Parliamentary Debates
(HANSARD)

FORTIETH PARLIAMENT
FIRST SESSION
2020

LEGISLATIVE COUNCIL

Thursday, 26 November 2020

Legislative Council

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THE PRESIDENT (Hon Kate Doust) took the chair at 10.00 am, read prayers and acknowledged country.

CHAMBER ATTIRE

Statement by President

THE PRESIDENT (Hon Kate Doust) [10.01 am]: Thank you, Hon Kyle McGinn. I was really pleased to see that Santa made a visit to the chamber but you know the rules. Thank you for disrobing. I am not too sure about the loud and lairy tie, but we will see how we go. We will call him the Beau Brummell of the Legislative Council!

VAPING DEVICES — NICOTINE USE

Petition

HON AARON STONEHOUSE (South Metropolitan) [10.02 am]: I present a petition containing 7 176 signatures, couched in the following terms —

> To the Honourable the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned call upon the Legislative Council to facilitate the legalisation of the use of nicotine in electronic vaping devices, as a less harmful alternative to smoking tobacco.
>
> Current laws in WA are not only behind the times, but are putting people's health at risk. For this reason, we call upon the Legislative Council to:
>
> (a) amend the *Tobacco Control Act 2006* to legalise the sale of vaping devices; and
>
> (b) amend the *Medicines and Poisons Act 2014* to allow for the sale and use of nicotine in such devices.
>
> The people of WA deserve free and easy access to a harm reduction alternative to smoking, and we call upon the Legislative Council to make such access a reality in law. And your petitioners as in duty bound, will ever pray.

[See paper 4683.]

PUBLIC SCHOOL FACILITIES — COMMUNITY USE

Statement by Parliamentary Secretary

HON SAMANTHA ROWE (East Metropolitan — Parliamentary Secretary) [10.03 am]: Last year, Hon Sue Ellery, Minister for Education and Training, asked me to review the Department of Education's policy on community use of public school facilities and resources following correspondence from a number of members of Parliament and the school community. Schools are often seen as the heart of the community. In addition to providing a space for students to learn, they are also important facilities for the community. Sports clubs, local government, community groups and residents can all benefit from a school's facilities, including ovals, gymnasiums, undercover areas and performing arts centres. In fact, in some new suburbs, schools are the only places where there are sports ovals and facilities such as playing courts. However, it is important to strike the right balance between sharing facilities and maintaining security and safety so that schools are not disadvantaged for opening up and sharing their facilities. Some members of the community raised concerns that school facilities were not widely available for community use by local sports clubs and the wider public. Existing Department of Education policies on community use were unclear.

As part of my project, I visited a number of schools in both metropolitan and regional locations that were identified as great community hubs, and a review was undertaken on existing policies and procedures. During my visits, schools were able to share with me the real benefits that come with sharing their facilities, as well as some of the challenges. These are outlined in case studies from my school visits to Baldivis Secondary College, Subiaco Primary School, Anne Hamersley Primary School and Sheoak Grove Primary School. These benefits included providing access to services to support families and communities, opening up green space, which is vital in new suburbs, and lowering the risk of wilful damage to schools. I am pleased to advise the house that, following my review, a range of initiatives have been developed to encourage and support greater community use of these valuable public facilities.

The Department of Education will now release a renewed position on community use of public school facilities and support for schools to provide a more consistent approach. This will include a simplified community use of school facilities policy and supporting guidelines, promotional materials outlining the benefits to the community

and a suite of resources to support schools to make their facilities available to the community. This work reflects the extensive consultation and feedback from schools and stakeholders as part of the review. Information on the renewed policy and support for schools is available on the Department of Education's intranet. The community can access information on a dedicated page on the Department's website.

This announcement is not compulsory. It will not work in some schools, and that is okay. This announcement will provide the tools necessary to empower those schools that choose to open up their facilities. I am confident that this support will encourage access for the community to a wider range of facilities and resources. From these visits, I have seen the very best of what schools can do to become the heart of the community.

PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Thirty-fifth Report "Government Response to Report 31—Coming Home Safely: WorkSafe and the Workplace Culture in Western Australia" — Correspondence — Statement by President

THE PRESIDENT (Hon Kate Doust) [10.06 am]: Today I received correspondence from the Minister for Mines and Petroleum; Energy; Industrial Relations, Hon Bill Johnston, MLA, relating to the thirty-fifth report of the Standing Committee on Public Administration. I table that correspondence.

[See paper 4684.]

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

Seventeenth Report — "Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003" — Tabling

HON JIM CHOWN (Agricultural) [10.08 am]: I am directed to present the seventeenth report of the Joint Standing Committee on the Corruption and Crime Commission titled "Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003".

[See paper 4685.]

Hon JIM CHOWN: This report of the Joint Standing Committee on the Corruption and Crime Commission is titled "Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003". During the fortieth Parliament, the committee has observed various areas in which the Corruption, Crime and Misconduct Act 2003 is deficient, obsolete or unclear. Key stakeholders brought the committee's attention to issues arising from the application of the act in its current form, and areas in which the act would benefit from improvement. These stakeholders have functions provided under the act. They include the Corruption and Crime Commission, the Parliamentary Inspector of the Corruption and Crime Commission and the Public Sector Commission. In addition, the committee heard from other individuals and agencies, who also identify areas of the act that could be improved.

The need for a comprehensive review of the CCM act is necessary and overdue. The former CCC act required that the minister carry out a review of the operation and effectiveness of the act. This was undertaken by Ms Gail Archer, SC, who published her report in February 2008. The report made 58 recommendations concerning the act. One of these was that a further review of the act be conducted eight years after its commencement. The committee is concerned that a further review of the act is necessary but has not yet occurred. In preparing this report, the committee has collated feedback from diverse stakeholders, endeavouring to draw attention to these comments as areas that should be afforded thorough consideration when the act is finally reviewed. What is made abundantly clear through the collation of feedback from these stakeholders is that a comprehensive review is necessary to support much-needed reform of the act.

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Fifty-seventh Report — "Overview of Petitions 1 July 2020 to 31 October 2020" — Tabling

HON MATTHEW SWINBOURN (East Metropolitan) [10.09 am]: I am directed to present for tabling the fifty-seventh report of the Standing Committee on Environment and Public Affairs titled "Overview of Petitions 1 July 2020 to 31 October 2020".

[See paper 4686.]

Hon MATTHEW SWINBOURN: Madam President, the report that I have just tabled advises the house of the petitions that were finalised by the committee during the four-month period between July and October 2020. During this period, 15 new petitions were tabled in the Legislative Council and the committee concluded its inquiries into nine petitions.

Environmental issues, particularly the impact of emissions on human health and wellbeing, were the focus of petitions concerning the Cockburn Cement factory and dust emissions in Port Hedland. Environmental concerns were also raised in a petition that called for a review of broadscale prescribed burning in the south west.

Throughout the course of this Parliament, the prevalence of petitions about planning and transport matters are evidence that these issues often provoke community action and protest. Opposition to the redevelopment of the Mt Pleasant Bowling Club and the Glen Iris Public Golf Course are two such examples outlined in the report. At the end of this reporting period, the committee was continuing its inquiries into a further 14 open petitions.

I commend the report to the house.

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Eighty-third Report — "2020–21 Budget Cycle — Part 1: Estimates Hearings and Related Matters and 2019–20 Budget Cycle — Part 2: Annual Report Hearings" — Tabling

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [10.11 am]: I am directed to present for tabling the eighty-third report of the Standing Committee on Estimates and Financial Operations titled "2020–21 Budget Cycle — Part 1: Estimates Hearings and Related Matters and 2019–20 Budget Cycle — Part 2: Annual Report Hearings".

[See paper 4687.]

Hon ALANNA CLOHESY: Madam President, the report that I have just tabled advises the house that the Standing Committee on Estimates and Financial Operations conducted joint hearings with 14 agencies regarding their 2019–20 annual reports and 2020–21 budget estimates in mid-November 2020. Understandably, the COVID-19 pandemic was a significant topic for members' questions. Although no theme was adopted this year, the committee initiated a series of questions seeking further information from agencies on how they intend to remedy their qualified audits, matters of significance or emphasis of matter in their audit reports; on their separations under the voluntary targeted separation scheme; and on progress made to integrate key systems arising from machinery-of-government changes since 2017.

Consistent with previous practice, the committee compiled a table of occasions on which ministers, for various reasons, did not provide requested information. The committee was satisfied with the conduct of its hearings, the level of attendance and member participation. Both government and non-government members asked a wide variety of questions and a significant number of subject matters were canvassed. Overall, 47 agencies were asked 306 questions prior to the hearings. During the hearings, 341 subject matters were canvassed.

The committee extends its appreciation to those members who participated in the hearings and the assistance given by ministers and their agencies. The "2019–20 Budget Cycle — Part 2: Annual Reports Hearings" is now completed and closed.

I commend the report to the house.

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

Seventh Report — "Discussion Paper: In Their Own Voice: The Participation of Children and Young People in Parliamentary Proceedings" — Tabling

HON DR SALLY TALBOT (South West) [10.13 am]: I am directed to present the seventh report of the Joint Standing Committee on the Commissioner for Children and Young People titled "Discussion Paper: In Their Own Voice: The Participation of Children and Young People in Parliamentary Proceedings".

[See paper 4688.]

Hon Dr SALLY TALBOT: As Chair of the Joint Standing Committee on the Commissioner for Children and Young People, it is my pleasure to present this discussion paper, which arises from the proposition that hearing the voice of children and taking into account their views on matters that affect them is important and worthwhile.

This discussion paper acknowledges the rights of children to form and express their views on matters affecting them. This right is set out in article 12 of the United Nations Convention on the Rights of the Child, the convention to which the Commissioner for Children and Young People is under a statutory obligation to have regard. It has been more than 30 years since Australia became a signatory to this convention, yet its provisions are still seen as controversial by some and realising article 12 in practice remains problematic.

Working with children and young people in a meaningful way is made more difficult if there are limited tools available to help organisations such as Parliament plan and engage in this type of participation. Although it is a matter for the Parliament to consider, the committee's view is that the development of detailed guidance about how to engage with children safely and appropriately will help future parliamentary committees ascertain how and when to engage with children and young people.

The parliamentary system is one that strives to reflect the voices, interests and concerns of the entire population. Given that a quarter of the Western Australian population is under 18 years old, incorporating the views of children and young people on matters that affect them will help make the Parliament more representative and inclusive. In the committee's view, better decisions will be made if children can have their say on decisions about what matters to them.

With the end of the fortieth Parliament in sight, the committee hopes that those in the next Parliament will use the information put forward in this discussion paper to start considering ways in which children and young people might be encouraged to participate in parliamentary proceedings. With other jurisdictions showing us the way, there is good reason to suggest that now is the time for this matter to be taken seriously by the forty-first Parliament of Western Australia.

I would like to thank my fellow committee members for their commitment to this issue and acknowledge the support of the committee's advisers.

I commend the discussion paper to the house.

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Appointment of Member — Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.16 am] — without notice: I move —

> That Hon Tjorn Sibma be appointed as a member of the Standing Committee on Procedure and Privileges.

This arises as a result of the resignation of Hon Rick Mazza from the committee. I make the point that this is one of the major parties replacing a representative from the crossbench. At some point the house may want to reflect on that, but that is what the house is doing today.

Question put and passed.

ADJOURNMENT OF THE HOUSE

Special

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved —

> That the house at its rising adjourn until a date and time to be fixed by the President.

CURTIN UNIVERSITY STATUTE NO. 12—ADMISSION AND ENROLMENT — DISALLOWANCE

Discharge of Order

Hon Robin Chapple reported that the concerns of the Joint Standing Committee on Delegated Legislation had been satisfied, and on his motion without notice it was resolved —

> That order of the day 1, Curtin University Statute No. 12—Admission and Enrolment — Disallowance, be discharged from the notice paper.

CURTIN UNIVERSITY STATUTE NO. 5—ELECTION OF COUNCIL MEMBERS — DISALLOWANCE

Motion

Pursuant to standing order 67(3), the following motion by Hon Robin Chapple was moved pro forma on 14 October 2020 —

> That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the Curtin University Statute No. 5—Election of Council Members published in the *Government Gazette* on 24 July 2020 and tabled in the Legislative Council on 11 August 2020 under the Curtin University Act 1966, be and is hereby disallowed.

HON ROBIN CHAPPLE (Mining and Pastoral) [10.18 am]: We tabled a committee report and we gave a statement to the report. We would urge members to support the disallowance standing in the name of the Joint Standing Committee on Delegated Legislation.

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.19 am]: The government will be supporting the report's recommendation. On 18 March 2020, the Curtin University council amended statute 5 that relates to the processes for electing representatives of students, staff and graduates to the council. Previous statute 5, election by staff, and previous statute 9, election by students, went into some detail about the election processes. Previous statute 5—staff elections—included considerable detail about the election process, including the electoral rolls, the processes for nomination, the provision of ballot papers and the counting of votes. Previous statute 9—student elections—prescribed issues such as the eligibility of candidates and the filling of vacant positions, but the rules made by council under the authority of statute 9 provided more detail on the process for electing student representatives.

New statute 5 does not go into adequate detail on the processes, stating that those details would be contained in the rules to be made by the council. The university contended that new statute 5 was to consolidate election processes for different groups into one statute, which would also include the election of graduate representatives provided for under the 2016 amendments to the Curtin University Act. The university further contended that this approach to delegate more of the administrative details to the rules is consistent with its approach over a number of years.

The Joint Standing Committee on Delegated Legislation wrote to me on 24 September 2020, asking why the processes for electing members of the university council had been dealt with in the rules rather than in statutes and what the legal basis for this was. Curtin contended that it was empowered by its legislation to prescribe these procedures in the rules. Although the matter is not beyond doubt, after considering the concerns raised by the committee, I consider that the manner of electing council members should be substantively addressed in a statute and not by rules. Although the university has not agreed to this interpretation, it has agreed to remake statute 5 to contain the detailed provisions that it included in the rules at its December 2020 council meeting. On 23 October, I wrote to the committee advising it of Curtin's decision and requested that the committee postpone further consideration of statute 5 so that the committee could be informed of the revision of statute 5 by the Curtin University Council at its December 2020 meeting.

In its November 2020 report to the Parliament, the committee recommended that statute 5 be disallowed based on the committee's reading of the act that the Parliament intended the election of the university council to be subject to parliamentary scrutiny. The committee states that it is unable to delay the question of disallowance because, under our standing orders, we are on the proposed last sitting day prior to a general election, and if a motion to disallow a regulation remains unresolved, the question shall be put before the Council rises on that day. Given I share the view that statute 5 in its current form is not acceptable and given the time constraints, the government will be supporting the disallowance motion.

HON DONNA FARAGHER (East Metropolitan) [10.22 am]: I rise as the lead spokesperson for the opposition on this disallowance and also indicate that the opposition will be supporting the disallowance. I have read the Joint Standing Committee on Delegated Legislation's report and I thank it for that report. It is clear from that report, and certainly from my reading of both the Curtin University Act and statute 5, that the committee is correct in its recommendation that the statute be disallowed.

The Minister for Education and Training has gone through the process, but it is also clear to me—this was also reflected in the committee's report—that the previous statute 5, which has been replaced, correctly sets out the manner in which council members are to be elected and that they were deleted from the current statute 5. Given that, the opposition will support the recommendation of the committee and will support the disallowance.

I also add that in reading the committee's report—I appreciate that statute 12 has now been discharged from the notice paper—I read the part of the report that covered off on statute 12 as well. Just for the record, I indicate that I agreed with the committee's interpretation of the act and if it had not been discharged, I would have supported the disallowance.

Question put and passed.

DISALLOWANCE MOTIONS

Discharge of Order

Hon Robin Chapple reported that the concerns of the Joint Standing Committee on Delegated Legislation had been addressed on the following disallowance motions, and on his motions without notice it was resolved —

That the following orders of the day be discharged from the notice paper —

1. Public Transport Authority Amendment Regulations 2020.
2. City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Local Law 2020.

SWAN VALLEY PLANNING BILL 2020

Third Reading

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Environment)**, and returned to the Assembly with amendments.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF NAME) BILL 2018

Report

Report of committee adopted.

As to Third Reading — Standing Orders Suspension — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and returned to the Assembly with amendments.

CRIMINAL LAW AMENDMENT (UNCERTAIN DATES) BILL 2019

Second Reading

Resumed from 25 November.

HON ALISON XAMON (North Metropolitan) [10.28 am]: I will continue my remarks from yesterday, when I was addressing the problem of uncertain dates in four particular scenarios. The four sets of provisions that I outlined are not mutually exclusive. They can operate together when necessary—for example, if there is uncertainty about both the date of the offence and the age of the victim at the time the offence was committed.

I note that the Criminal Law Amendment (Uncertain Dates) Bill 2019 is retrospective in the sense that it will apply to all alleged acts and omissions regardless of whether they occurred before or after the bill's commencement. However, the bill is not retrospective in the following senses: it does not create new offences, and it does not render anything illegal that was previously legal; it does not expose an offender to the risk of a higher maximum penalty; and it also does not expose a person to double jeopardy if they were previously acquitted because of uncertainty about the dates, and as a result the person cannot be retried.

The bill removes a barrier that can prevent the prosecution from proceeding. It is not known how often this has occurred, because data has not been kept about the decisions of investigators about whether to lay charges. However, I note that in the other place two examples were given of matters in which charges had been laid and uncertainty about dates had subsequently become an issue. One case was SI v The State of Western Australia [No 2], in which a conviction for penetrating a child under 13 years of age was overturned because of uncertainty about the date of the offence and whether the old offence or a new offence should apply because the case spanned a period of a change in law. In another appeal case, Kailis v The Queen [1999], there was uncertainty about whether sexual offences had actually been committed before or after the victim's thirteenth birthday.

Bail eligibility, parole eligibility and aggravating or mitigating factors will apply as usual to the offence with which the accused is charged. I note that the Royal Commission into Institutional Responses to Child Sexual Abuse did some excellent work in this space. The commission found that many victims do not disclose child sexual abuse until many years after the abuse occurred, and often not until they are well into adulthood. Survivors who gave evidence to the commission reported taking, on average, 23.9 years to tell someone about the abuse, and men often took longer to disclose than women. The average reporting time for females was 20.6 years and for men it was 25.6 years. There are many barriers to disclosure and there is still a lot of work to do to break down these barriers. The royal commission made a range of recommendations in that space. I know that work is being done to address those recommendations, and it is incredibly important that this work is made a priority.

The Greens are very happy to support this bill. We think that this is an important mechanism to try to prevent the miscarriage of justice that occurs when perpetrators evade conviction because it could not be conclusively established when the offending took place. I particularly welcome the potential positive impact on the prosecution of child sexual abuse offenders, whom we know commit particularly heinous crimes that often have a lifelong impact on the victim. We are very happy to support this bill. I note that there is still more work to be done. In particular, I would like to see the prioritisation of additional important law reform in this space, such as raising the age of criminal responsibility. That is a bill that I would love to have seen brought into this place, debated and passed before the end of this year. These are the sorts of related bills that would help to complement these important law reforms that we have in front of us today. I certainly hope that this suite of reforms will be prioritised in the next Parliament.

HON NICK GOIRAN (South Metropolitan) [10.32 am]: We are dealing with the Criminal Law Amendment (Uncertain Dates) Bill 2019. I would like to say several things about this bill. Firstly, my understanding is that the bill, as drafted, is intended to provide a remedy to situations in which the uncertainty about particular dates prevents a person from being found guilty of a crime that has otherwise been proved to have occurred. The bill before us is expected to have application across a range of matters in which there is uncertainty about relevant dates, particularly facilitating the successful prosecution of child sexual abuse offences and cases in which the trauma of the victim and the passing of time make it difficult to provide sufficient details to a court about when the abuse occurred. In light of that policy and what this bill is going to do, it has my support. If this bill is going to provide a greater opportunity for convictions in child sexual abuse cases, it has my overwhelming support. It has been of significant concern to me that those who are accused have often been acquitted when there has been uncertainty surrounding the date of the offence, yet there has been no uncertainty about the guilt of the offender. It is my understanding that the purpose of the Criminal Law Amendment (Uncertain Dates) Bill 2019 is to ensure that that can no longer occur. I spoke about this type of injustice in my maiden speech in 2009.

I am disappointed that the McGowan government has decided to bring on this bill on the Legislative Council's final scheduled sitting day for the fortieth Parliament. By way of explanation, I note that this bill was introduced into this house on 22 October. The casual observer of the proceedings of the Legislative Council might say that that is a reasonable period of time, because today is 26 November. What they would miss in that casual observance is the fact that the 22 October to which I refer is not 22 October 2020, but 22 October 2019. This is a particularly outrageous situation, because if members take a moment to look at clause 2 of the bill, they will see that it is the

government's intention, with the support of this chamber, that this legislation come into operation on the day after royal assent. There is to be no delay from the executive—that is, the McGowan government—in bringing these provisions into operation.

Members know from events that took place earlier this year that the McGowan government has the capacity to ensure that the Governor is available, if necessary, to give assent to legislation even moments before midnight on the day that a bill is passed. We have seen that happen. There is therefore no reason why this bill could not be granted royal assent today and come into operation tomorrow, 27 November. There is no good reason why that could not happen. This is not a bill for which the government needs to ask the house to agree that it commence by proclamation because it needs to work on some form of regulations or anything like that; there is no upgrade of technology required before it can commence. This legislation could come into effect tomorrow—and if it did, it would be a good thing. However, for reasons known only to the Leader of the House and the Premier of Western Australia, the McGowan government deliberately and intentionally buried this bill—which will provide proper redress for victims of child sexual abuse—on the *Daily Notice Paper* for the entirety of this calendar year. None of the rest of us had any say in that; the Leader of the House decided that this bill, which will allow proper redress for victims of child sexual abuse, would be buried until the final day of the fortieth Parliament in the Legislative Council. That is disgraceful and unacceptable, and it is the latest example of the mismanagement of the government's legislative program in this place by the Leader of the House and the government.

Over the course of this calendar year, the government has urged us to pass a variety of bills as quickly as possible only for us to find out that the government was not ready to bring them into operation because it had to do a range of things. It was only yesterday that the Leader of the House informed us that the Births, Deaths and Marriages Registration Amendment (Change of Name) Bill, which was third read earlier this morning, will need three to six months before it comes into operation. We could have dealt with that bill today, and had we dealt with the Criminal Law Amendment (Uncertain Dates) Bill yesterday, it would be law today. But once again, the Leader of the House and the McGowan government continue to ensure that victims of child sexual abuse receive low priority on the legislative program. It is significant that the government has decided to take this course of action. I express my grave disappointment that this was not dealt with earlier.

Members will all remember that at the end of last year, we were dealing with a very controversial piece of legislation, and the house agreed to extra sitting time to allow the government to pass that legislation. It is no secret that I was one of the members who did not support that legislation. However, it is significant that that legislation, the Voluntary Assisted Dying Act, has not yet come into operation and will not come into operation until next year. Members are quite entitled to the view that it was important legislation that they wanted to support. The reality is that nothing will happen with it until the middle of next year. However, this bill, which will help victims of child sexual abuse, could have been brought in last year. It was last in the house on 22 October last year. I was the lead speaker for the opposition on the controversial Voluntary Assisted Dying Bill and I know exactly which day we started the debate because it happened to be my birthday—it was 15 October. It was not the most pleasant bill to be dealing with on my birthday; nevertheless, I was the lead speaker and we do what we need to do in this place. From 15 October last year we were dealing with that controversial bill, which the government decided was its top priority. It was entitled to make it its top priority, but the consequence of that is that this bill has not seen the light of day until now. The McGowan government needs to be held to account for that. Even the biggest fan of voluntary assisted dying surely would agree that we could have passed this bill in one day last year and made sure that it was available to victims of child sexual abuse. Surely we could have sacrificed one day last year, but not according to the McGowan government. We certainly have not been able to sacrifice any days this year. That is the record of the McGowan government as we now close the fortieth Parliament. That is the level of priority victims of child sexual abuse receive from this government.

There is an issue here that I hope the government will be able to respond to in its reply to the second reading debate, so that at least from my perspective, even though I am not the lead speaker for our party on this bill, there will then be no need to ask questions in the Committee of the Whole House. It is really dependent on the quality of responses provided to this question. As we know, we have had three and a half years of responses provided by government rather than answers to a whole range of issues. My question to the government on this bill that the government has decided deliberately to bury over the last 12 months is: has anyone in the government given consideration to the intersection between this bill and the Criminal Injuries Compensation Act 2003? By way of explanation—this will take a few moments—members may be aware that in Western Australia, we quite rightly take a compassionate approach to victims of crime and that compassion is manifested in several ways. One of those ways is through our criminal injuries compensation scheme. It allows a victim of crime to apply to the Chief Assessor of Criminal Injuries Compensation to seek an award for their loss. Members will appreciate that the sad reality—in this particular context, I am talking about victims of child sexual abuse—is that no amount of money could possibly compensate and provide any sense of adequate redress to a victim of child sexual abuse. The survivors of those heinous crimes live with that for many years; and, in my experience, having worked with an inordinate number of such victims, they live with that for decades, so there is no amount of money that we, as a community, can properly give them to address these concerns. Nevertheless, we do the best we can and we provide support in a variety of ways, and one of those ways is to provide an amount of compensation.

The relevance of this is that if the specific date of the offence committed against a victim of crime is on or after 1 January 2004, the maximum amount of compensation that that person can be awarded is $75 000. I do not want to get bogged down, Leader of the House, in a debate about the various mechanisms in the criminal injuries compensation scheme for how a person can get more than $75 000. Yes, that is possible. Yes, there is a mechanism whereby there can be two times the maximum amount. That is not the purpose of today's debate; the purpose of today's debate is about the specificity of the date of the offence. The criminal injuries compensation scheme requires there to be a specific date of the offence. With this bill, which has my support, we are saying that the date does not need to be specific.

Hon Sue Ellery: I get the point you are making.

Hon NICK GOIRAN: Obviously, if the date of the offence is after 1 January 2004, a person will be able to apply for compensation of up to $75 000, subject to the various provisions under the act that allow for some additional amounts, but things get particularly interesting if the date of the offence is before 1 January 2004. A table in the Criminal Injuries Compensation Act sets out the various provisions. Remember, we are talking about historical cases of child sexual abuse. That is part of the reason that it is so difficult for a victim to identify a specific date; often, by the time they report the matter to the police, it is decades after the original offence and it is very difficult to specify a particular day. Sadly, there are circumstances in which the date is very vivid in the mind of a victim of crime. However, finding specific dates is often incredibly difficult, particularly when a course of conduct has taken place over a long period.

It is the case under our scheme in Western Australia, and I think much to our shame, that if an offence took place between 22 January 1971 and 17 October 1976, which is approximately five and a half years, the maximum amount of compensation is $2 000. On another day, when we have more time and we can have a debate about these things, that is a matter that needs to be addressed. Nevertheless, during that period of five and a half years, a victim of crime is entitled to compensation of $2 000. What happens when a victim is not sure whether the offence was on 17 October, which is the final date in that period, or the next day, 18 October? The significance is that the amount of compensation that a victim is entitled to jumps from $2 000 to $7 500. What happens if the victim is unsure whether the offence took place on 31 December 1982, in which case the maximum would be $7 500, or the next day, 1 January 1983, when it would be $15 000? What happens if the date of the offence is not clear to the victim of crime; they are not sure whether the offence occurred on 31 December 1985, which would limit them to compensation of $15 000, or the next day, at which point it would jump to $20 000? I must say that each of those increments, particularly in the case of a victim of child sexual abuse, is a pittance. We are talking here about figures of maybe an extra $5 500 or $7 500 or, in the last example, an extra $5 000. In the scheme of things, as I say, it is a mere pittance for their pain and suffering and loss of enjoyment of life.

Things get particularly difficult when there is a lack of clarity, such as "on or around 30 June 1991". If the offence took place on 30 June 1991, the maximum amount of compensation is $20 000; if it was the next day, it is $50 000. Suddenly, we are starting to talk about a sizeable difference, which has a material impact on the victim of crime. There is a very big difference between $20 000 and $50 000. Of course, the same principle applies when we get to 31 December 2003, when the maximum is $50 000, and the very next day, 1 January 2004, we kick into the current system, which is $75 000.

I do make this other passing remark: the amount of compensation that is currently available has not been reviewed for more than 16 years. I would call on whichever party wins the state election on 13 March next year to make it a priority to review this. For the past 16 years, there has not been any movement, not one cent, in respect of compensation for victims of crime in Western Australia. I repeat: 16 years. This is too important an issue for people to be pointing fingers at each other and saying, "You didn't do it in the last four years, McGowan government", and then the government says, "You didn't do it in the eight years of the Barnett government", and then we say, "You didn't do it in the Carpenter government." This is too important an issue for that. The point is that whichever party has been on the treasury bench over the last 16 years has not reviewed the amount of money that is available to victims of crime. It has stalled on $75 000 for the last 16 years. Compensation of $75 000 was a darn sight larger amount of money on 1 January 2004 than it is in 2020, notwithstanding the global pandemic and everything else that has transpired in the intervening period. It is well overdue.

Members will be aware that, particularly in this fortieth Parliament, we have routinely and regularly put into bills statutory review clauses. I am quite proud of the performance of this Legislative Council in that respect. Often, those review clauses have been for a period of five years, but there have been variations—sometimes it has been three years, four years and so on and so forth. In fact, I seem to recall one recently in which the review period is one year; I think it might be the Guardianship and Administration Amendment (Medical Research) Act, on which Hon Dr Sally Talbot tabled a report yesterday. We have routinely done that, and for good reason. Review clauses ensure that whoever is in government is obliged under law to review the statute and report to the house on whether there is any need for changes to be made. Sadly, this has not been the case with the Criminal Injuries Compensation Act 2003; a review has not been done. That has led to the situation we are in now, in which 16 years later, we still have not done anything. As I said, this is not a new issue for me because this is something that I even raised in my maiden speech in 2009. The last 11 years have passed quickly!

I simply make the point that just one calendar day can make all the difference for a victim of crime under Western Australia's criminal injuries compensation scheme. Although this bill has my support for the reasons I have mentioned—that is, it is likely to increase the probability of securing a conviction in certain cases—we must not just leave it there. I ask members to imagine for a moment a victim of child sexual abuse who decides, some substantial period of time after the abuse, that they will go to the police to report the matter. That is an incredibly difficult decision for a victim of crime to make. They then have to endure the taking of a detailed statement. As a person who, over the course of my previous professional career, had the obligation to take some of these statements, I can attest to the fact that it is traumatic to take the statement, let alone for the person who has to recount the details of what took place, sometimes decades ago.

Members, imagine what it is like for a victim of child sexual abuse, who decides years later that they are now ready to go to the police. They go through this very difficult and, in its own way, traumatic exercise. Under the legislation that we are looking to pass today, they will have the comfort of knowing that if they do not get the dates precisely right, that is not going to be detrimental to their being able to secure some sense of justice and a conviction. That will be a great feeling for such a person, if they are able to secure a guilty verdict. But what happens if their next interaction with the so-called justice system is to be told, "Sorry, we can't really be sure about the date, so we're going to award you $20 000 of compensation and not $50 000 of compensation"? Imagine a victim of child sexual abuse being put in that situation. The system for which we will be collectively responsible will compound the trauma of victims of child sexual abuse. We have an opportunity to get this right. I simply ask: to what extent have government members given consideration to the intersection between these laws? In particular, I would like to know whether the Chief Assessor of Criminal Injuries Compensation has been consulted specifically about this issue.

It is the last day, in theory, of the fortieth Parliament for members of the Legislative Council. This issue is too important. I do not want obstructive answers to questions on this issue. I want a proper and comprehensive response. I do not want us to get into Committee of the Whole House to be told by the minister at the table that the government does not have that information available. That will not be satisfactory. This bill could have been brought on last year, but it has been brought on on the last day. There is no other opportunity for me to raise this issue. I cannot raise it tomorrow or next week; I cannot raise it until after the election, and that is not good enough. If we are going to pass the bill now, we need an answer to this question: has the Chief Assessor of Criminal Injuries Compensation been specifically consulted about the intersection between this bill and the legislation that the chief assessor is responsible for administering? Yes or no—none of the equivocation that we have seen over the last three and a half years or fake answers. Yes or no—has there been any consultation with the chief assessor? If the answer is yes, when did consultation take place? If consultation is taking place right now as I am speaking, that is fine. When did it take place? That is the next question that needs to be answered. Most importantly, what specific feedback has the Chief Assessor of Criminal Injuries Compensation given on this issue?

It may be that the Chief Assessor of Criminal Injuries Compensation will talk about how its office currently manages this situation, because, members, the Chief Assessor of Criminal Injuries Compensation has to consider this issue. Why is that? It is because, for simplicity, there are two avenues by which a victim of crime can access compensation. One avenue is when there has been a proved offence; in other words, there has been a guilty verdict. The other avenue is when no person has been charged. Members can imagine a situation in which a victim of crime for a historical child sexual abuse case reports a matter to police. The police start to investigate, but find the alleged offender is deceased. The police cannot bring charges against the deceased person so therein ends that aspect of the criminal justice system, but it does not necessarily preclude the victim of crime from seeking compensation. They can still make an application. At that point, the chief assessor has to determine whether, on the lesser standard of the balance of probabilities, the offence has taken place. That, again, is an issue that needs reform. It is a conversation for another day.

As I have said previously, it is most unsatisfactory and incredibly traumatic for a victim of crime whose alleged offender is not alive. They go through the court process and get a not guilty verdict and then they try to get criminal injuries compensation and they cannot. They are shut out of the system because of the not guilty verdict. Why did they get a not guilty verdict? It is because, quite rightly, our criminal justice system requires the prosecution to prove the case beyond reasonable doubt at that highest standard. They were not able to achieve that standard and now they are shut out from compensation, yet a victim of crime from a deceased accused needs to prove their case only on the balance of probabilities. That is an area of reform. I say "only" in the context of being a supporter of that lower standard of applying for compensation. I just think it is wrong that a person who has obtained a not guilty verdict cannot then go to the criminal injuries compensation assessor and say that they were not able to meet that high bar, but they can demonstrate—a bit like the O.J. Simpson case—that on the balance of probabilities, it did occur, and they were sexually assaulted, so they are entitled to compensation. People should be able to obtain that in Western Australia, but they cannot.

The point is that the Chief Assessor of Criminal Injuries Compensation already needs to deal with this complexity of uncertain dates when an application is made when a person has not been charged. It may well be that the government has at its disposal at some point today information about how the chief assessor already deals with those types of matters. I hope we are able to be provided that information. However, that information alone will not answer this

question. Just because the assessor is handling those cases in that way, the question is how it will impact on those cases that are brought on a proved case, when the case has been proved in the criminal court, a guilty verdict has been obtained thanks to the benefit of this legislation—the uncertain dates—but the criminal injuries compensation scheme does not allow for uncertain dates for a proved offence. I am not talking about when nobody has been charged. We already know full well that the criminal injuries compensation assessor has a scheme to deal with that. It is that technical intersection that arises only because of this legislation. It does not exist at the moment; it is a new thing that will happen. I would like to think that at the very least, given that the McGowan government has purposely, deliberately and intentionally buried this bill over the past 12 months, the only reason that has happened is that it has been busy consulting with the Chief Assessor of Criminal Injuries Compensation and getting to the bottom of the matter to make sure that there is no gap, that there is no problem and that the trauma for victims of crime will not be further compounded. I would like to think charitably that that is the reason there has been this extraordinary delay.

We absolutely have to get to the bottom of this today; there is no other time to do it. If we find out in a short while that this remains a grey and murky space and there is no clarity to it, that should not hold up the progress of this bill. We must pass it. I am not suggesting that there should be any delay to that whatsoever. As I said earlier, I am disappointed that this was not dealt with over a year ago. However, as an absolute minimum, if this matter has not been properly addressed, if there will be some kind of gap and the Criminal Injuries Compensation Act 2003 requires minor amendments to bring it into line with what we are doing here, I hope that whoever wins government on 13 March will expedite this type of reform. And I mean "expedite" in the true sense of the word, not in the sense that has been used by the McGowan government over the past three and a half years, when "expedition" has meant to move at the speed of a tortoise or a snail. I am not talking about the McGowan version of expedition; I am talking about real expedition. That means we should drop everything after 13 March and get this sorted.

Hon Alannah MacTiernan interjected.

Hon NICK GOIRAN: I suggest the Minister for Regional Development says nothing on this topic.

Hon Alannah MacTiernan: Why would you try to suppress me for expressing enthusiasm for us sitting longer and getting more bills through?

Hon NICK GOIRAN: Because, minister —

Several members interjected.

The ACTING PRESIDENT (Hon Dr Steve Thomas): Order, members! Hon Nick Goiran, we might return to the substance of the bill. If you will direct your comments to me, I will ensure that we do not have the background noise that we currently have.

Hon NICK GOIRAN: The reason is that when the minister was away on urgent parliamentary business, I was saying that this matter is far too important for us to be busy pointing fingers at one another. It needs to be addressed for the benefit of the victims of child sexual abuse in particular.

As it so happens, the type of reform that we are dealing with at the moment—the reform that I am talking about—will be of benefit to all victims of crime. I do not know whether other members agree with me but, in my view, some crimes are more heinous than others. It is very difficult for me to get past the view—I do not think that I will ever be persuaded—that anything is more heinous than a sexual assault on any person, irrespective of age. It seems to go, again, to a whole other level if anything can be worse than the worst when we are talking about children. This matter needs to be addressed by whichever party wins government on 13 March.

There may be a simple explanation for all this. Frankly, I doubt it. If we can address all of this today, well and good. I would like to facilitate that, but if it cannot, the purpose of me speaking about this particular matter for the last 40 minutes is to emphasise and underscore, especially to those members who will be here in the forty-first Parliament, that this needs to be addressed; it cannot go on any longer. We have the opportunity to ensure that there is real reform for victims of crime and victims of child sexual abuse. It is within our power to do it. It is not complicated. Members who are here for the first time will see how amazingly quick some pieces of legislation can go through. It is staggering at times to see what can be done in this place when there is a will—how bills can be brought on and passed through both houses of Parliament in a day, in a 24-hour period. How can that happen? It can happen if it is considered by everybody in a unanimous fashion to be a matter of great importance. I would like to think that we can all unanimously agree to address this type of systemic trauma on victims of crime. Sure, we can have a robust debate amongst ourselves about the reasonable level of compensation that should be available to a victim of crime. At the moment, the maximum is $75 000. We could select any figure; we could say it should be $80 000, $85 000 or $100 000, and well-meaning, reasonable-minded members could have a strong view about what it should be. I have no problem with that. That is not what we are talking about; we are talking about ensuring that no technical gap can unintentionally create trauma for a victim of crime.

