Parliamentary Debates
(HANSARD)

FORTIETH PARLIAMENT
FIRST SESSION
2018

LEGISLATIVE COUNCIL

Thursday, 6 December 2018

Legislative Council

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

LOCAL GOVERNMENT — COMPLAINTS HANDLING

Petition

HON ROBIN CHAPPLE (Mining and Pastoral) [10.02 am]: I present a petition containing 16 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned support Mr Crawford's serious concerns about the seeming inability of the Department of Local Government, Sport and Cultural Industries to adequately address complaints concerning lack of proper process or failures in due process against individual local government authorities and in meeting community expectation of same.
>
> Your petitioners therefore respectfully request the Legislative Council inquire into the performance and effectiveness of the Department of Local Government, Sport and Cultural Industries and its failure to meet community expectations and how best this should be rectified.
>
> And your petitioners as in duty bound, will ever pray.

[See paper 2308.]

DAMPIER ARCHIPELAGO AND BURRUP PENINSULA — INDUSTRIALISATION

Petition

HON ROBIN CHAPPLE (Mining and Pastoral) [10.03 am]: I present a petition containing 23 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned ask the Legislative Council to oppose the plans for the continued industrialisation of the Burrup Peninsula and Dampier Archipelago (Murujuga) reported in recent media. This is of great concern to our community, as there are alternative sites available for industry which won't infringe on heritage values of the region, in particular the Maitland Industrial Estate, located in close proximity to Murujuga.
>
> The petitioners reiterate the call for the World Heritage Listing of the Dampier Archipelago at the earliest opportunity available to the State Government.
>
> The petitioners oppose further development of heavy industry on Murujuga, and request that the State Government commit to review the following two documents: 30 August 2002 'Report into the Maitland Industrial Precinct' prepared for Hon Eric Ripper MLA (Deputy Premier), Hon Clive Brown MLA (Minister for State Development), Hon Alana MacTiernan MLA (Minister for Planning and Infrastructure), and Hon Tom Stephen MLC (Minister for the Pilbara), by the City of Karratha and the District Chamber of Commerce and Industries; and December 2002 'Maitland Heavy Industry Estate: Assessment and Comparison with the Burrup Peninsula Industrial Estate' prepared for the Shire of Roebourne.
>
> The petitioners call on the Government to evaluate the cumulative airshed of pollutants and emissions of current industry on rock art in the Burrup Peninsula (Murujuga), and quantify the increase in emission loads from known projected industries for the Burrup Peninsula (Murujuga).
>
> And your petitioners as in duty bound, will ever pray.

[See paper 2309.]

IRONSTONE GULLY FALLS — MOBILE TOWERS

Petition

HON ADELE FARINA (South West) [10.05 am]: I present a petition containing 190 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned are support urgent provision of mobile tower/s for the region of Ironstone Gully Falls on Goodwood Road between Donnybrook and Capel in SW Australia.

Mobile coverage is required urgently for SES purposes, permanent residents, tourists, overnight campers and motorbike eventers.

We therefore ask the Legislative Council to recommend installation of Mobile tower/s for the Paynedale/ Capel River region.

And your petitioners as in duty bound, will ever pray.

[See paper 2310.]

Nonconforming Petition

Hon ADELE FARINA: I have also received a further 122 signatures on a nonconforming petition couched in similar terms to the petition I have just tabled.

LAW REFORM COMMISSION OF WESTERN AUSTRALIA — "PROJECT 108: FINAL REPORT"

Statement by Leader of the House

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.06 am]: I rise on behalf of the Attorney General to table the latest report of the Law Reform Commission of Western Australia, titled "Project 108: Final Report: Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics".

On 16 January 2018, the Attorney General announced a referral to the commission to report on issues and inconsistencies in Western Australia's current legal framework relating to the legal recognition of sex and gender. The terms of reference sought a review of the existing practices under the Gender Reassignment Act 2000 and the Births, Deaths and Marriages Registration Act 1998, as well as consideration of practices in other states and overseas. The commission published a discussion paper in August 2018 that prompted public debate, including over its proposal for a baby's sex classification to be held by the Registrar of Births, Deaths and Marriages but not displayed on birth certificates.

The final report, received by the Attorney General last week, makes 17 recommendations. The government is yet to consider the full contents of the report, but will not be accepting recommendations 5 and 6, which are to remove and expressly prohibit the recording of sex or gender on birth certificates. However, there is a need for some reform in this area. The final report states that the High Court has held that not all human beings can be classified by sex as either male or female. Therefore, the state government is proposing that when the attending midwife or doctor at the birth is unable to identify the sex of the baby and the Registrar of Births, Deaths and Marriages is notified of this, it seems reasonable that the parents could also notify the registrar that their baby's sex at that stage is indeterminate and for privacy reasons ask that the words "indeterminate sex" not be printed on the birth certificate. When the sex of a newborn baby is known, the sex should be identified on the birth certificate as per the current practice; that is, the child will be identified as male or female.

In accordance with section 11(7) of the Law Reform Commission Act 1972, and for the benefit of members, I table the final report, which will be presented to the other place in the new year. On behalf of the Attorney General, I thank the commission and acknowledge the significant amount of time and thought that has gone into this project.

[See paper 2311.]

CHINA INTERNATIONAL IMPORT EXPO 2018 — REPORT

Statement by Minister for Regional Development

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [10.08 am]: On 8 November 2018, I made a statement to Parliament about my visit to the China International Import Expo in Shanghai. I table this report outlining the details of my meetings and activities while I was there.

