 1[1]. Insert after line 7—

*joint committee* means the Committee on Ageing and Disability constituted under section 28A.

**No. 2 Parliamentary joint committee**

Page 5, Schedule 1. Insert after line 28—

**[13A] Part 5A**

Insert after Part 5—

**Part 5A Committee on Ageing and Disability**

**28A Constitution of joint committee**

- (1) A joint committee of members of Parliament, to be known as the Committee on Ageing and Disability, must be appointed.
- (2) The joint committee must be appointed as soon as practicable after—
  - (a) the commencement of this part, and
  - (b) the first session of each Parliament.
- (3) The joint committee has the functions conferred or imposed on the joint committee by or under this Act or another Act.
- (4) Schedule 2 contains provisions relating to the joint committee.

**28B Functions**

- (1) The joint committee has the following functions under this Act—
  - (a) to monitor and review the exercise of the Commissioner's functions,
  - (b) to report to both Houses of Parliament, with the comments the joint committee thinks appropriate, on any matter—
    - (i) relevant to the Commissioner or connected with the exercise of the Commissioner's functions, and

- (ii) to which, in the joint committee's opinion, the attention of Parliament should be directed,
- (c) to examine each annual report and other report—
  - (i) made by the Commissioner, and
  - (ii) presented to each House of Parliament under this Act, Part 5 or another Act,
- (d) to report to both Houses of Parliament on matters appearing in, or arising out of, the annual reports or other reports,
- (e) in relation to trends and changes in services and issues affecting adults with disability and older adults—
  - (i) to examine the trends and changes, and
  - (ii) to report to both Houses of Parliament about changes the joint committee thinks desirable to the functions and procedures of the Commissioner,
- (f) to inquire into any question in connection with the Commissioner's functions that is referred to the joint committee by both Houses of Parliament and to report to both Houses on the question.
- (2) Nothing in this part or Schedule 2 authorises the joint committee to—
  - (a) reinvestigate a particular report, or
  - (b) reconsider a decision to investigate, not to investigate or to discontinue the investigation of a particular report, or
  - (c) reconsider the findings, recommendations, determinations or other decisions of the Commissioner, or another person, in relation to a particular investigation or report.
- (3) The Commissioner may, as soon as practicable after a report of the joint committee has been tabled in a House of Parliament, prepare and give to the Presiding Officer of the House a report in response to the report of the joint committee.

#### **28C Membership**

- (1) The joint committee consists of 7 members as follows—
  - (a) 3 members who are members of, and appointed by, the Legislative Council,
  - (b) 4 members who are members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the joint committee must, as far as practicable, be in accordance with the practice of Parliament in relation to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the joint committee if the person is a Minister of the Crown or a Parliamentary Secretary.

#### **No. 3 Parliamentary joint committee**

Page 6, Schedule 1. Insert after line 3—

#### **[18] Schedule 2**

Insert after Schedule 1—

#### **Schedule 2 Committee on Ageing and Disability**

##### **1 Vacancies**

- (1) A member of the joint committee ceases to hold office—
  - (a) when the Legislative Assembly is dissolved or expires, or
  - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
  - (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly, or
  - (d) for a member who is a member of the Legislative Council—if the member resigns the office by written instrument addressed to the President of the Legislative Council, or
  - (e) for a member who is a member of the Legislative Assembly—if the member resigns the office by written instrument addressed to the Speaker of the Legislative Assembly, or
  - (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint 1 of its members to fill a vacancy among the members of the joint committee appointed by the House.

##### **2 Chairperson and deputy chairperson**

- (1) There must be a chairperson and a deputy chairperson of the joint committee, who must be elected by and from the members of the joint committee.
- (2) A member of the joint committee ceases to hold office as chairperson or deputy chairperson of the joint committee if the member—
  - (a) ceases to be a member of the joint committee, or
  - (b) resigns the office by written instrument presented to a meeting of the joint committee, or
  - (c) is discharged from office by the joint committee.
- (3) If there is a vacancy in the office of the chairperson or the chairperson is absent from New South Wales or is for any other reason unable to perform the duties of the chairperson, the deputy chairperson may exercise the functions of the chairperson under this Act or the *Parliamentary Evidence Act 1901*.

### 3 Procedure

- (1) The procedure for calling meetings of the joint committee and conducting business at the meetings must, subject to this Act, be determined by the joint committee.
- (2) The Clerk of the Legislative Assembly must call the first meeting of the joint committee in each House of Parliament in the way the Clerk thinks appropriate.
- (3) At a meeting of the joint committee, 4 members constitute a quorum, but the joint committee must meet as a joint committee at all times.
- (4) The following person must preside at a meeting of the joint committee—
  - (a) the chairperson,
  - (b) if the chairperson is absent—the deputy chairperson,
  - (c) if the chairperson and deputy chairperson are absent—a member of the joint committee elected to chair the meeting by the members present.
- (5) The deputy chairperson or other member presiding at a meeting of the joint committee has, in relation to the meeting, all the functions of the chairperson.
- (6) The chairperson, deputy chairperson or other member presiding at a meeting of the joint committee has—
  - (a) a deliberative vote, and
  - (b) if there is an equality of votes—a casting vote.
- (7) A question arising at a meeting of the joint committee must be decided by a majority of the votes of the members present and voting.
- (8) The joint committee may sit and transact business despite—
  - (a) a prorogation of the Houses of Parliament, or
  - (b) an adjournment of either House of Parliament.
- (9) The joint committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

### 4 Reporting when Parliament not in session

- (1) If a House of Parliament is not sitting when the joint committee seeks to give a report to the House, the joint committee may present copies of the report to the Clerk of the House.
- (2) The report—
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk, and
  - (c) if printed by authority of the Clerk—is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

### 5 Evidence

- (1) The joint committee has power to send for persons, papers and records.
- (2) The joint committee must take all evidence in public subject to clause 6.
- (3) If the joint committee as constituted at any time has taken evidence in relation to a matter but the joint committee as constituted in that way has ceased to exist before reporting on the matter, the joint committee as constituted at any later time, whether during the same or another Parliament, may consider the evidence as if it had taken the evidence.

- (4) The production of documents to the joint committee must be in accordance with the practice of the Legislative Assembly in relation to the production of documents to select committees of the Legislative Assembly.

## 6 Confidentiality

- (1) The joint committee must take evidence in private if—
- (a) the evidence relates to a secret or confidential matter, and
  - (b) the witness giving the evidence requests that it be taken in private.
- (2) The joint committee must direct that a document be treated as confidential if—
- (a) the document relates to a secret or confidential matter, and
  - (b) the person producing the document requests that it be treated as confidential.
- (3) For this clause, when the joint committee directs that a document be treated as confidential—
- (a) the contents of the document are taken to be evidence—
    - (i) given by the person producing the document, and
    - (ii) taken by the joint committee in private, and
  - (b) the person producing the document is taken to be a witness.
- (4) If, at the request of a witness, evidence is taken by the joint committee in private—
- (a) the joint committee must not, without the written consent of the witness, disclose the evidence, and
  - (b) a member of the joint committee or another person must not, without the written consent of the witness and the authority of the joint committee under subclause (6), disclose the evidence.

Maximum penalty—20 penalty units or imprisonment for 3 months, or both.

- (5) If evidence is taken by the joint committee in private other than at the request of a witness, a member of the joint committee or another person must not, without the authority of the joint committee under subclause (6), disclose the evidence.

Maximum penalty—20 penalty units or imprisonment for 3 months, or both.