As I conclude my remarks, I note that since 1 July 2016, Western Australia has had the catastrophic injury scheme—that is, the no-fault scheme that was introduced for motor vehicle accidents, which is funded by an increase in third party premiums. If a person is catastrophically injured as a result of a motor vehicle accident, a very significant amount

of compensation is available to them, rightly so, to deal with their needs for the rest of their life—it is a no-fault scheme funded by our third party premiums—yet a victim of crime who has been catastrophically injured can receive a maximum of only $75 000. There is no equity in that. A person who has catastrophic injuries as a result of being a victim of crime can receive up to $75 000, but for a person who has catastrophic injuries as a result of a motor vehicle accident, in a sense—this is a bit of exaggeration on my part—the sky is the limit on how much compensation they can get. In no way am I diminishing the trauma experienced by a catastrophically injured person as a result of a motor vehicle accident. They have my support for access to that no-fault scheme. I simply make the point that victims of crime should not be treated like second-class citizens in this way. It is time for all of us to act. It is long overdue that we properly review these matters. There is capacity for all members in the forty-first Parliament to work together to ensure that there is real and measurable justice for victims of crime. I hope that members are persuaded that there is a need for this reform and that it is long overdue.

With those remarks, I once again re-emphasise my support for the bill before the house because it will provide greater opportunity for victims of sexual abuse in particular to secure a conviction, and anything that we can to do lessen the systemic trauma for those people continues to have my overwhelming support.

HON SUE ELLERY (South Metropolitan — Leader of the House) [11.17 am] — in reply: I thank members for their support of the Criminal Law Amendment (Uncertain Dates) Bill 2019. Hon Michael Mischin asked a question about similar provisions in New South Wales. He referred to similar section 80AF of the New South Wales Crimes Act 1900 and asked whether any issues had arisen from recent reforms in a similar regard. The proposed changes to the Western Australian Criminal Code have regard to but do not mirror the recent New South Wales amendments regarding uncertainty about when a sexual offence against a child occurred. The New South Wales act came into effect on 1 December 2018. The legislation introduced new section 80AF to the New South Wales Crimes Act to provide for an accused to be prosecuted in respect of the conduct under whichever sexual offence had that lesser maximum penalty, regardless of when during that period the conduct occurred. The New South Wales government has previously indicated that since its passage, one case has relied on that section and no particular problems arose in that matter. The department recently sought advice from the New South Wales Department of Communities and Justice, which confirmed that no issues with the operation of section 80AF have been identified.

The honourable member also asked whether we would provide information on the number of cases that had been put on hold in the hope that an amendment to the law would be able to rescue those prosecutions. I cannot give the member advice on that. It is not possible to provide specific information of the kind sought. Although the issue can arise at any stage of a prosecution and even in the trial, it may relate to some or all of the incidents alleged to have occurred. Sometimes alternative charges can be pursued, even if they have a lesser maximum penalty. Decisions arising from the issue may be made by the WA Police Force, the Director of Public Prosecutions or a judge and/or jury, so there is no way of accurately collecting that kind of data. The Office of the Director of Public Prosecutions, though, advises that it has on occasion considered cases and has determined that no prosecution can be properly commenced due to that issue. As this bill operates retrospectively, it will enable charges to be laid and convictions to occur when that has not been previously possible. As in many other situations, if a case that once could not have been prosecuted now can be, the office of the DPP is open to commencing a prosecution if there are reasonable prospects of conviction. Following the passage of this bill, the Office of the Director of Public Prosecutions will liaise with the WA Police Force in the normal way.

I thank Hon Alison Xamon for her support of the bill. She is out of the house on urgent parliamentary business. The honourable member set out the four scenarios in which the bill will address the uncertainty of dates.

I thank Hon Nick Goiran for his support of the legislation. The essential question asked in the second part of the honourable member's contribution was around the intersect between this bill and the Criminal Injuries Compensation Act 2003, in particular noting the periods of time that attract different levels of compensation payment and to what extent victims, whose cases are able to be resolved with prosecution and a conviction as a result of this, might be disadvantaged. To paraphrase the member: is there a gap? In the last part of his contribution, the honourable member asked about the chief assessor's involvement in the consideration of how the two pieces of legislation come together. Indeed, the Chief Assessor of Criminal Injuries Compensation has been consulted and has provided advice, so there will be no change to a victim's right to apply for criminal injuries compensation or the way the assessor determines an application in accordance with the Criminal Injuries Compensation Act.

Criminal injuries compensation can be awarded under that act in the following circumstances: the perpetrator has not been identified according to section 17; a person has been charged with an alleged offence but the charge has not been determined according to sections 16(1)(a) to (g); and, when there has been acquittal, the assessor will determine the application in accordance with section 13. Therefore, the bill is not intended to affect the manner in which any uncertainty in relation to the date of an offence is dealt with under the Criminal Injuries Compensation Act. A table under section 31 of that act sets out the maximum amounts that may be awarded for various offences committed on a date within a particular period. To apply the particular maximum amount, the assessor needs to be satisfied on the balance of probabilities that an offence occurred within a particular date period; for example, if the claim is for an offence committed on a date unknown between, say, 31 December 1981 and 31 December 1983, the assessor

may apply the higher maximum amount if satisfied on the balance of probabilities that the incident occurred in the period that attracts the higher maximum amount. Therefore, the bill does not seek to make uncertain dates certain but, rather, removes that technical barrier to allow a conviction for the offence with the lowest penalty, notwithstanding the uncertainty. The government recognises that there are challenges with the operation of the Criminal Injuries Compensation Act and has asked the Commissioner for Victims of Crime to provide advice specifically on how those challenges can be addressed in the best interests of victims.

On the other matter of the honourable member's side comments about the Criminal Injuries Compensation Act, I am advised—I am sure the honourable member is already aware of this—that the government tabled a review of the Criminal Injuries Compensation Act some time ago. I can probably answer that question in the Committee of the Whole House if necessary.

With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: I will take up an issue a little further. In her second reading reply, the Leader of the House mentioned that the assessor will determine the date dependent upon the standard of balance of probabilities. I agree that that will be what the assessor will do moving forward; in fact, that is what the assessor has done in any application that has been made to the assessor, other than when there has been a proved offence. In all the types of circumstances that the Leader of the House raised and no person had been charged—maybe somebody was charged but they may never have ended up standing trial because they were found to be mentally unfit, and so on and so forth—there has been no conclusion to the criminal procedure process. Therefore, an application would have to be made under those other gateways and the assessor would have to work out a date based on the evidence that has been provided, and the standard the assessor would apply is on the balance of probabilities. That is conceded and is not up for debate.

The question that arises is how the assessor will deal with it when there has been a proved offence. As I understand it, this is the most common type of application that has been made—a guilty verdict has been obtained. I want to make sure that I have not misunderstood the advice that was provided to the chamber in the reply. Is it intended, irrespective of what has transpired under the criminal procedure, that when an application is made, even for a proved offence, there will be the capacity for a victim of crime to persuade the assessor about the date on the balance of probabilities?

Hon SUE ELLERY: Yes, the honourable member is right. The current arrangements apply when the case has not been proved. The assessor will apply the same mechanism—that is, determine on the balance of probabilities—in a proven case as well.

Hon NICK GOIRAN: That is good news for victims of crime. I thank the Leader of the House for that information. The Leader of the House referred to the fact that the government is aware of the various challenges in a general sense, and indicated that the Commissioner for Victims of Crime is looking into it. Is that some form of inquiry that is taking place; and, if it is, are there terms of reference, is there a scheduled date for it to be concluded, and will it be in a report that might be tabled in Parliament? Can the Leader of the House provide some further information about that?

Hon SUE ELLERY: Yes. Since the review of the Criminal Injuries Compensation Act was published, the government has sought advice from the Commissioner for Victims of Crime on the matters not only contained in that review, but also specifically raised by the member around the issues for victims of sexual offences. I do not have a specific time line on when that advice will be received. I am told it is anticipated to be in the next couple of months, but I cannot give the member anything more specific than that.

Hon MICHAEL MISCHIN: I want to pick up on a couple of comments that the Leader of the House made in the course of her second reading reply. The Leader of the House mentioned that advice had been sought about the New South Wales experience with like provisions. My understanding is that those provisions go nowhere near as far and nor are they as comprehensive as what Western Australia is proposing. When was that advice sought?

Hon SUE ELLERY: Advice was sought during drafting, but further advice was sought literally this morning to check that there had been no developments since that initial advice. The advice remains the same.

Hon MICHAEL MISCHIN: There has been a response to that request for further information, but no difficulties have been experienced and there have been no challenges or cases that might affect the merits of this or require something to be addressed?

Hon Sue Ellery: By interjection, that is correct.

Hon MICHAEL MISCHIN: Thank you. Have any other jurisdictions in Australia made similar amendments to their criminal law?

Hon SUE ELLERY: Not that we are aware of.

Hon MICHAEL MISCHIN: Moving on, Hon Alison Xamon mentioned that this bill will operate retrospectively. I am not sure that is necessarily the right way of categorising it, but I understand what she was driving at. If I understand what the Leader of the House has told us, the Director of Public Prosecutions will revisit cases and review circumstances in which either no charge has been laid by reason of uncertainty about date or age, or change of law, or cases in which no indictment has been presented by reason of those uncertainties that are being addressed in this bill. I take it that considerations such as the age of the accusation, and whether there was an adequate penalty that reflects the seriousness of other conduct and so forth if there were other charges laid, will be addressed. Would that be right?

Hon SUE ELLERY: Yes.

Hon MICHAEL MISCHIN: There is no guarantee that simply because a charge or a case did not proceed because of one of these difficulties, a charge or an indictment will be laid?

Hon Sue Ellery: It may be, but it is not guaranteed.

Hon MICHAEL MISCHIN: How far back will the director be looking at these things? I know that it is a question of horses for courses, but surely some kind of a line is going to be drawn. Will this apply to nothing before the 2014 case of SI v The State of Western Australia or will we be looking at a more recent threshold date? I am not asking the director to commit hard and fast to that date, but I simply want to get an idea of how far back we will be going.

Hon SUE ELLERY: In my second reading reply I said that the Office of the Director of Public Prosecutions will liaise with Western Australia police. They will not actively go back to a certain point and look at all cases, but WA police may bring to attention some glaringly obvious cases. The advice I have is that some matters may be revisited in which an otherwise strong case could not be proceeded with because of the uncertainties that this bill now addresses. In addition to some matters that the Office of the Director of Public Prosecutions might revisit, it anticipates that it may be asked by the Western Australia Police Force and/or victims to reconsider cases that were not previously proceeded with or were discontinued. Of course, the prosecutors will still have a duty to evaluate the reasonable prospects of conviction before proceeding any further. This will not be driven by a time line but by the particular characteristics of those cases that will then be brought to the attention of the Office of the Director of Public Prosecutions.

Hon MICHAEL MISCHIN: I am concerned about whether some cases might be overlooked for a variety of reasons, one of them being that this process is driven by Western Australia police. This is no reflection on their diligence and the like, but as time goes by and the older a case gets or if the file is closed, there may not be an appetite or, indeed, an awareness of that matter that will have a police investigator going back to check whether it is now a viable case. I take it that it is accepted that that may be the case.

Hon SUE ELLERY: Yes. The honourable member is right in that this process is not automatic with every single file being screened; that will not happen. But there may well be cases that officers at the DPP are aware of now that are brought to attention, and it is highly likely that there are cases that WA police and, indeed, many victims of crime who are generally engaged in following these kinds of debates are aware of that are also brought to attention. The member is right in that we are not going to go back and look at every single file. As a consequence, it may be that something is lost in corporate history.

Hon MICHAEL MISCHIN: That would be a similar situation with the DPP. I expect that the director, team leaders or file managers may very well be aware of files that they have had that they thought were viable but were frustrated by these particular problems. If they have the time, they may dust them off and have another look at them and propose that they be proceeded with, subject to a complainant's evidence still being viable, if you like, and other considerations. But, again, as I understand it, that would depend on either the director, a senior officer or a particular file manager—the file managers may have changed over time and the original file manager may not even be there anymore—being aware of those cases and revisiting them.

Hon SUE ELLERY: The member's characterisation is correct.

Hon MICHAEL MISCHIN: Are any difficulties foreseen with regard to double jeopardy, either on the basis that someone has been charged already with an alternative offence as a second best because the best one was frustrated by these problems, or in a case in which someone is acquitted of an alternative charge? Is the director aware of whether there are many or a few cases of that character that will be affected by these considerations?

Hon SUE ELLERY: The answer to the member's question is no. A new prosecution would not be taken against someone who has already been prosecuted under a lesser charge, and that prosecution perhaps had to go to the lesser charge because of the problem that has now been fixed. It is not going to trigger the double jeopardy principle, if you like.

Hon MICHAEL MISCHIN: Finally, the minister might be able to assist. Again, I am not looking for a firm figure. I just want to get an idea or flavour of the significance of this reform. Perhaps the director is aware, either through personal knowledge or anecdotally, through her staff, of roughly how many offenders have not been prosecuted in, say, the last 12 months because of this difficulty, or of how many charges that might otherwise have been laid have not been laid, or indictments not presented. I know it is a difficult question, but there must be some idea of the extent of the problem. I know the director is anxious to get this reform through, so I want to get an idea of just what difference it will make, and particularly how many prosecutions may have been compromised entirely because there was no other way of approaching them, other than getting this legislation through, so no alternative charges were available. Is there half a dozen a year, a dozen a year?

Hon SUE ELLERY: I understand the question the member is asking, and I asked the same question myself because the member raised it in his contribution to the second reading debate. I am sorry; I am not able to do that. There would be matters that did not proceed, for example, because the police took a certain view that it was not worth bringing it to the attention of the Director of Public Prosecutions. I understand why that would be of interest to the member, but I am not in a position to provide him with that information.

Hon MICHAEL MISCHIN: Lastly, on a more general issue that relates to sexual offences, I recall that it was a government election commitment that a parliamentary committee be established to review the director's decisions in respect of discontinuing cases of sexual assault and the like. That has not come to fruition, but the Attorney General, when in opposition, was pretty firm on the necessity for that. Can the minister explain why that has not been done? To my mind, it was a wholly impractical and undesirable idea, but the government was pretty firm on it when it was in opposition. Can the minister help us out there?

Hon SUE ELLERY: The "Policy and Guidelines for Victims of Crime 2018" and a formal victim review process were put in place, which basically removes the need to proceed down that threshold.

Hon MICHAEL MISCHIN: This is more of a comment, but it falls far short of the commitment for public and parliamentary scrutiny of those sorts of decisions, which the shadow Attorney General at the time thought was essential. I always thought it was undesirable and not practical, so I am pleased that it has not proceeded. Of course, improvements in internal processes are always made, so I commend the director on improving them. I have no further questions on clause 1.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Part I Chapter IIB inserted —

Hon MICHAEL MISCHIN: The focus of clause 4 with the insertion of Chapter IIB into the Criminal Code is on sexual offences. Is there any reason why it is limited to sexual offences and not to other serious offending?

Hon SUE ELLERY: I refer the member to proposed section 10L, over the page, which applies to indictable offences, including sexual and all other indictable offences. Proposed sections 10M and 10N apply to the age of the victim being uncertain and is limited to sexual offences, as these are where the age-related issues present in terms of the appropriate charge.

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Section 19 amended —

Hon MICHAEL MISCHIN: This was a late addition to the bill, along with the amendment to the Evidence Act that appears in clause 9, as I recall. When was it realised that further amendments were necessary in order to achieve the ends being sought by those provisions?

Hon Sue Ellery: By interjection, we think you might mean part 4, because I am advised that part 3 was not a late change.

Hon MICHAEL MISCHIN: I see. Pardon me; you may be right.

Hon Sue Ellery: Say that louder!

Hon MICHAEL MISCHIN: You may be right—it is not unknown!

The DEPUTY CHAIR: Order, members! I do not want too much dissent in the chamber!

Hon MICHAEL MISCHIN: Congratulations, minister—credit where it is due! The minister is right; parts 4 and 5 were the late additions, so I will move on.

Clause put and passed.

Clause 8: Act amended —

Hon MICHAEL MISCHIN: I repeat the question about parts 4 and 5 of the bill: when was it realised that those needed to be addressed?

Hon SUE ELLERY: I am advised that they were inserted when the bill was in the Assembly and that they are, of themselves, consequential amendments but they had been overlooked in the drafting, so that was picked up in the Assembly.

Clause put and passed.

Clauses 9 to 11 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.

NATIONAL DISABILITY INSURANCE SCHEME (WORKER SCREENING) BILL 2020

Second Reading

Resumed from 9 September.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [11.54 am]: I stand on behalf of the opposition to offer our support for the National Disability Insurance Scheme (Worker Screening) Bill 2020. I do not intend to take too much time; suffice to say that we think it is an imperative component of the National Disability Insurance Scheme in an overall sense. As most people know, the genesis of the National Disability Insurance Scheme stemmed from an initiative of former Prime Minister Julia Gillard in 2012. It was met with universal applause and universal support. Of course, the transition to a National Disability Insurance Scheme was fine in theory, but in practice it was always going to have some problems with its implementation. Fundamentally, it has been relatively seamless, although pockets of concern have been raised by some people with disability. Some people feel that they are worse off and others have had difficulty accessing funding et cetera. Across the board, the whole point of the NDIS is to ensure that people with disability—one of the most marginalised groups in our community—are empowered; that is, they have control of their own destiny, which in a lot of instances they feel they have not had before. From that perspective, the theory of it is magnificent.

In Western Australia, the previous government decided to keep the actual operation of the NDIS contained within Western Australia. Dare I say it, Western Australia is a bit of a maverick state, which is fairly common for Western Australia. Our mob lost government in 2017 and the current government decided to go with the national model. I have no issues with that at all. I acknowledge and respect that decision. The opposition has worked constructively with the government and the disability sector to ensure that those people who are eligible for the NDIS are provided with that service delivery.

Funding is only one component of the NDIS. An area that sits hand in hand with the funding challenges is accessing workers. Tens of thousands of workers are needed in the disability sector to service what is close to half a million—400 000 or something along those lines—people with disability. In Western Australia, we are talking about 39 000 to 40 000 people accessing the NDIS. Service providers and individual providers have a huge task in front of them. Accessing quality staff is always problematic in an area such as disability services. We have to ensure that established protocols are available to ensure that people with disability are not in any way remotely discriminated against.

With that said, I think we have landed in a pretty good place with this screening legislation. I thank the Minister for Disability Services for his support in providing every avenue for information. I have had two briefings from the minister's office and his advisers; I thank them very much. I am pretty much satisfied with what has been provided, so I have not got too much to go through.

The Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme was signed by the Premier on 4 June 2019. It will literally introduce a high standard of screening for persons engaged in NDIS work. That is very important. As I said, one of the most marginalised and vulnerable groups in our community is people with disability. It is absolutely imperative that we prevent any sort of exploitation of those people, particularly from a financial perspective, but also from a physical and sexual perspective.

Everybody, but particularly people with a disability, deserves the right to live a life without abuse, violence, neglect or exploitation. That is the aim of this legislation.

This applies equally to the State Administrative Tribunal in reviewing whether decisions are consistent with the intergovernmental agreement. People can apply for a clearance for work that is subject to requirements under the NDIS act for a registered NDIS provider, that is delegated by a CEO with authority under the bill, or that the CEO is satisfied makes it necessary or convenient for them to hold a clearance. They must be engaged or propose to be engaged in NDIS work with a connection to WA. If the screening is successful, they are granted an NDIS worker check clearance certificate. The clearance will be granted for five years, but will be subject to ongoing monitoring

and can be cancelled earlier. If an NDIS worker check clearance certificate is refused, the exclusion will be indefinite unless it is cancelled under the bill. That information was provided by the advisers on the day. Ultimately, the NDIS worker screening will commence on 1 February 2021, which is why it is important that we pass this legislation today.

In terms of national consistency, all other states and territories will have NDIS worker screening legislation. I think that is imperative for it to work. The fundamental role of the commonwealth government in this scheme is to coordinate information and establish a clearance database. With a Federation like Australia, it is really important to have that clearance database as a central repository of information. I mentioned this yesterday when I talked about the mutual recognition legislation—that is, when national consistency is needed, there needs to be not only a central database, for want of a better term, but also provision for the states to have a degree of autonomy. It is not mirror legislation. The IGA aims for national consistency in worker screening rather than exact uniformity between jurisdictions. I understand, recognise and support that. That is probably a good thing. This provides for states to make their own individual decisions. It provides states and territories with significant discretion in implementing certain elements of the national policy, including consistency in relation to penalties, enforcement, the issuing of physical cards, and the ability for workers to commence working in advance of their applications being determined.

As far as Western Australia is concerned, the bill is drafted to be consistent with the Working with Children (Criminal Record Checking) Act 2004 as appropriate and will implement a worker screening scheme broadly similar, but not identical, to that under the working with children legislation. In some jurisdictions, the proposed legislation combines NDIS worker screening with other vulnerable person screening requirements. That is not the case in Western Australia—the working with children legislation and the worker screening legislation are two discrete pieces of legislation. That was done intentionally. Notwithstanding a few minor differences, each state and territory's legislation to implement nationally consistent worker screening will mean that the results of the screening will be portable across Australia and NDIS employers. As I have said, that is an imperative component of being in a Federation, particularly for something like worker screening. If a worker meets the criteria for worker screening in Western Australia, one would like to think that there will be national consistency so that if the worker transfers or moves to another jurisdiction, their screening will be portable. That is what happens now for most qualifications.

With regard to applications for clearance, people who engage or intend to engage in National Disability Insurance Scheme work in Western Australia or who reside in WA may apply for an NDIS clearance as required by the National Disability Insurance Scheme Act and other rules. Persons employed or otherwise engaged by registered NDIS providers, including contractors and subcontractors in risk-assessed roles, will require clearance. Risk-assessed roles include key personnel, such as those holding executive and senior management positions, and roles for which normal duties include the direct delivery of specified supports or services to, or are likely to require more than incidental contact with, the person with the disability. Self-employed people or volunteers used by registered National Disability Insurance Scheme providers and their subcontractors in risk-assessed roles will similarly be required to apply.

There is one area I brought up a couple of times with the advisers. I think it is stating the bleeding obvious that those workers who have incidental contact with an NDIS participant will not be required to have clearance. I understand that, fundamentally, we are talking about perhaps someone who does some clerical work or comes in as a delivery operator or something along those lines, but it is rather subjective. I am sure that the minister's advisers will be well prepared for this. I would appreciate it if the minister could clarify what is meant by an "incidental worker" with regard to this legislation.

There will be automatic exclusions, interim bars and suspensions. If an applicant or clearance holder has a criminal record showing a conviction for a class 1 offence committed as an adult, the CEO must issue an automatic exclusion, as these persons will be disqualified from NDIS work. Disqualified persons will be permanently excluded from NDIS work and will not be entitled to reapply. Again, that is eminently sensible. That is basically it on the requirements of the bill itself. With regard to other key features, the bill has information-sharing provisions to ensure that all risk assessments of applicants and clearance holders undertaken in Western Australia and other jurisdictions are informed by all relevant information. That public sharing of information between organisations, administrators and jurisdictions, again, is eminently sensible.

Transitional arrangements will be provided for in the regulations to ensure the orderly phasing in of National Disability Insurance Scheme workers. The new screening requirements in the bill will continue to strengthen the current safeguards that apply to disability service provision.

The Standing Committee on Uniform Legislation and Statutes Review did a first-class job of assessing this legislation, and I would like to thank Hon Michael Mischin for his strong leadership and his committee for forensically going through the bill. Essentially, the committee said that there are no problems with the bill, apart from its three recommendations. The recommendations relate to clause 2. Recommendation 1 states —

> Clause 2 of the National Disability Insurance Scheme (Worker Screening) Bill 2020 be amended to require the proposed *National Disability Insurance Scheme (Worker Screening) Act 2020* to be automatically repealed, if not operational, at the expiration of 10 years of receiving Royal Assent.

That seems eminently sensible from Hon Michael Mischin. Recommendation 2 states —

> The second reading speech or Explanatory Memorandum for a bill should identify any Henry VIII clause in that bill, provide a rationale for it and explain its practical effect.

Recommendation 3 states —

> The Minister for Disability Services table an amended Explanatory Memorandum for the National Disability Insurance Scheme (Worker Screening) Bill 2020 in the Legislative Council that identifies all Henry VIII clauses and the rationale for them.

I understand through discussions with the minister behind the Chair that he intends to support those recommendations and to address the concerns of the committee in his response today, which I am pleased about. Fundamentally, this legislation will provide a framework for integrity for workers in the disability sector. As I said, people with a disability are one of the most vulnerable groups in our community and they deserve that respect. The last thing we want is a national scheme that leaves one of the most vulnerable groups in our community open to abuse either physically, financially, verbally or sexually. This legislation will prevent exactly that. It will provide standalone legislation for each jurisdiction while at the same time providing a national framework to ensure national consistency on particular standards. That means the standards for workers will be portable, so workers can transfer from one jurisdiction to another, and the legislation provides clarity, particularly for service providers. Believe it or not, charlatans try to exploit vulnerable people, particularly those with a disability. The heinous values of those sorts of people cannot be allowed to go unchecked.

There will be a national disability policy, which the National Disability Insurance Scheme is. Despite a number of issues that existed in its primary implementation, it will ultimately benefit people with a disability. It is imperative that we dot the i's and cross the t's. One of the most profound areas that quality assessment must be ensured is the provision of workers. As I said, a lot of people with a disability rely heavily on their carers. Yes, we would all like to think that all carers are honest, law-abiding, altruistic people, but unfortunately that is not the case. When people with a disability are open to exploitation, they are extraordinarily vulnerable. It is essential that we have standalone legislation in Western Australia that is unique to Western Australian circumstances, and that is exactly what we have here.

Hon Nick Goiran has a couple of questions about the working with children legislation and the associated connection with this bill. We have decided to have two discrete pieces of legislation, so I will allow him to go down that path. Suffice to say, the opposition supports this legislation. It goes a long way to ensuring that we protect the interests and rights and livelihoods of one of the most vulnerable groups in our community, and that is people with a disability. For those reasons, the opposition will support the bill.

HON ALISON XAMON (North Metropolitan) [12.12 pm]: I rise on behalf of the Greens as the lead speaker on the National Disability Insurance Scheme (Worker Screening) Bill 2020 and I indicate that the Greens will support this legislation. It is an important bill. The aim of the bill is to ensure the safety and wellbeing of people with disability and their right to live free from abuse, violence, neglect and exploitation. That is clearly something that the Greens fully support because it is important, and this is a much-needed reform. Abuse of people with disability has been described as endemic and accounts of rape, neglect and violence are all too common. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was established in April 2019 in response to community concern about widespread reports of violence against and the neglect, abuse and exploitation of people with disability. That royal commission uncovered shocking examples of abuse of people with disability. The cases that became public are only the tip of the iceberg. I remind members of the mistreatment of Ann Marie Smith, who lived the final 12 months of her life alone on a wicker chair until she died of septic shock and multiple organ failure from severe pressure sores and irreversible malnutrition. She was only 54 years old.

The safeguards in WA have been lacking. We have had no process for screening people who work in this area. Although police checks might be required by many service providers, we know that they are simply not enough; they are not thorough enough. This bill seeks to implement WA's obligations under the Intergovernmental Agreement on Nationally Consistent Worker Screening. It will provide for screening and ongoing monitoring of disability workers in WA delivering some NDIS services. It is due to commence on 1 February next year, which is why this bill has rightly been prioritised as needing to be passed this year.

This legislation is required in order to ensure nationally consistent NDIS worker screening. The result will mean that we will have portability across Australia. It aims to prevent people with disability from experiencing harm from poor quality or unsafe supports or services delivered under the NDIS. It is therefore intended to deter unsuitable people from working in the sector, exclude some people from working for registered NDIS providers in certain roles, and also reduce the potential for NDIS providers to employ workers who pose an unacceptable risk of harm to people with disability. The commonwealth's responsibilities include establishing and administering a national clearance database to record outcomes of those worker screening checks, to enable employers to verify workers and also to check their clearance status. The NDIS Quality and Safeguards Commission was established for this purpose. I note

that it is not mirror legislation; it aims for national consistency rather than seeking to ensure exact uniformity. The state still has discretion to impose penalties and issue physical cards to enable workers to commence work in advance of an application being determined. I will ask some questions about that in a moment. It is also drafted in WA to aim for consistency with the Working with Children (Criminal Record Checking) Act 2004.

Workers in WA will pay a single application fee that will entitle them to work throughout Australia. Screened workers from other jurisdictions will also be able to work here. I am interested to know whether the fee will be the same as the fee payable when applying for a working with children check. It is important that it is affordable given that so many of the workers in this area tend to be low paid.

Having a national scheme is a welcome move, and it will help prevent gaps. We know that the scheme will employ persons employed or otherwise engaged by registered NDIS providers, including contractors and subcontractors who are in risk-assessed roles, and that the people who will require clearance are key personnel such as those holding executive and senior management positions, roles under which the normal duties include the direct delivery of specified supports or services or are likely to require more than incidental contact with a person with disability, and self-employed people and volunteers used by registered NDIS providers and their subcontractors in risk-assessed roles. There are also people who do not require clearance—that is, workers of unregistered providers and people in non-risk assessed roles. The scheme seeks a balance between flexibility, choice, individual control—I understand that that is an important underlying tenet of the NDIS—quality and safeguarding. The workers of unregistered providers can apply for an NDIS clearance if they are delivering or planning to deliver NDIS supports and services and the application is endorsed by their employer but there is no requirement for them to apply.

I want to briefly make a comment about those gaps and the fact that worker screening will not be comprehensive. Workers of unregistered providers will not require a clearance. I also assume that workers providing care for people with disability who are ineligible for the NDIS, for example, because of their visa status, but who receive state disability services and support, will similarly not require a clearance. I would like to know whether that will also be the case for people who acquired their disability when they were aged over 65 and who are, by definition, ineligible for NDIS services. The question I have is: if they receive aged-care services and supports instead, does that mean that this class of people will miss out on worker screening protections? I am concerned that we may be creating a two-tiered system and, if that is the case, does the government have plans to address these potential gaps?

I acknowledge the right of people with disability to individual choice and control. There is a spectrum of opinions about what that looks like; however, we want to strike a reasonable balance. This legislation is about protection and it is important to ensure that if workers of unregistered providers are not being screened, that will not place national disability insurance scheme recipients at increased risk. Similarly, if workers who provide services to recipients of non-NDIS services are not being screened, will this place vulnerable people at greater risk? I hope that this area will be closely monitored by the state government and that it will swiftly respond to any concerns as they arise.

To return to the provisions of the bill, the chief executive officer of the Department of Communities has the ultimate responsibility for undertaking NDIS worker screening. Screening will involve a criminal record check, which will also contain convictions, including spent convictions, non-conviction charges and current pending charges, including offences committed or allegedly committed as a child. Clearances will remain in force for up to five years and they will be subject to ongoing monitoring. I also note the Auditor General's findings about working with children clearance screening processes and the use of interim negative notices. It is obviously vital to ensure that people are protected while the screening is undertaken. I ask the minister: how long does the government estimate the screening process will take and can people still work while that screening is underway?

Class 1 and class 2 offences against WA legislation are listed in schedules 1 and 2, and these offences were agreed nationally. Additional offences and conditions for offences listed in the schedules may be prescribed in the regulations. I note that the Standing Committee on Legislation found that these provisions, which enable the addition of class 1 and class 2 offences through regulation, to be of concern because they are Henry VIII clauses but are justifiable by reason of the need to ensure that there is national consistency in worker screening. Of course, the Greens prefer that Henry VIII clauses not be used, but we accept this finding.

Conviction for a class 1 offence that is committed as an adult will result in automatic exclusion from NDIS work and the individual will not be entitled to reapply because they will be permanently excluded from this work. The question I have is: what happens if that same individual then seeks to work for an unregistered provider? Are there any protections in that instance? Exclusions must also be issued if the CEO conducts a risk assessment of the applicant or clearance holder and determines that there is an unacceptable risk that the person may cause harm to people with disability in the course of carrying out NDIS work. The CEO must impose an interim bar on applicants and a suspension on the clearance holders who either are or become disqualified, or presumptively disqualified, when a risk assessment is undertaken. The CEO may impose an interim bar of suspension on any other ground that they determine appropriate. Will a particular type of risk assessment tool be used? Does the minister have any information on its validity? I acknowledge that although these tools can be very useful, they are, of course, not immune from systemic bias.

Information gathering is not confined to simple criminal record checking. Other information relevant to risk might be considered. The CEO may request and consider information from any person or body when conducting a risk assessment. I note that the second reading speech states —

> An unacceptable risk may arise from events that are not recent and need not be based on any assessment as to whether any conduct is likely to recur.

Therefore, I was hoping that the minister could provide an example of past behaviour that may be unlikely to recur but would result in an exclusion being issued.

I acknowledge that the bill takes a strong precautionary approach and that doubts about risk need to be resolved in favour of protecting people with disability from harm. I quote again from the second reading speech —

> When the information considered in the risk assessment gives rise to significant concern that cannot be resolved one way or the other—for example, where allegations of offending or misconduct are unable to be proven to any given standard—the unacceptable risk test to be applied to decision-making under this bill will embody that precautionary approach.

That is outlined and it is made quite clear that that is the intent of this bill. The bill also contains important information-sharing provisions and powers of investigation and enforcement. I note that the bill also provides for the CEO to take submissions from applicants and clearance holders in advance of decisions to refuse or cancel a clearance. The transition arrangements will be in the regulations. I am pleased to see that the bill has the standard five-year review clause, which is always welcomed by the Greens.

A final question that I have is about the issue of exemption for work experience students. I understand that Queensland introduced such a measure and I want to know whether something such as that had been contemplated here in Western Australia.

It is really clear from our existing frameworks that they are simply inadequate to ensure that we have appropriate levels of protection for people with disability. The evidence to the royal commission really highlighted how big those current gaps are, and I think the bill before us, therefore, is going to be a very welcome and important mechanism that will address some of those gaps. But it is important to note that the bill will not address all the gaps. I think it is important to recognise that the passage of this bill will not negate the need for robust training and supervision. It really is only one part, albeit an important part, of the solution to preventing abuse and neglect of people with disability.

Members, we all have a role to play in supporting people with disability and in calling out and reporting harmful behaviour and treatment if we witness it. I welcome the bill. I note that it is important that we continue to work to strike the right balance in supporting and facilitating the right to self-determination for people with disability—in other words, not over-regulating the area—whilst also ensuring that there are appropriate safeguards that seek to realise the right of people with disability to live in a healthy environment, free from neglect, abuse, violence, intimidation and exploitation. This bill is part of that spectrum of supports.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [12.27 pm]: To expedite the proceedings relating to the National Disability Insurance Scheme (Worker Screening) Bill 2020, I had not intended to speak, but given that some time is available because of the expeditious way in which we have facilitated the government's passage of the legislative agenda that it has nominated for this final sitting week, I thought I would make a small contribution in respect of the report that has been mentioned by Hon Stephen Dawson, as the Minister for Disability Services.

By way of background, because this was a uniform legislation bill, it was referred to the Standing Committee on Uniform Legislation and Statutes Review by way of standing order 126. We were due to report at the start of the first week of the November sittings—about 3 November—but bearing in mind that the government had hinted at its desire to have this important piece of legislation passed before Parliament rose, and in order to assist in that process, we tabled our report with the President, in accordance with standing orders, a week before that sitting when we had finalised the report. I am pleased to say that the committee was able to assist the minister in that regard because it gave him an additional week in which to explore the recommendations and to deal with anything that the committee felt needed to be addressed. On behalf of the committee, I thank the minister for the spirit of cooperation with which he engaged with the committee to provide information.

When one looks at some of the recommendations of the report, we see that they primarily deal with three areas—one being the commencement clause, with the suggestion of an appropriate time limit on the proclamation of any provisions so that if they are not proclaimed for some reason, they can be automatically cleansed from the statute book; and two others that deal with potential Henry VIII clauses, which were identified by the committee in its analysis of the legislation. There are two features to that. We have raised this in other reports that the Standing Committee on Uniform Legislation and Statutes Review has delivered—that is, the desirability of questionable clauses, or those that are even questionably Henry VIII clauses, and certainly those that plainly are Henry VIII clauses, being identified by the government when it introduces bills to this house. These things tend to be overlooked in the other place.

I am not quite sure why, but it tends not to notice or address those sorts of clauses, which is a bit of a surprise and a disappointment. If, as a rule, there was greater diligence in that regard, it would take the burden off members of this house and certainly our committees having to deal with that sort of issue. If they are addressed in advance of a bill being introduced, either in this place or the other place, it would be helpful because those sorts of concerns would be resolved before the bill was introduced. Given that sometimes that may not take place, however, and that sometimes Henry VIII clauses are useful and, indeed, unavoidable—particularly in the case of national schemes that we are required to adapt, or because there is a restraint on the operation of those clauses but they are necessary, for example, for transitional provisions in domestic legislation—it would be helpful were the government to identify them, if not in the second reading speech, as far as the policy of the bill is concerned, but in the explanatory memoranda that are tabled as a matter of course. That would assist members to understand the intent and effect of those provisions and it would provide some rationale, some justification, for the need for a Henry VIII clause. Regrettably, the committee found more generally that that does not occur.

I am pleased to say—I commend the minister for this—that when we pointed out that there were such clauses in this bill, rather than receiving the response that we receive from some other ministers, saying, "Well, there's no requirement to put it in an explanatory memorandum", or simply, as part of an explanatory memorandum, to effectively paraphrase the clause in the bill rather than give an analysis and a reason for its necessity, the minister, in the spirit of his responsibilities to the Parliament and in facilitating the passage of this legislation, took that on board and undertook to provide a supplementary explanatory memorandum and gave some explanation for the need for those clauses: how they were intended to operate, why they are necessary and, why, despite the fact that they may be prima facie objectionable for the very sound reasons that this house has expressed for just about every report that has been tabled that has identified such a clause, a clause in that form may be required. I am pleased that the minister has done that. I believe the minister is now distributing such a memorandum and that he plans to table that in the course of either his second reading reply or in Committee of the Whole. I might just observe, without much too much criticism, that it would have been helpful if that had been distributed earlier so that members would have been able to absorb what the minister has to say about it. I commend the minister for the fact that he is prepared to do so and did not quibble with the idea that some explanatory material ought to be provided to support the government's position.