I take this opportunity to report to the house that the 10 companies whose presence was facilitated by the Western Australian government have received 52 inquiries about their products from Chinese buyers as a direct result of displaying at the expo. Those products include walnuts, carrot juice concentrate, olive oil, various types of honey, nougat, chocolate and chutney. Fifteen of those inquiries came from general food distributors interested broadly in Western Australian premium food offerings. We also acknowledge the other eight WA agribusiness exhibitors and look forward to updates on their success.

[See paper 2312.]

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

120th Report — "Child Support (Commonwealth Powers) Bill 2018 — Extension of time" — Tabling

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [10.10 am]: I am directed to present the 120th report of the Standing Committee on Uniform Legislation and Statutes Review, titled "Child Support (Commonwealth Powers) Bill 2018 — Extension of time".

[See paper 2313.]

Hon MICHAEL MISCHIN: On 5 December 2018, the Legislative Council referred the Child Support (Commonwealth Powers) Bill 2018 to the Standing Committee on Uniform Legislation and Statutes Review for consideration and report. The reporting date is 12 February 2019, being the next sitting day after the 45-day period mandated by standing order 126 and the first sitting day after the summer recess. The bill proposes to adopt certain commonwealth laws relating to the maintenance of exnuptial children that will then apply in Western Australia, and to refer the matter of the maintenance of exnuptial children to the commonwealth Parliament, which will enable the commonwealth Parliament to amend or affect the operation of those laws in Western Australia. On 5 December 2018, the committee passed a motion that in the event the bill was referred to the committee on 5 December or 6 December 2018, the committee would seek an extension of the time in which it was to report to the Legislative Council. The extension of time is requested to enable the committee to properly discharge its reporting obligations to the Legislative Council due to the need to consider the significant parliamentary sovereignty issues raised by the bill; whether to conduct hearings on the bill and the availability of witnesses over the summer recess; and the commitments of committee members over the summer recess. The committee therefore requests an extension of time in which to report on the bill from 12 February 2019 to 19 March 2019. Of course, if the committee's deliberations have concluded and it is capable of reporting before that due date, it certainly will, as it has on occasions in the past when extensions of time have been granted.

Extension of Reporting Time — Motion

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [10.11 am] — without notice: I move —

> That the reporting date for the committee inquiry into the Child Support (Commonwealth Powers) Bill 2018 be extended from 12 February 2019 to 19 March 2019.

[Leave granted for the member's speech to be continued at a later stage of the sitting.]

Debate thus adjourned.

[Continued on page 9246.]

HEALTH PRACTITIONER REGULATION NATIONAL LAW REGULATION 2018 — DISALLOWANCE

Notice of Motion

Notice of motion given by **Hon Robin Chapple**.

TEMPORARY ORDERS — CONSIDERATION OF COMMITTEE REPORTS — EXTENSION

Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.13 am] — without notice: I move —

> That the operation of the temporary orders with respect to the consideration of committee reports adopted by the Council on 7 December 2017 be extended to apply until and including 31 December 2019.

By way of explanation, there has been agreement behind the Chair that those temporary standing orders are working well and members are happy to extend their application.

Question put and passed with an absolute majority.

MINISTER FOR REGIONAL DEVELOPMENT; AGRICULTURE AND FOOD — MINISTERIAL RESPONSIBILITIES

Motion

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [10.14 am] — without notice: I move —

> That this house expresses its concern with the manner in which the Minister for Regional Development; Agriculture and Food has discharged her ministerial responsibilities.

I have only 20 minutes today, so I will not take interjections. The irony of some of the comments made by Hon Alannah MacTiernan during debate in Committee of the Whole House two days ago on the standards in this place in comparison with the other place escaped no-one on this side of the chamber. Effectively, she told us not to be so precious about some of the deplorable comments made by members in the other chamber. If anyone in this chamber should not be talking about standards, it is Hon Alannah MacTiernan.

The PRESIDENT: Can I just say there is no need to raise your voice. Let us keep it calm today.

Hon PETER COLLIER: I have raised a number of issues on the comments of Hon Alannah MacTiernan. The first was an accusation she levelled at me very early in the term of this government that I purportedly closed 150 Aboriginal communities. That was manifestly wrong, and I asked her to withdraw that comment—she refused. Another example of the lowering of standards was of course when Hon Sue Ellery cancelled pairs on one occasion.

When I made some critical comments about that, Hon Alannah MacTiernan interjected and said, "Oh, pairs are cancelled all over the nation—who cares? Pairs are cancelled in Parliaments all over the nation." That is good. If that is the standard the Labor Party is going to adopt in this chamber—we will adhere to it as well.

The big one for me relates to Carnegie Wave Energy. Carnegie is a clear conflict of interest for this minister. If this minister does not understand that her involvement in that company raises a clear conflict of interest, she should not be in this chamber. If she had declared a conflict of interest in the cabinet room the day when Carnegie was dealt with, or on any occasion that Carnegie was dealt with, I would not be standing here today. Carnegie has its problems; that is not the issue. My issue is upholding the conventions of this chamber and parliamentary democracy around conflict of interest. In this instance, we have consistently had a two-fingered salute from Hon Alannah MacTiernan with regard to Carnegie Clean Energy. She has a clear conflict of interest, and she refuses, despite constant requests, to acknowledge that. I have asked dozens and dozens of questions about this. I have made at least six speeches on this issue, and there is a clear conflict of interest. The only person who does not seem to understand this is Hon Alannah MacTiernan. The responses I have had have been vague and dubious at best, and they do not answer my questions.

Let us first of all look at the conflict of interest, because Hon Alannah MacTiernan has form in this area. She was drawn up on a conflict of interest issue in 2005, when her husband had shares in Alinta Energy at a time when she was in cabinet making decisions. At the same time, Hon Bob Kucera was sacked from cabinet for the same reason. I raise that, not to be malicious, but because when we were on the other side of the chamber the guys opposite went absolutely ballistic when Hon Donna Faragher's husband happened to work at Woodside and Hon Norman Moore's wife had shares in a joint superannuation fund. These guys cried out for their heads! Those are the standards that these guys expect.