- (6) Subject to subclause (4), the joint committee may disclose or, with the written permission of the chairperson, authorise the disclosure of evidence taken in private by the joint committee.
- (7) Nothing in this clause prohibits—
- (a) the disclosure of evidence that has already been lawfully published, or
  - (b) the disclosure by a person of a matter of which the person has become aware other than because of the giving of evidence before the joint committee.
- (8) This clause has effect despite the *Parliamentary Papers (Supplementary Provisions) Act 1975*, section 4.
- (9) If evidence taken by the joint committee in private is disclosed in accordance with this clause, the *Parliamentary Papers (Supplementary Provisions) Act 1975*, sections 5 and 6 apply in relation to the disclosure as if it were a publication of the evidence under the authority of that Act, section 4.
- (10) A document produced to the joint committee in proceedings conducted in private is a public document for the purposes of the *Defamation Act 2005*, section 28 if the document is disclosed in accordance with this clause.
- (11) Proceedings of the joint committee conducted in private are proceedings of public concern for the purposes of the *Defamation Act 2005*, section 29 if the proceedings relate to the taking of evidence that is disclosed in accordance with this clause.
- (12) In this clause—
- disclose** includes publish.
- document** includes part of a document.

## 7 Application of certain Acts

For the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes—

- (a) the joint committee must be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the joint committee must be regarded as having originated in the Legislative Assembly.

**8 Validity of certain acts or proceedings**

- (1) This clause applies if, at the time an act or proceeding of the joint committee is done, taken or commenced, there is—
  - (a) a vacancy in the office of a member of the joint committee, or
  - (b) a defect in the appointment, or a disqualification, of a member of the joint committee.
- (2) The act or proceeding of the joint committee is as valid as if the vacancy, defect or disqualification did not exist and the joint committee were fully and properly constituted.

The amendments will implement recommendation 11 of the review to establish a joint committee managed by the Legislative Assembly on ageing and disability. I will not go into all the proposed details of the committee, as those are outlined in the amendments. The main thing to note is that it will monitor and review the exercise of the roles and functions of the commissioner, and examine each annual report and any other relevant reports. It will report to the Parliament about any issues that might arise in relation to those reports and examine trends and changes in services and issues affecting adults with disability and older adults.

During budget estimates the commissioner was asked about the establishment of such a committee. One of the things he highlighted—and I am summarising his comments—was that, when the commission was first established approximately five years ago, he did not think that a committee was needed. However, he now feels that it is quite important. It was a recommendation that he put forward in the review as well. He said that one of his concerns was that, over that five-year period, a lot of the issues that were raised were articulated through the Minister. He felt that a parliamentary committee would be a means to raise some of those issues, scrutinise some of those matters and, more importantly, advocate.

The Government indicated that it felt that the budget estimates process and the tabling of the reports were adequate. The challenge is that annual reports are often handed down after the first round of estimates in the year. Members really only have the February-March period to potentially look at an annual report or ask particular questions. As we all know, the time for budget estimates is quite short and there are a lot of witnesses. Meanwhile a parliamentary committee can look at a number of issues and trends. The last report that the commissioner tabled showed that there has been not only an increase in the number of complaints raised but also some interesting trends regarding where reports are being made. A committee can look at those things.

I note comments made during the second reading debate about forums that will be established. We are conducting inquiries into housing and education already. The proposed committee will have the opportunity to also look at those issues in more detail. The establishment of the committee is supported by not only the review and the commissioner but also New South Wales Official Community Visitors. I commend the amendments to the Committee.

**The CHAIR (The Hon. Rod Roberts):** As the two separate sets of amendments are similar—with some slight differences—I invite Ms Abigail Boyd to move her amendments. We will then open up debate to other members.

**Ms ABIGAIL BOYD (14:59):** I indicate that I do not intend to move The Greens amendments on sheet c2024-002C on the basis that I now understand them to be almost identical to the amendments already moved by the Opposition. I thank the Hon. Natasha Maclaren-Jones for putting forward the amendments, which will see a committee having oversight of the Ageing and Disability Commission [ADC]. This is something Greens members have discussed. It was something I identified late last year and asked the Parliamentary Counsel's Office to draft. I think both the Opposition and The Greens have been putting in various versions of these amendments for some time. Today I was made aware that the Government had been working with both the Opposition and with me on essentially the same amendment. There may have been some teething issues with the new Government, particularly with Ministers and members who are not necessarily familiar with the way the Legislative Council works.

Members of this place are not as interested in political pointscore as we are in making sure that legislation is as fit for purpose as possible. It is not our intention to compete on an amendment that is essentially the same thing. Had we known that the Government had been working with the Opposition on this, we would have just dealt with the other nine portfolios that we have and been quite happy with what we achieved. I am a bit annoyed that my staff and I spent time doing something that essentially replicated the work of this House elsewhere. That said, I think those are teething problems. I take it they were still good-faith negotiations. Maybe there was just a misunderstanding about how the upper House works.

That brings me to the amendment. One of the things I enjoy about being a member of this place is our committee work, where members do important work around accountability and awareness-raising. It is a mistake to think we have committees only to hold entities and people to account. In the area of ageing and disability it

does not matter which government it is, whether it is the Coalition, Labor or whomever: We have a long way to go to achieve inclusion. We are constantly finding people with disability at the bottom of the pile when policymakers and governments give consideration to their needs and the needs of older people.

The commissioner prepares excellent reports every year, which most people do not read unless they have an interest in this space. One of the most valuable things that members can do is to talk to him directly about those reports in a public setting and ask questions through that process, with people watching from across the sector. It will bring that work to life and hopefully get more media attention and public awareness. That was the role of the Committee on Children and Young People when I was a member in the last term of Parliament with regard to the Advocate for Children and Young People, and the Children's Guardian.

When we review that annual report every year this additional mechanism will be incredibly valuable. Hopefully it will finally begin to turn around the lack of focus on people with disability and older people and include them at every stage. I wholeheartedly support the Opposition's amendments. I thank the Government for working in good faith. I hope we can iron out some of those procedural wrinkles but, overall, I think we have achieved a good result. I thank the Committee.

**The Hon. MARK BUTTIGIEG (15:04):** I thank The Greens, in particular, for agreeing to not move their amendments, given that they were almost identical to those moved by the Opposition. I would like to say it was by design because we like to keep The Greens busy, but who knows? The amendments moved by the Hon. Natasha Maclaren-Jones implement recommendation 11 of the independent review of the Act by Mr Alan Cameron, AO. Recommendation 11 of the statutory review is that a parliamentary committee should be appointed to monitor and review the functions of the Ageing and Disability Commission.

The Government takes a collaborative approach with stakeholders and members of Parliament to ensure that the lives of adults with disability and older adults are improved. I appreciate the contributions of members from all sides of politics towards strengthening the Parliament's oversight of the Ageing and Disability Commission. After further consideration of the amendments, the Government does not oppose a joint parliamentary committee overseeing the functions of the Ageing and Disability Commission. I note that it remains the Government's view that a joint committee is not necessary as there are already many avenues available for Parliament to monitor and review the work of the Ageing and Disability Commission. Section 25 (1) of the Ageing and Disability Commissioner Act 2019 states the commissioner is required to provide an annual report to the Parliament. Section 27 (1) states that the commissioner may, at any time, make a special report to Parliament after providing a copy of the special report to the Minister, while section 27 (3) states the commissioner must prepare a special report on any matter requested by the Minister and provide it to Parliament.

Further, the vast majority of statutory appointments do not have a dedicated parliamentary committee to review and monitor their work. These include the Director of Public Prosecutions, the NSW Legal Services Commissioner, the Crown Solicitor, the Public Guardian and many others. In addition, the commissioner routinely and regularly appears before budget estimates hearings and, as an independent statutory officer, is available to meet with members of Parliament at any time. The outgoing commissioner is a well known figure about these parts. Many of my parliamentary colleagues will have met him from time to time and been able to engage with him freely about the work of the commission.