I take this opportunity to urge other ministers, in not only the current government but future governments, whichever their colour, to do the same thing. The purpose of an explanatory memorandum is, in part, to assist members to understand the thrust of the bill, and to not only expand on the policy, but also, I would have thought, give some idea of how clauses work and interrelate with each other, rather than simply provide some comment about this is what the clause does. An explanatory memorandum should weave together the various threads, particularly in the case of a very large and complex piece of legislation, so that members do not have to spend unnecessary time, and, indeed, delay the passage of legislation through unnecessary questioning.

As I have mentioned, the Standing Committee on Uniform Legislation and Statutes Review made only three recommendations. Those recommendations are significant. Recommendations 2 and 3 relate to explanatory memoranda. I am pleased that the minister is dealing with that and will address the question of Henry VIII clauses. I am also pleased that rather than it being necessary for a member to move the proposed amendment to clause 2 to provide for a sunset clause, if I might term it in that way, the minister has taken the initiative and that will now be a government amendment. That is part of the other government amendments that are felt necessary, although most of those deal with a change of title to some legislation to provide for the High Risk Serious Offenders Act 2020 in place of the Dangerous Sexual Offenders Act 2006.

On that note, I would like to thank the minister for his cooperation and his provision of information and the like. I was pleased that the committee was able to assist him in addressing as early as possible any need for comment and response to the committee's report. I also thank my fellow committee members for their work on this and other legislation that we have had to deal with. I also thank our legal adviser, Ms Felicity Mackie, who has done a sterling job over the years analysing some very complicated legislation and in helping to devise ways in which it can be improved, and to facilitate the incorporation into Western Australian law of national scheme legislation. I also thank the committee clerk, Mr Mark Warner.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Disability Services) [12.38 pm] — in reply: Firstly, I thank Hon Peter Collier for his indication of support for the bill before us. I also acknowledge the bipartisan way in which he undertakes his role as shadow Minister for Disability Services. I am very grateful that we have a good collaborative relationship. I thank the member for the ongoing relationship that our offices have together. It is important when we are dealing with people with disability that we are on the same page, and we certainly are in this regard. I also thank Hon Alison Xamon for her contribution and her indication of support for the bill, and also Hon Michael Mischin. I will get to his points a bit later. Hon Peter Collier asked for some clarification about what is meant by "incidental" worker. Registered National Disability Insurance Scheme providers are responsible for identifying which roles are risk-assessed roles and for ensuring all workers in those roles have an NDIS worker screening clearance. The normal duties of a risk-assessed role include the direct delivery of specified supports or specified services to a person with disability. It is a role for which the normal duties are likely to require more than

incidental contact with people with disability, which includes physically touching or building a rapport with a person with disability as an integral and ordinary part of the performance of normal duties, or having contact with multiple people with disability as a part of the direct delivery of the specialist disability support or service, or in a specialist disability accommodation setting. It includes physical and face-to-face contact and oral, written and electronic communication. Registered NDIS providers will not be required to ensure that workers who do not work in risk-assessed roles have an NDIS worker screening clearance or an acceptable check under the transitional and special arrangements.

I will put two examples on the record. In the first example, Lee works for a mobility equipment company that is a registered NDIS provider and delivers mobility equipment to the homes of people with disability. As a standard part of that role, he provides training and instructions to the customer about how to use the equipment safely and makes adjustments to the equipment to make it suitable for the customer. The provider will have to ensure that Lee has an NDIS worker screening clearance. The second example is of someone who would not need this clearance. Sue is an accountant who works in the back office of a registered NDIS provider. Sue often has coincidental contact with people with disability while she moves through public areas of the business, such as when she walks through the lobby and Sue nods and says hello to the customers. The provider does not have to ensure that Sue has a worker screening clearance because her role does not involve the direct delivery of services to the customer and she is not required to have more than incidental contact with people with disability.

Hon Alison Xamon had a few questions. The fee for the worker screening clearance will be similar to the fee for a working with children check. The final decision will be put in the regulations. It will be a similar annual fee that will cost no more than the working with children check fee. I agree that it is important to keep the fee as low as possible. Hon Alison Xamon asked whether someone who becomes disabled after 65 years of age will be captured. If a person works with someone who becomes disabled after 65 years of age, the answer is no. However, the recipient can ask the worker to apply for an NDIS worker screening check. How long will the screening process take? It might take days and will depend on the information given to the organisation or agency. The second question was about whether people can work while waiting for that clearance to come through. The answer is yes, they can, but the CEO can, and in some cases must, issue an interim bar to stop somebody from working in the sector. Hon Alison Xamon also asked about exemptions for work experience students. I am advised that in our regulations we will mirror what is in place in Queensland. She asked about risk assessment. We have not got a template but certainly every matter will be considered on its merit.

I will touch on Hon Michael Mischin's contribution. At the outset, I thank him for his good work as Chair of the Standing Committee on Uniform Legislation and Statutes Review. I thank his fellow members of the committee too: Hon Pierre Yang as deputy chair, Hon Robin Scott and Hon Laurie Graham. I thank you all. I am particularly grateful for the committee providing its report to the house earlier than it needed to, which gave us some time to address the issues that were raised in the report. I certainly welcome the report. As Hon Michael Mischin indicated, there was a finding, I think, or a recommendation about the explanatory memorandum. I think it was a finding, not a recommendation.

Hon Michael Mischin: There were findings in respect of both Henry VIII clauses, but there were two recommendations.

Hon STEPHEN DAWSON: Yes, but in terms of the explanatory memorandum, I was trying to find the correct words.

It was suggested that an updated explanatory memorandum should be provided, so I would like to take this opportunity to table an updated explanatory memorandum for the National Disability Insurance Scheme (Worker Screening) Bill 2020.

[See paper 4689.]

Hon STEPHEN DAWSON: Essentially, the changes in the explanatory memorandum take on board the recommendations made by the Standing Committee on Uniform Legislation and Statutes Review in its 130th report. As Hon Michael Mischin pointed out, the committee found that clause 2, in providing that the executive is to determine the bill's commencement date, erodes the Western Australian Parliament's sovereignty and lawmaking powers. Recommendation 1 is that clause 2 be amended to require the legislation to be automatically repealed if it is not operational at the expiration of 10 years after receiving royal assent. I have made that change to the explanatory memorandum and, indeed, I have also put on the supplementary notice paper an amendment to deal with that issue. There are a couple of other amendments on the supplementary notice paper, to clauses 39 and 89, reflecting the recent passage of the High Risk Serious Offenders Act 2020, which repealed the Dangerous Sexual Offenders Act 2006. As Hon Michael Mischin pointed out, the remainder of the committee's report was concerned with Henry VIII clauses in the bill. I have taken those concerns on board and I have made the suggested changes to the updated explanatory memorandum. I also note that committee findings 5, 9 and 13 were that the Henry VIII clauses were acceptable by reason of the need for Western Australia to maintain nationally consistent worker screening and to effect a smooth transition to the new requirements. I certainly welcome those findings. However, I have taken on board the member's suggestion to acknowledge the use of Henry VIII clauses, so they are in the updated explanatory memorandum.

This is very important and, indeed, landmark legislation for Western Australia. It will make a difference. Will it stop some people from doing certain things? It might not, but it is another level of protection that I know is supported and welcomed by people across the sector. I again thank the committee for its work, and Hon Peter Collier in particular, for helping us get to where we are today in having this legislation before the house.

With that, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Stephen Dawson (Minister for Disability Services) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: The minister will be aware from discussions we had behind the Chair that I do not intend to engage in another second reading debate on this bill, which has my support, but I do want to put on the record certain things that have been discussed between our respective offices in preparation for today. I will conveniently deal with it all under clause 1. I will start with the date on which this bill is intended to come into operation. Under clause 2, with the exception of part 1, the rest of the act will come into operation on a day fixed by proclamation. Importantly, it states, in part, that "different days may be fixed for different provisions". In the 130th report of the Standing Committee on Uniform Legislation and Statutes Review, reference is made to a letter of advice, dated 22 September this year, that the minister provided to the committee. It is also attached as appendix 1 to the report. In it, the minister has indicated that the entirety of the act is expected to come into operation on 1 February 2021, with the exception of clause 23. Can the minister confirm that that expected date of operation remains the same?

Hon STEPHEN DAWSON: I can confirm that it remains the same.

Hon NICK GOIRAN: Clause 23, which is the one exception to the commencement date of 1 February 2021, is one of the key clauses of interest to me. I understand that in that same letter of advice of 22 September this year, the minister indicated —

> Clause 23 is included in the Bill, to allow for potential future alignment of the duration of an individual's National Disability Insurance Scheme worker check clearance certificate (NDIS clearance) and working with children assessment notice (Working with Children (WWC) check) …
>
> …
>
> Clause 23 is not intended to commence until such time as relevant amendments to the WWC Act may be passed and enacted.
>
> Commencement of clause 23 without an amendment to the WWC Act could lead to ongoing requests for NDIS clearances to be in force for less than five years.

The letter states further on —

> … such decisions would never align the time periods of an individual's NDIS clearance and WWC check unless the duration of the NDIS clearance was continually reduced. The exercise of this discretion would therefore undermine the intent of the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme* … which at clause 76 provides NDIS clearances will be valid for up to five years, subject to ongoing monitoring.

Given the minister intends that the operation of the provisions of the act, with the exception of clause 23, will come into effect on 1 February 2021, I understand that that is in part why the minister is agreeable to bringing in the amendment in his name at 2/2 on the supplementary notice paper. That said, I want to confirm that the information his office has kindly provided to me prior to today's date remains correct. This is about clause 23. It may be useful at this time if I quote from this email that I received on Monday, 16 November, last week, in which the following remarks are made —

> Further to our emails last week, Minister Dawson offers the following information relating to your query regarding the commencement and intent of clause 23 of the National Disability Insurance Scheme (Worker Screening) Bill 2020, for your consideration.
>
> - As you will be aware, an NDIS worker check clearance certificate (NDIS clearance) is intended to have a duration of 5 years while an assessment notice (in the form of a WWC Card) issued under the *Working with Children (Criminal Record Checking) Act 2004* (WWC Act) currently has a duration of 3 years.
> - Clause 23 of the Bill provides discretion for the Chief Executive Officer … of the Department of Communities to reduce the period of an NDIS clearance or permit an application for a further

> NDIS clearance sooner than 3 months before the expiry of the current NDIS clearance. This clause seeks to facilitate an alignment of the timeframes for application for a WWC Card and an NDIS clearance, for individuals who must apply for both checks.

I will pause there before I continue on to the other comments made in that helpful email. Can I confirm that the purpose is that a person who has to apply for both will be able to, because of clause 23 when it comes into effect, make one application rather than two?

Hon STEPHEN DAWSON: No; they will still have to make two applications, but they will be able to make them at the same time.

Hon NICK GOIRAN: Can the two applications that can be made concurrently be made to the chief executive officer of the Department of Communities?

Hon STEPHEN DAWSON: That is correct.

Hon NICK GOIRAN: Until such time as clause 23 comes into operation—we do not know when that will be, but we understand that it will be on a date later than 1 February next year—is it the case that a person will continue to have to make two applications, but they will not be able to make them at the same time?

Hon STEPHEN DAWSON: Yes.

Hon NICK GOIRAN: Going back to the email of 16 November this year, it goes on to say —

- The Royal Commission into Institutional Responses to Child Sexual Abuse in its Working with Children Check Report recommended a 5 year duration for a WWC Card subject to continuous national ongoing monitoring of criminal history information. Clause 23 is not intended to commence until such time as future amendments to the WWC Act may be passed and enacted, which include increasing the duration of a WWC Card; a matter for a distinct amendment Bill.
- For the purposes of the operation of clause 23, practically, it will not be possible to align the two checks while a WWC Card's duration is 3 years. Hence, the intention for a different commencement date for this clause.
- Clause 23 was drafted for a future WWC amendment bill being passed by the Parliament. If a future amendment bill to increase the duration of the WWC Card is not passed by the Parliament, the amendment I propose to the commencement provision of the Bill will result in the automatic repeal of clause 23 if it does not commence within 10 years after Royal Assent.

I seek the minister's confirmation that all the information that was kindly provided by his office on 16 November remains the position of the government.

Hon STEPHEN DAWSON: I can confirm that, honourable member.

Hon NICK GOIRAN: I will not be too much longer, but I do not think I will be able to deal with this all prior to the adjournment.

I want to quickly look at the Royal Commission into Institutional Responses to Child Sexual Abuse's "Working with Children Checks Report" from 2015 and, in particular, I will quote briefly from pages 108 to 110 under the heading "Duration and continuous monitoring". The relevance of this is that in the email that I kindly received from the minister's office last week, the author quite correctly underlined the phrase "subject to continuous national ongoing monitoring of criminal history information". I agree with the author that that is a key component of the potential invoking of clause 23. In chapter 7.2, "Duration and continuous monitoring", of the royal commission's report from 2015, the following remarks are made under the subheading "Current approaches" —

> WWCCs in each state and territory are granted for a set period of time, ranging from two years in the Northern Territory to five years in New South Wales and Victoria. After this time has lapsed, people who wish to continue in child-related work must apply to have their WWCC renewed.

There is then a table that sets out the length of time that working with children checks remain valid in the various jurisdictions, and of course in Western Australia, the period is three years. The report goes on to say —

> The question of how long WWCCs should last is linked inextricably to screening agencies' capacity to identify and monitor new relevant records, as they arise. The validity period of WWCCs also has implications for:

It then lists four dot points, two of which are of particular interest at this time. One states —

> the currency of information held by screening agencies

The second states —

> how often a person's suitability to work with children is assessed.

Sitting suspended from 1.00 to 2.00 pm

Hon NICK GOIRAN: Prior to the adjournment for the luncheon interval, we were dealing with clause 1 of the National Disability Insurance Scheme (Worker Screening) Bill 2020. I was seeking to get on the record some of the useful information that the Minister for Disability Services' office had kindly provided to me last week. I confirm that that information was reconfirmed by the minister earlier today. We are looking at the intersection between clauses 2 and 23 of the bill. I remind members that it is the intention of the government to bring into effect all clauses in this 90-clause bill on 1 February next year, with the exception of clause 23. Prior to the adjournment, I referred to the royal commission's "Working with Children Checks Report" of 2015, and I intend to take a moment to look at one of the recommendations that arose in that report.

Before I do, in order to expedite the passage of the consideration of this issue, the minister might be able to confirm for the chamber that it is the government's intention, should it be re-elected on 13 March next year, to bring in a further bill to deal, in part, with reforms on working with children checks and in particular to extend the current three-year period to five years. Is the minister able to confirm that?

Hon STEPHEN DAWSON: I can say that the matter is under consideration by government at the moment. No bill has been to cabinet in relation to that issue, but the minister is considering it.

Hon NICK GOIRAN: That encourages me because that then gives me an opportunity at this time to make some submissions on this point. I need a fair amount of persuading that in due course it will be appropriate for us to extend working with children checks from three years to five years. I will explain why—because of this intersection between clauses 2 and 23 and the recommendations in the royal commission's report. I refer again to the report that I was quoting from earlier. After it set out the length of time that the working with children checks remain valid in the various jurisdictions, it went on to say at page 108 —

> To varying degrees, each state and territory currently monitors WWWC cardholders on an ongoing basis to identify relevant changes in their circumstances and, if necessary, reassess risks to children. Known as continuous monitoring, this generally involves state and territory screening agencies accessing criminal records from their respective police services on a daily or weekly basis, generally through arrangements facilitated by CrimTrac. However, we note that there are variations to this approach.
>
> These arrangements do not currently enable agencies to access cardholders' national criminal records, meaning that continuous monitoring is restricted to records arising in the jurisdiction that issued the WWCC. The practical effect of this is that a cardholder could commit an offence in another jurisdiction that remains undetected until their WWCC is due for renewal, which, if known, would result in the cancellation of their WWCC.
>
> Many submissions on *Issues Paper No 1* noted that WWCC renewals are needed at regular intervals until continuous monitoring is expanded to include national criminal records, so that new relevant records are identified and assessed. For example, Victoria reported that, since their WWCC scheme commenced in 2006, approximately 54 per cent of all negative notices were issued to existing cardholders, demonstrating the value of this type of monitoring.

I pause there to remind members that the government confirmed earlier that the intention is for clause 23 to come into effect on a date to be determined, expected to be after 1 February next year, and that this issue is dependent or hinges upon continuous national ongoing monitoring of criminal history information. That is because of the gap identified by the royal commission in its report. The report goes on to say at page 109 —

> We believe it is appropriate to grant WWCCs for longer periods of time provided that there are reliable systems in place for:
>
> - promptly identifying and assessing changes that may affect a person's risk to children
> - alerting employers and other relevant bodies to any resulting changes in a person's WWCC clearance status.

The royal commission report identified two key prerequisites if a jurisdiction is to provide that working with children checks remain valid for a longer period. At the moment in Western Australia, it is three years. The minister has confirmed that an extension out to five years is currently under consideration. I, for one, am glad that it is under consideration and has not already been agreed to, because if we are going to go down this path of extending working with children checks to five years, we need to make sure that these things have been addressed. We do not want some of these criminals to obtain a working with children check, commit crimes in another jurisdiction, for that not to be alerted to Western Australian authorities and for them to continue to have access to children over that five-year period. We do not want this change to happen until these gaps have been addressed.

The royal commission's "Working with Children Checks Report" goes on to say —

> Conversely, we believe the absence, or ineffective operation, of such mechanisms should result in WWCCs being granted for shorter periods, to ensure new information about the risks people engaged in child-related work pose to children are identified and assessed.

I ask the government to consider whether the time period should be shorter rather than longer. I well understand the desirability of having checks for working with people with disability in line with those for working with children and the efficiencies created when two applications can be lodged concurrently to the one authority. Although I support the desirability of efficiency, I do not want efficiency to be the driving factor here, least of all when child safety might be put at risk. Page 110 of the royal commission's report says —

> … we are of the view that there should be an obligation on both people engaged in child-related work and those engaging people in child-related work (for example, the employer) to inform the relevant screening agency when a person commences or ceases the specific child-related work.

This leads to recommendation 31 of the royal commission, which reads —

> Subject to the commencement of continuous monitoring of national criminal history records, state and territory governments should amend their WWCC laws to specify that:
>
> a. WWCCs are valid for five years
>
> b. employers and WWCC cardholders engaged in child-related work must inform the screening agency when a person commences or ceases being engaged in specific child-related work
>
> c. screening agencies are required to notify a person's employer of any change in the person's WWCC status.

I have taken time to underscore these points and bring these matters to the attention of the minister and the government while this issue is under active consideration because earlier this year, on 15 July, the Office of the Auditor General issued a media statement that in part states —

> The Auditor General today tabled the *Working with Children Checks — Managing Compliance* report in Parliament that assessed whether the WA Health system and the Departments of Education and Justice complied with their Working with Children Check requirements.
>
> …
>
> Auditor General Ms Caroline Spencer said none of the 3 entities fully complied with their obligations and they could not be sure that everyone who needed a working with children card had one.

The Auditor General is quoted as saying —

> 'For example all entities had procedures for managing Working with Children Checks, but they were not always followed.

I am underscoring these points for those reasons. Only a few months ago, the Office of the Auditor General was quite critical of the Departments of Education and Justice regarding their handling of the requirements for working with children checks. We would not want that lack of compliance to be in place if we were looking to extend the period from three years to five years. We need to make sure that these problems are addressed.

The DEPUTY CHAIR (Hon Martin Aldridge): Hon Nick Goiran.

Hon NICK GOIRAN: I also draw to the attention of the minister and members a further media statement made by the Auditor General, albeit at the end of last year on 23 October, headed "Working with children check process has improved but risks remain". The Auditor General said on that day —

> In 2018–19, Communities issued 20% of people who were refused a card with an interim negative notice, temporarily preventing them from working with children until their assessment was finalised.
>
> However, 80% of people who were refused a card, were not issued with an interim negative notice, meaning they could work with children while Communities processed their application. In 2018–19, it took on average over 200 days to refuse these applications. We consider revising this approach provides a significant opportunity to reduce risks to children.
>
> Ms Spencer said Communities has little assurance if employers are complying with the scheme and ensuring that staff who need a working with children card have one.
>
> 'Communities needs to strengthen its regulatory compliance activities and make every effort to minimise risk to children and ensure that employees, the self-employed and volunteers in child-related work comply with the legislated requirements and undergo a working with children check.
>
> 'The audit contains a number of recommendations to further improve working with children checks to help keep children safe.

I will conclude at this point. For all those reasons that I have indicated, I join our leader, Hon Peter Collier, in expressing support for this bill. I make no apologies for the reasons I have just outlined that when a future bill is introduced into this place, I will require substantial evidence that the transition puts the safety of children first. I will not be agreeable to extending the checks from three years to five years if all these matters have not been

addressed. If all these things have been addressed, I will join with the royal commission in its recommendation that working with children checks could be valid for five years, but it is not just a case of extending it from three to five years. A mountain of work needs to be done first. We know from the work that has been done by the Auditor General as recently as this year that we are not yet in a position to do that.

I pass on my thanks to the minister that the government has not yet determined a firm position on this; it is under active consideration. I encourage that active consideration to continue for as long as is necessary until the cabinet is satisfied that all the prerequisites have been met. I can certainly give a commitment that in the event that after 13 March next year I find myself as the Minister for Child Protection, I will not bring in a bill to extend it from three to five years until those prerequisites have been satisfied. I thank the minister for the indulgence of trying to wrap up all of these matters in the clause 1 debate.

Hon STEPHEN DAWSON: The honourable member's point is well made and I shall certainly bring his comments to the attention of the Minister for Child Protection.

Clause put and passed.

Clause 2: Commencement —

Hon STEPHEN DAWSON — by leave: I move —

Page 2, line 8 — To insert after "Assent" —

(***assent day***)

Page 2, after line 10 — To insert —

(2) However —

(a) if no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends; or

(b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on assent day, that provision is repealed on the day after that period ends.

Earlier this afternoon I gave reasons why these amendments appear on the supplementary notice paper. Obviously, they appear as a result of the good work of the Standing Committee on Uniform Legislation and Statutes Review.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 3 to 38 put and passed.

Clause 39: Power to require reports from CEO (Justice) —

Hon STEPHEN DAWSON: As I indicated earlier today when I spoke about the two amendments standing in my name on the supplementary notice paper at 3/39 and 4/89, I seek to delete "Dangerous Sexual Offenders Act 2006" and insert "High Risk Serious Offenders Act 2020". Those amendments are the result of the recent passage of the High Risk Serious Offenders Act 2020, which repeals the Dangerous Sexual Offenders Act 2006. I move —

Page 46, lines 29 and 30 — To delete "*Dangerous Sexual Offenders Act 2006*," and substitute —

High Risk Serious Offenders Act 2020,

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 40 to 88 put and passed.

Clause 89: Section 37A inserted —

Hon STEPHEN DAWSON: I have previously indicated why I seek to move an amendment. I move —

Page 80, line 22 — To delete "*Dangerous Sexual Offenders Act 2006*," and substitute —

High Risk Serious Offenders Act 2020,

Amendment put and passed.

Clause, as amended, put and passed.

Clause 90 put and passed.

Schedules 1 and 2 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

On motion without notice by **Hon Stephen Dawson (Minister for Disability Services)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Disability Services)**, and returned to the Assembly with amendments.

CRIMINAL LAW (UNLAWFUL CONSORTING) BILL 2020

Committee

Resumed from 12 November. The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 6: Objects of Act —

Progress was reported on the following amendment moved by Hon Alison Xamon —

Page 6, after line 22 — To insert —

(2) Without derogating from subsection (1), it is not the intention of Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest or dissent that is not intended —

(a) to cause a person's death;

(b) to cause serious physical harm to a person;

(c) to endanger a person's life, other than the life of the person participating in the advocacy, protest or dissent; or

(d) to create a serious risk to the health or safety of the public.

Hon ALISON XAMON: During the course of my second reading contribution, I made the point that the bill explicitly protects one form of communication for governmental and political matters, and that is the defence in clause 9 that relates to necessary consorting in the context of industrial action by members of registered unions for the purposes of a union's business. But as I mentioned during the course of my second reading contribution, my concern is that there is no defence or exclusion in the bill for any other form of advocacy, protest and dissent. Ordinarily in other similar legislation—I will make reference to that in a moment—in addition to industrial action, this type of action is usually expressly protected by Western Australian legislation, so to not have that as an explicit inclusion in this bill is quite a substantial departure from what we consider to be usual. The Criminal Organisations Control Act 2012 provides a double protection. Section 4 states —

> … it is not the intention of Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this state to participate in advocacy, protest, dissent or industrial action.

It goes on to set out a range of defences, which include lawful political protest and lawful industrial action, so it actually contemplates both forms of activity. The out-of-control gatherings provisions in the Criminal Code also refer to a gathering that is primarily for the purposes of political advocacy, protest or industrial action as an explicit exclusion. All three of our terrorism laws—the Terrorism (Commonwealth Powers) Act 2002, the Terrorism (Extraordinary Powers) Act 2005 and the Terrorism (Preventative Detention) Act 2006—were introduced by a Labor government, and all explicitly excluded from their scope advocacy, protest, dissent or industrial action. It goes on to say that this is provided that it is not intended to cause a person's death or serious physical harm et cetera.

Previous legislation has specifically recognised, upheld and acted explicitly to ensure Western Australia's freedom of communication on governmental and political matters. It is my understanding that the reason that this bill seeks to depart from this tradition and does not include the scope of this activity is that there is a concern that it might not be able to be drafted narrowly enough to prevent convicted offenders from consorting for criminal purposes under the cover of a protest. However, that argument does not seem to have been a problem in the drafting of the other 10 defences. Certainly, the defence relating to industrial action is drafted narrowly, but other more broadly worded defences in the bill permit consorting that is necessary for a range of purposes. In addition, every defence in the bill contains three protections against the defence being misused. The onus is on the accused to start with, because it is a defence. The consorting must be necessary to the specified purpose; and, if it is statutorily deemed to not be necessary, the defence does not apply if it is shown that any of the purposes for consorting were to avoid the operation of an unlawful consorting notice or were related to criminal activities. Therefore, I do not think that including a defence for advocacy, protest or dissent will open the door to circumventing the defences to any greater

degree than already exists within the bill. I suspect that the problem relates to priority. I am concerned that advocacy, protest and dissent is simply not being given the same level of significance, so we are not valuing its statutory protection. But I think that advocacy, protest and dissent really do matter, just as I also support industrial action. This omission needs to be seriously addressed. It is quite important that we maintain some sort of consistency with similar types of legislation that contemplate large gatherings for a range of reasons, and I ask members to seriously consider supporting this amendment.

Hon SUE ELLERY: The government will not be supporting the amendment moved by Hon Alison Xamon. The bill's object is accurately stated in clause 6 as it stands, which is to disrupt and restrict the capacity of convicted offenders to organise, plan, support or encourage the carrying out of criminal activity. Consorting by a person who is the subject of an unlawful consorting notice with another person named in the notice is prohibited in order to achieve that object, not for the object of diminishing the freedom of persons to engage in advocacy, protest or dissent. Although the prohibition on consorting may incidentally impact on the capacity of a person who is the subject of the notice to engage in advocacy, protest or dissent, that is not the object of the prohibition. A person who is subject to an unlawful consorting notice will still be able to engage in advocacy, protest or dissent provided that the person does not consort with any other person named in the notice.

The purpose of clause 6 is to state the object of the bill, not what the objects of the bill are not. The proposed amendment is unnecessary. Further, the proposed amendment to clause 6 would undermine the object of the bill by creating a potentially wide exception to the prohibition on consorting, which could be exploited by convicted offenders named in the unlawful consorting notice to allow them to organise, plan, support or encourage the carrying out of criminal activity under the pretext of advocacy, protest or dissent. The bill already provides appropriate exceptions in clause 9, which recognise that in some cases it will be necessary or reasonable for a person the subject of an unlawful consorting notice to consort with others named in the notice.

Hon MICHAEL MISCHIN: I understand, and have some sympathy with, Hon Alison Xamon's intentions here, but I agree with the government that the amendment is not appropriate, and we will not be supporting it. The qualification in the Criminal Organisations Control Act 2012 was to the purposes of the act so that there could be no misunderstanding in the interpretation of what organisations would be regarded as criminal if they fell within the other parameters prescribed by that legislation. Members who were here when that bill was debated will recall that there was concern that notwithstanding the several checks and balances contained within the procedures of the act, it could be misapplied to outlawed organisations engaged in employee unionism—anything from chess clubs to cycling clubs and all sorts of things. It was made quite plain what the purposes of the act were intended to apply to, and to exclude those organisations from operation. What Hon Alison Xamon is intending would be more properly limited to, I would have thought, a specific exclusion or defence to particular offence-creating provisions or powers that are afforded a commissioner or senior officers who are delegated the power to issue a consorting notice. As a matter of drafting, one cannot, or should not, sensibly include them as part of an exception to the objects of the act or qualifying the objects of the act. The objects of the act are intended to stop criminal activity; that is —

> … disrupt and restrict the capacity of convicted offenders to organise, plan, support or encourage the carrying out of criminal activity.

There is then a series of powers to issue notices and a variety of defences that we will get to in due course.

It seems to me that there is also a significant omission regarding the matters that are specified in Hon Alison Xamon's amendment. I accept that the word "intention" was used in the Criminal Organisations Control Act by way of the purposes of the act. Without derogating from subsection (1)—that is, the primary intention of the act—it seems to me that phrasing this amendment as though it is not the intention of Parliament that the powers in this act are to be used in a manner that would diminish the freedom of persons in this state to participate in advocacy, protest or dissent that is not intended to do various things is not particularly pointed. It needs to be more substantively attached to some kind of provision as a limitation of powers to use the act in certain ways.

The proposed amendment states —

> participating in advocacy, protest or dissent that is not intended to cause a person's death —

I would have thought that would be an offence under the code anyway —

> to cause serious physical harm to a person —

I would have thought that would be an offence —

> to endanger a person's life (other than the life of the person participating in the advocacy, protest or dissent), —

I would have thought that would be an offence —

> or to create a serious risk to the health or safety of the public.

I would have thought that might be a foundation for an offence.

What is missing is any intention to damage, threaten or deprive people of the use of their property. I would have thought that that also ought to be a protection that is recognised and that would disqualify advocacy, protest or dissent. Otherwise, how do we ascertain in a group what the advocacy, protest or dissent might involve? It might be the intention of some to participate to cause a person's death, but that might not necessarily be stated as the official purpose of that particular advocacy, protest or dissent. How does one sensibly apply this sort of exclusion and protection? There are a lot of unexplored issues with this amendment. In the circumstances, although I know what Hon Alison Xamon is aiming at, the opposition cannot support the amendment.

I have one question that the minister might be able to assist us with. An analogy has been drawn between the Criminal Organisations Control Act and this bill. Is there a material difference between an object and a purpose for an act? This bill uses the words "Objects of the Act", whereas the Criminal Organisations Control Act uses the words "Purposes of this Act". The minister may be able to assist us for future reference by advising whether there is a material difference between those terms.

Hon SUE ELLERY: I doubt that I can, honourable member. I do not have parliamentary counsel here, but people are furiously texting away, and, if something comes in, I will provide it to the member.

Hon MICHAEL MISCHIN: I thank the minister. It is not material to my views about the clause as printed, or about the proposed amendment, but if at some stage during the course of our consideration of the bill I could get some indication, I would appreciate it.

Hon AARON STONEHOUSE: Today has been a bit of a funny day as the last day of sitting for this parliamentary term. We are dealing with what are normally rather non-contentious bills, and I have been out of the chamber on urgent parliamentary business, but I thought it was worth coming back during consideration of this amendment and putting some words on the record. I have a great deal of sympathy for what Hon Alison Xamon is trying to achieve with this amendment, and I find myself agreeing with part of the, I suppose, policy intent of the amendment. However—this is not something that I have contemplated before—when we are dealing with unlawful consorting laws, where is it appropriate to draw the line? When we are restricting the activities of people who have been convicted of a crime, where do we draw the line? Do we draw that line before it begins to interfere with the fundamental democratic right, shall we say, of those people to engage in political activity, to protest, and to organise activism and advocacy? It is interesting that around the world there are debates and restrictions about whether incarcerated prisoners should have the right to vote in elections and things of that nature. I certainly have some reservations about unlawful consorting laws. I have some concerns about the idea of continuing to punish a person who has already been released from prison and is no longer serving time and has effectively paid their debt to society. The idea that an order would be applied to them to restrict their activity goes somewhat against our normal understanding of how criminal law functions. Once a person has served their sentence, they should be free to live the rest of their life, unless they pose some kind of unreasonable risk to the public. But in this case we are not necessarily dealing with people who pose unreasonable risks to the public. We are not dealing with dangerous violent offenders or dangerous sex offenders necessarily. A whole host of other crimes may make a person the subject of one of these orders.

I find this amendment interesting. I am surprised that the government is seemingly opposed to this amendment because there has been discussion about exempting unions from unlawful consorting laws. On the one hand, the government is taking the position that criminals out there may consort with each other and conspire to commit further crime and, therefore, they need to have orders applied against them, but, on the other hand, we must make sure that these orders do not unduly interfere with the activities of trade unions and organised labour because workers have some kind of fundamental right to organise that cannot be infringed upon. Even if it means that some criminals will continue to consort and conspire to commit crimes, there needs to be an exemption for unions. It is interesting for the government to take the view that workers have a fundamental right to join a union and engage in union activity, but they do not have a fundamental right to do the things contained in this amendment, which states, in part —

> … freedom of persons … to participate in advocacy, protest or dissent …

That is really interesting. I can see the argument from someone such as Hon Michael Mischin, who might say that we should not have any exemptions; if this is going to be the rule, it should be applied uniformly across the board to everybody, regardless of what organisation they join or what activities they engage in. It is very peculiar for the government to take the position that there should be an exemption for organised labour, but there should not be an exemption for what might be called political activity outside of a union. I find that rather interesting.

However, I do have some problems with this amendment. One of them stems from what I think might be some inconsistency applied, perhaps, by the mover of this amendment or by the honourable member's party. Proposed clause 6(2) states —

> Without derogating from subsection (1), it is not the intention of Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest or dissent that is not intended —
>
> (a) to cause a person's death; —

Of course, that is reasonable —

> (b) to cause serious physical harm to a person;
>
> (c) to endanger a person's life … or
>
> (d) to create a serious risk to the health or safety of the public.

Would that same standard be applied to those who want to engage or participate in advocacy, protest or dissent at the front of an abortion clinic? Obviously, it would not. I am sure that the mover of the motion can speak for herself, but I suspect that she and the members of her party, the Greens, do not apply that same standard consistently across the board and that they would not be happy for people to participate in advocacy, protest or dissent at the front of an abortion clinic. I find that rather interesting. Perhaps a certain type of advocacy, protest or dissent is envisioned with this amendment, or perhaps not. I am only speculating at this point and I am sure that it will be clarified in a moment.

I am trying to assess this amendment on its merits. I listened to the comments made by the previous speaker. I am interested to receive some clarification about the intent and consistency of this amendment, but I must say that perhaps the concern here is not so much that there is no specific exemption for political activity. Perhaps the focus should instead be on when these orders are issued and in what circumstances it is appropriate to issue them. It is the same problem I have with the exemption for unions. A person who is subject to one of these orders could foreseeably circumvent it by carrying out the activity as part of their association with a union. They could also circumvent the order by carrying out the activity as part of their association with a political party or advocacy group. Two criminals who want to consort and conspire could join Extinction Rebellion and do all their consorting and conspiring under the guise of advocating for action against anthropogenic climate change. They could attend a rally and pass their notes around under that protection. I have that concern, and I am not sure how this amendment would deal with it. I am interested to hear more.

Amendment put and negatived.

Clause put and passed.

Clause 7: Act binds Crown —

Hon MICHAEL MISCHIN: Clause 7 is titled "Act binds Crown" and states —

> This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Why is it necessary? Why do we need to have a Criminal Law (Unlawful Consorting) Act, as it will be when it is passed, binding the Crown and the right of the state?

Hon SUE ELLERY: I am advised that that is now ordinary practice being adopted by parliamentary counsel. I am told it is in the High Risk Serious Offenders Act 2020, for example. I am trying to see whether I can get some more advice from parliamentary counsel, which is not here, about why it considers it necessary to include that in all the bills it is drafting. I may not get that advice, because parliamentary counsel is not here, but that is what I am advised. The advice I have is that it is appropriate to make clear in legislation whether an act is to bind the Crown. In this case, various state entities have powers and duties under the act.

Hon MICHAEL MISCHIN: If those persons, agencies organisations and the like are told under the act that they can or cannot do things, I would have thought that was enough to bind them. However, I am still no clearer about why such a clause is necessary. I do not have to hand what was in the High Risk Offenders Bill 2019. What was the other bill the minister mentioned; I am sorry?

Hon Sue Ellery: Just that; the High Risk Offenders Bill was the one example I gave, but there may well have been others.

Honourable member, I understand your line of questioning; it is perfectly reasonable. I am not sure I will get any further information given I do not have parliamentary counsel here.

Hon MICHAEL MISCHIN: I was hoping the minister might also clarify why it is termed "the Crown in right of Western Australia" rather than what was, for example, the formula used in the Criminal Organisations Control Act, which is —

> This Act binds the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Section 5(2) provides the qualification —

> Nothing in this Act makes the Crown in any capacity liable to prosecution for an offence.

If we are worried that Her Majesty or the Vice Regal representative might be consorting with criminals, I would understand that, but I am at a bit of a loss about why it is necessary even if it may be just standard drafting practice and whether the bill is any richer for it or whether it will be affected if it is removed. As I did on the National Disability Insurance Scheme (Worker Screening) Bill that we just dealt with, I make the point that, unfortunately, the explanatory

memorandum does not help at all. It just says, "This clause provides that the Bill binds the Crown." That was exactly the problem I was trying to highlight. Simply paraphrasing what the clause says is no use to anyone at all. I would appreciate it if the minister took that back to those who manage this sort of legislation so that we can get more information. That might have avoided my need to ask the question in the first place. Is there any concern if this clause were not in the bill; would there be a problem?