The Ministerial Code of Conduct is very clear and unambiguous on conflict of interest. I have mentioned this before: ministers must declare a conflict of interest. The Ministerial Code of Conduct states quite categorically what ministers must do if they have a conflict of interest. It states —

> Public duties must be carried out objectively and without consideration of personal or financial gain. Circumstances which could give rise to a serious conflict of interest are not necessarily restricted to those where an immediate advantage will be gained. They may instead take the form of a promise of future benefit, such as a promise of post-parliamentary employment. Any conflict between a Minister's private interest and their public duty which arises must be resolved promptly in favour of the public interest. The same is as true for a perceived conflict of interest as an actual conflict.

The Premier has confirmed that—a perceived conflict is exactly the same as an actual conflict. Has Hon Alannah MacTiernan had a perceived conflict of interest in Carnegie? Without a shadow of a doubt she most definitely has.

The Labor Party went to the last election promising a wave power project in its plan for Albany. The Premier was wrong when he said that the Liberal Party changed the location from Albany to Garden Island. That came from Carnegie itself; it requested the change. I make that quite clear. Carnegie made that announcement and then the Labor Party won the election. I have been through this before, so I will be very quick. The Labor Party won the election, and two days after, Carnegie made an ASX announcement. The announcement included a photo, which was the same photo used in the Labor Party's announcement. It included the CEO of Carnegie, Hon Bill Johnston, Hon Mark McGowan and Hon Alannah MacTiernan. I can understand why Bill Johnston was there; he was shadow energy minister. I can understand why Mark McGowan was there; he was the Leader of the Opposition. I cannot understand why a candidate for the North Metropolitan Region was there, aside from the fact that she had a very close affiliation with Carnegie. Carnegie stated in this ASX announcement —

> Carnegie Clean Energy Limited … developer of utility scale wave, solar and battery storage projects, is pleased to note the election of a new Government of Western Australia … confirming the commitment of $19.5 million in funding for its Albany Wave Energy Project.

As I have said before, it was not promised to Carnegie; it was promised for a wave energy project. The fact that Hon Alannah MacTiernan had such a close connection to Carnegie meant that it probably thought it was in with a good shot, at the very least. Hon Alannah MacTiernan has very strong connections with Carnegie—let me make it quite clear. Energy Made Clean was purchased by Carnegie on 26 October 2016 to form Carnegie Clean Energy. Hon Alannah MacTiernan was a director of Energy Made Clean, so she had a direct connection with Energy Made Clean. The person who appointed her was Mr John Davidson. He said in a press release about the announcement —

> Alannah MacTiernan joins Board
>
> "Alannah, as a former long serving Minister for Planning and Infrastructure, brings a wealth of experience and a reputation for getting difficult jobs done and we are extremely pleased that she has agreed to take on this role," said Mr Davidson …

This is the same John Davidson who then became an executive director of Carnegie. At the same time as all of this was going on—at the same time as the decision on who was going to get the wave energy project was being

made—John Davidson appointed Hon Alannah MacTiernan as the executive director of Energy Made Clean. How can there not be a perceived conflict of interest? It is extraordinary. Are the standards of the Labor Party members so low that they cannot understand that?

Moving on, what happened was that when the Labor Party won the election, there was already that connection between Hon Alannah MacTiernan and Carnegie. It is there. It is unambiguous. She was a director and had shares in Energy Made Clean. That company was purchased by Carnegie and then Carnegie got the contract. It might be aboveboard. All I am saying is that there is a perceived conflict of interest. If Hon Alannah MacTiernan sat in that cabinet room and was part of the decision, it is a conflict of interest, and it shows the deteriorating standards of this government already. Let me tell members, as I have said over and over again, the seeds of destruction of a government are sown in this place—the Parliament—and they have definitely germinated.

I will move on. A month after that, Hon Alannah MacTiernan's acting appointment secretary rang Carnegie and asked for a meeting with the minister. A month after the election she met with Carnegie. She did meet with Carnegie, so I said that I would find out about that meeting. I asked: Who attended the meeting? Will the minister table all meeting notes? Did the minister receive a briefing from any of the other proponents that submitted to the Albany wave farm? Why did the minister receive a briefing from Carnegie? She was all over the place, but one of the responses she made was, "I convened a meeting of renewable energy industry stakeholders in Albany." She met with Carnegie but she did not meet with any other proponents—no-one else. A briefing note from that meeting was tabled. I thought, "Okay; she has met with the other proponents at this workshop down in Albany", so I asked more questions. They were: Who attended the renewable energy stakeholders meeting in Albany on 9 June 2018? Were any of the other nine companies—because there were nine companies originally—that put in a submission for the tender process for the Albany wave energy technology development project in attendance at the meeting? Apart from Carnegie, did the minister meet with any other proponents? Let me go through this because there are two very serious issues here, guys. Do members know who was at the meeting? There was a whole pile of government officials. Out of the 20 people in attendance, six were from the minister's or member's offices, five were from the University of Western Australia, five were from government departments and four were from three other energy companies. This round table had three companies. Do members know how many attended that put in a submission for the contract? There was one. Do members know what company that was? It was Carnegie. The only company that attended and provided a tender application was Carnegie. The other two did not put in a tender. Did the minister meet with anyone else? She absolutely did not. When I asked whether she met with anyone else, do you know what she said, Madam President? She said, "I have not been advised which companies submitted a proposal." Wrong! Let us look at a briefing note from Hon Alannah MacTiernan that I got through the freedom-of-information process on 5 October 2017. It reads —

> A Request for Proposal for the Technology Development Project was issued on Tenders WA and five proposals were received.