Despite this, we value transparency and note the important work done by the dedicated committees that focus on vulnerable communities and oversee the statutory officers appointed to advocate for and support those vulnerable communities. Those include the Committee on Children and Young People, which oversees both the Children's Guardian and the Advocate for Children and Young People, and the Modern Slavery Committee, which oversees the Anti-slavery Commissioner. The Ageing and Disability Commissioner is comparable to the roles of the Children's Guardian, the Advocate for Children and Young People and the modern slavery commissioner, so the Government acknowledges the argument for a joint parliamentary committee along the same lines as the committees that oversee these roles.

Similar to those committees, the joint parliamentary committee will have the standard range of functions, including monitoring and reviewing the exercise of the commissioner's functions; reporting to both Houses of Parliament with the comments the joint committee thinks are appropriate on relevant matters; examining the commissioner's annual and other reports and reporting to both Houses of Parliament on them; examining trends and changes in services and issues affecting adults with disability and older adults; reporting to both Houses of Parliament about changes the joint committee thinks desirable to the functions and procedures of the commissioner; and inquiring into any question in connection with the commissioner's functions that is referred to the joint committee.

With the release of reports by the aged care royal commission and the disability royal commission, public awareness and debate on issues affecting adults with disability and older children is front and centre in our current

public discussions. The establishment of a joint parliamentary committee will also ensure that these issues remain a consideration for Parliament in the long term. Accordingly, the Government supports the proposed amendments for a joint committee to oversee the functions of the Ageing and Disability Commissioner.

**The Hon. NATASHA MACLAREN-JONES (15:09):** I thank the Government for its support for the establishment of a joint committee. I particularly acknowledge the work of Ms Abigail Boyd in not only preparing to move amendments in relation to establishment of this committee but also her advocacy over many years, particularly in this place, for people with disability and seniors. I echo some of the remarks made, particularly the opportunity for Government, Opposition and all members of the crossbench to work together to support vulnerable communities. I note that Minister Washington also has child protection in her portfolios, which is another area with opportunities for us all to put politics aside and focus on delivering what is in the best interests of vulnerable people in this State. I commend the amendments to the Committee.

**The CHAIR (The Hon. Rod Roberts):** The Hon. Natasha Maclaren-Jones has moved Opposition amendments Nos 1 to 3 on sheet c2024-015B. The question is that the amendments be agreed to.

**Amendments agreed to.**

**The CHAIR (The Hon. Rod Roberts):** The question is that the bill as amended be agreed to.

**Motion agreed to.**

**The Hon. MARK BUTTIGIEG:** 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. MARK BUTTIGIEG:** On behalf of the Hon. Penny Sharpe: I move:

That the report be adopted.

**Motion agreed to.**

### **Third Reading**

**The Hon. MARK BUTTIGIEG:** On behalf of the Hon. Penny Sharpe: I move:

That this bill be now read a third time.

**Motion agreed to.**

### *Documents*

## **ANTI-SLAVERY COMMISSIONER**

### **Reports**

**The PRESIDENT:** According to the Modern Slavery Act 2018, I table the report of the Office of the Anti-slavery Commissioner entitled *Report pursuant to section 23(3) of the Modern Slavery Act 2018 (NSW) in response to Report No. 1 of the New South Wales Parliament Joint Modern Slavery Committee, "Review of the Modern Slavery Act 2018", December 2023*, dated March 2024, received out of session and authorised to be made public this day.

### *Committees*

## **JOINT SELECT COMMITTEE ON THE NSW RECONSTRUCTION AUTHORITY**

### **Membership**

**The PRESIDENT:** I inform the House that I received advice from the Speaker of the Legislative Assembly advising of the following change to the membership of the Joint Select Committee on the NSW Reconstruction Authority:

Mr Royal Francis Butler in place of Mr Philip Donato.



*Bills***ANIMAL RESEARCH AMENDMENT (PROHIBITION OF FORCED SWIM TESTS AND FORCED SMOKE INHALATION EXPERIMENTS) BILL 2023****Returned**

**The PRESIDENT:** I report receipt of a message from the Legislative Assembly returning the bill without amendment.

**INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2024****COMBAT SPORTS AMENDMENT BILL 2024****First Reading**

**Bills received from the Legislative Assembly.**

**Leave granted for procedural matters to be dealt with on one motion without formality.**

**The Hon. COURTNEY HOUSSOS:** I move:

That the bills be read a first time and published, standing orders be suspended according to sessional order for remaining stages and the second readings of the bills be set down as orders of the day for the next sitting day.

**Motion agreed to.**

**The Hon. COURTNEY HOUSSOS:** Statements of public interest have been prepared with respect to each of the bills, which set out those issues relating to the bills and satisfy the obligation of Ministers to provide such a statement. According to standing order, I table the statements of public interest.

**Statements of public interest tabled.**

**HUMAN TISSUE AMENDMENT (ANTE-MORTEM INTERVENTIONS) BILL 2023****Second Reading Speech**

**The Hon. COURTNEY HOUSSOS (Minister for Finance, Minister for Domestic Manufacturing and Government Procurement, and Minister for Natural Resources) (15:16):** I move:

That this bill be now read a second time.

I am pleased to introduce the Human Tissue Amendment (Ante-mortem Interventions) Bill 2023. I acknowledge the presence in the gallery of the Speaker, the member for Lake Macquarie. I thank him for his interest in organ and tissue donation and for introducing the bill to the Parliament. I have adopted part of his second reading speech in the other place when setting out the content of the bill. We know that just one organ donor can save the lives of as many as seven people and many more can be helped through tissue and eye donation. The Government is committed to increasing organ and tissue donation rates with a focus on delivering best clinical practice in hospitals; and to encouraging people to register to become an organ and tissue donor on the Australian Organ Donor Register and letting their family know that they want to be a donor.

The bill builds on the current clinical best practice by seeking to make amendments to the Human Tissue Act 1983. These amendments establish a process for the authorisation of ante-mortem procedures for the purpose of organ and tissue transplantation where a potential organ donor lacks capacity. Ante-mortem procedures are used to maintain or improve the viability of organ and tissues, and assist in reducing or preventing some damage to organ and tissues as well as minimising post-transplant infection risk. Currently in New South Wales, only the potential organ donor can consent to ante-mortem interventions being undertaken. This is because the provisions authorising substitute consent by a person responsible under the Guardianship Act 1987 only allows decisions that are for the benefit of the patient who lacks capacity. The bill will establish a new consent process for the carrying out of ante-mortem interventions, which will help to improve the health outcomes for transplant recipients.

I now turn to the details of the bill. The bill inserts new part 4A into the Human Tissue Act 1983 and establishes a process for authority to be given for the carrying out of an ante-mortem procedure for the purpose of transplantation of tissue from a donor's body, after the donor's death, to the body of another living person. The definition of "relevant purpose" in new section 27B of the bill specifically excludes ante-mortem interventions for the purpose of the transplantation of gametes from a potential tissue donor. Gametes are reproductive cells—ova or egg cells in females, and sperm in males. The bill does not propose amendments to current laws around posthumous reproduction and, for the avoidance of doubt, has been specifically excluded within the bill. New section 27B includes a specific definition and hierarchy of "senior available next of kin", which replicates in

substance the current definition of senior available next of kin within the Human Tissue Act. Amendments have been made to reflect the fact that the potential tissue donor is not yet deceased.

Medical treatment decisions before death are primarily determined by a "person responsible" as defined within the Guardianship Act, whereas consent to organ donations is generally determined by a person's "senior available next of kin", as defined within the Human Tissue Act. While often a responsible person under the Guardianship Act and a senior next of kin under the Human Tissue Act are one and the same person, this is not always the case. Ante-mortem interventions would be considered only following discussions with next of kin authorising organ donation to proceed. The bill has been intentionally drafted to allow for senior available next of kin consent to ante-mortem interventions, rather than a person responsible under the Guardianship Act. This is to incorporate ante-mortem intervention discussions within the organ donation process and to avoid confusion and added complexity to this process.