Hon SUE ELLERY: It takes a little bit to pull the veil away from the mysteries that are parliamentary counsel! I am advised that there is a general presumption of statutory interpretation that statutes do not bind the Crown in the absence of clear words or necessary implication. The High Court in Bropho held that this presumption that provides only limited protection, gives way to express or implied intention that legislation binds the executive. To remove uncertainty, it is best for legislation to expressly state whether it binds the Crown. It is particularly important in clarifying whether the Crown can be prosecuted for offences under the act.

If it assists the honourable member at all, I can ask the question here. However, I think it is not unreasonable that legislators are given reasons that a particular form of drafting has been adopted. If this will not cause too much offence, it is frustrating to me as well. I take the point the member made and I will pass it on.

Hon MICHAEL MISCHIN: I appreciate that the minister is doing her best with this. If we are creating rights and obligations that may expose us to litigation, I can understand why we might want to bind the Crown or exempt the Crown so that it can or cannot be sued and the like. I am not quite sure how that would be necessary in a bill of this character, because we are certainly not going to prosecute the Commissioner of Police. There is no offence-creating provision of that character there; and, if there were, it would specify that sort of liability. It seems a little odd to me and one of those conventions that is perhaps unnecessary. The minister does not have to assure me. I am a little reluctant, but I will not take issue with that clause. It will not do any harm. If it will not do any harm, we could get rid of it and save a bit of paper and ink, but I will not make an issue of it.

Hon Sue Ellery: I am obliged.

Clause put and passed.

Clause 8: Unlawful consorting with convicted offenders —

Hon NICK GOIRAN: Clause 8(3) provides that the prosecution does not need to prove that the consorting occurred for a particular purpose or that the consorting would have led to the commission of an offence, yet a consorting notice cannot be issued by a prescribed officer unless the prescribed officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of the convicted offenders to engage in conduct constituting an indictable offence under clause 10(2)(c). Is there an inconsistency between the policy of clause 10(2)(c) and the policy of clause 8(3)?

Hon SUE ELLERY: The basis for issuing the notice is set out at clause 10(2)(c). The officer needs to consider that it is appropriate to issue the notice in order to disrupt or restrict the capacity of convicted offenders named in the notice. The "consorting" has already been considered. The provision in subclause (3) means that when the matter gets to court, it has already been established; that is, the offence is the consorting. The breach of the consorting notice is the matter to be determined, not whether it occurred for a particular purpose and not whether it would have led to the commission of the offence, but whether it occurred at all, full stop.

Hon NICK GOIRAN: I will again look at clause 10(2). In this context it is inextricably linked with the questions pertaining to clause 8. Clause 10(2) indicates —

> A prescribed officer may issue an unlawful consorting notice in respect of a person if —
>
> (a) the person has reached 18 years of age; and
>
> (b) the person is a convicted offender who —
>
> (i) has consorted, or is consorting, with another convicted offender; or
>
> (ii) the officer suspects on reasonable grounds is likely to consort with another convicted offender;
>
> and
>
> (c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of convicted offenders named in the consorting notice to engage in conduct constituting an indictable offence.

In light of what is contained in clause 8, will it be necessary for the prosecution to demonstrate that the conduct constituted an indictable offence?

Hon SUE ELLERY: I am advised no.

Hon NICK GOIRAN: Is that because of clause 8(3)?

Hon SUE ELLERY: No; they will not have to demonstrate. The offence is constituted by the two occasions of breaching the notice, not the purpose for which they breached the notice; it is the breaching itself.

Hon NICK GOIRAN: In respect of the issuing of the notice, what is the check and balance to make sure that the prescribed officer has issued the notice lawfully?

Hon SUE ELLERY: I guess there are a couple. At a broad level, there is the objects clause itself and the fact that only an officer of or above the rank of commander will be able to issue the consorting notice. But if an accused were to take issue, for example, with the validity of the order, they will be able to argue that in court. The bill also contains provisions under which the commissioner will be able to revoke or vary the terms of an order if the subject of those orders requests that. That is effectively a form of review or appeal. There are the things that exist at the higher kind of policy level, but also at the more practical level there is the capacity to revoke or vary.

Hon NICK GOIRAN: I will take that up further when we get to clause 10, minister. I revert to the matters under clause 8, "Unlawful consorting with convicted offenders". When this bill was before the other place, it was confirmed that it goes further than the New South Wales consorting laws. Specifically, under the current bill, a person must be found to have breached a consorting notice on two or more occasions, but the breaches may relate to separate breaches against separately named individuals in those consorting notices. As I understand it, under the New South Wales law, a person commits the offence if that person consorts with at least two other convicted offenders whether on the same or separate occasions, and the person consorts with each convicted offender on at least two occasions. The bill before us requires consorting with only one other person on the notice, not two other persons. The proposed Western Australian consorting offence will apply if a person subject to a notice consorts with any other person on that notice on two occasions. In effect, the New South Wales law requires four strikes while this bill requires two strikes. Why has the government departed from the New South Wales model in this respect?

Hon SUE ELLERY: The honourable member looked at New South Wales and he may well have looked at other jurisdictions as well. We did not model our scheme on New South Wales alone. The Western Australia Police Force and the Director of Public Prosecutions looked at various elements of models in other jurisdictions. One difference between the Western Australian and New South Wales models is that we have a higher threshold for issuing a notice in the first place relating to conviction. The honourable member will find that there are differences between the respective jurisdictions. The model developed here that is in the bill before us matches certain elements in certain jurisdictions, but not all of them.

Hon NICK GOIRAN: The New South Wales law was subject to a High Court challenge in Tajjour v New South Wales [2014] HC 35. It survived that challenge. Given that our legislation goes further than the New South Wales consorting laws, is the government confident that it would survive a similar High Court challenge?

Hon SUE ELLERY: I am advised that it would. The government sought the Solicitor-General's advice on that question. The advice is that we are confident the model we have will meet any test. The staff at the table are worried about what I said. No, they are not. I am going to clarify what I said—any test in the High Court, not any test ever about anything anywhere in the world.

Hon NICK GOIRAN: Has the government received any advice about any provisions in this bill that are more susceptible to a challenge in the High Court?

Hon SUE ELLERY: The advice we have from the Solicitor-General is that the model in the bill before us is sufficiently close to the New South Wales model to survive any test in the High Court and in other elements it is a narrower and tighter test. On the basis of a combination of those two factors, the advice we have is that, yes, the model we have put together in this bill would be sufficient to survive examination in the High Court.

Hon MICHAEL MISCHIN: I note that clause 8 is framed in terms of people who consort contrary to an unlawful consorting notice served on them, making that a crime, albeit one that can also be dealt with summarily. Unless I have it wrong, the earlier equivalent provisions in the Criminal Code relating to consorting were merely framed as offences. Why has the course of making a section 8 offence a crime under this bill been adopted?

Hon SUE ELLERY: Given the target of the provisions before us—serious organised crime—the policy judgement was made that the two years' provision that exists in the current consorting provisions in the Criminal Code was not strong enough.

Hon MICHAEL MISCHIN: I appreciate that, but I am talking about not so much the penalty that is applicable and to which someone might be liable, but the character of the offending. Previously it was an offence and, hence, something that would be ordinarily triable summarily before a magistrate, a process that would have been less cumbersome—let us say, less formal—than going before a judge and jury on an indictment. Here it is created as a crime and, hence, as an indictable offence. I thought if there was simply a question of penalty, it was a matter of simply increasing the penalty for consorting while leaving it an offence, rather than categorising it as a crime that can also be prosecuted summarily. That is the question I would like answered: why was it elevated to being a crime? For example, it makes it the equivalent of an assault causing bodily harm, even though there may not be any physical action involved in it, other than collaboration. The government is elevating it to that level, making it a crime. I thought it would be far more efficient, effective, less expensive and quicker to simply leave it as an offence and increase the penalties.

Hon SUE ELLERY: I partly answered that in my previous answer. It does reflect the seriousness of the offence and the penalty means this will be an arrestable offence.

Hon MICHAEL MISCHIN: Would not a penalty of even two years' imprisonment make it an arrestable offence?

Hon SUE ELLERY: Setting the penalty at imprisonment for five years enlivens the provisions of part 12, division 2, of the Criminal Investigation Act 2006, which allows a police officer to arrest a person without a warrant if the officer reasonably suspects that the person has committed, is committing or is about to commit the offence. Making the offence an indictable offence has the effect of removing the time frame specified in the Criminal Procedure Act 2004, within which a prosecution must be commenced. Simple offences must be commenced within 12 months of the date on which the offence was allegedly committed, whereas no such limitation exists for indictable offences unless the written law specifies "other", which this does not. Police intelligence may span several years and the offence charged at a later date.

Hon MICHAEL MISCHIN: The rationale for making it a crime was to get around the limitation period, and making the penalty five years was to enliven the opportunity to arrest without warrant. I do not have the Criminal Procedure Act 2004 or the Criminal Investigation Act 2006 in front of me, but that is the rationale for those.

Hon Sue Ellery: And to reflect the seriousness of the crime.

Hon MICHAEL MISCHIN: I accept that it is serious, and I am glad that the Leader of the House reminded members of that because it will have a bearing on something that I will get to in a moment. I would have thought that the seriousness of the offence could also be reflected by keeping it an offence and prescribing a five-year penalty for it. Anyway, the government has chosen to do that.

I would have thought that if there is an excessive delay of over 12 months before a prosecution is initiated and no hatching of a criminal act can be established, simply the breach of a consorting notice is not likely to attract much of a penalty by a court. Those are the two reasons in any event.

My next question relates to clause 8(1)(b), which states, in part —

> … the person consorts with a convicted offender stated in the notice on 2 or more occasions.

Why does it have to be at least two occasions? If a person is not supposed to consort with someone because they are potentially so dangerous that they are going to hatch some criminal plot of such gravity that it attracts five years' imprisonment and has to be dealt with on indictment and not be subject to any limitation period, why wait for two occasions?

Hon SUE ELLERY: There are a couple of reasons. This was included on the advice of the serious and organised crime division and the DPP. Based on their experience, under the current scheme, habitual consorting has been quite difficult to prove. Putting in a number was viewed as being a way to make it easier to achieve a successful court outcome.

Hon MICHAEL MISCHIN: That raises more questions than it answers. I can understand the difficulty in establishing habitual consorting because of the use of the word "habitual", which may have been clarified by case law and experience as something that involves more than one occasion or some accidental or inadvertent communication, or being in company with someone. But we have eliminated the concept of habitual, so we have clarified it. We do not need "habitual" so that is irrelevant. We are saying that someone who is so serious an offender who is with someone who is proscribed—who is also a serious offender—is such a serious risk to public safety that they ought not to be in each other's company, never mind whether they are getting together to plot crimes or to discuss their favourite brand of coffee. It does not matter. It is the fact that they get to communicate, the fact that they are in each other's company and the fact that they are in each other's company and do not depart would be enough to establish it, but it has to be two occasions so they get one free. I do not understand why that is necessary and why it does not simply say that anyone who consorts with a convicted offender, as stated in the notice, on one or more occasion commits this crime. The relevance of the difficulty of establishing a habitual course of conduct is irrelevant to this. Why do we not simply not have one occasion or any occasion?

Hon SUE ELLERY: I am not sure whether I can take this much further. I am advised that no jurisdiction in Australia applies it to only one event. The practice that has been adopted around Australia is more than one. The advice from those on the ground doing the work in the serious organised crime division and the Director of Public Prosecutions people is that the most appropriate way to get the outcome is to have two. No jurisdiction in Australia provides for only one. I appreciate and understand the line of questioning, but I am not sure that I can take it much further than what I have already said.

Hon MICHAEL MISCHIN: Further to that, which other jurisdictions use the same concepts to establish consorting in their equivalent legislation? Are the other jurisdictions ones that use the formula of habitual, which gives rise to that lack of clarity, or are they all now defining a consorting offence as requiring two or more occasions? Have I made myself sufficiently plain on that? I can understand it if other jurisdictions are talking about "habitually" or using an equivalent form of words rather than a number of occasions that they might use as indicia of consorting that is two occasions of being in company or whatever, but if we are simply specifying a number of occasions that constitute a breach, do any other jurisdictions do it the same way that we are doing it here?

Hon SUE ELLERY: The elements of the offence are slightly different in each jurisdiction. I will go through them. In New South Wales, a person other than a person under 14 commits an offence if the person consorts with at least two convicted offenders and the person consorts with each convicted offender on at least two occasions. In Queensland, it is if the person habitually consorts with at least two recognised offenders. In South Australia, it is if the person consorts with at least two convicted offenders and the person consorts with each convicted offender on at least two occasions. In Victoria, they commit an indictable offence if the person associates with an individual on three or more occasions in a three-month period or six or more occasions in a 12-month period. In Tasmania, it is if the person consorts with another convicted offender on at least two occasions within the five-year period after having been given an official warning.

Hon MICHAEL MISCHIN: Minister, what was the second example that you quoted that simply used the concept of consorting without specifying a number of occasions?

Hon Sue Ellery: Queensland.

Hon MICHAEL MISCHIN: The concept of "consorting with another offender" gives rise to the same problem as the "habitual" concept when working out what "consorting" means and whether it is simply being in company or something more than that, or whether it is inadvertent contact or the like. The others seem to have a variety of formulas.

Does the occasion have to be on two separate days or can it be on the same day? The reason I raise that is in the past we have debated, for example, what is a multiple murderer. It has to be on two separate days. Therefore, if I kill someone before midnight and I kill someone after midnight, I am a multiple murderer. If I am smart enough and I kill them both before midnight, I am not a multiple murderer. I want to know whether the same silliness arises in this clause. If two offenders get together on several occasions during the course of a day, a 24-hour period, have they consorted on two or more occasions or do they have to consort on separate days? Is there any difficulty with that?

Hon SUE ELLERY: There is no reference to the consorting having to be on separate days, so it could happen on the same day.

Hon MICHAEL MISCHIN: So if the WA Police Force or the Director of Public Prosecutions does not encounter a problem down the track with any of this, is the minister able to assure us and them that there is no case law that will create a difficulty if the consorting is on several successive occasions over a relatively short period; for example, if I were to seek out a person's company, leave the room, go into another room to seek out someone else's company, in breach of an order, and then come back to the first person a couple of minutes later, would that be considered two occasions rather than part of the one meeting?

Hon SUE ELLERY: If I understand the question, we are confident that there have been no cases in which that has been demonstrated to be an issue. I am advised that there are not and I am advised that the occasion does not have to be on the same day but it may be.

Hon MICHAEL MISCHIN: It can be on the same day. It can be within a short period, depending, I suppose, as a matter of fact, on whether there has been more than one incident of consorting. But there is no bar to there being fairly short periods, if necessary, between those instances of being in company.

Clause put and passed.

Clause 9: Defences to charge of unlawful consorting —

Hon NICK GOIRAN: I have some preliminary questions on clause 9 before we dive deep into the amendments on the supplementary notice paper. Clause 9 provides a defence when the consorting was between persons who are family members. The family member of an Indigenous person is defined in clause 5(2) to include a person who is regarded as a member of the extended family or kinship group of the Indigenous person, under the customary law and culture of the Indigenous person's community. This defence, together with the definition of "family member" in clause 5(2), is said to be a safeguard against these new consorting laws from unfairly impacting Aboriginal and Torres Strait Islander people. The Attorney General in the other place explained that the 2016 New South Wales Ombudsman's report into that state's consorting laws documented that the New South Wales consorting law was used against Aboriginal and Torres Strait Islander people and that this should be avoided. It is not evident how this goes in any way to addressing the broader issue of consorting laws and their impact on members of our Indigenous communities—that being clause 9 as currently drafted. Can the Leader of the House explain how the impact of WA's current consorting laws on people of Aboriginal and Torres Strait Islander descent will be remedied by these particular provisions?

Hon SUE ELLERY: The honourable member raised this question, as did somebody else, in the second reading debate. I replied to it in my second reading reply and I set out the reasons why the government has taken this course of action—that includes that as a function of history and dispossession, Indigenous people are disproportionately represented in the justice system. That means that more of them are likely to have a conviction and, therefore, more likely to be captured by consorting provisions because it is more likely that members of their family will have a conviction. I explained that in my second reading reply. That is, I guess, the policy issue that the government was trying to respond to, noting the work that had been identified in reports from other jurisdictions like the one that the member referred to.

Hon NICK GOIRAN: The Leader of the House is correct in saying that I touched on this matter in my second reading contribution, but what I did not ask then and what I am asking now is whether Western Australia's current consorting laws have impacted upon Aboriginal and Torres Strait Islander people. The response that the Leader of the House provided seems to be a quantitative one, effectively utilising the statistics, or proportion of Aboriginal people who are in the criminal justice system, as an explanation as to how they might be impacted by current consorting laws. However, that is not the heart of my question. The heart of my question is encapsulated by what the Attorney General said during the debate in the other place. He is the one who drew to members' attention the 2016 New South Wales Ombudsman's report and he is the one who indicated that in New South Wales those laws were being "used against" Aboriginal and Torres Strait Islander people. Is it the case that Western Australia's current consorting laws are being used against Aboriginal and Torres Strait Islander people in the sense that they are being used improperly, inappropriately, disproportionately and unfairly? Are they being used in the way that the New South Wales Ombudsman's 2016 report was concerned about or are we able to distance ourselves entirely from the New South Wales' operations and say that, no, everything in Western Australia in that respect has been fair and equitable?

Hon SUE ELLERY: There is no report reflecting Western Australian data or consideration of circumstances in particular geographic areas of Western Australia, for example, where we might say, "Here is the matching evidence for Western Australia." So, no, there is no similar report as was done in New South Wales. However, we would only have to look at the experience of dispossession, racism and disproportionate representation in the justice system in New South Wales to say that it would be hard to believe that it would be better in Western Australia, given our history. Probably, at best, it is about the same. There may even have been times in our history in Western Australia when it was worse. If the member is looking for me to provide him with a report and a set of data that demonstrates the exact impact—where, when, how and in what numbers—in Western Australia, I do not have that.

Hon NICK GOIRAN: It would appear from reading the 2016 report of the New South Wales Ombudsman on the consorting law that the issue is not so much in the drafting of the legislation but in the use of police powers in issuing the notices. I note that page 63 of the report states —

> There is no specific reference to the use of the new consorting law in relation to Aboriginal people in the *Consorting Standard Operating Procedures* …

Can the Leader of the House advise the chamber whether the Western Australia Police Force adopts a form of consorting standard operating procedures that makes specific reference to the vulnerability of Aboriginal and Torres Strait Islander people under these laws, beyond merely referring to the kinship ties among Indigenous people?

Hon SUE ELLERY: I am advised that the WA Police Force is in the process of developing a procedures manual to deal with this, and that, as part of developing that, it is looking at the New South Wales Ombudsman's report and the recommendations and references therein to police standard operating procedures, which I think is how the member described them.

Hon NICK GOIRAN: That is a work in progress. This may answer my following question. I note that page 64 of the New South Wales Ombudsman's 2016 report states —

> Western Region police reported that, among other strategies, they most commonly used the consorting law in relation to drug, theft, robbery, and break and enter offences.

The report goes on to say that in some local area commands —

> … consorting was valued as providing an additional proactive tool that could be used to approach and engage individuals. However, others advised us that existing police powers, such as conducting bail compliance checks, search powers and move-on directions, provided more effective and less cumbersome proactive tools.

My question is: will Western Australia police apply existing police powers wherever possible, and use these new consorting laws as a last resort, particularly in relation to Indigenous persons; and, if the answer is yes, what will be the mechanism to direct Western Australian police officers in this way?

Hon SUE ELLERY: The object of this bill—remember, we had a discussion about the object of the bill a bit earlier—and the policy intent of this bill are that it is a tool to deal with serious organised crime. To that extent, the characterisation that the member referred to is correct, although I do not even think it is correct to say that it is a last resort; this would be the first resort in respect to serious organised crime and consorting. But it is not one of the tools that is intended for police to use as a general way of perhaps breaking up antisocial behaviour in the community. It is about tackling serious organised crime.

Hon NICK GOIRAN: I am not sure that this notion of serious organised crime is defined or even appears anywhere in the bill. It is certainly not a defined term on page 34 of the bill.

Hon Sue Ellery: That is perhaps my shorthand language. I was referring to the stated purpose that is set out in the objects.

Hon NICK GOIRAN: Yes, okay. The objects are stated in clause 6, as the minister has quite rightly identified. It states —

> The objects of this Act are to disrupt and restrict the capacity of convicted offenders to organise, plan, support or encourage the carrying out of criminal activity.

The provisions of this bill are extraordinary. I use the word "extraordinary" in the context that we know from other jurisdictions that these types of extraordinary restrictions on people's ordinary freedoms and liberties have been the subject of challenges in the High Court of Australia. The minister will recall from an earlier debate that I had a view that, given the seriousness of the restrictions, we should appoint an organisation such as the Corruption and Crime Commission as the oversight body. For those reasons and because of the severity of the laws, we need to make sure that Western Australian police officers use them as a last resort when other existing police powers cannot be used or might be ineffectively used. That is why I asked whether there will be a mechanism to direct police officers in that way.

I want to ask one further question about clause 9(1). The minister will be aware that this clause has three subclauses. I have questions about subclauses (2) and (3), but I know that a number of other members have an interest in clause 9 generally, so I will just ask this question and then pause at that point. Clause 9(1) states —

> It is a defence to a charge of a crime under section 8(1) to prove that the consorting was —
>
> (a) between persons who are family members; and
>
> (b) reasonable in the circumstances.

What type of consorting might be considered reasonable in the circumstances to provide a successful defence against the charge of unlawful consorting?

Hon SUE ELLERY: This is the example that I have been given, honourable member. Consider two brothers subject to a consorting notice who are responsible for the care, perhaps, of their elderly parents. It would be considered reasonable that the brothers would need to consort with each other to discuss a care plan or living arrangements for their parents. However, reasonableness still sets a threshold test. It may not be reasonable for those same two brothers to go on an interstate holiday together to participate in a run. By "run", I do not mean a marathon; I mean a bikie run whereby they travel together in packs. I hope that using that language does not attract them to my house or anything like that.

Hon MICHAEL MISCHIN: "Reasonable in the circumstances" is a very broad concept. I take the minister's example and wonder whether there might be other specific defences that would allow for such a thing. Bearing in mind that the defence is so broad as to cover family members and reasonableness in the circumstances, there is also a defence in situations in which the consorting takes place in a variety of activities that are specified, including it being necessary in the circumstances—not even "reasonably necessary", just necessary. To take the minister's example, let us say that there are two brothers who have not seen each other for a while and want to get together for a meal. Is that not reasonable in the circumstances, just to reacquaint each other with family members—even in the company of other family members? It might be a family reunion.

Hon SUE ELLERY: It would be a matter of the particular facts, including the purpose of the catching up and how regularly they catch up. The example I gave in response to Hon Nick Goiran was a situation in which they share responsibility for the care of elderly parents. It may not necessarily be the case that it is deemed reasonable for them to just catch up and have dinner, but, depending on the particular circumstances, if the meeting was about planning a roster for the care of their parents, maybe it would be reasonable. It is not possible for me to prescribe exactly what circumstances will constitute the test of "reasonable in the circumstances". It will depend on the particular facts.

Hon MICHAEL MISCHIN: This is where the problem arises. The current consorting laws may not be satisfactory, but part of the difficulty with consorting laws is in trying to draw the line as to what is acceptable and unacceptable conduct, bearing in mind that the object is —

> … to disrupt and restrict the capacity of convicted offenders to organise, plan, support or encourage the carrying out of criminal activity.

That is the blanket objective, yet there is a defence if the convicted offenders are members of the same family—in the case of Indigenous offenders, whatever might be regarded as an extended family or kinship group, which is very broad—and the conduct is reasonable in the circumstances. Let us draw on *The Godfather*. Vito Corleone decides that he wants a family reunion because he is getting a little old. Michael Corleone has been off to war and he wants to get all the family together. Why is that unreasonable in the circumstances?

Hon SUE ELLERY: I can appreciate wanting to test the question of what is "reasonable in the circumstances", but I really do not think this serves much purpose, because it is going to depend upon the particular circumstances. I am not going to be able to assist the member, and I am not sure that it is a useful use of our time to explore every possible variation that might exist. It is going to depend on the particulars of that matter at that time.

Hon MICHAEL MISCHIN: I accept that not everything can be canvassed and certain variations of facts might make a material difference. However, one view of what we are looking at is that this is a very profound limitation

on people's ability to seek out or accept other people's company and communicate simply on the basis of their having had convictions of certain types without any need to prove the purpose of their collaboration or company because, as a blanket rule, the risk is too high that they will be up to mischief and it needs to be stopped. Notwithstanding that the risk can be that high, the commissioner can say that it is reasonable that two people are not allowed to see each other or communicate with each other or stay in each other's company unless, of course, they are family members, albeit crime family members. But we are offering no guidance on what may or may not be reasonable. We are compounding that by qualifying that alleged risk by saying that there is even broader scope if someone happens to be Aboriginal or Torres Strait Islander. We will get to those defences in a little while. The government is saying that something is wholly unacceptable and that the risk is enormous. We are talking about child sex offenders and people convicted of an indictable offence, although at a pretty low threshold. We are saying that the risk is so high that the commissioner can issue a notice on at least up to two occasions that two, three or whatever number of people will not be allowed anywhere near each other and must stay away; yet, on the basis of someone's ethnicity or race, that is more important than the risk to the public or particular people and, indeed, there are even more qualifications. If people are family members and it is reasonable in the circumstances—whatever that might be; we will leave it to someone else to decide—they may have a defence to it. I find that a little too loose. Although I accept that we cannot explore every possibility, surely the government has some parameters in mind or some concept of what may or may not be reasonable or what is acceptable or unacceptable. We are letting police officers take the burden of deciding that.

I again give the example of the Corleone family getting together for a family reunion. Is it something about which we can expect the police to say, "That's not acceptable because you're breaching your unlawful consorting notice", given what we know about that family from the movies? Is that an acceptable risk? Is it reasonable in the circumstances that they get together for a Christmas dinner or family reunion? Does the government have a view that that sort of thing ought to be stopped or that it is fair enough?

Hon SUE ELLERY: I understand the question that has been put to me, but as I have said already a couple of times, I am not able to take it any further because we could go down a rabbit hole with one scenario of versions of the Corleone family and others, but that can be entirely meaningless because it will depend on the particular circumstances. I am therefore not able to assist the member on this issue any further.

Hon MICHAEL MISCHIN: I fear that some of the good work that has gone into this will be simply unenforceable.

The minister mentioned on several occasions that we are dealing with very serious organised crime. Hon Nick Goiran asked where that is to be found in the bill and the minister said that that was —

Hon Sue Ellery: My shorthand.

Hon MICHAEL MISCHIN: — the minister's shorthand for it. Of course, we are not talking about serious organised crime at all, unless we consider any combination of two people planning something to be organised crime. Two burglars who have knocked off a place in the past might find themselves subject to an unlawful consorting notice; would that not be right?

Hon SUE ELLERY: I tried by way of interjection with Hon Nick Goiran to make the point—it was probably inelegant use of language on my part—by using shorthand. The honourable member asked me whether this could be used as a tool, to paraphrase, against Aboriginal people, for example. I made the point that the purpose of this bill is not the same as a general tool to be used for the purpose of dealing with antisocial behaviour, for example, which is what the move-on laws that the honourable member used in his example have been used for in the past. Please do not misinterpret my shorthand language. The object of the bill, as Hon Nick Goiran pointed out, is quite clear. The only point I was trying to make is that this is targeted at something different from that targeted by the other range of tools that Hon Nick Goiran referred to in the example he put to me. I withdraw that language. I was not trying to suggest that this is a bill specifically targeted at serious organised crime. I was using sloppy language to try to make the point that there is a specific objective of this legislation and that that is the purpose it would be used for.

Hon MICHAEL MISCHIN: Minister, do not misunderstand me. I understood what the minister was saying and I was not holding her to that language as a term of art. In reflecting on the debate in the other place, that is the sort of language that was used by the Attorney General—outlaw motorcycle gangs and organised crime have no business being in places like the Chamber of Commerce and Industry of Western Australia and that is why there does not have to be an exception to that. He spoke entirely of the purpose this will be focused on—that is, motorcycle gangs and things at that level. If that is right and we are talking about outlaw motorcycle gangs or child sex offender rings—that level of criminality—it does not sit well with making exceptions on the basis of ethnicity because we are worried that in the past, some people, as a group, and their ancestors may have been subject to oppressive laws or unfairly treated or are over-represented in the criminal justice system. Either something is a serious enough threat on the basis of behaviour and risk that it needs to be stopped or it is not. That is where I have a bit of difficulty with the philosophy of the bill.

If there is a structure in the bill whereby the Ombudsman is meant to oversee the operation of these provisions and to make representations to the Commissioner of Police about whether the provisions are being used properly, fairly,

in a balanced way and so on, that seems to be when we should start questioning whether a particular demographic is being unreasonably targeted, not by making exceptions for them to make it easier to wriggle out of the consequences of their previous actions and the risks that they pose to the community. Bear in mind what a "convicted offender" means. It may be that the bar is being set too low. The term "convicted offender" means —

(a) a person against whom a conviction has been recorded for 1 or more of the following —

(i) an indictable offence;

That could be anything from assault causing bodily harm on one occasion, all the way through to murder or drug dealing and the like —

(ii) a child sex offence;

Fair enough —

(iii) an indictable offence against a law of the Commonwealth;

That is very broad —

(iv) an offence against a law of the Commonwealth that, if committed in this State, would constitute a child sex offence;

That is also very broad, but fair enough; and something akin in other states and territories.

The eligibility threshold is very low, but the defences seem very, very broad to get around them. Some of them seem to be unreasonably based on something that ought not to be a consideration in the realm of public safety, other than to relieve people of the consequences of what may have happened to others in the past.

I take it that the defence in clause 9(2)(a)(i), "engaging in a lawful occupation, trade or profession", is to not impede people's rehabilitation notwithstanding that they are such a risk to everyone else that they ought not to be hanging around together. Will that permit criminals at this level to set up a business partnership—say, a lawnmowing round?

Hon SUE ELLERY: If we are going to go into another round of me trying to provide a prescriptive list of what will and will not be considered to meet those defences, I cannot do it, honourable member. It may mean that they set up a lawnmowing business; it may mean that they cannot, but to do so would not be deemed a reasonable defence in the circumstances. It will depend on particular facts.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Michael Mischin, do you want to move your motion to amend?

Hon MICHAEL MISCHIN: Yes. This is probably a suitable time to do that. I move —

Page 8, lines 22 to 27 — To delete the lines.

To put it in context, clause 9 is a set of defences. We have dealt with clause 9(1), which is a defence to a charge under section 8(1) to prove that the consorting was between persons who are family members and reasonable in the circumstances. We have not had a great deal of fleshing out of what may or may not be reasonable as indicia of what the government regards as acceptable or unacceptable consorting in the circumstances. I accept that it will depend on the facts of a particular case, and perhaps the intentions as well.

Clause 9(2) states —

It is a defence to a charge … to prove that the consorting —

There can be one or more instances that count towards the unlawful consorting, which requires two or more instances in order to negate one instance, and paragraph (a) sets out nine circumstances. The circumstance I am focusing on at the moment is the circumstance at subparagraph (viii). Reading it in context, it states —

It is a defence to a charge of a crime under section 8(1) to prove that the consorting —

(a) occurred in the course of 1 or more of the following —

…

(viii) activities undertaken by members of an organisation of employees registered under the *Industrial Relations Act 1979* Part II Division 4, or the *Fair Work (Registered Organisations) Act 2009* (Commonwealth), for the purposes of the business of the organisation;

I get back to the objects that are said to motivate and direct this particular bill, which is not to merely stop the organisation planning —

The DEPUTY CHAIR: Order, member! Noting the time, I shall leave the chair until the ringing of the bells.

Committee interrupted, pursuant to standing orders.

[Continued on page 8357.]

Sitting suspended from 4.15 to 4.30 pm

QUESTIONS WITHOUT NOTICE

The PRESIDENT: Members, it is the last question time for the year. Do we have any questions? Leader of the Opposition.

LOTTERYWEST — EQUAL OPPORTUNITY COMMISSION TRAINING

1350. Hon PETER COLLIER to the Leader of the House representing the Premier:

(1) Has Lotterywest received any training from the Equal Opportunity Commission since March 2017?

(2) If yes, on what dates, and which employees and/or board members received the training?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1) No.

(2) Not applicable.

GRACETOWN — ACCESS ROAD

1351. Hon PETER COLLIER to the minister representing the Minister for Planning:

I refer to the single access road to Gracetown in the south west.

(1) What fire management plan is in place to ensure that residents have an alternative way to exit the town in the case of a fire emergency this summer?

(2) Are there any plans for a second access road; and, if not, why not?

(3) If yes to (2), at what stage are the plans and when will they be finalised?

(4) What other options, if any, are being considered?

Hon STEPHEN DAWSON replied:

I thank the Leader of the Opposition for some notice of the question. The following answer has been provided to me by the Minister for Planning.

(1) A fire management plan is the responsibility of the local government.

(2) Yes.

(3)–(4) Six alignment options have been considered for Gracetown. The recommended option of a 4 400-metre north–south inland road extending from Salter Street to Ellen Brook Road has the endorsement of the steering group. It is not, however, supported by the Shire of Augusta–Margaret River, which opposes it for environmental reasons. The shire has resolved not to endorse the recommendation.

CORRUPTION AND CRIME COMMISSIONER — REAPPOINTMENT — OPERATIONAL ACTIVITIES

1352. Hon MICHAEL MISCHIN to the Leader of the House representing the Attorney General:

The position of full-time Corruption and Crime Commissioner has been vacant since 28 April this year because the government has chosen not to appoint either of the two candidates recommended by the Joint Standing Committee on the Corruption and Crime Commission as suitable for appointment.

(1) To what extent has the lack of a full-time commissioner significantly disrupted or compromised operational activities?

(2) Can the Attorney General provide evidence to support those assertions?

(3) Has the Attorney General, since April, asked for or received any further reports from the Corruption and Crime Commission of its ongoing or emerging investigations; and, if so, when and for what purpose?

(4) Have any investigations pursued when Hon John McKechnie, QC, retired as commissioner been discontinued or compromised solely by reason of his not having been reappointed; and, if so, why?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question, but I am astonished that he would want to ask about the Corruption and Crime Commission today!

(1)–(4) The government continues to support Hon John McKechnie, QC, who was considered by the nominating committee to be the outstanding candidate for the role of Corruption and Crime Commissioner given his integrity and professional experience, including in the roles of Director of Public Prosecutions, as a senior judge of the Supreme Court of Western Australia and, most recently, as commissioner of the CCC. The nominating committee comprised the Chief Justice of Western Australia, the Chief Judge of the

District Court and a community representative. The government, in its dealings with the Joint Standing Committee on the Corruption and Crime Commission and the Liberal Party on this critical appointment, maintains its strong support for Mr McKechnie, QC.

Several members interjected.

The PRESIDENT: Order! I would really like to give the call to Hon Donna Faragher, who I am sure has a very interesting question to pose.

SWAN DISTRICT HOSPITAL SITE

1353. Hon DONNA FARAGHER to the minister representing the Minister for Lands:

I refer to the former Swan District Hospital site. Can the minister confirm the government's intent for the future of this site and does it impact on the application previously lodged with the City of Swan to rezone the site from public purpose hospital to special use, residential R60, private clubs and public open space?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. I draw the member's attention to the fact that the question was asked on 11 November, so the answer is current as at that date. I am aware of some changes since then.

The former Swan District Hospital site has been committed to the Noongar Boodja Trust as part of the Noongar land estate under the south west native title settlement, on the basis that it seeks to deliver an aged-care outcome on a portion of the site. This does not impact on the application previously lodged with the City of Swan.

INSURANCE COMMISSION OF WESTERN AUSTRALIA — BELL GROUP LIQUIDATIONS

1354. Hon NICK GOIRAN to the minister representing the Treasurer:

I refer to the answer to question without notice 1267.

(1) Why is the $291.1 million funded in legal fees not being recouped from the Bell litigation settlement sum and retained or repaid to the Insurance Commission of Western Australia?

(2) Of the $665.4 million received by ICWA, how much is being paid to the government?

(3) Further to (2), by what statutory mechanism—please name the section of the act—is ICWA lawfully able to pay this specific sum to the government?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Treasurer.

(1) The amount spent on the Bell litigation was expensed in each year the costs were incurred. In determining dividends to be transferred to government, the Insurance Commission of WA's board takes into account its net profit after tax, solvency and capital adequacy requirements. Tax payments are made in line with the national tax equivalent regime.

(2) It is expected $655.4 million will be paid to the government.

(3) Sections 28 and 29 of the Insurance Commission of Western Australian Act 1986 and the national tax equivalent regime provide the mechanisms for the payment of dividends and tax equivalent payments.

REGIONAL ECONOMIC DEVELOPMENT GRANTS

1355. Hon JACQUI BOYDELL to the Minister for Regional Development:

I refer to an article published by WAtoday on 25 November, titled "Prison officer suspended over fraud allegations gets $100 000 government grant for Pilbara tours".

(1) Will the minister explain the due diligence process for local development commissions and the government when checking the accountability and credibility of the applicants for regional economic development grants?

(2) Given that the application is now in doubt, what will happen to the $100 000 allocated grant money if it is not given to the original recipient?

(3) Given that the role of the local development commissions is to bring the element of local knowledge and content to the process, and that there was media coverage of this issue prior to the grant round closing, yet the issue was still missed, will the minister undertake to restoring development commissions' staffing to levels that will allow them to undertake their role more effectively?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1) Applications for regional economic development grants require applicants to provide details of all partners, directors and senior management of the business that is applying for a grant. In this instance, a sole director was listed and this was not the person referred to in the WAtoday article. Accountability and credibility

of the listed applicants is determined using local knowledge and, when relevant, credit checks are also undertaken. In the Pilbara, the assessment of applications involves up to three assessors providing comment on the suitability of the project and proponent. The full application, as well as an overview of the project and recommendations from assessors are then presented to the board of the commission for final approval.