The footnote reads —

> Proposals were received from: Carnegie Clean Energy, ROC Technologies, Wedge Global, BioPower Systems, and Society with Limited Liability/Foundry Co-Symvol.

This is serious. This minister has misled this house. She stated in a response to a question, "I have not been advised which companies submitted a proposal." Wrong! I have a briefing note that the minister approved on 5 October. It has a list of the companies. This minister has misled this house. She has misled this house and, yet again, she is up to her neck in this thing with Carnegie. When she scoffs at all this stuff and says it is smoke and mirrors, it is not.

We all know that Carnegie has had its issues. It is nothing to do with the conflict of interest, but it has had its issues. Its long-term chief executive officer resigned, Energy Made Clean was sold, as was Carnegie's Northam solar farm, and the share price collapsed. It is a real shame. Hon Donna Faragher and I have put money into this company and the one on Garden Island is working well—the CETO 6 company. Why the decision was made to continue to fund the project down in Albany is beyond me. It might have something to do with Hon Alannah MacTiernan being up to her neck in this thing. There is an evident perceived conflict of interest. What happened is that Carnegie did not meet its first milestone. The minister made an announcement that she was going to give Carnegie half the money for reaching its first milestone—half of $5.2 million. She said that she was going to give Carnegie $2.6 million. Why could Carnegie not meet its first milestone? Do members know what happened? The minister blamed the federal government over and over again. She made a ministerial statement and a media statement, and Carnegie even put the minister's comment on its ASX announcement. On each and every occasion she blamed the changes to the research and development funds from the federal government. The fact that Carnegie may have had some issues seems to have gone by the wayside. It was all about the federal government. The minister used crass politics and yet again showed a complete lack of understanding of and respect for the integrity of this place by providing an excuse. She is quoted in *The West Australian* of 24 November as saying —

> … changes … had upended the business plan for Carnegie's Albany project by slashing the value of … credits from $16 million to $4 million.

She stated that, so I did a bit of investigation. That is rubbish. I asked Hon Alannah MacTiernan a number of questions about it—six questions over the last two weeks. She was vague and all over the place, as usual—not responsive. She refused to agree that it was changed from $16 million to $4 million. I wonder why? It is because there is absolutely no integrity behind those figures. She just used them to make a cheap political point. That is all this was—a cheap political point. As opposed to saying yes, she does not want to go down with the ship. I hope Carnegie does not go down. I hope that it can somehow resurrect itself, but it has problems. It does not help that this minister continues to make this political. It is not us; it is the minister. She is directly involved in this company and she should not have been involved. She should have vacated the space, declared a conflict of interest and had nothing to do with this contract.

Let us have a look at what effects the changes to R&D would have. On 27 November 2018, the minister stated that the proposed scaling back of the tax break would slash Carnegie's expected credits from $16 million to $4 million. I asked how this could happen and the minister said that the advice she received was in confidence. We can just have a look at the annual report. It highlights that Carnegie Clean Energy received federal research and development grants totalling $2.6 million in 2018. That is a long way from the $16 million to which Hon Alannah MacTiernan referred; it is even below the $4 million threshold. What the minister has been saying is rubbish—absolute garbage! Let me make perfectly clear that the changes that have been drafted have not yet been adopted by the Senate, and anything can happen in Canberra; it changes on a daily basis. When we look at the Albany wave energy project as a standalone project, the only impact would be if the project does not hit the $4 million cap, when there would be a reduction in the R&D rebate from 43.5 per cent to 41 per cent in 2018–19, 39 per cent in 2020–21 and 38.5 per cent in 2021–22. It does not hit the $4 million cap so how can it be captured by it? This equates to a loss of $477 500 in R&D grants over four years. This is still well below the two amounts of $12 million that this minister told the public of Western Australia, trying to —

Hon Alannah MacTiernan: What is the document that you are quoting from?

Hon PETER COLLIER: This is a key political point. The minister will get her chance in a minute.

Hon Alannah MacTiernan interjected.

The PRESIDENT: Order! There is actually quite a bit of noise in the chamber. I know that the member speaks quite quickly anyway, so he is quite difficult to follow sometimes. Could members just keep the noise down. I am sure that people will have an opportunity to have their say in due course.

Hon PETER COLLIER: We will take things a step further. If Carnegie maintained R&D expenditure at a similar level to previous years—approximately $6 million per annum—as well as the additional $15 million in expenditure on the Albany wave energy project, then it would hit the $4 million cap. However, under this scenario, the impact would be a $2.8 million loss falling from $17.3 million in grants to $14.5 million over a four-year period. What I am saying —

Hon Alannah MacTiernan: What is that document?

Hon PETER COLLIER: They are my notes. The minister should have a look at the annual report; that is where my information came from. She should go and have a look at Carnegie's annual report; that is where it comes from. A person does not need a PhD to do this—just do not throw political hand grenades out there.

Hon Alannah MacTiernan interjected.

The PRESIDENT: Order!

Hon PETER COLLIER: Can I say, Madam President —

Hon Sue Ellery: He is getting hysterical.

The PRESIDENT: Order! There is a bit of that happening.

Hon PETER COLLIER: This minister is up to her neck in this thing. I have tried relentlessly to get to the bottom of it and every single time I have been battered. I can tell her that that is not going to work. I have tried using freedom of information processes. The very first FOI request I made for documents from 17 March to 17 November was fine. I got all the documents. I put another request in for documents from 17 November to 26 October. They came back to me and asked if I could reduce the scope because it related to about 1 000 documents. We reduced the scope to three months. I got a response last week. Can members guess what it said? It asked whether I could reduce the scope further because it related to 1 000 documents! But there were 1 000 documents for the 12-month request; now there are 1 000 documents for three months! I can tell the minister that on this matter, I am not going to go away. This minister should have distanced herself.