New section 27C of the bill sets out the process of authority to carry out an ante-mortem procedure. It provides that a designated officer for a hospital may authorise an ante-mortem procedure to be carried out if a potential tissue donor consents, or where a potential tissue donor lacks capacity to consent, senior available next of kin consents, subject to certain requirements being met; or where a potential tissue donor lacks capacity to consent and there is no senior available next of kin, a designated officer may authorise but only if they are satisfied the potential tissue donor has provided written consent to organ donation during their lifetime.

New section 27C (3) provides protection for potential donors by requiring a prescribed practitioner to certify in writing that they are reasonably satisfied that the death of the potential tissue donor is expected and the carrying out of the ante-mortem procedure will not hasten death or cause more than minimal harm to the potential tissue donor. The inclusion of the reference to minimal harm acknowledges that most minor and simple everyday medical interventions, such as the insertion of a cannula, may cause a minimal degree of harm. New section 27C (4) defines a prescribed practitioner to be a designated specialist in the first instance or, in circumstances where a designated specialist is not available, an experienced medical practitioner registered for at least five years. Neither a designated specialist nor an experienced medical officer providing the required certification can be involved in transplantation procedures, care of the patient or the care of the potential recipient of the tissue.

New section 27D provides that a senior available next of kin may not provide consent unless they have no reason to believe the potential tissue donor has expressed an objection to the carrying out of an ante-mortem procedure. New section 27F addresses possible situations of conflict between treatments which may have been consented to by a person responsible within the meaning of the Guardianship Act and the ante-mortem procedure consent by a senior available next of kin. New section 27F provides that where a person responsible has given consent to a treatment and this treatment is incompatible with an ante-mortem procedure, an authority to ante-mortem intervention has no effect.

Where a coroner has jurisdiction or is expected to have jurisdiction to hold an inquest under the Coroners Act 2009 in relation to a death, it is still possible for organ transplantation to take place. However, before a designated officer or senior available next of kin can authorise organ removal, the Coroner must provide consent. Ante-mortem procedures are not expected to impact on any inquest undertaken by the Coroner; however, new section 27G provides that ante-mortem procedures must not be carried out if they are reasonably likely to interfere with the functions of the Coroner.

The changes will further support current government initiatives such as Donate Life Week, which earlier this year included a collaboration between NSW Health, Service NSW and the Australian Organ and Tissue Authority. This project included a two-week campaign promoting a prominent tile in the Service NSW app directing people to the Australian Organ Donor Register and an email to over five million Service NSW users. NSW Health also continues to collaborate with the NSW Multicultural Health Communication Service to deliver evidence-based programs supporting culturally and linguistically diverse communities. The bill will complement current NSW Health programs while respecting the wishes of potential donors and supporting New South Wales patients to continue receiving high-quality health care. It is a privilege to commend such an important bill to the House.

### Second Reading Debate

**The Hon. BRONNIE TAYLOR (15:24):** I lead for the Opposition in the second reading debate on the Human Tissue Amendment (Ante-mortem Interventions) Bill 2023. The Opposition supports the bill as amended in the other place. As Minister Houssos said, one organ donor has the potential to save the lives of seven people. That is pretty incredible. As of last year, 47,000 people were registered on the Australian Organ Donor Register to become donors in New South Wales. I note that during the COVID-19 pandemic, donor numbers decreased significantly. However, I am very glad to see that they are returning to pre-pandemic levels today.

It is quite incredible that in the first 10 years of the national organ donation program there was a 122 per cent increase in deceased donation rates. That meant there was an 81 per cent increase in people receiving an organ transplant in Australia. In New South Wales, there were 142 deceased organ donors and 392 transplant recipients last year. That means 392 people in New South Wales are living fuller and healthier lives thanks to donors. However, I note that last year around 1,800 people were on the transplant waitlist in Australia, plus another 14,000 people on dialysis. The lives of the people on dialysis would change if they could receive a kidney transplant. While there is much support for organ donation in Australia, only 36 per cent of the population are registered donors. That is why we need to encourage those around us—our family and friends, and those in our wider community—to register as donors. It is very important.

I believe the bill seeks to help increase the rate of organ donation in New South Wales. However, some sensitive ethical issues must be navigated in this specific area of public policy. The amendments made in the other place are prudent and make the bill stronger, and therefore the Coalition supports the bill as it stands. Maintaining public confidence in organ and tissue donation requires transparency around which ante-mortem procedures are contemplated in the bill. If medicine advances and there are scientific developments, then it is appropriate that those be considered and debated transparently in Parliament. We think that the process of the Parliament is best placed to give confidence and safeguard what is actually being done, rather than leaving intact the ability of departments and the bureaucracy to change what procedures could be included through regulation.

I have absolute confidence in the current Health bureaucracy. I think they are incredible people doing amazing work each and every day. I thank them for their countless hours of work on this policy. That is how legislation makes it to the Parliament. I do not know where we would be without them. I spent many years as a Minister working alongside people such as Dr Chant, whom I have enormous respect for. However, the Opposition recognises the issue is so sensitive that it is the Parliament who should decide which procedures are appropriate. This legislation is an important step forward to increase the number of organ transplants that could occur in New South Wales, which is a good thing. But, in making these changes, we must ensure that we bring the community with us. The amendments passed in the other place by both the Government and Opposition will provide appropriate safeguards to ensure that we maintain public confidence in this very important area of public policy. I commend the bill to the House.

**Dr AMANDA COHN (15:28):** As The Greens spokesperson for health, I indicate that The Greens support the bill. I acknowledge the member for Lake Macquarie for his work to introduce the bill. Organ donation is a precious gift. It is an extraordinary act of compassion for a person's final act in life to be the gift of life or better health to a stranger. While just over 50 per cent of Australians consent to organ donation, only 2 per cent of Australians die in a way that makes it possible for them to donate an organ. For donated organs to be viable, a person needs to die in hospital so their organs can be preserved while working well. The situation is made even more difficult by the current legislative framework.

The bill amends the Human Tissue Act to improve the viability of donated organs by introducing a process for consent to ante-mortem procedures. Those are things like blood thinning medication so that blood does not clot in organs that are to be donated, or imaging to determine the viability of potentially donated organs prior to costly and potentially unnecessary organ retrieval operations. Currently, if a person has consented to organ donation but is not able to provide consent to the ante-mortem procedure—for example, because they are unconscious—these procedures cannot be legally carried out because the provisions of the Guardianship Act restrict a guardian or next of kin from consenting to treatment that is carried out for a purpose other than that of promoting or maintaining the health or wellbeing of the patient. Tragically, this means that some organs planned for donation are unable to be used and it is this circumstance that the bill addresses. Like most registered organ donors, I want these ante-mortem procedures to be undertaken to maximise the opportunity for a successful transplant.

The bill has been conservatively drafted and includes safeguards to address community concerns, such as requiring a second doctor to verify that death of the potential donor is expected and that the ante-mortem interventions will not hasten death. Critically, the second doctor—the prescribed practitioner—can be accessed remotely. That is important for rural and regional hospitals where there is unlikely to be a second experienced medical practitioner who is not involved in the care of the donor. The bill also ensures that ante-mortem interventions cannot be done if they conflict with the clinical care required for the donor or if they would interfere with a coronial process.