(2) Any unallocated grant funds are made available for future RED grant rounds. We now understand that Ms Van Den Berg had stood down from the management of the company prior to the commission or me becoming aware of the charges. I note that the project was assessed very highly by the commission for its potential economic benefits, including long-term tourism jobs for Aboriginal people on the Burrup Peninsula.

(3) Applications for round 3 of the RED grants closed on 7 July and the assessment of applications began on 8 July. The commission is unaware of any media reports naming the person identified in the article prior to 12 August. There are currently eight staff in the commission's Karratha office, which is similar to staffing levels under the previous government. The member will be aware that under the previous government, many of the Pilbara Development Commission staff were based in Perth. I note the commission's recent stakeholder survey with over 100 responses showing very positive results across all indicators, suggesting it is well engaged and well regarded in the Pilbara.

AUSTRALIAN UNDERWATER DISCOVERY CENTRE

1356. Hon COLIN HOLT to the Minister for Regional Development:

I refer to question without notice 1318 asked on 24 November.

(1) What role does the Minister for Regional Development play in the market-led proposal process?

(2) Has the minister played any role in assessing or presenting the Busselton jetty MLP application; and, if so, what has been her involvement?

(3) The proponent has been told that the proposal has been on the Minister for Regional Development's desk now for nine months waiting for her to take it to cabinet.

(a) Is this true and what has been the hold-up in taking it to cabinet?

(b) Why has the assessment and lack of notification of the Busselton jetty MLP failed the steering committee's own 99-day notice period?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(2) Under the market-led proposal guidelines, a lead agency minister is responsible for presenting a cabinet submission on the findings of the MLP steering committee. My involvement in the assessment of Busselton Jetty Inc's application process has been consistent with the guidelines.

(3) I acknowledge that this proposal has not progressed as quickly as the proponent would have liked. However, as per the terms of the MLP policy, I am not in a position to disclose information on the process.

COMMUNICATIONS CAPABILITIES — ESPERANCE

1357. Hon RICK MAZZA to the minister representing the Minister for Emergency Services:

I refer to the 12 November 2020 *Farm Weekly* article titled "Govt agrees with most fire recommendations" in which the minister said that the state government would seek to undertake a review of communications capabilities in the Esperance region and investigate flexible and mobile solutions that provide digital radio communications and enhanced wi-fi and phone coverage. He added that the state government recognised that current technology was limited in its capacity to service growing demand.

(1) When will the review into Esperance's communications capabilities commence?

(2) How long will the review last?

(3) In the meantime, what is the government doing to improve communications capabilities in the Esperance region?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) The review and identification for an additional radio repeater site in the Esperance north east region is currently underway.

(2) The review is scheduled for completion in June 2021, with works to commence in the 2021–22 financial year.

(3) The state government is enhancing emergency communications networks across the state. In partnership with the Department of Biodiversity, Conservation and Attractions, an additional radio repeater was installed at Peak Charles in June 2020 to improve radio communications in the northern part of the Esperance local government area. The Department of Fire and Emergency Services is testing upgrading mobile satellite capabilities to improve communications in remote areas.

The commonwealth government has primary responsibility for telecommunications. The state government has raised with the commonwealth the need for improved telecommunications in WA. DFES is currently working with NBN and the Strengthening Telecommunications Against Natural Disasters program to install satellite-based wi-fi services at 21 community evacuation centres, local government buildings and emergency services buildings in high-risk isolated communities by December 2020, with a further 55 locations across the state to receive satellite services in 2021.

LOCAL GOVERNMENT ACT — REVIEW

1358. Hon AARON STONEHOUSE to the Leader of the House representing the Minister for Local Government:

I refer to the response the Minister for Local Government gave in the other place on 4 April 2019 in relation to the Local Government Act review, and specifically to his comments that the government intended to —

> … create a green bill that we can further consult on before we bring landmark reform legislation to Parliament in the near future.

Given that 18 months have passed and we are now heading into an election in which jobs and the local economy will be central, and given that the local government sector now accounts for approximately $4 billion of economic throughput across Western Australia each year, I ask the following.

(1) What stage is the green bill currently at?

(2) Since it will not now be tabled prior to Parliament rising, is the minister able to table at least an executive summary of its proposed provisions so that the electors of Western Australia know what they can expect in this space from any future government of which the minister or his colleagues might be a part?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1)–(2) The details of the local government green bill will be provided when the bill is finalised and released for public consultation.

INDUSTRIAL LAND — COLLIE

1359. Hon COLIN TINCKNELL to the Minister for Regional Development:

I refer to question without notice 1295 of 12 November. I note that the land referenced in the answer, the Shotts Strategic Industrial Area, is available for mining-related industry only, the land in Kemerton is not within the Shire of Collie and the land in the Collie Light Industrial Area is not available for heavy industry. Noting this government's stated commitment to diversifying the economy of the Collie region, can the minister outline what plans the government has, if any, to address the lack of land available in the Collie shire for either lease or purchase for the operation of job-creating heavy industry not directly related to the mining sector?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

Some months ago, the Collie steering committee resolved—I think it was approved by cabinet—to proceed to change the zoning for that heavy industrial site. Currently, it needs to be a coal-related heavy industry. We are now going through the process of advertising the change to the local planning scheme. We agree that it should not be limited to coal. That process is underway at the moment. The comment period closes on 18 January. In the meantime, if anyone is looking at that, we will be treating this as if that has already gone.

In addition, the South West Development Commission has commissioned an engineering assessment for current and potential industrial land in and around Collie. The assessment seeks to identify current capability and constraints on industrial land, including access to water, power and wastewater, and to inform potential industry attraction and development strategies. That assessment, which has been going on for some time, is due to be completed in January 2021. As the member would be aware, we have already invested in excess of $50 million to that diversification project. Some of those projects are showing great success, in particular, the WesTrac Piacentini and Son project, but many more are underway.

GREENHOUSE GAS EMISSIONS — LNG SECTOR

1360. Hon ALISON XAMON to the Minister for Environment:

I refer to the requests the minister made in 2018 that the Environmental Protection Authority review the implementation conditions regarding greenhouse gases on the Wheatstone development, ministerial statement 873; and the Gorgon gas development, ministerial statement 800.

(1) Can the minister please advise when each of these reports are expected to be completed?

(2) Will the minister please confirm that these reports will both be released in full to the public upon completion?

(3) Will the minister commit to requiring these projects comply with any recommendations the EPA might make regarding greenhouse gas emission reductions?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) The Environmental Protection Authority published its report on its inquiry into condition 26 of ministerial statement 800 for the Gorgon gas development revised and expanded proposal in September 2019. Ministerial statement 1136 was subsequently released in May 2020.

With regard to my request for an inquiry into ministerial statement 873 for the Wheatstone development, I am advised that the EPA is still conducting its inquiry and is expecting to report in mid-2021.

(2) Yes. The Environmental Protection Act 1986 requires that EPA reports on inquiries made under section 46 are published.

(3) For the Wheatstone development, I will consider the EPA's advice and recommendation and consult with other decision-making authorities in accordance with the EP act before making my decision on the implementation conditions. This is the statutory process that was followed in issuing ministerial statement 1136 for the amendment to condition 26 for the Gorgon gas development's revised and expanded proposal.

PUBLIC TRANSPORT — BUS FLEET — DIESEL VEHICLES

1361. Hon TIM CLIFFORD to the minister representing the Minister for Transport:

(1) Can the minister advise how the McGowan government plans to transition the Transperth bus fleet to fully electric or does the McGowan government policy still stand, as per question without notice 127, that the government has no plans to transition the fleet away from diesel?

(2) Can the minister advise how the recent 10-year contract with Volvo to supply 900 diesel buses for the Transperth fleet is in line with the McGowan government's aspiration of net zero emissions by 2050?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Minister for Transport.

(1) On 2 July 2020, the McGowan government announced that a trial of electric buses would be undertaken on the Joondalup CAT route. Work is currently underway to upgrade the Joondalup depot to facilitate this trial, which is expected to commence from early 2022. Following this trial, further decisions can be made as to the deployment of further electric buses.

(2) As per the 2 July 2020 media statement, the contract allows for the provision of alternative technology.

IRON ORE ROYALTY REVENUE

1362. Hon Dr STEVE THOMAS to the minister representing the Treasurer:

I refer to the 2018–19 to 2020–21 mini-boom in iron ore royalties.

(1) What is the current spot price of iron ore as measured by the government?

(2) What amount of iron ore royalty income has the government received for the 2020–21 financial year to date?

(3) How much higher is the answer to (2) than the income that would have been received if the iron ore price had averaged the 2020–21 budget price of $US96.60 a tonne?

(4) Has the government modelled the fiscal impact of an iron ore price over $US100 a tonne for 2020–21 or would such an assumption be considered highly unrealistic?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) It is $US127.85 a tonne.

(2) An update will be provided in the 2020–21 midyear review.

(3) See the response to (2).

(4) The honourable member does not seem to understand the key but basic point that iron ore prices are highly volatile. As the honourable member has been informed on previous occasions, this government makes no apologies for its conservative revenue assumptions. It will not repeat the mistakes of the previous Liberal–National government in assuming high revenue assumptions when there is a very high level of uncertainty. It was this reckless approach that delivered nine budgets with nine cash deficits totalling $27.8 billion.

WESTERN AUSTRALIAN REGIONAL DEVELOPMENT TRUST

1363. Hon MARTIN ALDRIDGE to the Minister for Regional Development:

I refer to the Western Australian Regional Development Trust's "2019–20 Annual Report".

(1) Has the trust provided advice to the minister in 2019–20 or from 1 July 2020 to date under section 12(a) of the Royalties for Regions Act 2009? If so, please table that advice.

(2) Has the minister sought the advice of the trust in 2019–20 or from 1 July 2020 to date under section 12(b) of the Royalties for Regions Act 2009? If so, please table the request and the advice received.

(3) I refer to the membership of Ms Gail Reynolds-Adamson on the trust satisfying section 13(1)(a) of the act, and noting that Ms Reynolds-Adamson attended only one of five trust meetings in 2019–20 but still received her full remuneration of $11 309.83, what explanation can be provided for this?

(4) How are regional development commissions being adequately represented on the Regional Development Trust in these circumstances?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(2) No formal advice has been requested or provided, but the chair of the trust has kept me abreast of its activities.

The trust continues to lead greater collaboration across the regional development portfolio, including the alignment of strategic themes and planning. This greater integration was highlighted during our response to the COVID-19 pandemic. Certainly, the trust is providing thought leadership in regional development generally across the state.

(3) Remuneration and allowances are provided in accordance with section 20 of the Royalties for Regions Act 2009. Although Ms Reynolds-Adamson's other commitments made it difficult for her to attend meetings, I am advised that she was still able to contribute to the work of the trust. Ms Reynolds-Adamson was appointed for only one year.

(4) The chair of the Regional Development Trust is also chair of the Pilbara Development Commission Board and a member of the Regional Development Council, so I consider that the development commissions are adequately represented on the regional development trust.

QUOBBA–GNARALOO ROAD — CARNARVON

1364. Hon ROBIN CHAPPLE to the Minister for Environment:

I refer to Quobba–Gnaraloo Road in Carnarvon, which the then Department of Parks and Wildlife recommended remain closed until 2023, DPaW's correspondence with the shire and the outcomes of the shire meeting.

(1) Is the minister aware that the shire intends to reopen the road as an adventure track, without reinforcing or protecting the track or surrounds?

(2) Is the minister aware that the track runs through national heritage place ID 105881?

(3) Is the minister aware that the track was closed in the 1960s due to safety concerns?

(4) Is the minister aware that the surrounding dunes have been damaged as a result of irresponsible 4 x 4 use?

(5) Given that this area is on the National Heritage List, will the minister ensure that such inappropriate activity will be rejected by the department?

(6) If no to (5), why not?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(6) The Department of Biodiversity, Conservation and Attractions and the Nyinggulu coast joint management body have provided advice to the Shire of Carnarvon regarding the reopening of the road. This has included a suggested road map to address cultural, safety and environmental concerns associated with reopening the road and requesting an extension of the road closure period for five years until these matters are resolved. However, although DBCA has management responsibility for the adjacent Nyinggulu coastal reserves, the Shire of Carnarvon has management responsibility for the road.

TIMBER WORKERS — REGISTRATION

1365. Hon DIANE EVERS to the minister representing the Minister for Forestry:

I refer to the Forest Management Regulations 1993, part 2, "Registration of timber workers".

(1) How many workers are currently registered to engage in timber harvesting in a state forest or timber reserve?

(2) How many workers are currently registered to engage in the transport of log timber harvested in a state forest or timber reserve?

(3) How many workers are registered for both timber harvesting and the transport of log timber?

Hon ALANNAH MacTIERNAN replied:

I thank the member for some notice of the question. The following information has been provided by the Minister for Forestry.

(1)–(3) There are 792 timber workers currently registered to engage in timber harvesting in a state forest or timber reserve or in the transport of log timber harvested in a state forest or timber reserve. The Forest Products Commission's register is maintained in accordance with the Forest Management Regulations 1993, which do not require registration for harvesting and transport activities to be recorded separately.

ABORIGINAL COMMUNITIES — GOVERNMENT INVESTMENT

1366. Hon ROBIN SCOTT to the minister representing the Treasurer:

I refer to the state budget and the three-quarters of a billion dollars to be spent on an enhancing Aboriginal wellbeing package.

(1) How will the success of this package be measured?

(2) Who will be accountable for any failures?

(3) If the outcomes for Aboriginal people do not improve, will the government stand by its policy of avoiding intervention and continue instead with its partnership model?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(3) The Western Australian government is making a record investment in Aboriginal communities to progress its commitment to building the resilience and capacity of Aboriginal people and communities. The WA government is a signatory to the national agreement on Closing the Gap and the comprehensive reporting requirements under this agreement will capture the majority of commitments for socioeconomic change for Aboriginal communities through one consolidated reporting mechanism. This government is committed to resetting the relationship between the state and Aboriginal communities, and working in partnership to improve outcomes for Aboriginal people.

WATER — VARIABLE TAKE LICENCES

1367. Hon COLIN de GRUSSA to the minister representing the Minister for Water:

I refer to the determination of spring rights as it applies to surface water irrigators in the Manjimup–Pemberton irrigation district.

(1) Why are some farmers, with previously approved spring rights, now being told they no longer have spring rights?

(2) Why are farmers with an A-class water licence now being told they need a licence again when they were previously told they did not need a licence due to spring rights?

(3) Given that catchments are fully allocated in the region, when will this quagmire of uncertainty be resolved and how will this be communicated to all in the region?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information has been provided by the Minister for Water.

(1)–(3) The questions contain a certain number of misconceptions. Firstly, one of the deficiencies of the current legislation, which was not remedied by the previous government, is that there is no formal process for farmers to get a definitive declaration that they have a spring right. The Department of Water and Environmental Regulation has put in place a voluntary process to assist farmers. The government believes that it will be necessary to modernise water management in Western Australia, including improving the processes around establishing a spring right.

Minister Kelly has advised that his office is willing to meet with anyone who is concerned. I would be more than prepared to organise a briefing with Minister Kelly for the member.

SWAN VALLEY PLANNING SCHEME

1368. Hon TJORN SIBMA to the minister representing the Minister for Planning:

I again refer to the draft Swan Valley Planning Scheme—or the scheme that was published for public comment from 14 October until 14 November 2020.

(1) To what degree was the City of Swan consulted on the draft Swan Valley Planning Scheme prior to its publication; on what dates and with whom did that consultation occur, and what specific written advice was provided to the minister's departmental officers; and how was that advice incorporated into the draft scheme?

(2) How many public and/or private comments were received throughout the consultation process?

(3) Will these comments be published; and, if not, why not?

(4) Will the minister be afforded adequate time to contemplate and, when possible, incorporate those comments, including those representations made by business following the closure of the public comment period before the scheme is gazetted?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Minister for Planning.

(1) The Department of Planning, Lands and Heritage engages extensively with the City of Swan and has received feedback from city staff on the draft Swan Valley Planning Scheme. At a recent council meeting, the city resolved to recommend support for the draft scheme, with four modifications suggested. The city's recommendation will help inform the final scheme.

(2) Seventy-six submissions have been received.

(3) A schedule of submissions will be made available on the Department of Planning, Lands and Heritage website once the scheme has been finalised.

(4) Yes.

COMMUNITY SAFETY FORUM — BROOME

1369. Hon KEN BASTON to the minister representing the Minister for Police:

I refer to the ABC article published online on 25 November reporting that 40 cars had been stolen in 30 days in Broome and to the upcoming community safety forum hosted by the Shire of Broome on Monday, 7 December.

Will the minister please advise who of the following will be in attendance at the forum —

(a) government members of Parliament;

(b) government ministers;

(c) department directors general; and

(d) government agency representatives?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Minister for Police.

(a)–(d) From the police portfolio, Acting Assistant Commissioner Darryl Gaunt and relevant Kimberley police district personnel will attend. Information regarding other attendees would need to be requested from the relevant minister or the shire.

JUVENILE OFFENDING — TARGET 120 — PROGRESS REPORT

Question without Notice 1274 — Supplementary Information

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.02 pm]: On behalf of the Minister for Community Services, I would like to table the Target 120 evaluation progress report in relation to Hon Colin Tincknell's question without notice 1274, asked on 11 November 2020.

[See paper 4690.]

RENEWABLE ENERGY CERTIFICATES — GOVERNMENT PURCHASES

Question without Notice 1219 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.03 pm]: I would like to provide an answer to Hon Tim Clifford's question without notice 1219. I seek leave to have the response incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

I thank the member for the question. The following information has been provided to me by the Minister for Energy

Synergy

Over the past five financial years Synergy has purchased at least 89 per cent of its large-scale generation certificates (LGCs) through its power purchase agreements with Western Australian based renewable energy generators.

The remaining 11 per cent has been procured through national spot market purchase. Location information for these LGCs is not readily available.

In addition to its existing renewable energy assets, Synergy, through Bright Energy Investments; has recently expanded the Greenough River Solar Farm by 30 megawatts to four times its original capacity, and has built the 180 megawatt Warradarge Wind Farm.

These are significant projects, delivered under the McGowan Labor Government, contributing to a greener energy future for all Western Australians.

Horizon Power

Over the past five financial years Horizon Power has purchased, on average, 28 per cent of its large-scale generation certificates (LGCs) from Western Australian based renewable energy generators. The remaining 72 per cent were purchased from renewable energy generators based in the eastern states.

Horizon Power is embracing technologies and fuels to decarbonise, and is making significant investments in developing a renewable energy capability including through the following projects:

1 Denham Demonstration Project: A trial to test whether hydrogen can meaningfully displace the use of diesel, and to gain a technical understanding of how to integrate technology into 1ectricity networks and its application to microgrids.

2. Esperance Power Project: This project includes a battery energy storage system, two new wind turbines and a central solar farm. It will reduce carbon emissions by almost 50 per cent compared to the existing power supply arrangements and generate up to 46 per cent of Esperance's electricity annually through a new renewables' hub.

3. Onslow Power Project: This trial will enable the significant expansion of how much renewable energy Horizon Power can allow into its networks and how the network impacts of high-renewable penetration can be managed for the benefit of the customer. The Onslow Power Project is delivering cleaner, greener energy to Onslow with fossil fuel savings of about 820 tonnes of C02 emissions per year.

4. Solar Schools Program: 30 public schools in remote and regional WA will benefit Horizon Power supplying and installing rooftop solar systems. This will significantly reduce energy costs and greenhouse gas emissions by more than 2,000 tonnes annually.

5. Standalone Power Systems (SPS): Units will be deployed to selected rural customers, offering more reliable electricity without the need to be connected to the overhead electricity network. SPS use solar and battery technology to generate and store electricity, and will allow more customers to benefit from safer, higher quality and more reliable power.

6. Electrical Vehicle (EV) Pilot: The EV Pilot seeks to increase Horizon Power's understanding about customer's experience of EVs, the impact of grid charging and prepare regional communities for the future.

7. Derby Shire/Hospital Rooftop Solar: New rooftop solar systems will be installed across the Shire of Derby's portfolio of buildings and the town's conventional streetlights with be replaced with smart LED streetlights.

Horizon Power will also work with Derby Hospital to co-design and install a large-scale solar PV and battery solution. This will significantly reduce the Hospital's annual power costs and enable more funds to be redirected into frontline services in the community.

YOUTH CRIME INTERVENTION OFFICERS — BUSSELTON

Question without Notice 1307 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.03 pm]: I would like to provide an answer to Hon Peter Collier's question without notice 1307, asked on 24 November to the Minister for Police. I seek leave to have the response incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

(1)–(4) Under the McGowan Government, there are 120 more officers in regional WA than there were under the Liberal–National Government. The McGowan Government committed, and put funding on budget, to recruit an additional 800 Police Officers; 98 of the first 200 of these officers will be deployed to regional WA.

The Western Australia Police Force advise:

All four Youth Policing Officers (YPO) conducted duties specific to their roles. YPO do not attend jobs or tasks in the same manner as frontline police officers. YPO conduct home visits, participate in youth and family interactions and assist other partner agencies with harm minimisation and diversion strategies. Data is not available on the specific number activities undertaken by YPO in the South West District. YPO spend at least one day a week in Busselton, with additional attendances occurring as duties require. YPO regularly attend events at the Busselton Youth Hub, Juvenile Justice Team Meetings, Youth at Risk Meetings, Education and Youth Justice Meetings. YPO also attend Busselton on an unscheduled basis as required. YPO participate in the:

- Compass Pilot Program (Education/Police) – Home visits conducted with a Department of Education staff member to work with poor attendance/disengaged students. The Program runs for 12 months. YPO recently assisted in the evaluation of the Program which recommended the program continue.
- Jobs South West Leadership 1 Course run throughout the school term.
- Busselton Youth and Families Hub Friday Afternoons.

POLICE — REGIONAL FTE

Question without Notice 1312 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.04 pm]: I would like to provide an answer to Hon Martin Aldridge's question without notice 1312 to the Minister for Police. I seek leave to have the response incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

I thank the Honourable Member for some notice of this question. The following answer has been provided to me by the Minister for Police.

Under the McGowan Government, there are 120 more officers in regional WA than there were under the Liberal–National Government. The McGowan Government committed, and put funding on budget, to recruit an additional 800 Police Officers; 98 of the first 200 of these officers will be deployed to regional WA.

The Western Australia Police Force advise as at 31 October 2020:

(1) 1,548 FTE.

(2) 1,452.64 FTE.

(3) 35.9. Vacancies in police districts vary daily, including through natural attrition, severance, leave without pay and transfers in and out of regional WA. Police Officer Deployment Unit issue transfer notices to successful applicants and their physical arrival in a new position can take up to six weeks in Regional Western Australia.

(4) FTE are deployed by the Commissioner of Police to address areas of greatest operational need. To enable this, vacancies are carefully managed across the Western Australia Police Force. Regional WA Vacancies remain prioritised with deployment levels reviewed weekly. Between March and May 2020, Police placed a moratorium on transfers as part of an initial in response to the pandemic.

DEPARTMENT OF FIRE AND EMERGENCY SERVICES — VOLUNTEERS

Question without Notice 1281 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.05 pm]: I would like to provide an answer to Hon Colin de Grussa's question without notice 1281 to me as Minister for Environment representing the Minister for Emergency Services. I seek leave to have the answer incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

(1) All DFES Career Fire and Rescue Service, Volunteer Fire and Rescue Service, Volunteer Fire and Emergency Service and State Emergency Services personnel have access to AED coverage with an AED being fitted on one or more of each Stations/Units appliances/vehicles. All Career Pumps, Special Equipment Tenders, and the Incident Control Vehicles have an AED. Volunteer stations have an AED placed on their main appliance, Country Pump, Hazmat/Structural/Rescue appliance, Urban Tanker etc.

In 2020, the delivery of 828 Automated External Defibrillator AED) devices was completed.

The AEDs were provided to all local governments to distribute to their respective Bush Fire

Brigades (BFB) and State Emergency Service (SES) Units.

In addition, 121 Training devices were also supplied, one to each Local Government.

(2) I table Local Government Grants Scheme AED Distribution list 2020, Local Governments appliances/vehicles.

(3) Yes. Four training providers are contracted to DFES to deliver training locally across the State as required. The providers are:

- St John Ambulance WA
- Time Critical
- Royal Life Saving Western Australia
- Safety Direct Solutions.

(4) Guidelines relating to the use of defibrillators are incorporated into the first aid training. Student learning manuals and videos on the use of AEDs are on the DFES training portal eAcademy', and readily accessible by volunteers and staff.

Each AED is provided with a video, written instructions, and when activated, the AED provides verbal instructions to the operator.

(5) AEDs are primarily provided to assist response personnel at emergency incidents. Should a member of the public require defibrillation, it would be used.

With that, there is an attachment to be tabled.

[See paper 4691.]

QUESTIONS ON NOTICE 3345, 3376, 3387, 3406 AND 3410

Papers Tabled

Papers relating to answers to questions on notice were tabled by **Hon Stephen Dawson (Minister for Environment)** and **Hon Alannah MacTiernan (Minister for Regional Development)**.

HON RICK MAZZA

"Report on Electorate Allowances and Management of Electorate Offices" — Personal Explanation

HON RICK MAZZA (Agricultural) [5.05 pm] — by leave: I wish to make some comments on the report of the Corruption and Crime Commission tabled today titled "Report on Electorate Allowances and Management of Electorate Offices". The report does not suggest any adverse finding against me; however, I wish to make some comments on it.

Paragraph 195 of the report notes that I argued that the Corruption and Crime Commission has mischaracterised the electorate allowance as "public money", because once the allowance was paid to me, the money became my property and consequently I was lawfully entitled under the terms of the determination to spend the money as I saw fit, in the same way as I deal with my salary. Under the current determination, this view can easily be formed, for the following reasons.

The "Determination of the Salaries and Allowances Tribunal: Remuneration of Members of Parliament", made on 30 November 2017 under section 6 of the Salaries and Allowances Tribunal Act 1975 makes it clear that the electoral allowance, which is dealt with in part 3 of the determination, upon payment becomes the property of the member, under section 2.1(5). At this time, the funds clearly cease to be public money. In this respect, the determination draws no distinction between the base remuneration and additional remuneration—that is, salary—provided for in part 2 of the determination, and the electoral allowance. The absence of a distinction is deliberate, as both matters are dealt with in section 2.1(5). Consistent with this, the bank references for all electoral allowance payments I have received states "Salary". Further, section 3.1(2) of the determination notes that the electoral allowance may be used at the member's discretion but shall not be used for campaigning, electioneering or political party promotion. This may be interesting for those members who pay a levy to their party and claim a tax deduction. The words "shall not" are mandatory and clearly prohibit the use of the electoral allowance for the purposes specified in section 3.1(2).

Section 3.2 of the determination deals with the electorate allowance. Section 3.2(2) states that it is "intended" that the electorate allowance will be used for expenses incurred to assist with serving the electorate and includes seven examples of expenses of that type. The words "it is intended" in section 3.2(2) clearly differ in effect and intent from the words "shall not be used" in section 3.1(2). The relevant provisions of the determination, as set out, are the same in all respects as the provisions of the "Determination of the Salaries and Allowances Tribunal: Remuneration of Members of Parliament", which was made and which came into operation on 15 April 2016. This interpretation of section 3.2(2) is consistent with sections 2.1(5) and 3.1(2) of the determination, which make it clear that immediately upon payment of the allowance, it becomes the property of the member and is able to be used at the member's discretion. It is also important to note that the determination does not require members to account for the manner in which the electoral allowance is spent, and in particular it does not require the keeping of records to justify the expenditure of the electoral allowance. The Corruption and Crime Commission itself acknowledged in its earlier report "Misconduct Risks in Electoral Allowances for Members of Parliament", dated 17 December 2019, at paragraph 37, that Parliament has no oversight over the use, acquittal or accounting of the electoral allowance paid fortnightly to each member.

Consistent with the fact that the electoral allowance becomes the property of the member immediately upon payment, there is no provision for any part of the electoral allowance to be repaid if it is not expended in accordance with the statement of intention in section 3.2(2). The Corruption and Crime Commission itself acknowledged at paragraph 80 of its earlier report that a member is not required to return any unspent electoral allowance. There is no provision for a member to claim any amount in excess of the electoral allowance should its expenditure on matters set out in section 3.2(2) exceed the electoral allowance payment. Consistent with the money becoming the property of the member, at which time it clearly ceases to be public funds, the Australian Taxation Office treats the electoral allowance as income for taxation purposes. ATO taxation ruling TR1999/10 states at paragraph 8 —

> A payment is an **allowance** when a Member is paid a definite predetermined amount to cover an estimated expense. It is an amount contributed towards an expected expense, and is made regardless of whether the Member incurs the expected expense. The spending of the allowance is at the complete discretion of the Member.

Paragraph 9 states —

> The receipt of an allowance does not, in itself, entitle a Member to a deduction …

That means that the electoral allowance could be acquitted on matters that may not satisfy the test for deductibility.

All the above factors support a conclusion that the electoral allowance, like a member's salary, is able to be spent by the member as and when they see fit, subject only to the prohibitions of section 3.1(2) against its use for campaigning, electioneering or political party promotion. In fact, the determination, in stating that both the salary and the electoral allowance become the immediate property of the member, treats these payments in the same manner.

At the time of my induction into Parliament, I, like others here, was informed that the electoral allowance was mine to spend as I saw fit but if it was not acquitted on parliamentary business, I would need to pay income tax on that money. Despite the above, the CCC has suggested at paragraph 228 of the report —

> Whilst the Determination provides no sanction for failing to spend the allowance for the benefit of the electorate, this does not relieve the member from the duty to comply with the intention of the Determination.

Further, in paragraph 247 of its report, the CCC states —

> While the Determination does not prohibit, it places a positive obligation on members to use the allowance for electorate purposes. The use of the allowance for a private purpose is contrary to the Determination.

Further, at paragraph 496, the CCC has concluded that my conduct is —

> … an example of expenditure which does not reflect the use of the allowance intended by the Determination.

For the reasons set out above, no such duty or obligation is imposed by the determination, and I have not, at any time, used my allowance in a way prohibited by the determination.

Also, at paragraph 486 of the report, the CCC has suggested —

> The members had a pecuniary interest in maximising the taxation benefit that would be received from the ATO, so their assessable income from the electorate allowance could be matched by a claimed expenditure. Some expenditure was plainly for private purposes and the electorate allowance should not have been used.

Again, the determination simply does not prohibit the use of the electoral allowance for private purposes. I also pay significant additional tax each year on my income. I strenuously deny that I incorrectly used my electoral allowance. I may have some errors in my tax return, which, at my earliest opportunity, I will have reviewed and submit an amended return as required, but otherwise I reject any suggestion I have not properly acquitted my electoral allowance.

I would also like to point out that I have no connection to Craig Peacock with whom I was only acquainted on three occasions. As a trade commissioner to Japan for nearly 20 years who had hosted many members of Parliament from various political parties, including ministers and Premiers, I had no reason to suspect anything untoward when invited to dinner. There were no discussions at that dinner in relation to the reasons for his presence in Perth.

The report at paragraphs 463 and 464 also notes that I was the recipient of certain information from Mr Edman. This was clearly outside of my control as I cannot stop people from sending me messages. Furthermore, once I started receiving messages from Mr Edman, I blocked Mr Edman on my phone. At no time did I engage in any discussions with Mr Edman or others in relation to the subject matter of the investigation, and at no time did I disclose the subject matter of the investigation to other parties. I, at all times, respected and maintained a strict regime of confidentiality, particularly as a former member of the Standing Committee on Procedure and Privileges, and as I have on any parliamentary committee I have served on.

In conclusion, I am pleased that this report has been tabled as it highlights the need for greater clarity around the application of the electoral allowance.

MATTER OF PRIVILEGE — CORONAVIRUS — RESTRICTIONS — DOCUMENTATION

Ruling by President

THE PRESIDENT (Hon Kate Doust) [5.14 pm]: Members, I am going to provide a ruling on a matter of privilege raised by Hon Peter Collier. Yesterday, the Leader of the Opposition raised a matter of privilege under standing order 93. The matter relates to the noncompliance by the Leader of the House with an order of the Council made on 4 November 2020 for the production of documents. On 11 November 2020, the Leader of the House tabled documents in part compliance with the order of the Council. The Leader of the House cited a number of reasons for partial compliance, such as practical concerns with the scope of the order; the limited time provided for compliance; cabinet confidentiality; and a desire to redact personal information.

When determining whether there is substance to a matter of privilege under standing order 93, schedule 4 of the standing orders establishes a number of threshold questions. Relevant considerations are: whether a person knowingly committed an act amounting to contempt, the existence of any other remedy and whether the person had a reasonable excuse for the commission of any act constituting a contempt. I am of the view that it is premature to treat the Leader of the House's partial compliance with the order of the Council as a substantial matter of privilege. The Leader of the House has not outright refused to comply with the Council's order and she does not appear to have obviously misled the Council. She has instead raised a number of practical objections to the production, or unredacted production, of a number of the documents that have been ordered to be produced. It is ultimately a matter for the Council to decide whether those objections amount to a reasonable excuse not to fully comply with the order. If not, it is within the Council's competence to make further orders, including adjudging a person guilty of a contempt.

I note that the Council has a range of options available to it to effectively immediately deal in a public manner with aspects of the partial noncompliance with its order prior to prorogation and to enable it to pursue the matter further in the next Parliament. For instance, the Council may reissue the order with another, more generous, time for compliance and by delivery of the documents to the Clerk, if the Council is not sitting; issue a new, more narrowly focused, order for the production of documents; order the Leader of the House to stand in her place and provide further details of both her compliance and noncompliance with the order; order that the Leader of the House produce certifying letters from the offices of the Premier, the Minister for Health and the Chief Medical Officer that all documents the subject of any order have been identified and produced; or establish a select committee to obtain further relevant oral and written evidence by way of public hearings.

I am, accordingly, of the view that at this stage there is no substantive matter of privilege to be investigated.

CRIMINAL LAW (UNLAWFUL CONSORTING) BILL 2020

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 9: Defences to charge of unlawful consorting —

Committee was interrupted after the amendment moved by Hon Michael Mischin had been partly considered.

Progress reported and leave granted to sit again, on motion by Hon Sue Ellery (Leader of the House).

CORONAVIRUS — EMERGENCY MANAGEMENT

Statement

HON AARON STONEHOUSE (South Metropolitan) [5.19 pm]: I would like to make a quick, brief statement to make members aware of something that I learnt during the budget estimates hearings that I think is rather disturbing. Before I get there, I would like to first remind members of what seems to be the positions of the Premier and the new Leader of the Opposition, which is the view that we should be basing our COVID-19 response purely on the advice of the Chief Health Officer. These are comments made by the Premier time and time again that all decisions about COVID-19 are based on advice from the CHO. The new Leader of the Opposition has said that he will continue to follow the advice of the CHO without hesitation or equivocation. This is concerning to me because it has become quite clear, through questioning that I engaged in during budget estimates, that the Chief Health Officer is not passing on mental health advice to the State Disaster Council or the State Emergency Coordinator. In the advice that the CHO tabled, no mention is made of mental health considerations in the advice passed to the State Emergency Coordinator. That means that directions are being written, at least through the evidence I could get through budget hearings, seemingly without mental health advice being incorporated. I asked several questions. I asked questions of the Department of Health, the CHO himself, the Mental Health Commission, police, the Leader of the House and the Department of the Premier and Cabinet. All the answers I received seemed to imply that the Chief Health Officer receives all the advice, including mental health, economic and welfare advice, distils it all down, bundles it together and incorporates it into the advice that he passes on to the State Emergency Coordinator and the State Disaster Council.

When we look at the written advice provided, we can see that that is clearly not the case. Unfortunately, I did not get a chance to go back and ask the Chief Health Officer whether that is true because he appeared first, before all those other agencies. That has me deeply concerned. To its credit, the government created the new role in June, I believe, of Chief Medical Officer, Mental Health. I commend the government for creating that role; it is fantastic. However, that officer sits at a much lower level buried beneath a Kafkaesque tapestry of bureaucracy—the Public Health Emergency Operations Centre, the State Welfare Incident Coordination Centre, the State Health Incident Coordination Centre, the State Disaster Council and the State Emergency Coordination Group—which are all various bureaucratic committees that report to various ministers, agencies and directors general. The mental health advice is clearly being lost in the mix.

I asked questions of the government and various agencies and tried to confirm who sat on the highly secret State Disaster Council. It is rather interesting, Madam President; you will be aware, I am sure, that—I may get my acronyms confused, but this is part of my point—the committee created when a state of emergency is declared is the State Disaster Council, which sits concurrently with a subcommittee of cabinet. That means all the deliberations of the State Disaster Council are subject to cabinet confidentiality. We have no idea what goes on inside those meetings. I believe it may be by design; it may be intentional. Neither the Chief Medical Officer, Mental Health; the Chief Psychiatrist; nor the Commissioner for Mental Health have a seat at the State Disaster Council table. The government will say that it is because the director general of Health, the Minister for Mental Health or even the CHO has a seat at the council, so we do not need mental health professionals there giving up-to-date, minute-by-minute advice. I am sorry, but none of the people I just mentioned—the Minister for Mental Health, the director general or the CHO—are experts in that field. They are not. When advice is being given several layers down and a higher level public service is expected to relay the information to the SDC with the same level of urgency, the same professionalism, the same intimate knowledge of that subject matter that the Chief Medical Officer, Mental Health or the Chief Psychiatrist might be able to provide, I am sorry, but something is being lost here in translation.

It is deeply concerning when people were confined to hotel quarantine, and, at least in the earlier stages, had no exercise, no fresh air or very little sunlight.

People were contained in what could really be best described as solitary confinement. Mental health advice about what that might do to someone psychologically, emotionally and mentally was not being provided by the experts in that field to the State Emergency Coordinator. That is an absolute disaster.

This comes on the heels of the Mental Health Commission recognising in its budget that there is an increased demand on suicide prevention services. We are looking down the barrel of a mental health crisis created by the government's COVID-19 restrictions. It seems that the most important decision-makers are not receiving direct mental health advice about the decisions that they make for Western Australians. That is a disaster.