The Premier said on 18 June 2016 that the public interest, transparency and openness must come first. Apparently, that applies to everyone apart from Hon Alannah MacTiernan. I will make this perfectly clear yet again, and I will emphasise it: my issue is not with Carnegie—it has its financial issues and I hope it gets through them; I really do—but with Hon Alannah MacTiernan because she made the announcement with Carnegie. She had a clear, unambiguous connection with Carnegie. Even if she did sell her shares and donated them to charity afterwards, so

be it; that has nothing to do with this. The minister has a perceived conflict of interest without a shadow of a doubt. If not, the standards of this government amount to naught—they amount to absolutely nothing. It means that a person can be a board member of a company and then sit in cabinet a month later and not have a conflict of interest. For goodness sake, Hon Donna Faragher's husband worked at Woodside and members opposite wanted to tar and feather her! Members opposite should not come in here with their self-righteous indignation.

This minister organised a meeting with Carnegie one month after the election. Five companies had put in for the tender process. How many companies did Hon Alannah MacTiernan meet with? One, and it was the company that got the contract. She did not even meet with any of the other four. She did not meet with them! She said in answer to one question she was asked that that was part of the procurement process—one engages. But a minister should never engage with companies as part of a procurement process. Again, if it happens, it shows the diminished standards of this company. The minister held a round-table conference in Albany and three renewable energy companies turned up. One applied for the tender process and the other two were not even part of it. The minister claimed that she did not know who put in submissions—she most definitely did know! A briefing note clearly shows that she knew the five that had provided submissions. This minister has misled the house, her standards are appalling and she had a clear conflict of interest in this project. Quite frankly, she owes this house an apology for misleading it.

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.35 am]: I need to let the opposition know that if its aim by the end of this year was to unite the government team more than I thought was actually possible, it has done it. Congratulations for uniting us more than I thought was possible. Its attempted attack on Hon Alannah MacTiernan this morning resulted in me having to tell all our members of Parliament that they could not all get the call to stand in her defence. That is what they wanted to do. I had to tell them that I was sorry that they would not all get the call.

Several members interjected.

The PRESIDENT: Order! The last speaker was heard virtually in silence. I think you should apply that to the speaker who is on her feet at the moment.

Hon SUE ELLERY: Thank you, Madam President. I had to tell members this morning that they were not all going to get the opportunity to speak. That is what they wanted to do. I had to deal with two things this morning. The actions of one of your members in starting the dogs on Hon Pierre Yang is one of the lowest acts I have seen in my time in politics. The article in *The Australian* today was a disgrace, but that was started by someone on your side. *The Australian* is a disgrace.

Point of Order

Hon NICK GOIRAN: Madam President, this member has been here long enough to know that she needs to be relevant to the motion. The situation with respect to Hon Pierre Yang has nothing to do whatsoever with the discharge of responsibilities of the Minister for Regional Development. That is my first point. My second point is that the honourable member is also experienced enough to know that it is unparliamentary to just broadbrush slur the opposition —

Several members interjected.

The PRESIDENT: Order! If you want this debate to continue, you will be quiet.

Hon NICK GOIRAN: As I was saying, this member is experienced enough to know that it is inappropriate to broadbrush slur the opposition without naming a name. I ask her to withdraw that comment. The first point of order is plainly the unfortunate circumstances in which Hon Pierre Yang finds himself, which is irrelevant to this motion.

The PRESIDENT: There is no point of order on either count. The member knows himself that when somebody is responding to a motion, the debate can be wideranging and extremely broad. The Leader of the House did not actually reference which member she was referring to in those latter comments and so I am going to allow her to continue.

Debate Resumed

Hon SUE ELLERY: Thank you, Madam President. Nevertheless, the outcome this morning was that the opposition has made us more united at the end of the year than we were when we started. I did not think that was possible but the opposition has done that, so thanks very much. Let us talk about the honourable member.

Several members interjected.

The PRESIDENT: Order! Members, there is limited debate time. The first speaker was heard in comparative silence. This speaker has eight minutes to go and I suggest that you let the Leader of the House have her say and you listen to her.

Hon SUE ELLERY: Let us talk about the agricultural portfolio inherited by Hon Alannah MacTiernan.

Hon Peter Collier: What about Carnegie!

Hon SUE ELLERY: I am talking about the motion. Let us talk about the portfolio she inherited. Let us talk about the two hapless, hopeless ministers for agriculture from whom she took over and who, during their time, saw the Department of Agriculture and Food absolutely gutted financially. That is what those two ministers for agriculture oversaw, one of whom is still in the chamber with us. Research and development in the agricultural ministry was gutted. The budget of the Department of Agriculture and Food was gutted. Hon Alannah MacTiernan has built that portfolio back up from the mess in which it was left.

The real thing that members on the other side do not like about Hon Alannah MacTiernan is that she is effective, she is hardworking, she takes the fight right up to them, she is innovative and she delivers on the things she says she is going to do. That is what they do not like. She is in their face with it; that is what they actually do not like about her. She does not take a backward step; that is what they do not like about her. It is too confronting for them to deal with the fact that she is such an effective minister.