The bill as originally drafted did not specify ante-mortem procedures. Rather, it specified that these interventions must not hasten death or cause more than minimal harm—for example, breaking skin to insert a cannula. The bill in its current form incorporates amendments made by the Opposition in the Legislative Assembly that specify the permitted ante-mortem procedures. It is the view of The Greens that this is better suited to regulations to allow NSW Health and medical experts flexibility in line with developing medical technology.

Regulation can still be disallowed by Parliament if this were to ever not be in keeping with community expectations. It is a shame that lives may be lost in future due to donated organs not being viable because of the unnecessarily slow process now required to update this legislation by returning to Parliament.

I understand that a number of key stakeholders have been consulted throughout the process of the drafting of the bill and that it is well supported. They include the Medical Services Advisory Committee; the Australian Medical Association; the Health Ethics Advisory Panel; the Australian and New Zealand Intensive Care Society; the Royal Australian College of Physicians; the Department of Communities and Justice, including the State Coroner and the NSW Trustee and Guardian; Intensive Care NSW; and the Emergency Care Institute. As The Greens spokesperson for disability rights and inclusion, my colleague Ms Abigail Boyd rightly raised concerns that disability stakeholders had not been consulted in relation to the consent provisions during the drafting process. People with disability must not be an afterthought in the development of legislation that significantly impacts them.

Issues arise from the interplay between the provisions in the bill and the Guardianship Act, particularly the provisions in new section 27C (2) and the definition of "senior available next of kin", which could operate in a manner that does not adequately take into account circumstances where a person with a cognitive disability who may be seen to lack the capacity for consent has expressed to their carer through supported decision-making that they do not consent to the medical procedure. The drafting of the bill could result in a designated officer defaulting to the views of the senior available next of kin, despite the views expressed through the carer. However, The Greens have been assured by representatives of the Minister that Health's policy on the functions of designated officers in relation to the operation of these provisions would provide guidance in these circumstances to ensure that the preference of a person with disability is respected. Finally, in supporting the bill, I remind my colleagues, parliamentary staff, stakeholders and interested community members who may be listening to this debate of the life-saving importance of registering as an organ donor and communicating this decision to their loved ones.

**The Hon. STEPHEN LAWRENCE (15:32):** I voice my support for the Human Tissue Amendment (Ante-mortem Interventions) Bill 2023, introduced by the member for Lake Macquarie in the other place. The bill encapsulates the importance of organ donation in our community and builds on current clinical best practice to increase the rates of organ and tissue donation. The amendments to the Human Tissue Act 1983 establish a process for the authorisation of ante-mortem procedures for the purpose of organ and tissue transplantation where a potential organ donor lacks capacity. Ante-mortem procedures are used to maintain or improve the viability of organ and tissue and assist in reducing or preventing some damage to organs and tissue, as well as minimising post-transplant infection risk.

There will be new and rigorous consent processes in place around the use of ante-mortem procedures for organ and tissue donation. First, organ donation and ante-mortem interventions are raised by doctors or nurses with the patient's family if the patient is very close to death or has no chance of survival. All proposed interventions need to be explained to family members in advance as part of the usual organ donation consent process. The bill will require that a senior doctor not involved in the care of the patient certifies in writing that a proposed ante-mortem intervention on the potential organ donor does not cause any more than minimal harm to the patient. Examples of ante-mortem interventions could include the removal of blood for testing to check suitability for donation; the intravenous administration of medication, such as antibiotics or vasopressors, which are drugs to support the patient to maintain blood flow, or heparin, which is a drug that prevents the blood from clotting; medical imaging, such as CT scans and X-rays; and a range of other measures.

The new regime and consent process will improve the lives of more Australians by optimising potential organ and tissue donation for transplantation. Just one organ donor can save the lives of as many as seven people, and many more can be helped through tissue and eye donation. The decision to donate organs and tissue is an act of extraordinary generosity. In New South Wales in 2023 there were 142 deceased organ donors and 392 recipients who received an organ transplant. This is a 13 per cent increase in deceased organ donation, resulting in a 14 per cent increase in organ transplants compared with 2022 and the highest level of activity since the onset of COVID-19 in 2020. These changes will further support current NSW Health programs while respecting the wishes of potential donors and supporting patients in New South Wales to continue receiving the highest quality of health care. I commend the bill to the House.

**The Hon. JEREMY BUCKINGHAM (15:36):** I make a contribution to debate in support of the Human Tissue Amendment (Ante-mortem Interventions) Bill 2023. I begin by commending the Speaker in the other place, the Hon. Greg Piper, and his staffer Roisin for their work to bring the bill to the attention of the House and for leading the campaign, which will ultimately be successful. The bill will provide a process to authorise ante-mortem interventions when a potential organ donor does not have capacity. The Human Tissue Act 1983 enables organ donation with consent of the donor or from a senior available next of kin [SANOK] if the donor had not objected to donation during their life.

Ante-mortem interventions are treatments given to a patient while alive that aim to improve outcomes of organ donation by making an organ healthier and work better for the recipient or provide information to assess the suitability of the organ for transplantation. Examples of ante-mortem interventions include giving medications, such as antibiotics or drugs that prevent the blood from clotting or undertaking a coronary angiogram to measure the flow in the heart's blood vessels. Currently, ante-mortem interventions can be undertaken only with the direct consent of a donor because, under current New South Wales law, substitute consent can be provided only if the procedure is beneficial to the patient. This is the key element to the bill.

The bill defines ante-mortem interventions but does not list procedures. It also limits the use of ante-mortem interventions to support organ donation. We all know how critical organ donation is to saving lives in this country, so the more organs that can be donated, the more lives we can save, but only where the potential organ donor has consented to organ donation or a SANOK is likely to consent. Where a donor lacks capacity, the bill provides two options for authorisation of ante-mortem procedures: consent by a SANOK or authorisation of a designated officer if a SANOK cannot be located. In both cases, ante-mortem procedures cannot be carried out if the donor objected to ante-mortem procedures during their life. The bill also requires that an independent medical practitioner, or prescribed practitioner, certify that the death of the donor is expected and the ante-mortem interventions will not hasten death or cause more than minimal harm. This prescribed practitioner cannot be involved in the treatment of the potential donor.

The bill also clarifies the interaction between the Guardianship Act 1987 and the Human Tissue Act where a person responsible under the Guardianship Act has made a treatment decision that is inconsistent with ante-mortem interventions. This could not occur as a person responsible under the Guardianship Act does not align with who can be a SANOK under the Human Tissue Act. The Government moved some amendments in the lower House, which I understand were accepted. Again, on behalf of the Legalise Cannabis Party, I thank the Government and the Hon. Greg Piper, the Speaker in the other place, for bringing the bill. We wholeheartedly support it and look forward to its implementation.

**The Hon. DAMIEN TUDEHOPE (15:39):** Organ donation after death is a noble act of solidarity. The Human Tissue Amendment (Ante-mortem Interventions) Bill 2023 addresses the ancillary issue of procedures carried out before the death of a person that are directed not to the dying person's own comfort or benefit but to facilitating the process of organ retrieval and subsequent transplant. These procedures that are carried out for the benefit of the potential recipients of donated organs may impose some burden on the person donating the organs. They should be carried out only if the donor or someone entitled to speak for the donor has given explicit consent. I acknowledge the diligence with which the shadow Minister for Health approached this important matter, and the members of the other place for accepting the amendments that he proposed. These included limiting ante-mortem procedures to the period where death "is imminently expected" rather than the vaguer, and potentially extensive period, when death "is expected". This is appropriate as, under the bill, ante-mortem procedures may be permitted even where they may cause some harm—"minimal harm"—to the person.