I will wrap up shortly, but I go back to the statements made by the Premier and the Leader of the Opposition that they will follow the Chief Health Officer's advice, whatever it is, without hesitation or equivocation, according to the Leader of the Opposition. That is an abdication of their responsibility. I am sorry, but we do not live in a technocracy. The bureaucrats do not run the show. We live in a representative democracy in which members of Parliament and, indeed, even the Premier are responsible to their electors and they need to consider all the factors. They need to consider what is best for health, clinical health, mental health, the economy and our society. They need to weigh up all these various factors and they need to exercise their own judgement. I am sorry, Mr Premier and Mr Leader of the Opposition, but you do not get to hand off your responsibility to make tough decisions to unelected bureaucrats. If there are costs due to the mental health crisis that we are facing now, the government is going to have to answer the tough question: why was the Chief Medical Officer, Mental Health, the Chief Psychiatrist or the Mental Health Commissioner not in the room at the secret State Disaster Council meetings giving their up-to-date and frank advice when the decisions were made to lock down our state and subject people to social isolation?

COLLINS-CLASS SUBMARINE MAINTENANCE PROGRAM
POLICE — LAURIE MORLEY — EX GRATIA PAYMENT

Statement

HON COLIN HOLT (South West) [5.26 pm]: I found an interesting article in today's newspaper that I want to share with members of the house. It is on page 3 and the headline reads "State's sick of navy gazing on subs deal". I want to highlight this because I want to lead into something else. It states in part —

> The State Government will renew a national campaign today to convince the country that WA should win a multibillion-dollar submarine maintenance contract.
>
> The advertising blitz will run across all media platforms to pressure the Federal Government to finally announce whether the full-cycle docking work will be shifted from South Australia to WA.

There are a few quotes from the Minister for Defence Issues, Paul Papalia. It continues —

> … the Federal Government was almost a year past its self-imposed deadline for a decision and had not provided any updates on the timeline.
>
> He rejected the assertion the Labor State Government's advertising campaign was timed to hurt the Liberals ahead of the State election in March.
>
> "It's a WA Government demanding a decision from the Federal Government who should have made the decision already," he said.
>
> "What works, as we've seen with the GST debate, is public awareness—public pressure encourages governments to make the right decision."

I will repeat that: "public pressure encourages governments to make the right decision". A few pages later in the newspaper, on page 15, there is a full-page advertisement headed "Canberra, it's time to make a decision and put the national interest first." I have no problem with that. The advert has a little checklist —

> We have highly skilled tradespeople ready to go.

Tick —

> We have experienced businesses.

Tick —

> We have world-class infrastructure.

Tick —

> Now all we need is a decision.

I raise this because I have asked a number of questions without notice about two issues during question time this week. One issue is the Busselton jetty market-led proposal, which is stuck in the quagmire of government, with no decision being made. I have tried to get to the bottom of who is responsible, what the time line is and when the proponent can expect a decision, yet no decision has been forthcoming. It is hidden in the terms of reference and the processes of the steering committee, even though the government said that it would let the proponent know within 99 days what is happening, or at least give an indication of some time lines. I tried to get to the bottom of that question today with the Minister for Regional Development, who gave me no answer. The government has gone outside its own time line. The federal government has not answered for a year and the state government gets all shirty with it and decides it had better take out an advertising campaign. The Busselton jetty people put in a proposal. They want to hear something, but they cannot get to the bottom of it. Maybe they need to take out a full-page ad, but of course they do not have the means to do that.

The second issue I raised this week was about retired police officer Laurie Morley, who put in an application for an ex gratia payment. In 2015, ex-police officer Laurie Morley was seriously assaulted in Harvey. He has now been discharged from the Western Australia Police Force. He does not qualify for medically retired compensation.

The information that came out just a few days ago to address that is that it is not retrospective. His application for an ex gratia payment has been sitting with the Commissioner of Police or someone else for 18 months. I received information this week that his application is now with the State Solicitor's Office. To get his point across, should Laurie Morley take out a full-page ad that shows the 43 bruises he got on his back from the assault with a hammer? Remember what the state Minister for Defence Issues said —

> "What works, as we've seen with the GST debate, is public awareness—public pressure encourages governments to make the right decision."

Laurie Morley does not have the means to put an ad in the paper, like the one I am holding up, to raise the public's awareness of the issues he faces and to force the government to say that it is time to make a decision on his ex gratia payment. I think it is a disgrace. He does not have the ability to do that. Maybe Seven West Media would like to do some pro bono advertising for Mr Laurie Morley to get an answer to his ex gratia payment application that has been sitting within government for 18 months!

I would encourage the minister who represents the Minister for Police in this place, whom I regard as a great minister, to take up the cause. The answer that he gave yesterday on behalf of the Minister for Police left Laurie Morley with nowhere to go. While the state government thinks it is okay for it to miss deadlines and there are people waiting for this government to make a decision, it has asked the federal government to come clean!

KOREAN WAR MEMORIAL

Statement

HON TJORN SIBMA (North Metropolitan) [5.31 pm]: I am conscious of the fact that other members wish to speak on this very last sitting day before we inevitably head to the election, and it had been my intention to do so earlier, so I will amend and shorten my prepared remarks accordingly. I did not want it to pass unmentioned that last Thursday, 19 November, I had the great pleasure of accepting an invitation from the Perth Korean War Memorial Committee Inc and the Korean Veterans Association of Western Australia to attend the 2020 Korean War Veterans and Korean War Memorial fundraising dinner. I would like to speak very briefly in support of this worthy project. In simple terms, that project is to build a suitable memorial within the grounds of Kings Park, identified more specifically now within the vicinity of the Tobruk Memorial precinct, to honour the service of Australian forces, particularly those of Western Australian origin, who fought during the 1950–1953 Korean War. It is a project that I have been involved in almost since its inception, which is not to claim ownership of the concept, but it has certainly received my full support. I have moved it along to the best of my capacity, albeit from the diminished resourcing of an opposition member.

Last week, I was also pleased to announce that a future Liberal government would commit $300 000 towards the building of that memorial, with the object of completing that task, as well as completing an adjoining friendship memorial, in time for the seventieth anniversary of the Armistice, which concluded that conflict to some degree. At a bipartisan level, my hope is that should the McGowan government be successful at the election, it would at the very least match that commitment. I acknowledge the efforts of Minister Dawson and Minister Tinley and the support they have shown for this project. I also acknowledge the hard work of the good people of the board of the Botanic Gardens and Parks Authority, who have essentially approved stage 1 of the concept. This is providing a degree of reassurance to the volunteers who are working towards this particularly worthy cause.

This concept and commitment is deeply appreciated by the people and government of the Republic of Korea. I have borne witness to this gratitude on a number of poignant occasions over the last few years, when I have witnessed the awarding of Ambassador for Peace Medals on behalf of the Korean government to surviving veterans of that conflict. They are an ageing, diminishing but certainly noble cohort of our fellow Western Australians. It was also a pleasure to attend last week's function—a real reinvigoration—because of the concept of the giving of gratitude. That is not a sentiment that we, as politicians, bear witness to very frequently in the course of our public engagement, so it was refreshing and to some degree humbling to witness the expression of gratitude by the most official level of the Korean government to not only the Australian people and the Australian government but also, particularly, those servicemen and their families.

As members might know, the Korean War is commonly referred to as the forgotten war, for reasons that are understandable but also quite lamentable. I think we have within our grasp a clear opportunity to atone for that historical oversight. We should, and indeed must, take that opportunity should we have the power to do so. I have every confidence that this project will materialise in some form. I think there is also an opportunity, should it present itself, to reinvigorate this state's trade relationship with our Korean trade partners. It is a relationship that we do not often have cause to reflect upon, but I think we should absolutely do so.

BUSHFIRES — ESPERANCE — CORONIAL INQUEST

Statement

HON COLIN de GRUSSA (Agricultural) [5.37 pm]: In 2015, I witnessed firsthand the devastation of the Cascades, Merivale and Cape Arid fires near my home town of Esperance. The fifth anniversary of that event has just passed.

Although the community is moving on to the best of its ability, the fires have left a significant scar on the community. These fires burned through 322 000 hectares, tragically taking four lives and doing enormous damage to thousands of hectares of crop, 4 500 head of livestock and countless infrastructure—buildings and so on.

On the fourth of this month, I raised questions in this house regarding the government's response to the coroner's inquest, which was tabled in Parliament just over a year ago. By happenstance, or maybe as a direct result of my questions, the Minister for Emergency Services tabled the state government's response to the recommendations the very next day. It makes for interesting reading, and I want to make some observations about it. In the first instance, I think it is appropriate to acknowledge that the government has taken sensible, if somewhat slow, steps towards a more proactive fire mitigation approach, and there has been some progress in improving mobile firefighting capability and the construction of fire sheds and additional communications, as we heard about today in response to the question by Hon Rick Mazza. Given the time available, I will focus my comments on the recommendations that the government has not supported but has simply paid lip service to.

Recommendation 1 of the coroner's report states —

> … **DFES immediately take steps to create and fill the additional positions of a District Officer, Area Officer (Rural Competencies) and Bushfire Risk Management Officer to supplement the current Area Officer in Esperance.**

The government's response was —

> DFES has employed a Community Emergency Services Manager for the Shire of Esperance, and as an interim measure, seconded a Natural Hazards District Officer from the Kalgoorlie office to the Esperance office.

The reality is that the coroner actually recommended three new positions, leading to a total of 4.5 full-time funded DFES positions in Esperance. At the time of the fires, there were 1.5 FTE funded positions; there are now 2.5 funded positions. The supposedly new position is actually an existing role relocated from Kalgoorlie to Esperance, and the person is still doing the work they were doing in Kalgoorlie. It is bizarre that the government supposedly supported the coroner's recommendation but has chosen to provide only one additional FTE, which is not a new FTE and is not doing work for the local community. Recommendation 4 of the coroner's report states —

> … **State Government give consideration to giving a higher drafting priority to the Consolidated Emergency Services Act.**

The government's response —

> The State Government will review a higher drafting priority to the new amalgamated emergency services legislation in the second term of the McGowan State Government.

The government is in no hurry. It is a year since the coroner presented this report and we have been crying out for clarity on this legislation, because it is a major change to the legislation. The government's position is not to give it a higher priority, but to review giving it a higher priority after the election. That is no response.

Recommendation 5 states —

> … **DFES fund an additional two light tanker appliances and one heavy duty appliance to be used by the Esperance volunteer Bushfire Brigades, at their discretion. The appliances should be provided on a permanent basis** …

The government's response —

> DFES is committed to undertaking a review and potential expansion of the summer season firefighting fleet allocation across the south west land division … based on a risk to capability assessment.

The reality is that during the fire season, the Esperance community, and other communities, can apply for access to vehicles in the high season fleet, but approval and access is not guaranteed. This is not an ideal situation and not the standard recommended by the coroner. There has been some progress on general upgrades to bush fire brigade trucks as part of the normal vehicle replacement process, but that has nothing to do with the coroner's recommendations. In addition to the appliances recommended by the coroner, Esperance also requires four light appliances that can be utilised as rapid-response vehicles. At the moment, locals are using their own vehicles in this capacity, because they do not have light tankers.

Recommendation 9 states —

> … **the WA Government** … **undertake an assessment of established airstrips in the** … **Esperance Shire** … **with a view to identifying airstrips that can be enhanced to permit operation by water bombers. Once a suitable site has been identified, priority should then be given to funding the necessary upgrades to make the airstrip(s) suitable for that purpose.**

The government's response —

> The State Government supports an assessment of airstrips in the Shire of Esperance.

> DBCA has the operational capacity to assist DFES and local government with the identification and assessment of existing airstrips to determine suitability for aerial suppression operations.

That is not a commitment. The government is not doing anything. Essentially, the six lines in the media statement actually say that we have done nothing on that. This is an incredibly important issue because a lot of airstrips located on private land would make water bombing far more efficient when necessary. The government needs to step up, take control of this really important issue and get on with identifying the airstrips that are available and how they can be made appropriate.

Recommendation 10 states that the government should —

> … **give priority to funding** … a **Wheatbelt based aerial fire suppression response for the full fire season commencing in the Wheatbelt and concluding in Esperance.**

The state government's response is that it supports this measure in principle. That is great. The government supports it in principle but it is not doing anything about it. I have raised the availability of water bomber capability directly with the minister responsible, as it is one of the most important issues raised by volunteers, especially when it comes to the control of fires in land managed by the Department of Biodiversity, Conservation and Attractions. The current arrangements are inherently inefficient and leave plenty of communities without capability. There is already capacity, for example, in Esperance for water bombing, but because of exclusive contracting arrangements, those aircraft cannot be used, and that needs to change. It is disappointing that the government's response does not deal with the most critical recommendations of the coroner's report. I think the Esperance community, and indeed all our communities, deserve better. As we enter the fire season, these issues come to the front of mind.

In closing, in the limited time I have left, I will directly quote the coroner's report so that members can get a clear picture of what happened on that day, why the coroner made the recommendations that she did and why the government's response is so inadequate. The report states —

> Weather conditions recorded around this time showed a wind velocity of 101 km/hr, temperature of 43.2°C and 0.8% relative humidity.

The people on the ground said that they —

> … had never seen conditions like this with a fire raging, and after the fact … came to understand that they were the most extreme fire conditions recorded in Australia to this date.
>
> …
>
> The fire front was estimated to be 5 km wide at its largest. As the bushfire travelled across the crops it was unstoppable, burning everything in its wake.
>
> The speed of the fire was amongst the highest ever recorded. The fire jumped all of the mitigation work and firebreaks, despite the efforts that had been put in to trying to contain the fire. The fire was also circling around and restarting after fire crews had doused it, which was unusual and made it even harder to fight.
>
> …
>
> By 4.00 … pm … the fire was travelling at a rate of approximately 36 km/hr, and it was gaining pace at an extraordinary rate. … its speed may have reached close to 50km/hr, which is 'unheard of'. … on the ground, and … at the DFES office, were struggling to map the fire movement and predict where the fire would go due to its unprecedented speed and magnitude. … the fire nearly tripled anything he had anticipated in terms of the distance it travelled and he was in disbelief and awe at its ferocity. The Cascades fire had jumped the Highway and the Merivale fire had crossed Cape Le Grand Road by this stage, and both fires were out of control. The Incident Control Centre was overloaded and the firefighters on the ground were trying to outrun the fire.

SERVICES — REGIONAL WESTERN AUSTRALIA

Statement

HON ROBIN SCOTT (Mining and Pastoral) [5.45 pm]: I would like to continue the remarks I made in my member's statement last night. I will temper my remarks, Madam President, so that I do not have to experience the pouting and the squealing that I did last night.

The PRESIDENT: That's no way to talk about the Presiding Officer, member!

Hon ROBIN SCOTT: I started by speaking about optimism. That optimism is due to the hard work, resilience and perseverance of the people in the regions, which includes the Kimberley, the Pilbara, North West Central and the goldfields. The future of the regions is very, very fragile. Since the McGowan government will not support the regions, we need to make sure that industry is given certainty so that it can continue to do the heavy lifting. That means that the government cannot raise royalty rates for our resources. It tried that a few years ago with the gold industry. Fortunately, my party, the One Nation party, was successful in stopping it. I hope that any future plans for

royalty rate hikes have been put on the backburner because that is where they should stay. I want the government to know that I look forward to being elected to the forty-first Parliament. I will be keeping a close on watch on royalty rates, and I am sure the industry will be, too. The people of the regions can no longer afford the government using their royalties as an ATM because once that piggy bank is empty, it will be empty for good.

I conclude by saying that I am here to help the government. I am here to keep it posted about what is needed in the regions—not what the people want but what they need. Everybody wants a big house, a fancy car and a yacht with a helipad on it but that is not what they need. That is what I will be pushing for. For the last three and a half years, that is what I have been doing every day while I have been doing my job. It is the least I can do for the people of the Mining and Pastoral Region who have been let down by this government time and again.

FESTIVE SEASON REMARKS

Statement

HON MARTIN PRITCHARD (North Metropolitan) [5.47 pm]: I want to make a very quick statement. I know that we are all going to be out there on the doorstops, but as we head towards the festive season, to everybody in this place, along with your families, I hope you are happy over the festive season and that you and your families stay safe.

Members: Hear, hear!

COMPLIMENTARY REMARKS

Statement by President

THE PRESIDENT (Hon Kate Doust) [5.48 pm]: I am going to ignore the clock for a little while. As is customary at this time of year, I will make some comments about our year. Indeed, we have had another very, very busy year. We certainly would not have expected this year as the final sitting year of the fortieth Parliament, but I do not think anyone could have foreseen how challenging this year would have turned out to be. The coronavirus pandemic and the resulting state of emergency declared in March 2020 certainly significantly changed the way in which we live our lives and manage our work arrangements. Our usual practices and some longstanding parliamentary procedures were changed to ensure that the work of the Legislative Council continued in a way that was safe for both members and staff. I want to thank everyone—members and staff—for accepting the changes and adapting to them with both grace and understanding, as tough as that might have been at times. The cross-party collaboration in the chamber has been very positive this year, with members working together to agree to additional sitting days to deal with urgent COVID-19 legislation. In total, 21 bills were passed during that COVID period in the best interests of all Western Australians. This year, we have sat for 21 weeks—63 days—and passed 49 bills. We came close to passing our fiftieth bill today, but we did not quite get there. Twenty-nine bills were amended in the Legislative Council, which, again demonstrates the work that we do so well as the house of review. We have asked more than 1 350 questions without notice of which some notice was given and almost 680 questions were placed on notice.

In addition to the work in the chamber, a tremendous amount of committee work was undertaken, with 42 reports being tabled this year, which really is not the best measurement of the depth and breadth of the work undertaken, but it is a significant measurement nevertheless. As members are usually on more than one committee, I believe that it has been a very busy year for the vast majority of members in this chamber.

Before I move on to talk about and acknowledge individuals in the chamber, I will make one brief comment about the Corruption and Crime Commission's "Report on Electorate Allowances and Management of Electorate Offices", which was tabled earlier today, and its reference on page 84 to a code of conduct for members of the Legislative Council. Given that a code of conduct for members of the Legislative Assembly has been in place for a number of years, in my opinion this matter—the development of a code of conduct for members of the Legislative Council—is worthy of discussion, development and implementation in the next Parliament. I encourage members to give this matter appropriate consideration.

I move on to acknowledge members in the chamber. I acknowledge the hard work of the Deputy President, Hon Simon O'Brien. I thank him very much for his fine efforts in managing the deputy chairs in this chamber. I note all the hard work of all the Deputy Chairs of Committees: Hon Martin Aldridge; Hon Dr Steve Thomas, who has moved from PFAS to iron ore so we look forward to what his challenge is next year; Hon Robin Chapple; Hon Matthew Swinbourn; and Hon Adele Farina. They have worked diligently throughout the year in their capacity as deputy chairs, and I thank them for their work.

I would also like to acknowledge all the party leaders in this place and their teams: Hon Sue Ellery, the Leader of the House, and the Labor team; Hon Peter Collier, the Leader of the Opposition, and his colleagues in the Liberal Party; Hon Jacqui Boydell, the Deputy Leader of the Nationals WA, and her members; Hon Alison Xamon and the member of the Greens; Hon Colin Tincknell and Hon Robin Scott from Pauline Hanson's One Nation; Hon Rick Mazza from the Shooters, Fishers and Farmers Party; Hon Aaron Stonehouse from the Liberal Democrats; and Hon Charles Smith, who is a member of the Western Australia Party.

I know I say this every year, but it is true; we are fortunate to have an excellent group of people who work here at Parliament, and I would like acknowledge them. I want to acknowledge Rob Hunter and the executive team from Parliamentary Services. The mission of Parliamentary Services is to provide effective apolitical support to the operations of the Parliament, and they do this well. They work very hard to ensure that the house and all the services their teams provide are good to go at any given time!

I will acknowledge and thank the departments of Parliament in alphabetical order. We thank Building Services staff for looking after our accommodation and for repairs to and the maintenance of Parliament House. I congratulate them again on the completion of the fountains redevelopment project. I want to give a special shout out to our fabulous gardeners, who do an admirable job caring for the gardens and grounds of Parliament House. I acknowledge Catering Services, which continues to provide us with fabulous food service in Parliament. I also thank the Parliament's kitchen staff for preparing meals that were distributed to people in need by the food rescue charity OzHarvest whilst Parliament was in COVID-19 shutdown.

I want to acknowledge the Finance staff for all their very good work getting bills paid and for the reimbursements and other payments that were done in a quiet and efficient manner.

I acknowledge Human Resources staff for providing advice to management and staff in all areas of human resources and staff payroll, and for their work to arrange health and wellbeing activities.

The staff from Information Technology have had a very significant year. They did amazing work implementing at short notice a COVID work-from-home platform for the majority of Parliament staff and providing for a range of business critical applications to be accessed remotely, including Hansard recording, finance and payroll systems. I do not think there is anyone in this chamber who would have thought at the beginning of this year that they would using the words "Zoom", "Teams" or "Webex", which they now frequently use in their conversations.

I acknowledge the staff from Library and Information Services, who do a magnificent job providing information and media monitoring services to members, members' electorate staff and others. I give a special mention to all those who work on Parliament's social media. The Parliament of Western Australia's Facebook page is fantastic. The posts are interesting, quite often fun and always professional.

To the Parliamentary Education Office, they are a superb team of people who provide education services and community relations activities, public tours and the like that promote and enhance awareness, knowledge and understanding of the history, role and functions of the Parliament of Western Australia both here within our own building and certainly in the regions. To reception services for their frontline customer service. They welcome people to Parliament, deal with telephone and face-to-face inquiries. They connect guests with their hosts and always represent the Parliament in a professional manner. For that, we thank them.

Reporting Services—Hansard—are always making the transcripts read better than we actually speak and the broadcast team who provides television and audio services, thank you. They have had a very interesting year with all they have had to deal with, with the changes in the chamber, trying to keep track of who is speaking and who may not be seated in their usual spot. Last but not least, I acknowledge and thank Security for providing us with a safe environment within the parliamentary precinct in which to work. I want to thank all those groups and all those individuals.

I want to acknowledge my colleague in the Assembly, Hon Peter Watson. He has been a fabulous person to work with in our capacity as Presiding Officers. I have worked with Hon Peter Watson for nearly 20 years as a member in this Parliament, and so I wish him well in his retirement. I also acknowledge the support of his Clerk, Ms Kirsten Robinson.

I would like to recognise some of our Legislative Council staff who reached very significant service milestones this year. Parliamentary officer Chris Hunt, served 35 years. Deputy Usher of the Black Rod, Peter Gale, and senior projects officer, Kelly Alcock, attained 25 years' service. Our Clerk, Nigel Pratt, served 15 years, albeit broken with a stint in Tasmania. Our parliamentary officer, Hayley Brown, our committee clerk, Clair Siva, and our Usher of the Black Rod, John Seal-Pollard, all reached the 10-year milestone. Our advisory officer, Stephen Brockway, has now been with the Legislative Council for five years. I congratulate them and thank them for the excellent work that they do for us all.

I especially thank the Department of the Legislative Council management team, our Clerk, Nigel Pratt; our Deputy Clerk, Paul Grant; our clerk assistant, committees, Ms Christine Kain; our clerk assistant, house, Mr Sam Hastings; and our Usher of the Black Rod, Mr John Seal-Pollard, for their support, hard work and dedication, all of which is appreciated. A number of other staff work extremely hard for us in and around the chamber. I have already mentioned Mr Sam Hastings, and Mr John Seal-Pollard. I would also like to acknowledge Mr Peter Gale, Mr Brian Conn, Ms Hayley Brown, Ms Lauren Levia, Mr Grant Hitchcock, Mr Chris Hunt, Ms Renae Jewell and Ms Rebecca Burton, who is not only the executive officer to the Clerk, but also assists in the chamber.

I want to acknowledge the staff that work across the road in the Legislative Council committee office—a talented and an exceptionally professional bunch lead by clerk assistant, committees, Christine Kain; and parliamentary officer, committees, Ms Lauren Wells. I also want to acknowledge Deb Kapoor, my steward, and Tina O'Connor,

my executive officer, who both do an exceptionally good job of looking after me. As I have said, it has been an extremely busy year, a very unusual year and hopefully one that we will never have to deal with again in the same way.

Members, as we head towards Christmas, and a very much longer than usual recess with the state general election taking place in March 2021, with a yet to be determined resumption date next year, I would like to say thank you very much for your contributions made in the Legislative Council this year on behalf of, and in service to, the Western Australian community.

I wish everyone here a very happy and safe Christmas with your families and a wonderful new year, and I hope that when we finish up today, members will join the staff in the members' lounge for refreshments to wrap up the year.

I look forward to seeing you all when we return in 2021. Thank you.

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.58 pm]: Thank you very much, Madam President. Can I join you and endorse your comments in thanking the parliamentary staff in particular, across the precinct and across the many and varied functions, who do an exemplary job behind the scenes. In particular, I want to thank the staff who work in this chamber, the Clerk and his team, who keep this place held together and to whom we can all turn to for advice, and of course, thank you, Madam President, for the leadership role that you have played.

This time last year we were coming to the end of the debate to which every single member of this chamber contributed. That is not always the case, but that was an extraordinary debate, and I think we all thought that we would never go through another parliamentary year as draining or as challenging as we did last year because of that particular piece of legislation. Then we entered 2020 and COVID-19 happened. I think that this year will be remembered by all of us for the remainder of our lives. The legislation that we had to deal with and pass this year has been extraordinary to match extraordinary times.

I think Madam President referred to 21 COVID-19-related bills that were passed in the interests of keeping Western Australia safe and to support the state and all the functions through the pandemic. I am advised that is by far the most COVID-19-related legislation that was passed of most Parliaments in Australia. I want to sincerely thank members of this house for their role in helping to achieve that.

Madam President referred to the Corruption and Crime Commission report that was issued today. I had not planned to mention it, but I think her suggestion that we give consideration to a code of conduct is one that is worthy of consideration. Our role as members of Parliament and of this place is one in which the community places an enormous amount of trust. It was disappointing and shocking in varying degrees to see that what that report is telling us is that not everybody values and respects that trust as much as they should. Therefore, I think the President's suggestion is one worthy of consideration.

I do want to thank a few people. I continue to value the working relationship I have with Hon Peter Collier—long may he remain Liberal Leader of the Opposition in the Legislative Council. I also want to acknowledge and thank Hon Donna Faragher, who is out of the house on urgent parliamentary business, as the shadow in my portfolios. I want to thank all members of the Liberal Party as well. I want to thank even my nemesis over there, but fellow Eagles supporter—as I try to think of something positive—Hon Nick Goiran.

I want to thank members of the Nationals WA led by Hon Jacqui Boydell, who has had a challenging end to her parliamentary year as well. I have put on the public record my respect for the position that she took on those issues and I stand with her.

I want to thank Hon Alison Xamon and the team in the Greens. If there was a trophy for the most member statements that can be made in any one year, then the Greens are right up there. More than 80 statements were made by the Greens, 47 of them by Hon Alison Xamon. I have to confess, honourable member, that it is not always the case we think kind thoughts about you when we get to member statements!

Hon Alison Xamon: You'd think I cared!

Hon SUE ELLERY: We know.

I want to thank members of the crossbench as well. I want to thank Hon Colin Tincknell and his One Nation team, and Hon Aaron Stonehouse, Hon Rick Mazza and Hon Charles Smith. If we put aside the politics that are par for the course between us, the COVID pandemic has demonstrated that when we need to, and in the interests of Western Australians, we can in fact work together collegiately. We do not always agree, but my aim has been to make sure that I manage my working relationships with each party leader in a respectful way, and most times we have been able to find a way forward. I want to thank everybody for their assistance in that.

Of course, my biggest thanks goes to team red—members of the government benches. I thank them for their flexibility. I thank them for their willingness to give up their opportunities to speak when I know they are desperate to do it. I thank them for understanding the death stare when it is applied in their general direction; I am not looking

at anyone in particular. I want to thank them for their ongoing support, their outstanding representation of the McGowan government in this chamber and elsewhere. I know that being a government backbencher can be challenging at times, but each of you has brought a strength to our team and I do appreciate your contributions.

In particular, I want to acknowledge the Deputy Leader of the Government in the Legislative Council, Hon Stephen Dawson. I thank my ministerial colleague Hon Alannah MacTiernan as well, who in the last year has overcome greater challenges than most of us during the course of this term and is so often the defender of the government's honour on a Thursday during non-government business. I want to say thank you to her.

I also want to pay a particular thankyou to the Whip, Hon Pierre Yang, for his dedication and support.

Because my role as leader means that others who work for me and with me have to take an extra burden, I want to thank the staff in my ministerial and electorate offices. They are a hardworking and dedicated team, who ride the highs and the lows with me, and I certainly could not do it without them.

I need to seek the indulgence of the house to make a couple of thankyous that are a bit unusual. This is literally what I have been told by Ollie, Shelley and Kris, the three Amigos—I could pick another term, but I will call them that—who work for Hon Stephen Dawson, Hon Alannah MacTiernan and me, and who have hijacked my speech and written this bit. They have asked me to thank the members and parliamentary staff in this place for the good working relationship they have had with them over this term, particularly the government members of Parliament with whom they have worked with so closely, and they also say do not forget to mention the three impressive ministers whom they work for.

From time to time, ministers need to be in other places. Hon Stephen Dawson has reminded me in particular to thank the drivers who wait for us at the south entrance as we run in and out and who get us safely to where we need to be.

The second special thankyou that I want to make is to my chief of staff, Liz Carey. When Liz came to work for me as my chief of staff, the deal was that when her son, Lewis, was ready to start school, she would be moving back to Victoria. That time has come. Despite the fact that I have tried to put every obstacle in the way of Lewis reaching school age, it has happened, and so Liz is moving to Victoria to be with family. Many members will have dealt with and spoken with Liz on a range of issues in my portfolios. I know that Liz is highly regarded by those who have spoken with her. She has worked tirelessly and at an incredibly high standard. Members who know me will know that I have high standards. She is respected across government, and across politics as well. She is certainly respected by me. I wish Liz, Joe, and Lewis every success for the next phase of their lives. I am confident that whatever Liz Carey put her mind to, she will be successful at.

Honourable members, there are 107 days until the next election. To everybody who is heading out to every corner of Western Australia to campaign in their electorates, good luck; but of course if you are not on team red, then actually not very much luck at all! I will see you all out there in the trenches.

I sincerely wish everybody a peaceful and joyous Christmas and festive season. Enjoy the time with your family and friends. Rest, recharge and stay safe.

We will be back sometime after the election and before those members who are leaving us will finish their term in late May, so I know that we will have the opportunity to celebrate the contribution that they have all made to this place. We will see you all back here in 2021.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [6.07 pm]: I would like to make a few comments at the conclusion of not just this year, but this parliamentary session. To start with, I want to thank Hon Sue Ellery. Our relationship is actually turning into a very long term relationship. I thought it was about to end, but I have decided to continue it. We have had our moments, but we have always had, dare I say it, a very constructive and productive relationship, and I thank you. I also thank Hon Stephen Dawson in his capacity as Deputy Leader of the House and also as Minister for Disability Services. We have a very good and very effective working relationship, so thank you. I thank all members of the Labor Party for their contribution, particularly in this very challenging year.

To the crossbench, the members of the National Party, and the Greens collectively, we are what makes up the rich tapestry of the alternate government. Everyone who is not in government is potentially an alternate government. We have spent a lot of time working with you guys over the past four years, and the last year in particular. It has always been an extraordinarily fruitful and rewarding experience. We do not always agree on things, the same as we do not always agree with the government, but the relationship is always honest, open and transparent. I regard each and every one of you as friends, as I do with the government, but I spend a lot more time negotiating and working with the members of non-government parties, so thank you very much for contributing to what is a dynamic Legislative Council. Thank you very much.

To the "blue team", my guys, as I say every year, it is my absolute privilege to be your leader and I am delighted to be continuing. We are a small but, dare I say it, very effective and extraordinarily harmonious group. As everyone

knows, in the major parties sometimes you have your little battles and groupings, but we just do not have that in the Liberal Party in the Legislative Council. I was waiting for some smart-alec quip from Hon Simon O'Brien; he was just about to open his mouth, and decided against it! Having said that, I firmly believe that.

I will lose my deputy, Hon Michael Mischin; the father of the house, Hon Simon O'Brien; and our Whip, Hon Ken Baston next year. Of course, I will have more to say about that. I am really going to miss you guys; I really, really am going to miss you guys. It is not going to be the same without you, but I will have more to say about that next year.

Collectively, thanks to everyone. We always comment about the values and attributes of the Legislative Council. When you are part of it, you really understand why nothing beats the Legislative Council, so thanks to each and every one of you.

Madam President, it is always a pleasure. Your experience, expertise, effectiveness, efficiency, and the fact that you are so balanced in your rulings and judgements and the manner in which you conduct the proceedings of this house are testament to your character, so thank you.

To the Clerk, Nigel Pratt, and the chamber staff: you are exceptional. You really do a good job. You are Rolls–Royce engine room that keeps this place humming, so to you and collectively to the chamber staff, thank you so much, as with Hansard, who always make us read a lot better than we probably sound, so well done to Hansard—you guys are also exceptional.

I will not go through the entire parliamentary precinct; suffice it to say that the catering staff are extraordinary, as are the security staff, the ground staff, and the committee staff. They are wonderful. It is an exceptionally professional working environment to be employed in.

As the Leader of the House said, this has been an exceptional year, and none of us need to repeat that, but what we have tried to do—and, I think, have done effectively—is to rise to the challenges and meet those challenges as a legislative body in assisting the government to facilitate the swift passage of legislation, which has ensured that Western Australians have remained safe. That, again, is testament to the professionalism of everyone in this chamber.

COVID-19 brought challenges and we rose to those challenges and will do so again if required. Along with that, we had other legislation to deal with. That perhaps was not as seamless, prompt or efficient as the Leader of the House would have preferred. I have been in that chair and I know what it is like. Ideally, whoever is in power, we will not have the same challenges that we did this year.

Having said that, to everyone: thank you once again. I wish you all a blessed Christmas. For those you love and who love you, I hope it is a wonderful time of the year for you. I hope 2021 brings each and every one of you good health and happiness. We will see what happens after 13 March 2021. Thank you.

HON JACQUI BOYDELL (Mining and Pastoral) [6.13 pm]: I rise on behalf of the Nationals WA to make some comments about the year we have had. It has really been an unprecedented year; there is no doubt about that. On behalf of all Western Australians I want to thank and congratulate the McGowan government on how it has dealt with the COVID-19 response for Western Australia. I think it has given Western Australians a degree of confidence in how we have managed our response to COVID. I also think that the negotiations with the federal government have set a new paradigm for how they can happen. I have watched with interest how, as a state, we can carry that forward. As one of the most important states in Australia, we should have that voice and should be heard. Perhaps it shows a way that things can be done differently. That is something I think all Western Australians would want to congratulate the government for. There is no doubt that on 1 January 2020 people would not have thought that we would be dealing with a global pandemic, not only the health risk it would create for everyone but also the potential economic fallout. We will probably be managing that for some time to come.

As a representative of a regional area, as all members of the Nationals WA are, and being more removed, we need to work out how we get the extra layer of risk management in a regional sense for health and economic recovery because we want to ensure that all Western Australians get an opportunity to take advantage as we now turn to recovery. The National Party will be focused on that way past my time here, but I think one of the important roles that the National Party has played this year has been to highlight the extra unique challenges people in regional WA face.

I would like to take a moment to reflect on the condolence motions the house passed this year. There were some fairly significant ones for me, particularly Hon Tom McNeil's, a former member of the National Party, whose condolence motion we did recently. Another one was for Hon Kevin Leahy, who had been a friend of mine since I was a young person. He also came from Carnarvon and I respected him greatly and enjoyed the opportunity, privilege and honour to comment on the time he served here. Another condolence motion was for Hon Clive Griffiths, a former President of the Legislative Council and well-respected member.

Although it is not a condolence motion, certainly the reflection on the life of Andrea Mitchell, a member of the other place, was deeply felt by members of the Legislative Council. We, again, place on record our thanks to those former members who served their time to the best of their ability while they were custodians in this place.

Some of the issues I have highlighted may also reflect the need for a code of conduct. I think it is time the Parliament was seen as a place of leadership; as a place in which people expect us as members and the parliamentary process to support the public and be leaders in this space. Highlighting issues, particularly of a personal nature is never easy. However, while we are here and have the opportunity, no matter how hard it is, we should do that as we represent those people who do not have that opportunity. The hundreds of messages that I have received since highlighting some of those issues have been overwhelming and are something I will be forever grateful for. I will continue to work with the National Party to ensure we get a better process. I want to also thank the members of the Legislative Council and the staff for their ongoing support of me during that time.

Some people have asked me as a retiring member whether I will miss the Legislative Council. I said no, because I will always feel that I am a member of it, and the people I have served with during my time here will always have a place in my heart and mind, particularly around the support that I have received from members across the chamber and I thank them wholeheartedly for that. Obviously, everybody's challenge next year will be the state election. It will not be mine. I might be on a beach somewhere, and I will enjoy that! I wish all members of this place luck with the election. I am sure that the Legislative Council, under the exceptional leadership of the Clerk of the house and the President and their team, will welcome new members and will see the retiring members out in the way that we normally do. I have no doubt that members of the next Parliament will be as well supported as I have been in this place.

I say to everybody and their families: have a merry Christmas and stay safe in particular, and take some time to reflect and replenish the soul for next year, because it will be the start of another four-year term and an exciting opportunity. Thank you all very much and have a restful season.

HON ALISON XAMON (North Metropolitan) [6.20 pm]: I rise on behalf of the Greens to note the end of what has been an interesting term and a quite unprecedented and extraordinary year. Every year of this term, our members have taken turns to give the traditional Christmas greeting, and here I am doing so at the end of this term. I was concerned that members had not heard enough from me, so I am here to ensure that they get to hear more from me now!

I want to thank everyone in this chamber for their friendship, for being fun, frankly, and for an extraordinary time. I want to thank Hon Sue Ellery and Hon Stephen Dawson for their leadership in this place. I also want to thank the other parliamentary leaders: Hon Peter Collier, Hon Jacqui Boydell, Hon Colin Tincknell, Hon Aaron Stonehouse, Hon Rick Mazza and Hon Charles Smith. We have certainly attempted to make sure that communication was open and that the chamber could progress its business as effectively as possible.