I want to refer to some quite succinct points that the Premier made in the other place when he was asked about the minister. This is what he said —

> She is a much-loved Western Australian. She can go out and mix it with anyone. She has been on the national stage. She has been on the local stage. She has been in this house. She has been in the upper house. She has worked in private industry. She has worked in government. She is an extraordinary Western Australian. We are very proud of her … She is a great advocate for our state locally, internationally and interstate. I —

This is the Premier, and I join with him —

> have the utmost confidence in Alannah MacTiernan. She is someone who is known by Prime Ministers and federal opposition leaders. She is known internationally. She is a great Western Australian.

The Premier also said —

> … she can walk down any street in Western Australia and everyone knows who she is.

The Premier said that the minister is a great Western Australian and she is doing a great job. That was from *Hansard* of 20 June this year in the Legislative Assembly.

I want to touch on some of the things Hon Alannah MacTiernan has achieved in her portfolio in the short 20 months in which she has held it. She is building back up the Department of Agriculture and Food, which was left decimated by the so-called traditional defenders of that portfolio, the conservatives. She is building it back up after it was left decimated. The minister has provided new funding for research and development to drive growth and to keep the state's grain industry internationally competitive, and is rebuilding research and development in the agricultural sector. Under this minister, pastoralists can now register for more than $45 million worth of carbon-farming projects, funding has been provided for the Transforming Agriculture in the Pilbara project, and the lease agreement with Kimberley Agricultural Investment Pty Ltd has been finalised for the Ord development after two years of negotiation. She launched the $1.5 million value add agribusiness investment attraction fund and the $18.6 million investment fund for wild dog control, and established the North Wanneroo Agriculture and Water Taskforce. She has progressed pastoral land reform, amended the Animal Welfare Act, and secured ongoing funding for the natural resource management program and additional funding over three years to support the activities of the Southern Forests Food Council. In the area of digital technology, $5 million has been provided for the first round of digital farm grants. That list is already 10 times more than the last two ministers for agriculture achieved in the whole 8.5 years of the previous government.

In terms of regional innovation, the minister has established the $4.5 million regional new industries fund to drive innovation across Western Australia. Up to $2.7 million will be spent across regional WA for initiatives that build a regional innovation pipeline and drive job creation at a local level. A further $1.4 million is to be invested in inter-regional projects that drive collaboration between innovators across the state.

On the issue of regional jobs and economic growth, the minister established dedicated local content advisers in each regional development commission and online portals to maximise tender and job opportunities, provided $22.5 million in regional economic development grants, and led the redesign and development of the Port Hedland Spoilbank marina.

In terms of Aboriginal economic development, the minister has provided $4.4 million. Remember, the mover of the motion was the Minister for Indigenous Affairs when the then Premier randomly announced the most controversial thing to happen in an Aboriginal affairs portfolio—that he would close remote communities. The then Premier left the Minister for Indigenous Affairs isolated, and he had to clean up the mess. This Minister for Regional Development is enabling Aboriginal economic development.

The other thing to bear in mind, because this is a time-limited debate and many people on my side want to speak —

Hon Peter Collier: They can't.

Hon SUE ELLERY: They will give it a good shot.

Does anybody remember the disaster that was Muja A and B coal power station? Who was the minister who presided over that? For those who are new to the chamber, it was Hon Peter Collier. Who was the minister at the time of the solar tariff scheme blowout? For those who are new to the chamber, it was Hon Peter Collier. Who was the Minister for Education who went on the radio and said there would be no job cuts in education, but within days there were hundreds? Who did that?

Several members interjected.

The PRESIDENT: Order!

Hon SUE ELLERY: That was Hon Peter Collier. On this side we have a minister who is well respected. In whichever bit of her portfolio members choose to pick, she is well respected and well known. She is well known because she is a hard —

Hon Peter Collier: You need to get out more.

Hon SUE ELLERY: Does the member know what? When members are in government, they do get out. I know what it is like in opposition. I know it is hard. I know that opposition members do not get the invitations they would like to get. But our members, as members of government, are out and about every day, working with communities to deliver on our election commitments. We get feedback directly. The member knows what it is like in government. Not all members opposite do, but Hon Peter Collier does. Western Australians are not shy in speaking up. Do members know what they say about this minister? They love her. They think she is effective and hardworking. They know that she delivers on the things she promises. She is innovative and collegiate. She is an outstanding minister of the state.

Hon Tjorn Sibma: One of you has to be!

Hon SUE ELLERY: Don't you start, honourable member! Do not start with me today!

Several members interjected.

Hon SUE ELLERY: Do not start!

This minister is effective and hardworking. She is achieving outstanding things in cleaning up the mess left behind by the previous government.

HON JIM CHOWN (Agricultural) [10.47 am]: I congratulate Hon Peter Collier on his motion today, which is targeted at Hon Alannah MacTiernan and the discharge of her duties as Minister for Regional Development. We have just heard the Leader of the House go through a whole list of things the minister has implemented from an agricultural perspective. I do not think the money attributed to that list would accumulate to more than $15 million or $20 million. Of course, a lot of that list was nothing more than committees and paper shuffling, which actually will not —

Several members interjected.

The PRESIDENT: Order! The speaker is on his feet. If you want the call, seek it later.

Hon JIM CHOWN: That list will achieve very little in the agriculture portfolio, other than be a headline. We have just heard the headlines. Let us look back on the last 8.5 years of the Barnett government and what was spent on regional development and agriculture through royalties for regions. I am sure one of the Nationals WA members will get up and go line by line through what the previous government achieved on behalf of agriculture.

Hon Colin Holt: You worry about your speech, we'll worry about ours.

Hon JIM CHOWN: I will not take the member's speech off him.

Regional development is essential for the financial wellbeing of the whole community of Western Australia. In regard to regional development, this government has achieved absolutely nothing.