An additional protection for the dying person and prospective donor was the requirement that an ante-mortem procedure not carry any "undue risk". The bill does provide for explicit consent to be given to each proposed ante-mortem procedure by either the potential organ donor or, if the potential organ donor has lost capacity, a senior available next of kin. However, the bill creates an exception to the requirement for explicit consent in the case of a potential organ donor where "there are no known senior available next of kin". In this case the "designated officer" may authorise the ante-mortem procedure without any consent being given, unless it is known that the person had objected to such a procedure.

I am concerned that this provision violates the rule that a procedure that may harm a person and is not being carried out for that person's benefit but for the benefit of others ought not to be done without explicit consent by the person or by someone authorised to speak for the person. If prior consent to organ donation really implied prior consent to any proposed ante-mortem procedure, then the provisions for explicit consent to such procedures in other cases would be unnecessary. There is no proper basis to presume such consent. A person may have filled out a donor registration years ago—well before the very recent development of donation after cardiac death and the even more recent development of ante-mortem procedures.

The bill creates two classes of organ donors: those who have capacity or have someone authorised to speak for them on whom the bill imposes a requirement for explicit consent for any proposed ante-mortem procedure; and, the other category, those who have lost capacity but have no-one to speak for them—a childless elderly widow or a homeless person, for example—for whom the bill authorises ante-mortem procedures without explicit consent. While I will nonetheless support the bill as it stands, and note that this new power given to "designated officers" leaves it to their discretion whether to exercise it or not, I trust it will be used only very rarely or, perhaps, never.

**The Hon. COURTNEY HOUSSOS (Minister for Finance, Minister for Domestic Manufacturing and Government Procurement, and Minister for Natural Resources) (15:54):** In reply: I thank honourable members for their contributions to the debate on the Human Tissue Amendment (Ante-mortem Interventions) Bill 2023. I thank the Hon. Bronnie Taylor, Dr Amanda Cohn, the Hon. Stephen Lawrence, the Hon. Jeremy Buckingham and the Hon. Damien Tudehope. The bill will enable ante-mortem procedures to be used to maintain or improve the viability of organ and tissue for the purposes of donation where a potential donor lacks capacity. The bill strikes the right balance in enabling ante-mortem interventions while protecting the interests of the potential organ donor. Where a potential donor lacks consent, a senior available next of kin can provide authorisation for ante-mortem interventions. If there is no known senior available next of kin, then a designated officer will be able to provide authorisation for ante-mortem interventions.

Ante-mortem procedures assist in reducing or preventing damage to organ and tissues and can also minimise post-transplant infection risk. The bill will assist by ensuring ante-mortem procedures can be undertaken with consent from the patient's senior next of kin, where the patient is unable to provide consent. In instances where the patient does not have a senior next of kin, a designated officer who is not involved in the patient's care may provide consent for ante-mortem procedures. Protections in the bill ensure that no ante-mortem interventions can be undertaken unless an independent senior medical practitioner has certified that death is expected and the procedures will not cause more than minimal harm or hasten death. This important change will support the gift of organ donation.

I reiterate the words of Dr Amanda Cohn, who said that this is such a precious gift. It is genuinely the final act of generosity to be able to pass on life to others. I thank the Speaker in the other place and his staff member Roisin for all of her work on this important issue. I thank NSW Health for the important work that it has done in implementing the bill. I also thank the Minister for Health for the way he and his office have navigated this difficult issue so delicately to get the balance right. As I said earlier, it is my privilege to commend such an important bill to the House.

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

**Motion agreed to.**

### **Third Reading**

**The Hon. COURTNEY HOUSSOS:** I move:

That this bill be now read a third time.

**Motion agreed to.**

### *Adjournment Debate*

### **ADJOURNMENT**

**The Hon. COURTNEY HOUSSOS:** I move:

That this House do now adjourn.

### **LGBTIQ+ CONVERSION PRACTICES**

**Dr AMANDA COHN (15:47):** Yesterday the Attorney General tabled legislation to ban harmful LGBTIQ+ conversion practices. This is welcome and long-overdue reform that had bipartisan support at the last election. It is this result of the hard work of victim-survivors of conversion practices over many years, which The Greens have been calling for for years and which drags New South Wales to the minimum standard in other jurisdictions. This year Chris Minns became the first Premier of New South Wales to participate in the Sydney Mardi Gras parade. Sydney was the host of World Pride last year and is now home to the biggest centre for Queer History and Culture in the world, notwithstanding some controversy about its site and sponsors.

But New South Wales still has the worst laws in the country for LGBTIQ+ people, and those most impacted are outside of inner Sydney. As one example, New South Wales is the only jurisdiction that forces people to have invasive and medically unnecessary genital surgery to change their gender on official documents. The New South Wales Anti-Discrimination Act protects trans men and women but it does not protect non-binary people. It protects homosexuality but it does not protect people who are bisexual like me, or people who are asexual. It does not protect people with variations of sex characteristics or sex workers.

The Government has sent the Anti-Discrimination Act to the Law Reform Commission for review, which The Greens support. But the changes we need are urgent and could be implemented in the meantime. We know this is possible because the Government passed amendments on religious vilification while the process was

underway. Where is the same sense of urgency and priority for LGBTQIA+ people? Labor members and MPs participated in the Sydney Gay and Lesbian Mardi Gras parade wearing T-shirts that said, "Labor: A Future Free From Discrimination." The missing fine print is that this future is indefinitely distant because our community is not a priority for protection. The Sydney Gay and Lesbian Mardi Gras advised MPs that they were not welcome if they did not support the reforms proposed by the equality bill. With that bill conveniently delayed until after the parade, that assurance was never made. The equality bill is not perfect, but it would have already changed lives if it were passed last year. Now it is even further delayed by the Government sending it to a committee inquiry.

The NSW Police Force has rightly been the subject of public and media scrutiny over its relationship with LGBTQIA+ communities. Widespread reporting of our communities' grief for Sydney couple Luke Davies and Jesse Baird overshadowed the critical underlying issue of the Special Commission of Inquiry into LGBTIQ hate crimes. The Police Force was described as "adversarial or unnecessarily defensive", not in the pages of history but in the process of the inquiry itself. So far, the Minister for Police and Counter-terrorism has committed to nothing more substantial than an internal working group in response. Police continuing to investigate themselves cannot deliver the transformative change we need.

There is so much more work to do that is not even on the political agenda, like ending medically unnecessary interventions on children with variations of sex characteristics that cause long-term harm and have already been banned in the Australian Capital Territory. Discrimination and mistreatment in health care are devastatingly reasonable fears for LGBTQIA+ people. Studies have shown that trans and gender diverse people frequently avoid seeking medical care, including in emergencies, and are missing out on key preventive health measures like cancer screening. It will take dedicated effort to ensure cultural safety in mainstream health services. In the meantime, it is critical that specialised health services are supported and expanded to reach regional communities.

The evidence from mental health experts is clear that conversion practices which are happening right now will have a lasting negative impact on mental health for decades to come. Labor waiting 12 months to deliver its key election promise to ban conversion practices has had real consequences. With debate escalating, we must remember who is listening. I have been told directly by victim-survivors of conversion practices that our words have the power to show marginalised people that they can be themselves, that they are welcome to participate fully in community life, and that they are not broken and do not need fixing. Our words also have the power to convince people of the opposite. In this Government there are Ministers for a variety of populations who require attention across portfolios such as women, youth, seniors, veterans, people with disability, and multiculturalism. Where is a Minister for LGBTQIA+ people to coordinate and drive the action we need?