It certainly has been a very challenging year for the community. I note that while people were talking about taking time out to learn how to make sourdough and to speak languages, we were working harder than ever. That is the thing that I think a lot of members of the public did not necessarily see. I note that federal Parliament was not meeting, so people presumed that we were not either, but we were working very hard during extended hours to try to ensure that we facilitated the necessary actions to address this unprecedented crisis of COVID-19.

Madam President, I would particularly like to thank you for the way that you, as the Presiding Officer, steered the chamber in responding to that and taking unprecedented action simply to make sure that this place, as our workplace, remained safe for us and all the staff. I echo the comments that have been made about you. I thank you for doing a marvellous job as President. I make it clear that the Greens hold you in the highest regard for the way that you have conducted yourself.

I also want to thank quite a number of people who help make this Parliament work. Madam President, you went through a lot of them, but I have to acknowledge the committee staff in particular, who make all of us look good. Let us be very clear: the committee staff are often the brains trust of a lot of the work that happens in this chamber. I want to thank them for their diligence and their commitment to excellence. Thank you so much.

My thanks also go to the parliamentary staff. Again, so many have already been listed, but I am talking about the dining room staff, the cleaning staff, the front desk staff, Building Services staff, the gardeners, the kitchen staff, the administrative staff, the IT staff and the human resources staff. The list is huge because so many people help to make sure that Parliament is a well-oiled machine.

I want to give a particular thanks to Enno Schijf, who has been extraordinarily helpful to me as I have hosted a number of functions throughout this term. Thank you to him. I also want to send a shout-out to Tony Paterson and his staff in security, who have gone over and above. I am very grateful to them for responding to concerns as they arose. All of this of course has happened under the very capable leadership of Rob Hunter. I particularly want to thank him for finally getting rid of those ridiculous sewerage pipes out the front of Parliament House, even though as the driver of a Mini, they made for a great little rally obstacle course! I do not think they really did this place any favours, so I am pleased that they are gone.

I also want to thank the staff in this chamber. You are all so professional and friendly, and incredibly helpful. I want to acknowledge our Clerk, Nigel Pratt. Thank you very much for your leadership and for being so accessible and helpful all the time.

I want to give a particular shout-out to the Hansard staff. The Hansard staff have a huge job keeping track of everything we say and, obviously, a lot of what I am saying in this place. I am quite sure that they go back to their offices and have quite a bit to say amongst themselves about the sorts of things that we say and do. I would like to point out to the Hansard staff that we note them as well. On this front bench—I particularly note Hon Samantha Rowe, Hon Darren West, Hon Tim Clifford and myself—we notice when you come in looking particularly good, wearing a particularly nice outfit, when your hair has been done and when you return from leave! We will often make comments amongst ourselves about how good particular Hansard people look on any particular day. By all means, I am sure that comments are made about us, but we are favourably commenting and noting you as well! I thought I would point that out.

I have had the privilege of being able to head up two parliamentary friendship groups. I acknowledge the Parliamentary Friends for Children co-leads Lisa Baker and Mia Davies, and in this place Hon Donna Faragher. I have headed up the Parliamentary Friends of Refugees with the honourable Janine Freeman. I would like to acknowledge her and her recent announcement that she will not be recontesting the next election. I want to thank all those members.

A bit closer to home: an enormous thanks to all the Greens staff in all of our offices. They work so hard and they work over and above. They are absolutely committed to what we stand for. I am forever grateful for what they do. I particularly want to acknowledge Jocasta, Kirsten, Arran, Piper, Tom and Jamnes from my office. All four of us would like to give a special shout-out and thanks to Tonia Brajcich who is our Whip's clerk and research assistant. She is extraordinarily good and I thank her.

I want to thank my Greens colleagues. There are only four of us in this place but we try very hard to apply ourselves diligently to the work in this chamber. I particularly want to note Hon Robin Chapple who will not be recontesting the next election. Robin and I have been friends since about 1994, so we have known each other for a very long time. He has served in this chamber for a very long time. I am really glad that he is finally going to take some time to rest, although I really do not think he will be taking much of a rest from the issues that are core to his heart, particularly Aboriginal heritage. I want to thank him very much and acknowledge him.

For those members who celebrate Christmas—I am a person who celebrates Christmas with my family—I would like to wish you all a happy Christmas, otherwise happy Hanukkah, happy Gita Jayanti, happy Kwanzaa or happy Festivus, if that is your thing. Whatever it is, it is a time for us to be with loved ones and hopefully to be able to stay safe and have a little bit of a rest. Many of us are going into an election year. I hope people are kind. I hope too that people look after themselves. I will be attempting to hold on to my seat, as will my colleagues, and we are hoping to be joined by others. I wish everyone a wonderful Christmas and wonderful holidays. Please stay safe.

HON COLIN TINCKNELL (South West) [6.29 pm]: I just want to make a brief statement. I want to say thank you to everyone in this chamber. It is actually an honour to be a member of the Legislative Council. I really love the debates that go on in this place. It is actually a pleasure to be part of the rich tapestry that Hon Peter Collier mentioned before, with a lot of different parties here. To the major parties and to the other crossbench parties, thank you for working with us. One Nation is new to Parliament and we have enjoyed our four years. We will be fighting hard, as you know, to come back again. I want to say a special thanks to the crossbench and to all the staff, the President and the parliamentary committees. I especially want to thank our staff as well, who support Hon Robin Scott and me. Christmas is a special time. I hope everyone stays safe. I hope everyone has a fantastic, merry Christmas and a really good and happy new year. I will see you all probably on election day, but also in May.

HON RICK MAZZA (Agricultural) [6.30 pm]: I do not intend to delay the house too long, because we have a very important event, of course, once the house rises. It has been a very interesting year for me on many levels. One thing that I have experienced on the Standing Committee on Procedure and Privileges is the enormous dedication, capacity and intellect of the clerks of this Legislative Council. I do not think we really appreciate just how dedicated and professional they are. I am very grateful for the support of the clerks over the last 12 months and their guidance, particularly Nigel Pratt, who obviously leads the clerks.

I got a bit of an early Christmas present. I have obviously had a fair bit of pressure over the last few months, but on the fourteenth of this month my tenth grandchild, Liam Grayson Mazza, was born. He was a very healthy eight and a half pounds and is little brother to Jackson Ricky Mazza. I was very pleased about that. I just wanted to mention that because Liam's mother, very soon after giving birth, had a code blue emergency. She was at Bunbury Hospital at South West Health Campus. As my son explained, there was a swarm of professional medical staff there within seconds and they managed to deal with that issue very quickly. I know that we quite often criticise the Department of Health or whatever the case may be, but Western Australia has an absolutely first-class metropolitan and country health system. Those staff at Bunbury Hospital did a fantastic job, and because of their dedication, we will have a very merry Christmas this year, when it could have gone another way.

I would also like to thank my electorate staff, Anne, Lucy and Tim, who have been there with me for the last four years. They are a wonderful group of people and very dedicated. They keep things real for me when I am in here, and they feed information in and out. Without their support, I would be all the poorer, that is for sure.

Madam President, thank you for your leadership. I echo the sentiments of others in relation to the Parliament as a whole, when it comes to the dining staff or those who keep the grounds of the Parliament in first-class condition or whatever. With that, I wish every member of this place a very merry and safe Christmas. It has been a pleasure working with you all. I thought I would make a few comments on the basis that I do not know whether I will be here next Christmas as a member of the Council. It is a candle in the wind—we never know. But I do wish you all the best. If I do not happen to see you between now and May, enjoy the time.

The PRESIDENT: Members, I wish you a very happy and safe Christmas and I will see you on the other side.

House adjourned at 6.34 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

MINISTER FOR REGIONAL DEVELOPMENT — MEETINGS — TONY GALATI

3340. Hon Robin Chapple to the Minister for Regional Development:

I refer to Tony Galati, and I ask:

(a) did the Minister or the Department invite Tony Galati to the Kimberley on a recent trip:

  (i) if yes to (a), what was the purpose of the invitation;

(b) has the Minister had any recent discussions with Tony Galati regarding business opportunities in the Kimberley:

  (i) if yes to (b), what were the discussions about and where in particular were any potential irrigation projects located in the Kimberley;

(c) how many meetings has the Minister or the Department had with Tony Galati in the past year; and

(d) will the Minister table the notes from the meetings referred to in:

  (i) if no to (d), why not?

Hon Alannah MacTiernan replied:

(a) No, but I certainly encouraged Mr Galati to look at opportunities in the region.

(b) I met with Mr Galati on 7 September 2020. The meeting covered a wide range of topics, primarily water allocation, horticultural production and technology advances and egg farming. We briefly discussed horticulture development opportunities in the Kimberley.

(c) In the past year the Minister has met with Mr Galati on one occasion and the Department of Primary Industries and Regional Development has met with Mr Galati on six occasions. I have been present at a number of events also attended by Mr Galati.

(d) No.

  (i) No notes were taken in the meetings as the interactions were of a general nature.

AGRICULTURE AND FOOD — HORTICULTURAL DEVELOPMENT — SKUTHORPE, KIMBERLEY

3341. Hon Robin Chapple to the Minister for Regional Development:

I refer to the proposed horticultural development at Skuthorpe in the Kimberley, and I ask:

(a) how many hectares of asparagus is planned to be grown;

(b) how much water is available for the asparagus;

(c) how many hectares of table grapes is planned to be grown;

(d) what variety of table grapes is planned to be grown;

(e) have table grapes been grown successfully on a commercial basis in the Broome area in the past:

  (i) if yes to (e), where and when has this been the case;

(f) how will termites be managed in the table grapes and what chemicals are allowed to be used to treat them;

(g) what other crops and how many hectares are planned to be grown;

(h) how much water is available for these other crops;

(i) how much labour is required to grow these crops;

(j) is the Minister aware of whether the proponent will seek overseas workers;

(k) who is the current lessee of the land at Skuthorpe;

(l) according to question on notice 2054, asked in the Legislative Council on 2 April 2019 by Hon Robin Chapple, the Minister stated, "Kimberley Asparagus will trial 10 hectares of other high value crops including table grapes", did the proponent trial table grapes:

  (i) if no to (l), why not;

(m) is the Minister aware of how much has been spent on planting table grapes at the site:

  (i) if yes to (m), how much has been spent;

(n) has the Department advised the proponent on the likelihood of success in growing asparagus:

(i) if yes to (n), will the Minister table the advice; and

(o) how much water is available, in total, in the Skuthorpe area and how much is currently licensed for use and for what purpose?

Hon Alannah MacTiernan replied:

(a) 10 hectares of asparagus were planted in stage 1. If successful, the next stage would see 40 hectares planted.

(b) 2.7 gigalitres per annum is available in the Skuthorpe Subarea of the Broome Groundwater Area. The type of crop for which this water can be used is not specified.

(c) 52 hectares were planted in stage 1. If successful, the next stage would see 52 hectares planted.

(d) The grower has advised the Department of Primary Industries and Regional Development that five varieties have been planted as a trial under stage 1.

(e) The Department of Primary Industries and Regional Development is unaware of table grapes being successfully grown on a commercial basis in the Broome area in the past.

(f) Termite treatments will be applied as part of the land development and will be a chemical product that complies with the relevant particulars set out in the Register of Agricultural and Veterinary Chemical Products.

(g) No other crops are planned to be grown, other than (non-irrigated) cover crops to minimise erosion while developing land.

(h) Refer to (b).

(i) Two full time workers and up to 50 casual workers.

(j) Yes, Kimberley Table Grapes (Fruitico) is registered with the Commonwealth Government's Seasonal Workers Program.

(k) Kimberley Asparagus is the head lessee, which subleases to Kimberley Table Grapes (Fruitico).

(l) Yes, the trial has been planted.

(m) No. That is a commercial decision and the State Government is not privy to that information.

(n) No.

(o) In addition to the 2.7 gigalitres per annum available in the Skuthorpe Subarea of the Broome Groundwater Area, there is currently 3.07 gigalitres per annum licenced for the following uses: horticulture, caravan and campground use, tree crops, turf, lawns and gardens, fodder, stock watering, washdown, native plant nursery and domestic use.

REGIONAL DEVELOPMENT — IRRIGATION PROJECTS — KIMBERLEY

3342. Hon Robin Chapple to the Minister for Regional Development:

Regarding the expenditure on irrigation in the Kimberley since the McGowan Government was elected, I ask:

(a) how much has the Department spent on irrigation projects in the Kimberley on:

(i) the facilitation of irrigation through infrastructure; and

(ii) reports and assessment of irrigation projects in the Kimberley;

(b) will the Minister provide a detailed breakdown of the expenditure;

(c) has the Water for Food project in the Kimberley been completed:

(i) if yes to (c), how much was spent on the project by the Barnett Grylls Government;

(ii) if yes to (c), how much was spent on the project by the McGowan Government; and

(iii) if no to (c), when is the Water for Food project expected to be complete and how much further funding is allocated to it;

(d) how many jobs have been created as a result of the Water for Food project in the Kimberley;

(e) how many jobs for Aboriginal people have been created as a result of the Water for Food project in the Kimberley; and

(f) has the Water for Food project in the Kimberley been evaluated:

(i) if no to (f), why not; and

(ii) if yes to (f), will the Minister table the evaluation?

Hon Alannah MacTiernan replied:

(a) (i) Outside of the Ord River Irrigation Area, the Department of Primary Industries and Regional Development (DPIRD) has spent $93,089 on infrastructure as part of its own irrigation research trial at Skuthorpe, near Broome.

(ii) Outside of the Ord River Irrigation Area, DPIRD has spent $1,075,246 on reports and assessment relating to irrigation research and development activities.

(b) Expenditure for the period March 2017 to October 2020 consists of the following:

Project	Item of Expenditure	Expenditure (excl GST)
Infrastructure		
DPIRD Irrigation Research Trial (Skuthorpe)	1 centre pivot and supporting infrastructure	$93,089
Reports and Assessment		
Mowanjum Irrigation Trial	Mowanjum Irrigation Trial – Industry Report 2018	$45,450
Kimberley Pilbara Cattleman's Association Grower Grant	Delivery of the report 'Irrigated Fodder and Grazing Animal Production Systems Analysis for the Northern Beef Industry'	$198,000
DPIRD Mosaic Irrigation Project	Salaries and On Costs (technical and professional staff)	$628,535
	Operating costs – weed risk trials, plant analysis, economic analysis and preparation of the final report (yet to be completed)	$114,542
	Meat and Livestock Australia – administration costs	$88,719

(c) No.

(i) Not applicable.

(ii) Not applicable.

(iii) 30 June 2021. $609,000 remains.

(d)–(e) With respect to (d) and (e) The primary objective of Water for Food was to identify water and land resources, as well as irrigation technologies, that could enable Western Australia's fresh food and animal protein production to increase its contribution to regional economies

The Water for Food Program sought to improve data and knowledge of resources to create an investment ready environment, which in turn would create economic opportunity and employment over time as public, business and the private sector partnered with local land holders to explore development opportunity.

The program included a limited number of specific land development activities, such as the land release at Skuthorpe, which has been leased to Kimberley Asparagus (and aims to employ two full time and 50 casual workers) and the Mowanjum Project which currently employs five staff.

Other projects such as the Ord Bonaparte, West Canning Basin, Fitzroy Valley Groundwater Investigation and the Knowsley Groundwater Investigations have increased available data and improved knowledge of resources. The information collected as part of the Fitzroy and Knowsley investigations have informed and culminated in the updated groundwater resource information that was included in the draft Derby Water Allocation Plan released last week, which will guide future investment and decision making on the Derby Peninsula.

Given the WFF projects were targeted at improving the understanding the physical environment and parameters for future development, rather than development itself, job creation is more futuristic than immediate. It is hard to quantify what level of development and hence job creation will occur on the back of the knowledge gained, but using the Skuthorpe asparagus and grapes as an example it would be reasonable to suggest that job creation through future development will be significant.

As at the 2016 census, there were 872 people employed in the Agriculture, Forestry and Fisheries Industry in the Kimberley, representing 6 per cent of all jobs. With 90 pastoral leases across the region, a number of which are running below peak production level and high unemployment rates at 16 per cent in 2019,

opportunities to diversify and sustainably grow the productivity of the Agricultural sector in the Kimberley is an important economic driver. Not only does it provide direct employment in development projects, but indirectly boosts the regional economy through employment in industries such as transport services, trades, accommodation and retail outlets, manufacturing and construction to name but a few.

(f) No.

(i) A series of investigations and outcome reports were delivered under the program and are available on the DPIRD's website. The project is not yet complete but will, upon completion, deliver a project acquittal against funding and milestones.

(ii) Not applicable.

REGIONAL DEVELOPMENT — IRRIGATION PROJECTS — MOWANJUM, KIMBERLEY

3345. Hon Robin Chapple to the Minister for Regional Development:

I refer to irrigation for cattle in the Kimberley, and I ask:

(a) how many hectares have been cleared for irrigation at Mowanjum;

(b) how much Government funding was spent on the project;

(c) has a cost/benefit analysis for the Mowanjum Irrigation Trial been conducted to determine its economic viability:

(i) if yes to (c), will the Minister table it; and

(ii) if no to (c), why not;

(d) how many jobs have been created by the Mowanjum project;

(e) how many jobs are there currently in the Mowanjum project;

(f) how many Aboriginal people have jobs that are directly related to the Mowanjum irrigation project;

(g) did the Government receive or commissioned any reports on the economic viability of irrigated agriculture at Mowanjum:

(i) if yes to (g), will the Minister table the reports, now that sufficient time has passed to ensure they are no longer commercial in confidence;

(h) does the Minister have evidence to show that the project was economically viable without any Government subsidies:

(i) if yes to (h), will the Minister table the evidence;

(i) who is currently managing the irrigation at Mowanjum;

(j) does the Government have any calculations to show how much a kilogram of beef costs to produce at Mowanjum:

(i) if yes to (j), will the Minister table the details;

(k) what is the break-even cost per kilogram to produce beef in the Kimberley at today's live export average price; and

(l) if Bruce Cheung was not agisting cattle and managing the irrigation at Mowanjum, what evidence does the Government have to show that it would be a viable operation?

Hon Alannah MacTiernan replied:

(a) Mowanjum has a clearing permit authorising the clearing of 116 hectares for pivot irrigation and dryland cultivation of fodder crops. At present, there are 38 hectares under irrigation.

(b) $3,551,139 (excluding GST).

(c) No.

(i) Not applicable.

(ii) As advised through Question on Notice 402, the economic analysis of the stand and graze irrigation model is the outcome of the project. The economic analysis has been completed and is documented in the Mowanjum Irrigation Trial Industry Report, which is available on the Department of Primary Industries and Regional Development website and is tabled for your information. [See tabled paper no 4693.]

(d) Two full time employment opportunities were directly funded during the term of the project. There were also an additional 15 local residents involved in an onsite training program to build further station infrastructure.

(e) The Mowanjum project trial was completed in 2018 and the site handed over to Mowanjum Aboriginal corporation who formed a partnership and lease the site to Pardoo Beef Corporation. DPIRD has been advised that Pardoo Beef currently employs 5 staff at Mowanjum – 2 full time and 3 casual (seasonal) workers. Two of the casual (seasonal) staff are Aboriginal.

(f) See above.

(g) Yes.

(i) Refer to the tabled Mowanjum Irrigation Trial Industry Report. [See tabled paper no 4693.]

(h) Yes.

(i) Refer to the tabled Mowanjum Irrigation Trial Industry Report. [See tabled paper no 4693.]

(i) The Mowanjum Aboriginal Corporation in partnership with Pardoo Beef Corporation.

(j) Yes. Through the trial, cost of production was $1.91 per kg.

(i) Refer to the tabled Mowanjum Irrigation Trial Industry Report. [See tabled paper no 4693.]

(k) In the week ending 4 October 2020, the current live export spot price (ex Broome) for Brahman cross steers and bulls was $3.20 per kilogram live weight. The cost of production would need to be equal to or less than this to break-even.

(l) The tabled Mowanjum Irrigation Trial Industry Report outlines the economic viability of the site. [See tabled paper no 4693.]

SCHOOLS — POPULATION GROWTH — SCARBOROUGH

3355. Hon Alison Xamon to the Minister for Education and Training:

I refer to the approximately 2,800 additional dwellings anticipated to be constructed, in the short to medium term, as part of the Metropolitan Redevelopment Authority's redevelopment of the Scarborough Beach area, and I ask:

(a) has the Department included this growth in dwellings and population as part of the forecasting for primary and high schools in the area;

(b) please provide the ten year forecasts and current capacities for:

(i) Scarborough Primary School;

(ii) Deanmore Primary School;

(iii) Newborough Primary School;

(iv) Yuluma Primary School; and

(v) Wembley Downs Primary School; and

(c) could the Minister please provide a breakdown of where the Minister anticipates the students from these new dwellings will attend high school?

Hon Sue Ellery replied:

(a) The Department of Education has considered the Scarborough Master Plan that was developed by DevelopmentWA and the estimated growth in residential dwellings. This information has been included in the student enrolment projections for local primary and secondary schools.

(b) Projections have only been provided for five years. It is noted that beyond three to five years, the forecasts become more volatile due to the uncertainty of changes in student demand in the local-intake areas of these schools and the timing of residential development. Outlined below are the five-year forecasts and current capacities for identified schools:

School	2020 Enrolment (Semester 1)	Enrolment Projections 2025	Current Accommodation Capacity
Scarborough Primary School	215	270	285
Deanmore Primary School	499	534	511
Newborough Primary School	401	405	452
Yuluma Primary School	254	285	388
Wembley Downs Primary School	420	440	479

(c) The secondary school students residing in the proposed developments of the Scarborough Master Plan will be entitled to attend either Carine Senior High School or Churchlands Senior High School, depending on their residential address.

PRESCRIBED BURNING

3357. Hon Diane Evers to the Minister for Environment:

I refer to the Minister for Environment's response (Ref: 62-22987) to Petition No. 161, prescribed burning practices in Western Australia, particularly the Minister's comment that "The prescribed burning program undertaken by the Department of Biodiversity, Conservation and Attractions (DBCA) is supported by peer reviewed research", and I ask:

(a) please table or provide the references for the latest peer-reviewed scientific research that the DBCA has used in policy development and implementation in relation to each of the following issues:

(i) traditional owners and their knowledge of cultural fire practices and how these practices can assist in guiding the use of fire in the context of today's landscapes in Western Australia, including key areas of complementarity and difference between contemporary prescribed burning practices and cultural burning practices;

(ii) the relationship between fuel load and rate of spread in forest bushfires;

(iii) the role of living plants in forests as drivers of bushfire spread and severity;

(iv) the development and maintenance of a mosaic of recently burnt and long-unburnt areas of vegetation;

(v) the efficacy of prescribed burning in Western Australia (and other relevant regions) in:

(A) mitigating bushfire risk;

(B) protecting significant infrastructure; and

(C) protecting biodiversity;

(vi) the impact of prescribed burning in Western Australia on:

(A) hydrological systems;

(B) human health and safety; and

(C) soil microbiota, including bacteria and fungi (pathogenic and non-pathogenic);

(vii) the medium to long-term effects of prescribed burning on the risk of bushfire, and:

(A) the identification and classification of "young", "regrowth", "mature" and "long-unburnt" forest;

(B) methods for empirically measuring historical fire regimes; and

(C) the impact of self-thinning on forest understorey on bushfire risk in the short, medium and long term;

(viii) the most effective prescribed burning regime in terms of the burn season, fire intensities and interval between fires;

(ix) world's best practice evaluation methods and KPIs used to determine how "successful" a prescribed burn is;

(x) research on the psychology of decision-making and policy development, including:

(A) public attitudes to bushfires and bushfire risk mitigation;

(B) the influence of government department internal culture on policy development and implementation, particularly in relation to incumbent policies and technologies;

(C) the role of knowledge brokers in collating and interpreting science to facilitate its adoption and identify needs; and

(D) the design of research and decision making bodies to avoid ingroup–outgroup divisions where ideas are more likely to be accepted or rejected for social rather than scientific reasons;

(xi) approaches to increasing transparency in decision making in relation to bushfire risk and prescribed burning; and

(xii) the impact of funding on the nature and findings of scientific research and its application in policy?

Hon Stephen Dawson replied:

The Department of Biodiversity, Conservation and Attractions (DBCA) has the responsibility of balancing the impacts of prescribed burning on biodiversity against the need to protect communities from the damaging impacts of bushfires. In doing this, an evidence and risk-based approach is used, that is underpinned by peer reviewed research and detailed planning that can often take several years. One of the published papers that supports this

approach is a 2009 study in the south-west forests undertaken by Dr Matthias Boer and others that examined the historical occurrence of bushfire and prescribed fire over a 50-year period to quantify the impact of prescribed burning on the incidence, extent and size distribution of bushfires. This study determined that prescribed fire treatments had a significant effect on reducing the incidence and size of bushfires up to six years after treatment.

The State Government, through relevant agencies, maintains strong links to industry research through organisations such as CSIRO and the Bushfire and Natural Hazards Cooperative Research Centre. DBCA also maintains an active fire research program with a statewide focus building on knowledge gained over more than 50 years through long-term studies and monitoring. To ensure that DBCA's bushfire suppression and mitigation programs are informed by contemporary research, it also engages collaboratively with a range of organisations with scientific expertise relevant to bushfire science and biodiversity conservation. The importance of appropriately targeted bushfire mitigation was also recently reinforced in the recommendations of the Royal Commission into Natural Disaster Arrangements that resulted from those bushfires.

The McGowan Government is committed to engaging with traditional owners in helping to share (two-way learning), connect and learn from Aboriginal people's connection to country. These relationships have helped grow our knowledge of cultural fire practices and how these principles can assist in guiding the use of fire in the context of today's landscapes. State Government initiatives such as the Aboriginal Ranger Program are assisting Aboriginal people to re-connect to their country and to learn and share knowledge on cultural fire management practices and participate in contemporary prescribed burning with DBCA. Further, DBCA has formal joint management arrangements with traditional owner groups over 2,570,110 hectares of the conservation estate.

PREMIER — PORTFOLIOS — LEGISLATION — STATUTORY REVIEWS

3360. Hon Alison Xamon to the Leader of the House representing the Premier:

(1) Please advise which statutory reviews of legislation within the Premier's portfolios are currently outstanding?

(2) On what date were each of these reviews due?

Hon Sue Ellery replied:

Salaries and Allowances Tribunal:

(1) No statutory reviews of legislation are outstanding.

(2) Not applicable.

Infrastructure Western Australia:

(1)–(2) There are no legislative reviews outstanding.

GoldCorp:

(1)–(2) Gold Corporation has no outstanding statutory reviews of legislation with the Premier's portfolios.

Lotterywest:

(1) Nil.

(2) N/A.

Public Sector Commission:

(1) Review of Part 6 – Redeployment and Redundancy, *Public Sector Management Act 1994* as required under section 96B.

(2) There is no fixed date for completion of the review.

State Development, Jobs & Trade:

(1) There are no outstanding reviews.

(2) Not Applicable.

Department of the Premier & Cabinet:

(1) There are no outstanding statutory reviews of legislation for the Department of the Premier and Cabinet.

(2) Not applicable.

MINISTER FOR DISABILITY SERVICES — PORTFOLIOS — LEGISLATION — STATUTORY REVIEWS

3361. Hon Alison Xamon to the Minister for Disability Services:

(1) Please advise which statutory reviews of legislation within the Minister's portfolios are currently outstanding?

(2) On what date were each of these reviews due?

Hon Stephen Dawson replied:

(1) The statutory reviews of the *Disability Services Act 1993* and the *Declared Places (Mentally Impaired Accused) Act 2015* are outstanding.

(2) The statutory review of the *Disability Services Act 1993* was due by 14 May 2014, and the *Declared Places (Mentally Impaired Accused) Act 2015* was due as soon as possible after 17 June 2018.

Both reviews have been placed on hold until the transition to the NDIS is finalised.

MINISTER FOR CORRECTIVE SERVICES — PORTFOLIOS — LEGISLATION — STATUTORY REVIEWS

3362. Hon Alison Xamon to the minister representing the Minister for Corrective Services:

(1) Please advise which statutory reviews of legislation within the Minister's portfolios are currently outstanding?

(2) On what date were each of these reviews due?

Hon Stephen Dawson replied:

(1) The following statutory review is outstanding:

The review of the loss of confidence provisions contained in Part X, Division 3 of the *Prisons Act 1981* (WA) and Part 3, Division 3 of the *Young Offenders Act 1994* (WA) (LOC provisions).

(2) Pursuant to section 110K of the *Prisons Act 1981* (WA) and section 11CV of the *Young Offenders Act 1994* (WA), the statutory review was due to be tabled by 23 February 2018. The finalisation was impacted by the Ministerial Review of the State Industrial Relations System (IR Review), which was tabled in Parliament on 11 April 2019. Of particular relevance is recommendation 36 of the IR Review. In addition, Loss of Confidence provisions had not been tested. The Department of Justice is seeking to include information on the recent use of provisions in review. Once completed, it will be reviewed and tabled accordingly.

MINISTER FOR SENIORS AND AGEING — PORTFOLIOS — LEGISLATION — STATUTORY REVIEWS

3363. Hon Alison Xamon to the Leader of the House representing the Minister for Seniors and Ageing:

(1) Please advise which statutory reviews of legislation within the Minister's portfolios are currently outstanding?

(2) On what date were each of these reviews due?

Hon Sue Ellery replied:

Department of Communities – Seniors and Ageing Portfolio

(1) No statutory reviews of legislation within the Minister's portfolio are currently outstanding.

(2) Not applicable.

MINISTER FOR HEALTH — PORTFOLIOS — LEGISLATION — STATUTORY REVIEWS

3364. Hon Alison Xamon to the parliamentary secretary representing the Deputy Premier; Minister for Health; Mental Health:

(1) Please advise which statutory reviews of legislation within the Minister's portfolios are currently outstanding?

(2) On what date were each of these reviews due?

Hon Alanna Clohesy replied:

Department of Health and health service providers advise:

(1) *Food Act 2008*; *Queen Elizabeth II Medical Centre Act 1966*; *Tobacco Products Control Act 2006*.

(2) Due date for review to commence:

(a) *Food Act 2008* – End of 2014.

(b) *Queen Elizabeth II Medical Centre Act 1966* – End of 2016.

(c) *Tobacco Products Control Act 2006* – July 2018; the review is currently in progress.

Mental Health Commission advises:

(1) The Mental Health Commission (MHC) is the agency principally responsible for assisting the Minister with the administration of the Mental Health Act 2014 (MH Act) and the *Alcohol and other Drug Act 1974* (AOD Act). The planning for the statutory review of the MH Act is currently being done with a view to the review being commenced in 2021. The statutory review of the AOD Act has not been progressed.

(2) The MH Act provides that the statutory review be commenced as soon as practicable after 30 November 2020. The AOD Act provides that the statutory review be commenced as soon as practicable after 1 July 2020.

Health & Disability Services Complaints Office advises:

(1) Reviews of the *Health and Disability Services (Complaints) Act 1995* and Part 6 of the *Disability Services Act 1993* are outstanding.

(2) The reviews are due as soon as practicable after five years after the date on which the *Health and Disability Services Legislation Amendment Act 2010* (the Amendment Act) came into operation in 2010.

Healthway advises:

For WA Health Promotion Foundation

(1) Nil.

(2) Not applicable.

Animal Resources Authority advises:

(1) Nil.

(2) Not applicable.

MINISTER FOR EDUCATION AND TRAINING — PORTFOLIOS — LEGISLATION — STATUTORY REVIEWS

3365. Hon Alison Xamon to the Minister for Education and Training:

(1) Will the Minister please advise which statutory reviews of legislation within her portfolios are currently outstanding?

(2) On what date were each of these reviews due?

Hon Sue Ellery replied:

Department of Education

Department of Training and Workforce Development

Construction Training Fund

(1) Nil.

(2) Not applicable.

ENVIRONMENT — UNAPPROVED LANDFILL — GREAT NORTHERN HIGHWAY

3368. Hon Charles Smith to the Minister for Environment:

In relation to unapproved landfill on 1056 Great Northern Highway (34 Haddrill Rd), Baskerville, I thank you for your responses. The Minister's earlier responses on the above matter of unapproved landfill stated that there was only landfill on driveways and firebreaks, and the quantity of landfill did not exceed the quantities allowed by the *Environmental Protection Act 1986* and the *Environmental Protections Regulations 1987*, Section 52, Regulation 5, Schedule 1, (despite the Department of Water and Environmental Regulation (DWER) not measuring or determining the quantity). In 2019, Mr James (Jim) Davies of JDA Consultant Hydrologists examined the above property and one of the statements in his report is, "My observations on site were that the adjacent properties to the west, north and east were saturated to the surface in places (waterlogged) but that the property itself does not show waterlogging, suggesting that it has been filled above the natural ground surface by perhaps up to one metre in recent years." Mr Davies agreed that the approximate quantity of landfill imported and spread on the main rectangular portion of the above property (being approximately 23,300 square metres in area, excluding the dam), since 2013, is approximately 23,200 cubic metres. Using a nominal bulk density for soil of 1.4 tonnes per cubic meter, that equals approximately 32,480 tonnes of landfill. This is consistent with the numerous independent sources of aerial photographs, (including Landgate, Google Earth, Nearmaps, City of Swan Intramaps); aerial photographs; various surveys; complaints and information lodged with the DWER and City of Swan; a statement by one of the present owner(s), Swan Valley Gourmet Facebook, the obvious, abrupt and significant difference in soil level between the above property and neighbouring properties, particularly to the south, east and north (south of the dam). In particular, the bottom of original fences and the soil level on the abovementioned property and surveys of the abovementioned property pre mid-2013 that are different to those post mid-2013. Finally, the owner(s) of the above property have, on several occasions, been seen burying material in the south-east quadrant of the abovementioned property using a bobcat. This is not necessarily an offence, however is believed to be worthy of investigation. This area has an estimated two metres of landfill. In relation to the above, I ask:

(a) as the DWER has maintained its above stated position, will the Minister immediately instigate a full, thorough, independent and transparent investigation of the location(s), types, quantity and impacts (current and potential latent) of the landfill by suitably qualified and experienced professionals and, if required, exercise all legal means necessary to complete the investigation:

  (i) if no to (a), why not; and

(b) will the Minister publish and make public, the full, unedited, unredacted investigation report when it is completed:

(i) if no to (b), why not?

Hon Stephen Dawson replied:

In relation the Honourable Member's detailed preamble, I have previously advised through my response to questions on notice 2299 and 2694, the Department of Water and Environmental Regulation has investigated allegations of illegal landfilling at 1056 Great Northern Highway, Baskerville. The Department determined that materials had been brought onto the property to establish residential and commercial structures, roads and firebreaks. To refer to the property as a landfill is inaccurate. In addition, the Department is not aware of the report by Mr James Davies of JDA Consultant Hydrologists and referenced in the question.

(a)–(b) I am advised that since the original investigation undertaken in 2017, the Department of Water and Environmental Regulation has determined that there has not been any further information provided to warrant a fresh investigation. Any evidence or reports indicating offences against the Environmental Protection Act 1986 should be referred to the Department on the 24 hour Pollution Watch hotline on 1300 784 782, so that it can be investigated.

ENVIRONMENT — SOUTH GUILDFORD CLEANAWAY FACILITY FIRE

3375. Hon Tim Clifford to the Minister for Environment:

I refer to the 25 November 2019 fire that occurred at Cleanaway's South Guildford facility, and I ask:

(a) can the Minister confirm that no dioxin, furan or bromine contaminated fire waste or debris from the Guildford Cleanaway fire was deposited in a class three or other landfill not licensed to take such waste classifications in Western Australia;

(b) can the Minister confirm that the Guildford Cleanaway Materials Recovery Facility site is not contaminated with dioxin, furan or bromine contaminated materials resulting from the fire that occurred on 25 November 2019; and

(c) given the debris that landed in residential backyards in Bassendean and Guildford that came from the Guildford Cleanaway Materials Recovery Facility fire, can the Minister confirm that this material is not hazardous, toxic or harmful to human health?

Hon Stephen Dawson replied:

(a) As per my response to the Honourable Member's question on notice number 3183, the Department of Water and Environmental Regulation (DWER) is not aware if Cleanaway undertook sampling and testing of the fire damaged waste prior to its disposal. The responsibility lies with the waste producer to classify their waste and for the landfill operator to only accept waste which is authorised for disposal in their licence granted under Part V of the *Environmental Protection Act 1986* (EP Act). The Department monitors compliance with licence conditions including waste acceptance criteria.

(b) DWER has advised that, as part of post-fire monitoring commissioned by Cleanaway, a suite of dioxins and furans were analysed in water from an onsite drain (likely first point of receipt for fire response water) in December 2019. All concentrations were below the laboratory limit of reporting. In addition, as part of the post-fire monitoring and contamination investigations commissioned by Cleanaway, a range of brominated compounds were analysed in drain water and sediment, and in soil and groundwater onsite. All concentrations were below the laboratory limit of reporting.

(c) At the time of the incident DWER undertook air quality monitoring for air toxics and particulates and swab samples in the downwind residential area. Swab sampling that was undertaken at residential properties tested for a suite of chemical compounds, including dioxins, and metals that could be expected to be emitted from a waste fire and be potentially deleterious to public health. DWER has advised that the levels detected did not warrant further investigation. Full monitoring results are available in Paper 4122 tabled for Parliament on 18 August 2020. [See tabled paper no 4122.]

RACING AND WAGERING WESTERN AUSTRALIA — ANNUAL REPORT

3376. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the management of conflict of interest in Racing and Wagering Western Australia (RWWA) and the note on page 116 of their Annual Report that "some senior officials own (in full and/or part) racehorses and/or greyhounds that participate in racing within Western Australia", and I ask:

(a) how is this conflict of interest managed within RWWA;

(b) will RWWA make publicly available the names and winnings of the animals that are owned in part or in full by senior staff at RWWA; and

(c) if no to (b), why not?

Hon Alannah MacTiernan replied:

(a) Racing and Wagering Western Australia's (RWWA) conflict of interest obligations are covered within RWWA's Conflict of Interest policy. [See tabled paper no 4694.] The policy prescribes the criteria to be applied when assessing potential conflicts of interests in relation to the ownership of racing animals and the appropriate course of action required upon identification of a potential conflict.