I will refer back to what I believe were some of the greatest regional development initiatives, which have enhanced the state for the last hundred years. I am talking about developments such as the goldfields water system—the Kalgoorlie pipeline—which was started by a government in 1896 or 1897 under Sir John Forrest against massive opposition. We are talking about the expenditure of a whole state budget, which is equivalent to $1.5 billion today. The opposition was a mess over that initiative. Members on the opposite benches may laugh, but these sorts of regional developments are essential for the benefit of this state.

Hon Darren West: What was it like in those days?

Hon JIM CHOWN: Is Hon Darren West sniggering?

That particular regional development initiative was opposed by virtually every member of the opposition. I am sure that if the Greens were active in those days, they would have rallied and protested against the initiative despite the fact that it enhanced Western Australia not only at the time, but also for the next 100-odd years. Indeed, it is still operating today. We need to bear in mind that at that stage there were only 180 000 people in

Western Australia; today we have a population of 2.6 million, which is a massive increase. Prior to that particular state development project, in the early 1890s, C.Y. O'Connor built Fremantle port, which, today, is still active and servicing Western Australia.

Hon Alannah MacTiernan interjected.

Hon JIM CHOWN: I will get to you, Minister MacTiernan. Just give me time.

C.Y. O'Connor built that port over 100 years ago and it continues to serve WA today with 15.3 million tonnes of input and 19.5 million tonnes of exports. Most of those exports, which service regional Western Australia, arrive at that port by road.

Hon Alannah MacTiernan: Member, can I just make an interjection? Do you remember another great achievement of C.Y. O'Connor was the Midland railway workshops, which a conservative government closed down in more recent times in the 1990s?

Hon JIM CHOWN: Yes, I will take that interjection, minister. That is true. It was closed down because it was commercially unviable. All the rail lines et cetera were not carrying the tonnage that was required due to the new configuration of heavy transport throughout Western Australia—an issue that remains today. It is cheaper by road —

Several members interjected.

The PRESIDENT: Order! Order!

Hon JIM CHOWN: It is cheaper to move commodities by road than it is by rail, unless they are bulk commodities of large tonnages. The minister knows that. Minister, I will get to you in a minute; do not worry about that.

One of the great regional and state developments that this government has put in the bin is the Roe 8 and 9 initiative, which would have allowed for the smooth transition of hundreds of trucks a day—up to 700 trucks off Leach Highway—that originate in regional Western Australia from as far away as Kununurra and all points south, east and west. This government and Hon Alannah MacTiernan, when she was the minister for transport —

Hon Alannah MacTiernan interjected.

The PRESIDENT: Order!

Hon Alannah MacTiernan interjected.

The PRESIDENT: Minister! It is really hard sometimes to hear the speaker. It is really difficult for Hansard if people are yelling across the chamber, so I ask you not to do it.

Hon JIM CHOWN: Thank you, Madam President.

The Roe 8 and 9 initiative was developed by the Barnett government. Had we won government at the last election, it would have been under construction today and it would have provided a regional development initiative to the rural community that I represent especially and regional WA as a whole, with equivalent benefits for the next 100 years to those from the Kalgoorlie pipeline. The Minister for Regional Development, who was the minister for transport under a previous Labor government and a former federal member for Perth, is the most senior minister and has the most experience in the McGowan Labor government, sits back and does not say a word about the intention of the McGowan Labor government to stop the development of Roe 8 and 9.

Several members interjected.

The PRESIDENT: Order! I thank Hon Jacqui Boydell for that advice about yelling across the chamber. Follow your own advice. Hon Jim Chown.

Hon JIM CHOWN: Thank you, Madam President. I am sorry; I missed the interjection, so my apologies.

The PRESIDENT: That is all right; I heard it.

Hon JIM CHOWN: Hon Alannah MacTiernan is the Minister for Regional Development; Agriculture and Food and just for her information, in the last calendar year, 108 992 containers with agriculture products went to the port of Fremantle by road. That is —

Hon Alannah MacTiernan interjected.

Hon JIM CHOWN: Madam President.

The PRESIDENT: Order! Hon Jim Chown.

Hon JIM CHOWN: Thank you, Madam President. That is 280 000 heavy vehicle movements into and out of the port of Fremantle in a highly inefficient manner due to the fact that the construction of Roe 8 and 9 is not underway. The minister has done nothing and said nothing about that. She complied with the requirements —

Several members interjected.

The PRESIDENT: Order, order! Which part of "Please do not raise your voice while the speaker is on their feet" do people not understand? If members want to get the call after Hon Jim Chown, I suggest they be quiet.

Hon JIM CHOWN: The only solution that the minister has to these inefficiencies is to heavily subsidise rail containers to Kewdale. At this stage, millions of dollars of public moneys are going to be spent on subsidising this rail freight from the port of Fremantle to Kewdale. The best the government can do with the 769 000 containers that move into and out of Fremantle port is to have 16.1 per cent on rail. When Hon Alannah MacTiernan was the federal member for Perth, she had the audacity to say in a press release that by 2021, there would be a 40 per cent achievement. World's best practice is 30 per cent and, at this stage, the government is not even halfway. Regional Western Australia and its mining, agriculture and fishing industries that use Fremantle port require efficiencies in transport. Transport makes up 30 per cent of costs to regional WA. We compete in an international marketplace. The minister's lack of intention, support and commitment for this particular matter in her regional development portfolio, in addition to her commitment as Minister for Agriculture and Food, is abysmal. As I said before, she is the most senior minister and she is representing a very important industry of this state—an industry that year in, year out accumulates between $10 billion and $12 billion for the community at large. That the industry has inefficient access to its major port is beyond belief. I ask the minister—I am sure that she will give a response at some stage in the debate on this motion; I certainly hope she does—how she will achieve transport efficiencies from regional WA to the port of Fremantle, given that she will not support any intention to have Roe 8 and 9 re-implemented, and why she will not take the $1.2 billion on offer from the commonwealth government. If we are to remain competitive, it is absolutely essential that we have efficiencies in the transport chain. This government is doing the opposite. All we hear is some myth about an outer harbour at some stage in the future. It is a myth that will never come to fruition.