### TRIBUTE TO MICHAEL "MICK" O'SHEA

**The Hon. STEPHEN LAWRENCE (15:52):** I speak about the late great Michael "Mick" O'Shea, who passed away in Dubbo late last month at the age of 90. Mick was a great, true Australian. Mick was a shearer, a life member of the Labor Party and a former State Secretary of Australia's oldest union, the Australian Workers' Union [AWU]. He was well known in Dubbo, active in the Catholic Church and charitable organisations such as St Vincent de Paul and the Salvation Army. In his private life, he was the husband to Shirley, who predeceased him, and a loving father and father-in-law to Michele, Michael and Dianna, Wayne and Wendy, Paul and Leanne and Gerard. He had nine grandchildren and 12 great-grandchildren. As detailed in an obituary by Jack Ayoub, published on Tuesday in *The Sydney Morning Herald*, Mick led the AWU in the bitter and now legendary wide comb shearers dispute. The obituary states:

The wide comb dispute of 1983 was a landmark Australian industrial dispute. Australian sheep shearers, represented by the AWU, opposed the alteration of the Federal Pastoral Industry Award to allow the use of shearing equipment that used combs wider than 2.5 inches. Mick fought a losing battle over the use of wide combs, but one which is still taught in the modern AWU. The union now regards the dispute as an example of "right values, right heart, wrong fight", and no one could ever question Mick's values or heart.

I met Mick when I first joined the Orana Branch of the Labor Party. Mick became a mentor to me as I stood for Parliament and then for council and then again for Parliament, a mentor mainly by example, spirit and quiet support. Mick was not the type to offer frequent or adamant advice, unless you asked for it. To illustrate that point, I can think of one particularly stupid thing I did as a councillor of which Mick thoroughly disapproved; however, he never said a word about it. When I later fixed it, he was effusive in his praise.

At his funeral, a family member observed that Mick was forgiving of the failings of others. Perhaps in part that trait was due to Mick's strong Catholic faith. I have no doubt that his faith also propelled his work in the Labor Party and the trade union movement—involvement that allowed him to pursue a fairer and better world, where human dignity for all is upheld. Mick was born into a working-class Irish Catholic family in Coonamble in 1933. His father died when he was young and he left school early to work on farms in the local area to support his family. Mick's little brother spoke in his eulogy at the funeral of how Mick sacrificed a portion of his wages every

week so that his younger brother could complete secondary school. Even as a boy himself, Mick helped others in life-changing ways.

In 1974 Mick became an official of the AWU. For many years he worked out of the AWU's Oliver House in Dubbo, surrounded by his team of former shearers union officials. He fought to improve the lives of working Australians. After a difficult merger between the Federated Ironworkers' Association of Australia and the AWU, Mick and many of his team suddenly found themselves on the outside looking in. However, there can be no doubt that in the end the AWU did the right thing by Mick. His important role was remembered. The union held an event in Dubbo last year to honour Mick and later produced a video about his important union work. I note that the national secretary of the AWU, Paul Farrow, attended Mick's funeral, along with the New South Wales assistant secretary, Ron Cowdrey. The Labor Party also presented Mick with a special award at an event last year. Mick's funeral was at St Brigid's Catholic Church in Dubbo, where Shirley's funeral was also held. Part of St Paul's letter to Timothy was read, which states:

I have fought the good fight, I have finished the race, I have kept the faith. Now there is in store for me the crown of righteousness, which the Lord, the righteous Judge, will award to me on that day — and not only to me, but also to all who have longed for his appearing.

Mick certainly fought the good fight, and he has finished his race. Mick was buried next to his wife, Shirley, in Dubbo. His grandsons played Waltzing Matilda on the guitar and the harmonica as Mick was buried. Mourners picked up merino wool and gum leaves and placed them on Mick's coffin. Mick is buried under a gum tree, where no doubt a kookaburra will occasionally stop to sing where a great Australian lies resting. Vale, Mick O'Shea, a man who will long be remembered.

### MENTAL HEALTH SERVICES

**The Hon. JEREMY BUCKINGHAM (15:57):** Before I begin, I warn Indigenous people that my speech is about the suicide of Stockton's Kahi Simon, a kind and much-loved 20-year-old belonging to the Worimi people, who took his own life in October last year. His mum, Kelly Kay, said he had lived with depression since age 15. She said:

He became progressively worse over the last two years and in the months leading up to his suicide. The system failed him.

The family shared their story with Damon Cronshaw at *The Newcastle Herald* as the Black Dog Institute launched its Fully Fund Mental Health in NSW campaign in partnership with the Australian College of Mental Health Nurses NSW, BEING — Mental Health Consumers, Mental Health Carers NSW, the Royal Australian and New Zealand College of Psychiatrists, and WayAhead. Mrs Kay said Kahi's experience revealed gaps in the mental health system. He had been in a mental health hospital for about 10 days shortly before his death. She said:

I would like to see more funding for the stage after being discharged from a mental health hospital. We had to chase up where he could go next. There are so many wait lists for someone who is suicidal, but not really showing the signs. He was struggling internally. There needs to be funding for a safe house.

Of Safe Haven in Newcastle, she said:

Something like that would be perfect, but it's open three days a week for five hours a day. If something like that was open 24-7, that would be much better. He had family and mates, but needed more professional help. He wanted to go back to hospital, but we couldn't get him in anywhere.

The Black Dog Institute has found that New South Wales has invested the least per capita in mental health services over the past three years, compared with other States and Territories in Australia. Rates of psychological distress in New South Wales have almost doubled over the past decade. This underinvestment has devastating effects on both people trying to seek help and the mental health workforce trying to provide critical support.

The Black Dog Institute recommends the following: allow for extensive public consultation on the proposed Suicide Prevention Act, including making provisions for a lived experience working group; expand the Safe Haven program to be open in times of heightened need, with a view of opening additional Safe Havens in high-need rural, regional and remote areas; and NSW Health to pilot and roll out best practice guidelines for suicide prevention in emergency departments. The campaign is asking the New South Wales Government for funding to meet current demand for mental health services and cater for future population growth.

A dedicated revenue stream to provide ongoing funding for mental health services could be provided by a mental health levy, similar to that implemented in Victoria and Queensland. Since 2022 the Victorian Government has imposed a 0.5 per cent mental health and wellbeing surcharge on employers with taxable wages of more than \$10 million and 1 per cent on employers with taxable wages of more than \$100 million. The additional levy raised \$912 million in 2023-24. Another option that I urge the Government to consider is using the 15 per cent point of consumption betting tax. As the Government heads towards another budget, I urge the Expenditure Review



Committee to consider hypothecating some money from the existing point of consumption betting tax to mental health services and suicide prevention services in this State.

### PREMATURE BABIES

**The Hon. DAMIEN TUDEHOPE (16:01):** I recently read another heartwarming story of a very premature baby being given expert neonatal care and surviving, much to the joy of the parents and family. Mira Urbach was born recently at just 22 weeks and five days gestation, weighing just 538 grams. Her dad, Ben Urbach, reports that Mira is thriving under the care of the neonatal intensive care unit at Bryan Medical Center in Lincoln, Nebraska. Mira is not yet the youngest premature baby to survive. Several babies have survived who were born at less than 22 weeks, including Ellie Schneider, born at 21 weeks and six days in 2017 and introduced to the American nation at the 2020 Presidential State of the Union address.

A series of recent studies has demonstrated that where a proactive approach is taken to providing care to very premature babies, including those born as early as 22 weeks of gestation, there are increasingly positive outcomes. From an answer to a question on notice asked by the Hon. Susan Carter, we now know that since the legalisation of abortion up to birth in New South Wales, 154 abortions were performed at 22 weeks or later in the first three years from 1 October 2019 to 30 September 2022—an average of one per week. Amazingly, we are told that no information is collected about the outcome of those abortions of potentially viable children. Were any born alive? If so, were they given the medical care and treatment required under section 11 of the Abortion Law Reform Act? We do not know.