(b) RWWA does not make publicly available the names and winnings of the animals that are owned in part or in full by senior staff at RWWA.

(c) RWWA will not make such disclosures on grounds of privacy as any conflict of interest is managed in accordance with the policy.

WESTERN AUSTRALIAN GREYHOUND RACING ASSOCIATION — ANNUAL REPORT

3377. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the Western Australian Greyhound Racing Association (WAGRA) Annual Report, page 55, point 37, and I ask, can the Minister please give hypothetical examples of "Material transactions with related parties" that are not required to be disclosed?

Hon Alannah MacTiernan replied:

Business transactions, by which there is the exchange of good and services through a market (i.e. arm's length), between related parties and the public sector entity could be quantitatively material, and therefore required to be declared when they are above $50 000.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3378. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to blood testing of greyhounds, such as that referred to in laboratory reports provided to Racing and Wagering Western Australia as attachments to letters dated 8 August 2019 and 29 April 2020, and I ask if the reports provided information about the levels of substances found in the samples from the dogs?

Hon Alannah MacTiernan replied:

The reports of the laboratories do not provide information about the levels of substances found in the samples.

As the rules relating to the prohibited substance in question relate to presence only and are not subject to levels or limits, the reports of the laboratories are not required to state levels as it is an offence under the rules if these substances are present at any level. The laboratories task is to detect and confirm only the presence of these substances.

Although the Laboratory reports do not provide levels, this may be given in evidence by the representatives of the laboratory at a Stewards inquiry where such levels are available, either as an estimate or quantified reading.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3379. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the equipment that the on track veterinarians at the Mandurah and Cannington racetracks bring with them, and I ask:

(a) how does Racing and Wagering Western Australia (RWWA) ensure that the on track veterinarian is able to provide a sufficient level of care for the dogs, without providing any equipment for the veterinarians;

(b) does RWWA require a minimum level of equipment for the on track veterinarian to bring with them to the track and to the veterinary rooms;

(c) if yes to (b), will the Minister please table that list; and

(d) if no to (b), why not?

Hon Alannah MacTiernan replied:

(a) Veterinarians in Western Australia must be registered with the Veterinary Surgeon's Board of Western Australia and adhere to standards of professional conduct as required within the Veterinary Surgeon's Act. All veterinarians contracted to provide services at Western Australian race meetings must accordingly be registered and meet the required professional standards as required by the above. In addition to the above contracted veterinarians are selected for their experience and knowledge of greyhounds.

(b) No.

(c) Not applicable.

(d) Refer to (a).

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3380. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the Greyhounds as Pets (GAP) program, and I ask:

(a) how does the GAP program ensure the suitability of potential families to be greyhound owners:

(i) what, if any, family life/work arrangements or housing space/fencing would lead to a family not qualifying as a suitable placement for a GAP greyhound; and

(b) where a greyhound enters the GAP program via the Greyhound Injury Full Recovery Scheme, at what point of recovery will a greyhound be permitted to be adopted:

(i) if the greyhound is still needing medical attention or care, what information is provided to the adopting family; and

(ii) does GAP ensure that they follow-up that medical care is completed?

Hon Alannah MacTiernan replied:

(a) Through a combination of the following:

Assessment of the applicants' comprehensive application to adopt,

Desktop-based research verifying the applicants' particulars,

Adoption counselling on the telephone and in person, including observations made during the family's meeting of a greyhound; and

Sighting of required documentation for tenants.

(i) Significant undertakings are made by trained Greyhounds As Pets (GAP) staff to ensure that each greyhound is placed in a suitable environment. Each application requires comprehensive details with respect to the applicant, their living arrangements, ability to secure the greyhound properly at their premises, other animals present etc.

Given the array of variables it is not possible to definitively identify every scenario where a family may not qualify as a suitable placement for a GAP greyhound, however, every reasonable effort is made to ensure all necessary requirements are satisfied taking into account the family, its circumstances and the specific needs of the greyhound in question.

(b) (i)–(ii) Greyhounds entering GAP via the Greyhound Injury Full Recovery Scheme progress through GAP's standard rehoming procedures when the contracted veterinary clinic indicates that no further re-visits are required thereby clearing the greyhound for adoption. The duration prior to adoption varies on a case by case basis depending on injury severity and progress.

GAP informs the adopting family of the nature of the injury that the greyhound has been treated for. GAP has standard follow-up procedures within the first six months post-adoption where contact is made with the adopters and all matters pertaining to the greyhound are discussed.

PLANNING — MY HOME PILOT PROJECT — WOODBRIDGE

3381. Hon Tim Clifford to the minister representing the Minister for Planning:

I refer to the response provided to question without notice 1135, and I ask:

(a) why was the proposed Devon St site selected over the other Department of Planning, Lands and Heritage or Western Australian Planning Commission site located in the City of Swan; and

(b) given this site has been identified by the Woodbridge community as a critical link in a green corridor, what measures will be taken to ensure this link and the associated vegetation and fauna is not lost or damaged?

Hon Stephen Dawson replied:

(a)–(b) Consideration of the current development application is ongoing and will have regard to environmental matters on advice from relevant referral agencies, including the Department of Biodiversity, Conservation and Attractions.

GREYHOUND RACING — OWNERS — WINNINGS

3382. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

(1) I refer to the 910 'hobbyist' greyhound owners/co-owners/lessees/syndicates that have not registered for GST, and I ask:

(a) what is the total pool of winnings for the most recent financial year for these 'hobbyist' greyhound racers; and

(b) what is the total pool of winning for the most recent financial year for the 19 'business' greyhound racers?

(2) does Racing and Wagering Western Australia provide any information to the Australian Tax Office regarding winnings per dog or per owner?

Hon Alannah MacTiernan replied:

(1) (a) $7 670 985

(b) $2 753 796 (GST NOT included)

(2) No Racing and Wagering Western Australia does not provide information to the Australian Tax Office regarding winnings per dog or per owner.

RACING AND GAMING —
"SIZE AND SCOPE OF THE WESTERN AUSTRALIAN RACING INDUSTRY" REPORT

3383. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to *Size and scope of the Western Australian Racing Industry*, prepared by IER Pty Ltd in 2016, and I ask:

(a) has any assessment of the methodology used in this report been done and, if so, will the Minister please table that assessment; and

(b) will the Minister request a new and updated report be researched to ensure that figures quoted in annual reports etc are more current?

Hon Alannah MacTiernan replied:

(a) No. IER Pty Ltd is a business consultancy specialising in research, strategy development, economic and social impacts for the racing, sports and major events industries. For close to 30 years, IER has provided advice to a range of sport, racing and leisure organisations, major events, national sporting leagues and tourism authorities in Australia, New Zealand, Asia and North America.

The modelling for the study uses an input/output methodology for the calculation of economic impacts associated with the racing industry in WA. The evaluation is undertaken using methodology consistent with the requirements of the Australian government.

(b) IER Pty Ltd is currently engaged by Racing and Wagering Western Australia to develop an updated report on the economic and social impacts of the Western Australia racing industry.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3384. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the design, preparation and monitoring of track conditions at the Cannington, Mandurah and Northam greyhound racing tracks, and I ask:

(a) what are the design elements in place at these tracks that support greyhound safety while racing;

(b) what are the technical requirements that the surface of the track needs to meet to be considered safe for greyhound racing;

(c) what scientific instruments are used to ensure that track shape and surface match the design and safety requirements; and

(d) how frequently are these measurements undertaken?

Hon Alannah MacTiernan replied:

(a) Design elements in place at tracks can include aspects such as transition bends, camber and hoop arm lure systems.

(b) Technical requirements include aspects such as an evenly prepared surface and moist/soft sand, which are inspected by RWWA Stewards.

(c) Scientific instruments can include weather monitoring equipment, firmness measuring devices and track grading moisture readers.

(d) These measurements are conducted prior to every race meeting.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3385. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the Greyhound Injury Full Recovery Scheme (GIFRS) and the failure of Racing and Wagering Western Australia (RWWA) under Freedom of Information to find veterinary reports for nearly all dogs transferred to RWWA ownership in 2019–20, and I ask:

(a) does RWWA receive veterinary reports at the time the dog is transferred;

(b) if yes to (a), what are the records management requirements for these records:

(i) does RWWA meet its records management responsibilities with relationship to these dogs medical records; and

(c) will the Minister be assessing the records management process with regards to the medical records of greyhounds transferred to RWWA ownership through GIFRS?

Hon Alannah MacTiernan replied:

(a) It is assumed that the term 'veterinary report' refers to the clinical record of treatment and surgery recorded by the contracted veterinary clinic. It is further assumed that this relates to the transfer of the greyhound from the contracted veterinary clinic after treatment and/or surgery has been completed. The greyhounds' clinical record of treatment and surgery recorded by the contracted veterinary clinic is the property of, and resides with, that veterinary clinic. RWWA does not receive copies of the veterinary clinic's medical records.

(b) Does not apply.

(i) The contracted veterinary clinic creates and holds the medical records of the greyhounds in the Greyhound Injury Full Recovery Scheme.

(c) The contracted veterinary clinic creates and holds the medical records of the greyhounds in the Greyhound Injury Full Recovery Scheme.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3386. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to greyhound racing and I ask if the microchip of every greyhound racing is scanned before each race:

(a) if not, why not?

Hon Alannah MacTiernan replied:

Yes, the microchip of every racing greyhound is scanned before each race for identification at the time of kennelling by Racing and Wagering Western Australia Stewards.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3387. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the Racing and Wagering Western Australia Rules of Racing and I ask for the guidelines and/or decision matrix used by the Racing Stewards to determine whether or not a person is of suitable character to own and race greyhounds?

Hon Alannah MacTiernan replied:

Racing and Wagering Western Australia (RWWA) has the RWWA Integrity Assurance Committee (IAC) Licensing Policy. See tabled paper which sets out the fit and proper person test. [See tabled paper no 4695.]

Applications are assessed by RWWA Stewards subject to defined criteria considering the policy and a person antecedent.

The RWWA General Manager Racing Integrity has delegated authority to approve licenses with the IAC determining any applications that are not approved by the General Manager where the individual applies for a hearing.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3388. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I ask how often greyhound kennels are inspected by the stewards of Racing and Wagering Western Australia?

Hon Alannah MacTiernan replied:

For the period between 1 August 2019 to 31 July 2020 Greyhound Stewards conducted a total of 206 inspections.

Given that there are approximately 192 licensed trainers, this ensures that almost all active trainers kennels are inspected at least once per year.

These figures do not include those other occasions Stewards attend properties for other reasons.

RACING AND WAGERING WESTERN AUSTRALIA — SUBCOMMITTEES

3389. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the Racing and Wagering Western Australia (RWWA) Welfare Subcommittee, and I ask:

(a) what are the membership rules for this subcommittee;

(b) would this subcommittee entertain an independent observer to their meetings; and

(c) is it possible for an non-RWWA employee to become part of this and other subcommittees?

Hon Alannah MacTiernan replied:

(a) The Animal Welfare Committee (AWC) is established under section 16 of Racing and Wagering Western Australia Act 2003 (the Act) which states;

(1) The Board may –

(a) appoint committees of directors or other persons; and

(b) discharge, alter or reconstitute any committee.

(2) A committee is to comply with any direction or requirement of the board.

(3) A committee may, with the approval of the board, invite any person, including a member of staff, to participate in a meeting of the committee but such person cannot vote on any resolution before the committee.

(4) Subject to sub-section (2), a committee may determine its own procedures.

As per section 4 of the Animal Welfare Committee Charter:

4. MEMBERS

The Committee shall consist of the following regular members:

Board Director (Chair)

General Manager Racing Integrity

General Manager Racing

Manager Animal Welfare

Animal Welfare Coordinator (Secretariat)

As required:

Chief Executive Officer

Manager Veterinary Services

Manager Public Relations

Strategic Planning Advisor (Racing)

Code Racing Managers

Chief Stewards

Off the Track WA Representative (Marketing)

With the approval of the Committee, other persons with the relevant experience or other relevant parties, may be requested to attend a meeting, or part of a meeting as contributors or as observers, to provide additional expertise to the Committee.

(b) Refer to Section 16 of Racing and Wagering Western Australia Act 2003 (the Act):

(3) A committee may, with the approval of the board, invite any person, including a member of staff, to participate in a meeting of the committee.

(c) Yes it is possible for a non-RWWA employee to become part of this and other subcommittees.

ANIMAL WELFARE — GREYHOUND RACING INDUSTRY

3390. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the ten per cent increase in greyhound injuries from the 2018–19 financial year to the 2019–20 financial year and I ask the Minister to explain what is being done to reduce the number of injuries?

Hon Alannah MacTiernan replied:

In Financial Year (FY)20 the total number of greyhound starters was 28 473 compared to only 26 590 starters in FY19. Thus, in FY20 there were 1 883 more greyhound starters than in the previous year. Although the absolute number of injury incidents reported saw an increase this was due to an increase in the total number of starters in FY20. When compared as a percentage of total starters, injury rates remain consistent with previous years:

	Incident Rate as % of Total starters	
Stand down period	**FY19**	**FY20**
0–14 days	2.1	2.1
15–59 days	0.6	0.7
60–90 days	0.2	0.2

As part of Racing and Wagering Western Australia's (RWWA) continuous effort to ensure the highest level of welfare is provided to racing greyhounds in Western Australia at all times, RWWA has engaged Professor David Eager from the University of Technology Sydney (UTS) to conduct a review of WA's three greyhound tracks. The report will assist in identifying track enhancements that may elevate existing standards.

RACING AND GAMING — STAFF — FRINGE BENEFITS

3391. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the staff of Racing and Wagering Western Australia, Greyhounds as Pets and the Western Australian Greyhound Racing Association, and I ask:

(a) which, if any, of these organisations have staff that are eligible for fringe benefits; and

(b) for each organisation that has staff required to pay fringe benefits tax, could the Minister please provide information about:

(i) the level or role of employees eligible for fringe benefits;

(ii) the kinds of fringe benefits provided; and

(iii) who pays the fringe benefits tax?

Hon Alannah MacTiernan replied:

Western Australian Greyhound Racing Association

(a) Western Australian Greyhound Racing Association (WAGRA)

(b) (i) Manager Racing Services, Manager Enterprise & Statutory Operations, Manager Social Media, Facility and Track Manager, Broadcast Supervisor.

(ii) Motor Vehicles

(iii) WAGRA pays the FBT

Racing and Wagering Western Australia

(a) Racing and Wagering Western Australia (RWWA) (which includes Greyhounds as Pets (GAP) as part of its organisation) pay Fringe Benefits Tax (FBT) to the ATO under the rules as prescribed under the Fringe Benefits Tax Assessment Act 1986 on employee benefits provided in respect of employment. The responses to part (b) relates to RWWA and includes GAP.

(b) (i) The nature of benefits as identified under the Fringe Benefits Tax Assessment Act 1986 makes it impossible to preclude particular levels or roles of employees from potentially receiving a benefit that is captured under the FBT Assessment Act.

(ii) There are many FBT categories included in the FBT Assessment Act 1986, RWWA currently submits FBT returns that include Entertainment, Housing, Car and Expense payments.

(iii) FBT tax is assessed on the company and not the individual and as such only RWWA can pay any FBT liability.

GREYHOUND RACING — WAGERING TAX

3392. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the wagering tax and I ask if there is a wagering tax figure for each of the last five financial years solely for greyhound racing?

Hon Alannah MacTiernan replied:

The wagering tax for the WA TAB attributable to the Greyhound code for the last five years is:

FY16	FY17	FY18	FY19	FY20
11 175 287	11 131 916	11 828 067	11 778 384	11 865 692

These are the amounts attributed to Greyhound racing as per Racing and Wagering Western Australia financials.

Note: At the introduction of Point Of Consumption Tax in Vic/NSW/Tas/Qld/ACT, the taxes were not assigned to the Greyhound code for the initial 12 months from January 2019. These amounts are not material to the total wagering taxes paid.

RACING AND WAGERING WESTERN AUSTRALIA — GREYHOUND RACING INDUSTRY

3393. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

I refer to the Greyhound racing elements of Racing and Wagering Western Australia (RWWA), and I ask, does the RWWA have a profit and loss statement for greyhound racing alone:

(a) if yes, will the Minister please table this document for the 2019–20 year?

Hon Alannah MacTiernan replied:

RWWA does not prepare a profit and loss statement for greyhound racing alone.

GREENPATCH DEVELOPMENT — DALYELLUP

3394. Hon Diane Evers to the Minister for Environment:

I refer to the Minister's response to question on notice 1734, that 'DWER no longer intended to progress reclassification of part of Lot 9105 separately, and would instead address this matter in its report on the appeals'. The document *Decision in Respect of Appeal Against Classification Contaminated Sites Committee (CSC 05/2018) Contaminated Sites Act 2003, Part 8, Division 2 for Maidment Parade and Hutt Drive, Dalyellup, otherwise known as the Greenpatch development (the site)* does not document the intention of the Department of Water and Environmental Regulation (DWER) to reclassify a portion of the Greenpatch as 'Remediated for Restricted Use', and I ask:

(a) did DWER address the matter of its intention to reclassify part of the area as 'Remediated for Restricted Use' during the appeal;

(b) if yes to (a), why was the reclassification amended from 'Remediated for Restricted Use' to 'Possibly Contaminated Investigation Required' when it was confirmed by DWER the area contained treated solid residue, it was contaminated and needed restriction in use; and

(c) if no to (a), why not?

Hon Stephen Dawson replied:

(a)–(c) The Department of Water and Environmental Regulation briefly considered reclassifying a portion of the Greenpatch development as *remediated for restricted use* in September 2018, however, it was never given this classification under the *Contaminated Sites Act 2003* (CS Act). By the time the Department prepared advice to the Contaminated Sites Committee on the appeal, it had further considered the available information on the contamination status of the relevant portion of Greenpatch. Taking into account the criteria in Schedule 1 to the CS Act and relevant guidelines, the Department formed the view that a classification of *possibly contaminated – investigation required* was more appropriate. Accordingly, the Department recommended a classification of *possibly contaminated – investigation required* for the portion of Greenpatch known as Area 8 and the Eastern Turning Circle to the Contaminated Site Committee.

GREENPATCH DEVELOPMENT — DALYELLUP

3395. Hon Diane Evers to the Minister for Environment:

I refer to Satterley's application on 20 January 2020, on behalf of the Department of Communities to the Department of Water and Environmental Regulation (DWER) for a clearing permit on a portion of the Greenpatch to allow test pits to be dug to examine any contamination in the former Eastern Turning Circle (ETC), granted on April 2020, and I refer to the document *Decision in Respect of Appeal Against Classification Contaminated Sites Committee (CSC 05/2018) Contaminated Sites Act 2003, Part 8, Division 2 for the Greenpatch development*, dated 20 October 2020, and I ask:

(a) is it standard procedure to allow the landowner to repeat soil contamination investigation on a site that is subject to an appeal with the Contaminated Sites Committee especially, when the area being investigated has been assessed multiple times and shown by DWER to be contaminated; and

(b) if no to (a), why was the permit granted?

Hon Stephen Dawson replied:

(a) The Department of Water and Environmental Regulation (DWER) granted a clearing permit for a portion of the Greenpatch (that is, the portion referred to as Area 8 and the Eastern Turning Circle) to Satterley Property Group Pty Ltd. The permit was granted in accordance with the *Environmental Protection Act 1986*, to allow test pits to be excavated for the purpose of geotechnical investigations, not contamination investigations.

(b) Not applicable.

MINES AND PETROLEUM — ALCOA

3396. Hon Diane Evers to the Minister for Environment:

I refer to Alcoa's operations at the Huntley mine, and I ask:

(a) what are the latest figures on how much forest has been cleared each year since the commencement of the Huntley area operation (i.e. north of Dwellingup);

(b) how much of the mined area north of Jarrahdale Road is planted exotics or Eastern States trees rather than species indigenous to the area:

  (i) does the Government intend to remove exotics and non-indigenous species and replant this area with indigenous species;

(c) given that much of the rehabilitated jarrah forest requires additional management:

(i) who will undertake the additional management steps required to restore the forest; and

(ii) how much will the restoration cost;

(d) what impact has bauxite mining and rehabilitation have on the water table and stream flows in the area of the Huntley mine, particularly around Dwellingup:

(i) what is the estimated value in dollars of any water losses that have occurred; and

(ii) has the Water Corporation had to address any water catchment issues related to activities in the Huntley mine:

(A) if yes to (d)(ii), what has Water Corporation had to do, and what was the cost of any actions;

(e) what financial and other contributions does Alcoa make to the following:

(i) the Western Shield programme;

(ii) quokka research;

(iii) the impact of bauxite mining on hydrological cycles; and

(iv) any other research projects or programmes (please specify);

(f) how many pollution events have occurred near the Serpentine Dam in the Myara South mining area:

(i) what were the pollution events;

(ii) what was the impact of the pollution events; and

(iii) have any negative impacts been remediated;

(g) does the State Government provide any subsidies or discounts to Alcoa for water or electricity:

(i) if yes to (g), please detail the nature and cost of the subsidies or discounts; and

(h) given that Alcoa is required to provide support to regional communities according to license conditions:

(i) which regional communities or townships has Alcoa provided support to;

(ii) what form of support has been provided or offered;

(iii) what was the dollar value of the support provided; and

(iv) what outcomes have been achieved?

Hon Stephen Dawson replied:

I note the Hon Member has asked the identical question to three Ministers across four agencies.

It is unclear as to which parts of the question are directed to each individual agency. If the Hon Member would like to specify which sections of the question are for which agency, then I will endeavour to answer those parts of the question.

MINES AND PETROLEUM — ALCOA

3397. Hon Diane Evers to the minister representing the Minister for Mines and Petroleum:

I refer to Alcoa's operations at the Huntley mine, and I ask:

(a) what are the latest figures on how much forest has been cleared each year since the commencement of the Huntley area operation (i.e. north of Dwellingup);

(b) how much of the mined area north of Jarrahdale Road is planted exotics or Eastern States trees rather than species indigenous to the area:

(i) does the Government intend to remove exotics and non-indigenous species and replant this area with indigenous species;

(c) given that much of the rehabilitated jarrah forest requires additional management:

(i) who will undertake the additional management steps required to restore the forest; and

(ii) how much will the restoration cost;

(d) what impact has bauxite mining and rehabilitation have on the water table and stream flows in the area of the Huntley mine, particularly around Dwellingup:

(i) what is the estimated value in dollars of any water losses that have occurred; and

(ii) has the Water Corporation had to address any water catchment issues related to activities in the Huntley mine:

(A) if yes to (d)(ii), what has Water Corporation had to do, and what was the cost of any actions;

(e) what financial and other contributions does Alcoa make to the following:

(i) the Western Shield programme;

(ii) quokka research;

(iii) the impact of bauxite mining on hydrological cycles; and

(iv) any other research projects or programmes (please specify);

(f) how many pollution events have occurred near the Serpentine Dam in the Myara South mining area:

(i) what were the pollution events;

(ii) what was the impact of the pollution events; and

(iii) have any negative impacts been remediated;

(g) does the State Government provide any subsidies or discounts to Alcoa for water or electricity:

(i) if yes to (g), please detail the nature and cost of the subsidies or discounts; and

(h) given that Alcoa is required to provide support to regional communities according to license conditions:

(i) which regional communities or townships has Alcoa provided support to;

(ii) what form of support has been provided or offered;

(iii) what was the dollar value of the support provided; and

(iv) what outcomes have been achieved?

Hon Alannah MacTiernan replied:

I note the Hon Member has asked the identical question to three Ministers across four agencies.

It is unclear as to which parts of the question are directed to each individual agency. If the Hon Member would like to specify which sections of the question are for which agency, then I will endeavour to answer those parts of the question.

MINES AND PETROLEUM — ALCOA

3398. Hon Diane Evers to the minister representing the Minister for Water:

I refer to Alcoa's operations at the Huntley mine, and I ask:

(a) what are the latest figures on how much forest has been cleared each year since the commencement of the Huntley area operation (i.e. north of Dwellingup);

(b) how much of the mined area north of Jarrahdale Road is planted exotics or Eastern States trees rather than species indigenous to the area:

(i) does the Government intend to remove exotics and non-indigenous species and replant this area with indigenous species;

(c) given that much of the rehabilitated jarrah forest requires additional management:

(i) who will undertake the additional management steps required to restore the forest; and

(ii) how much will the restoration cost;

(d) what impact has bauxite mining and rehabilitation have on the water table and stream flows in the area of the Huntley mine, particularly around Dwellingup:

(i) what is the estimated value in dollars of any water losses that have occurred; and

(ii) has the Water Corporation had to address any water catchment issues related to activities in the Huntley mine:

(A) if yes to (d)(ii), what has Water Corporation had to do, and what was the cost of any actions;

(e) what financial and other contributions does Alcoa make to the following:

(i) the Western Shield programme;

(ii) quokka research;

(iii) the impact of bauxite mining on hydrological cycles; and

(iv) any other research projects or programmes (please specify);

(f) how many pollution events have occurred near the Serpentine Dam in the Myara South mining area:

(i) what were the pollution events;

(ii) what was the impact of the pollution events; and

(iii) have any negative impacts been remediated;

(g) does the State Government provide any subsidies or discounts to Alcoa for water or electricity:

(i) if yes to (g), please detail the nature and cost of the subsidies or discounts; and

(h) given that Alcoa is required to provide support to regional communities according to license conditions:

(i) which regional communities or townships has Alcoa provided support to;

(ii) what form of support has been provided or offered;

(iii) what was the dollar value of the support provided; and

(iv) what outcomes have been achieved?

Hon Alannah MacTiernan replied:

I note the Hon Member has asked the identical question to three Ministers across four agencies.

It is unclear as to which parts of the question are directed to each individual agency. If the Hon Member would like to specify which sections of the question are for which agency, then I will endeavour to answer those parts of the question.

MINES AND PETROLEUM — ALCOA

3399. Hon Diane Evers to the minister representing the Minister for Forestry:

I refer to Alcoa's operations at the Huntley mine, and I ask:

(a) what are the latest figures on how much forest has been cleared each year since the commencement of the Huntley area operation (i.e. north of Dwellingup);

(b) how much of the mined area north of Jarrahdale Road is planted exotics or Eastern States trees rather than species indigenous to the area:

(i) does the Government intend to remove exotics and non-indigenous species and replant this area with indigenous species;

(c) given that much of the rehabilitated jarrah forest requires additional management:

(i) who will undertake the additional management steps required to restore the forest; and

(ii) how much will the restoration cost;

(d) what impact has bauxite mining and rehabilitation have on the water table and stream flows in the area of the Huntley mine, particularly around Dwellingup:

(i) what is the estimated value in dollars of any water losses that have occurred; and

(ii) has the Water Corporation had to address any water catchment issues related to activities in the Huntley mine:

(A) if yes to (d)(ii), what has Water Corporation had to do, and what was the cost of any actions;

(e) what financial and other contributions does Alcoa make to the following:

(i) the Western Shield programme;

(ii) quokka research;

(iii) the impact of bauxite mining on hydrological cycles; and

(iv) any other research projects or programmes (please specify);

(f) how many pollution events have occurred near the Serpentine Dam in the Myara South mining area:

(i) what were the pollution events;

(ii) what was the impact of the pollution events; and

(iii) have any negative impacts been remediated;

(g) does the State Government provide any subsidies or discounts to Alcoa for water or electricity:

(i) if yes to (g), please detail the nature and cost of the subsidies or discounts; and

(h) given that Alcoa is required to provide support to regional communities according to license conditions:

(i) which regional communities or townships has Alcoa provided support to;

(ii) what form of support has been provided or offered;

(iii) what was the dollar value of the support provided; and

(iv) what outcomes have been achieved?

Hon Alannah MacTiernan replied:

I note the Hon Member has asked the identical question to three Ministers across four agencies.

It is unclear as to which parts of the question are directed to each individual agency. If the Hon Member would like to specify which sections of the question are for which agency, then I will endeavour to answer those parts of the question.

GREENPATCH DEVELOPMENT — DALYELLUP

3400. Hon Diane Evers to the Minister for Environment:

I refer to the unlined Dalyellup Waste Residue Disposal Facility (DWRDF) with millions of tonnes of treated solid residue (TSR) from the production of titanium dioxide pigment, buried in a modified swale between the vegetated linear primary dunes and the parabolic secondary dunes, covering an area of around 91,000m2 with a depth around seven metres Australian height datum (AHD) and an approximate maximum elevation of 24 metres AHD which will be exposed to rising sea levels and coastal processes, and I ask:

(a) what is the Government doing to make sure the DWRDF will be adequately contained; and

(b) what is the Government doing to make sure the DWRDF will not pose a health risk for the community?

Hon Stephen Dawson replied:

(a)–(b) The Dalyellup Waste Residue Disposal Facility (DWRDF) is regulated under Ministerial Statements 213 and 332 as well as a Closure Notice served under the *Environmental Protection Act 1986*, and is also classified as *remediated for restricted use* under the *Contaminated Sites Act 2003*. These regulatory instruments ensure that public health, the environment and environmental values are protected. Requirements and action that need to be taken under these regulatory instruments are set out in a Site Management Plan for the DWRDF. I tabled the latest version of the Site Management Plan on 12 November 2020. [See tabled paper no 4615.]

GREENPATCH DEVELOPMENT — DALYELLUP

3401. Hon Diane Evers to the parliamentary secretary representing the Minister for Health:

I refer to the Minister's response on 6 June 2019 to question on notice 2091, that a radiation consultant employed by an environmental consulting firm provided advice to the Radiological Council that there was no scientific basis for a buffer, and I ask:

(a) did the Radiological Council commission this advice/report by the environmental consulting firm;

(b) if no to (a), who did; and

(c) if yes to (a), is it normal procedure for the Radiological Council to rely on radiation consultants employed by environmental consulting firms to give advice in matters of radiation that can affect public health?

Hon Alanna Clohesy replied:

I am advised:

(a) No.

(b) The information cannot be disclosed under Section 49 of the Radiation Safety Act.

(c) Not applicable.

GREENPATCH DEVELOPMENT — DALYELLUP

3402. Hon Diane Evers to the parliamentary secretary representing the Minister for Health:

I refer to the Minister's response on 27 June 2019 to questions on notice 2164 and 2166 (that the Greenpatch development site is not regulated under the *Radiation Safety Act 1975*, and that outdoor levels of radon and thoron registered at the boundaries of the Dalyellup Waste Residue Disposal Facility (DWRDF) were not higher than expected in comparison to other coastal areas of Western Australia), and I ask:

(a) will the Minister provide a copy of the radiation readings of the areas surveyed;

(b) if no to (a), why not;

(c) where did the Radiological Council obtain the background environmental radiation levels for Dalyellup upon which it based its conclusion that "There was no evidence of radiation levels above background over the areas surveyed. Thus, these areas could be considered for unrestricted use with respect to radiation"; and

(d) what are the expected background outdoor levels of radon and thoron (Bq/m3) in a coastal area like Bunbury or Dalyellup?

Hon Alanna Clohesy replied:

I am advised:

(a) No.

(b) The information cannot be disclosed under Section 49 of the Radiation Safety Act.

(c) The quoted statement is not from the response to questions on notice 2164 or 2166.

(d) Radon levels vary across Australia. The Australian Radiation Protection and Nuclear Safety Agency's (ARPANSA) updated radon map of Australia shows the average radon level for the Bunbury region as 7 Bq/m3 and the average radon level for the Gelorup–Dalyellup–Stratham region of 9 Bq/m3.

GREENPATCH DEVELOPMENT — DALYELLUP

3406. Hon Diane Evers to the minister representing the Minister for Planning:

I refer to question on notice 2091, and I ask:

(a) will the Minister provide an exact map with coordinates delineating the reserve boundary;

(b) if no to (a), why not;

(c) will the Minister table a map or advise coordinates of the current internal buffer zone between the disposal cells and the reserve boundary;

(d) if no to (c), why not; and

(e) who is responsible for ensuring the internal buffer is maintained between disposal cells and the reserve boundary?

Hon Stephen Dawson replied:

(a) Yes. [See tabled paper no 4692.]

(b) Not applicable.

(c)–(e) Internal buffers regarding disposal cells are a consideration of the Minister for Environment and/or the Minister for Health.

PRESCRIBED BURNING SMOKE — HEALTH IMPACT

3408. Hon Diane Evers to the parliamentary secretary representing the Minister for Health:

I refer to question on notice 3099 on the health impact of prescribed burning smoke, and I ask:

(a) will the Government commit to tabling the research project report once completed in mid-November 2020, or as soon as practicable; and

(b) if no to (a), why not?

Hon Alanna Clohesy replied:

(a) No.

(b) The reports will be made available on the Department of Health website in December 2020.

PRESCRIBED BURNING SMOKE — HEALTH IMPACT

3409. Hon Diane Evers to the parliamentary secretary representing the Minister for Health:

Given that smoke from fire in native and introduced vegetation can exacerbate cardiovasculor diseases and respiratory diseases such as asthma and emphysema and can cause lung cancer and deaths among community members, fire fighters and those conducting prescribed burns, what steps is the Government taking to:

(a) minimise the amount of prescribed burning; and

(b) implement rapid detection and at-source suppression of wildfire ignitions?

Hon Alanna Clohesy replied:

Please refer to Legislative Council Question on Notice 3411.

FOREST PRODUCTS COMMISSION — PLANTATIONS AND PRODUCTION

3410. Hon Diane Evers to the minister representing the Minister for Forestry:

(1) Will the Minister provide the following statistics, usually provided in Forest Products Commission's (FPC) annual report:

(a) trends in the area of native forest harvested (hectares) from 1976–77 to 2019;

(b) area of coniferous (pine) plantations as at 31 December 2019 (hectares) pre-1970 to 2019;

(c) area of broadleaved (eucalyptus/corymbia) plantations as at 31 December 2019 (hectares);

(d) area of sandalwood (spicatum/album) plantations as at 31 December 2019 (hectares);

(e) log production from Crown land and private property in 2019–2020:

(i) sawlog timber;

(ii) native forest sawlogs;

(iii) plantation softwood sawlogs and veneer logs;

(iv) other log material;

(v) native forests;

(vi) plantation hardwood; and

(vii) plantation softwood other;

(f) native forest sawlog production in 2019–2020, by species and grade;

(g) native forest other bole volume in 2019–2020, by species and product type; and

(h) sandalwood production by the FPC from Crown land (product type)?

(2) if no to (1)(a) to (h), why not?

Hon Alannah MacTiernan replied:

(1) (a)–(h) This information is published in the Forest Products Commission's *Statistics 2019–20* report at www.wa.gov.au/government/publications/fpc-statistics-2019–20, which is tabled. [See tabled paper no 4696.]

(2) Not applicable.

PRESCRIBED BURNING SMOKE — HEALTH IMPACT

3411. Hon Diane Evers to the Minister for Environment:

Given that smoke from fire in native and introduced vegetation can exacerbate cardiovasculor diseases and respiratory diseases such as asthma and emphysema and can cause lung cancer and deaths among community members, fire fighters and those conducting prescribed burns, what steps is the Government taking to:

(a) minimise the amount of prescribed burning; and

(b) implement rapid detection and at-source suppression of wildfire ignitions?

Hon Stephen Dawson replied:

(a) The McGowan Government reaffirms its support of prescribed burning as the primary means of reducing combustible fuel and therefore the risk of bushfire to the community and the environment.

In this respect the McGowan Government is faced with the task of balancing the impacts of smoke from prescribed burning against the need to protect our communities from the damaging impacts of bushfires and the higher level of community smoke impacts that such bushfires can cause.

(b) The Department of Biodiversity, Conservation and Attractions (DBCA) uses a range of bushfire detection systems including near real-time satellite imagery, fire lookout towers and spotter aircraft that are primarily used in the south-west of the State, where early warning of bushfire occurrence is essential to ensure rapid response and appropriate suppression activities minimise the impact of bushfires to the community and the environment.

DBCA works closely with the Department of Fire and Emergency Services and local governments in suppressing bushfires under their control. The State has access to a fleet of aerial suppression aircraft, which have been selected and located for their suitability to the operating environment. These aircraft are based at locations throughout the south-west of the State, which are deployed or forward based according to the prevailing conditions, bushfire potential and operational requirements.

I am advised that experience in Western Australia has shown that suppression aircraft are most effective when operating as part of a coordinated strategy that includes bushfire mitigation activities such as prescribed burning and ground-based suppression resources.

ENVIRONMENT — LNG INDUSTRY — METHANE EMISSIONS

3412. Hon Tim Clifford to the Minister for Environment:

I note that liquefied natural gas (LNG) facilities have a quarterly reporting period requirement and report CO2-equivalent:

(a) how are methane emissions currently measured from Western Australia's five LNG facilities and where are they recorded;

(b) is the Minister aware that once leakage rates are above three per cent, LNG is considered to be more damaging than coal and there has been a widespread underestimation and underreporting of methane in Australia and overseas;

(c) for the Burrup Hub project, what methane leakage rates (fugitive emissions) in relation to scope one and three emissions has the Department assumed and how is this currently being measured; and

(d) for all existing LNG facilities, what methane leakage rates (fugitive emissions) in relation to scope one and three emissions has the Department assumed and how is this currently being measured?

Hon Stephen Dawson replied:

(a) Methane emissions generated from WA's five LNG facilities (Wheatstone, Gorgon, NW Shelf, Pluto and Macedon) are estimated using emissions factors, or measured and reported to the Commonwealth Government under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act). The NGER Act is the single national framework for reporting and disseminating company information about greenhouse gas emissions, and energy production and consumption.

(b) I am advised that the International Energy Agency estimates that 98 per cent of gas consumed today has a lower lifecycle emissions intensity than coal. This takes into account both carbon dioxide and methane emissions.

(c)–(d) Major LNG facilities are subject to greenhouse gas reporting requirements under the NGER Act which is administered by the Commonwealth Government. I am advised that methane leakage rates (fugitive emissions) for Woodside's Burrup Hub projects and other existing LNG facilities are estimated for Scope 1 and 2 emissions using the leakage factors in the National Greenhouse and Energy Reporting (Measurement) Determinations 2008.

New proposals on the Burrup peninsula that have greenhouse gas emissions identified as a preliminary key environmental factor are subject to environmental impact assessment by the Environmental Protection Authority (EPA). In accordance with the EPA's guidelines, proponents are required to provide estimates of their greenhouse gas emissions in their environmental assessment documentation.