On 13 February 2024 I asked in question on notice No. 1765 a series of questions about abortion data, explicitly limiting my questions to data elements that are recorded for each abortion via the mandatory abortion notification form. The breathtakingly arrogant reply from the Minister for Health was this:

To analyse and report termination of pregnancy data for this question would be an inappropriate diversion of resources from core health services and may also breach the privacy of individuals.

No data whatsoever was provided. A question arises as to whether the New South Wales Ministry of Health is simply putting thousands of official, mandatory notification forms into a cupboard and not performing any analysis of the data—not even a simple addition. Secondly, in relation to privacy, if the Minister for Health simply made sure of the usual practice for suppressing small-number data, this would be appropriately protected.

The debate on the abortion bill in this place was a heated one. It was predicated upon making sure that data was collected to ensure that things like sex selection abortion was not taking place and that adequate rationale and reasons were given in relation to late-term abortions. There is a reasonable expectation relating to that data and to the requirements contained under the Act that the Minister for Health would seek to assure the Parliament and members who sit in this place that the terms of the Act are being properly adhered to. I call on the Minister for Health to actually do his job in this Parliament, answer questions appropriately and, in fact, give the assurances that are sought by providing the data I requested.

*[Business interrupted.]*

*Visitors*

### VISITORS

**The DEPUTY PRESIDENT (The Hon. Dr Sarah Kaine):** I acknowledge the presence of special guests in the President's gallery: Ms Stefanie Costi, a lawyer at Watts McCray Lawyers, accompanied by the practice leader of the Sydney office of Watts McCray, Barry Frakes; Narelle Rich, manager of the Energy and Utilities, Private Sector and Airlines branches at the United Services Union; and Peter Munford, organiser at the United Services Union.

*Adjournment Debate*

### LEGAL PROFESSION WORKPLACE SAFETY

*[Business resumed.]*

**The Hon. MARK BUTTIGIEG (16:06):** I welcome our guests in the President's gallery. I bring to the attention of the House a very important issue concerning the under-representation of workers' rights in the legal profession. I am sure honourable members have all heard the horror stories from lawyer colleagues and friends: incredibly long workdays that often end after midnight, sleeping in the office, and working over the weekend with no breaks and no days off—basically, third-world conditions in the workplace that would not be tolerated anywhere else.

Over time, the sector has built up a work culture of cutthroat competition between employees at all levels, whereby unless they are working excessive hours and not taking breaks, they are seen as a weak link who does not belong in the industry. I have heard firsthand that this competitive culture begins at university and only intensifies once one enters the workforce. Some lawyers wear their excessive working hours as a badge of honour, but over time a lack of work-life balance becomes burdensome, creating an unhappy workplace and impacting lawyers personally. Because the "toughen up" culture is so embedded, some lawyers and legal professionals do not feel like they can report incidents of unsafe work or bullying. I have heard that the billable hours structure puts enormous pressure on lawyers, sometimes acting as a bullying tool and control method for employers.

This is not an Australia-specific issue. An International Bar Association survey in 2022 found that most young lawyers intended to change jobs within five years, and one-fifth intended to change careers. Some 60 per cent said their work-life balance was a major issue. It will not surprise most members that this sector is largely non-unionised. Lawyers and legal professionals do not feel predisposed to joining a union because it is generally frowned upon for the same reasons that I have just detailed. Many are unaware that there is even a union for lawyers. This power imbalance between employers and employees has to change. It is totally unacceptable that workers put their health and safety at risk by working crazy hours and not taking breaks in order to meet deadlines set by employers who foster a "survival of the fittest" culture.

The issue was brought into sharp focus when I recently met with Stefanie Costi, who was brave enough to speak out. At our meeting, Stefanie recited her horrifying experience of workplace bullying in the early years of her career in law. She was put down over and over again by colleagues, being told, "Don't be so enthusiastic," and "Mute your mouth." Stefanie was also subjected to strange office hazing rituals that have left a mental and physical toll. She recalled how her experience in an unsafe workplace ruined her confidence, led her to develop workplace post-traumatic stress disorder and almost drove her out of the profession.

In July 2023 Stefanie started telling her story. Stefanie's LinkedIn posts have reached people all over the world, with at least 2,500 people contacting Stefanie to share their stories of workplace bullying. Stefanie also offers support in her own time to those in difficult situations at work, speaking to people struggling on the phone and accompanying them to human resources meetings. Stefanie says the younger generations are fed up with the toxic work culture in the legal profession and want a change. Stefanie's experience motivated her to start advocating for a safer future of work in the legal profession. The United Services Union, impressed by Stefanie's advocacy, reached out to her, recognising the need to start a legal services campaign to help legal professionals. The campaign will be led by USU organisers Narelle Rich and Peter Munford.

As Parliamentary Secretary for Industrial Relations, I will take the matter up with the Minister for Industrial Relations, Sophie Cotsis, to investigate if there is a legislative remedy that we can implement. In the meantime, we must recognise the glaring deficiencies in the legal sector, which permit a culture of cutthroat competition to thrive at the expense of workplace health and safety. I support Stefanie and congratulate her on highlighting the issue, advocating for it and being so courageous in speaking out and leading the way. I also congratulate the USU on backing her in and I support it in its upcoming campaign.

### RENEWABLE ENERGY TRANSMISSION LINES

**The Hon. WES FANG (16:11):** Before I commence my adjournment speech, I acknowledge the Hon. Bronnie Taylor. There was a mix-up last night and this is my second adjournment speech in two days. I thank her for her generosity in allowing me to make an adjournment speech yesterday as well as today. The issue that I will speak about tonight came out of budget estimates. I do not think we have quite got to the bottom of what is happening about compensating landholders when renewable energy projects and transmission lines are imposed upon communities. We heard numerous witnesses give evidence during not only budget estimates but also the inquiry into undergrounding, where we first heard about the way that EnergyCo was negotiating with farmers and landholders. We found out that those farmers are dealing with third-party negotiators, not EnergyCo.

That only came to light when I read through some of the correspondence and the contracts that are being offered. I told the farmers I was working with that they were not negotiating with EnergyCo at all. They were under the belief that they were negotiating directly with the State-owned corporation. We then found out in budget estimates that it seems as though the Minns Labor Government is treating landholders differently. Regional roads Minister Jenny Aitchison is prepared to look at the contracts being offered to people impacted by the Singleton Bypass, which compensate them over and above what the land acquisition just terms Act normally outlines. On the other hand, for the Central-West Orana land acquisitions, EnergyCo is insisting that it is held solely to that Act and will not pay a cent more.

On top of that, we heard that landholders were threatened with a number of impacts, whether it be redirecting powerlines that were imposing on their farming practices back to original routes, threats of compulsory acquisition, or standover tactics related to the legal and bureaucracy nightmare that comes with dealing with the

State Government. Communities are concerned about this issue all across rural and regional New South Wales. The Minister and the Treasurer were in Dunedoo in the middle of February to talk to the affected landholders. They gave every excuse under the sun as to why they could do nothing about it. Yet regional roads Minister Jenny Aitchison let the cat out of the bag that a review of that Act is underway. Nobody was aware of that until she said it in her budget estimates hearing.

It is galling to know that a process is underway to offer farmers and landholders the lowest possible price for their land—let us be honest, the transmission lines will be hundreds of kilometres long—while a different Minister in another portfolio is seeking to pay people over and above what is reasonable so that she can try to get a political win. That is picking winners. That is not treating people equitably. It is a demonstration of how the Minns Labor Government treats rural and regional New South Wales. I will continue to prosecute and fight for those landholders who are having renewable energy projects and transmission lines imposed upon them without any appropriate compensation.

**The DEPUTY PRESIDENT (The Hon. Dr Sarah Kaine):** The question is that this House do now adjourn.

**Motion agreed to.**

**The House adjourned at 16:16 until Tuesday 19 March 2024 at 12:30.**