Hon Alannah MacTiernan interjected.

Hon JIM CHOWN: The minister knows that it will never come to fruition. She knows that at this stage, Fremantle port is probably only at 50 to 60 per cent capacity. If it were operated in the correct manner, it would have the ability to move at least double the number of containers. The outer harbour was going to cost between $7 billion and $8 billion of public money. If the government is serious about building an outer harbour, let us see it as a budgeted figure with some planning underway. Let us see whether it can be accomplished in the next 30 to 40 years. Fremantle Harbour has proved to be operational into the future.

The PRESIDENT: Hon Diane Evers.

HON DIANE EVERS (South West) [10.57 am]: Thank you, Madam President.

Several members interjected.

The PRESIDENT: Order! Hon Diane Evers has been given the call.

Hon DIANE EVERS: I would like to say that I am disappointed but I find this too amusing. I cannot believe this display of childish behaviour. It is phenomenal, and I hope everyone out there is watching this live as we do this. It feels worse than any muck-up day that I have been to on the last day of school. I am appalled, amused and perplexed, but I will get to the statements that I would like to make about this motion.

Unfortunately, I do not have all the detail about wave energy that other members have gone through today, but I have lived in Albany since this proposal first came forward, and I have been looking forward to it since 2008. Carnegie Clean Energy was there at the time. It was working well in Cockburn Sound. I do not know why the government at that time did not take the opportunity to develop this source of energy. It is a display of living in the Dark Ages, which members of the former government continue to do. Any advance we had in renewable energy during the two terms of the previous government was really done with reluctance by the government, with very little opportunity for others to get into the market and develop things. Carnegie had to do it on its own without the backing and support of the then government. What a useless waste of time that was. As I said, by 2012 it was already going well. It should have happened then. When this government came in and said that it would introduce wave energy, was that not great? Let us help that to happen rather than just try to stop the whole thing by sticking our heads in the sand, saying that we will sort climate change out some other day and wait until it is way too late. We have to do something, so let us look forward to try to get something happening with renewable energy. I was delighted to see in the news this morning that there is, I think, another $1 billion worth of investment in renewable energy happening in the south west alone. The companies out there are getting onto this without us. That is a really good thing to see, because that is where we need to go. We have just opened up fracking in the north and that will just release a lot more gas for burning and a lot more emissions for climate change. We have to do something. As I have talked about before, agriculture is one of the areas in which we can do it. That is something that this minister is doing. Unfortunately, many members have had to leave the chamber on urgent parliamentary business.

I turn to what happened to the Department of Agriculture and Food over the last two terms of the previous government. In the south west alone, not only did four offices close completely, but also Albany lost 25 staff and Bunbury lost 18 staff. Overall, 80 staff were lost in the agriculture department in the south west. This is on top of the decreases in funding during that time from 2008 to 2017. It could be said that it decreased from around $178 million to $163 million, but that is being generous, because of course royalties for regions was not supposed to be used to replace funding. The amount of funding for the agriculture department in 2008 was $177 million and that dropped to $116 million by 2017. That drop was made up with $46 million of royalties for regions funding,

which, of course, was not meant to be used to replace this regular funding. That is the only reason that the department survived, but unfortunately the survival of the agriculture department during that time meant that the government did anything that the GM promoters and agrochemical industry wanted it to do—that is, make sure that we continue farming by killing everything in the soil and that everything we grow has as little nutrition in it as possible. It did not do that much for our farmers. It kept them afloat and kept them going—we still have the farms—but our soil and climate are getting worse and worse. The difference from one year to the next are just incredible. I was talking to a farmer just yesterday down in Wellstead. He had his highest rainfall on record last year, but the lowest on record this year. Because he has adopted some new practices and is learning to keep moisture in his soil, he has bush on his farmland that still has moisture and fungi growing on it, even now when they are experiencing a drought down there.

There are things we can do to change that, and that is what our agriculture department needs to do. That is what it is beginning to do. It is starting to look to the various forms of agriculture that people want to do and is starting to put in place, or at least research, some of these options so we can get the data that shows this stuff is working. Hopefully, along the way the department will also talk to farmers who have been doing regenerative agriculture and have shown that it works for them. That is what we need to do. We need to move forward. We do not need to say how bad it was in the past; we need to make a move now. We need to change. We need to address climate change by not only reducing our emissions and not fracking more gas, but also getting carbon back into the soil, growing more forests and looking at what we can do to make this a better place.

I turn to a couple of other issues. One of the things this minister worked on was live animal export in order to meet the needs of the community, which had taken away the social licence from the industry and said that it was not happy with what was happening and that it did not like seeing sheep die on ships in the Middle East in the summertime. What did we get a couple of days ago? The live export industry said that it would not ship animals during the three months of the summertime. That is the sort of change we need. We need to move forward; we need to have positive change. I would like to see it happen. I would like to see wave energy. We need renewable energy. We need it on many different counts. We need as much of it as we possibly can have so we can get away from these continuing emissions and climate change affecting us so broadly. I request that the government continue to do some of the good work it is doing and also get an energy policy in place.

Let us look at 50 per cent renewables by 2030. I have been told it could even be 100 per cent by 2030. It can happen if the governments at both state and federal levels do something about it now. I have just heard that a car manufacturer is about to release an electric vehicle it has been ready to release here for some time. It has been used around the world and is doing really well. The company has basically said that until it gets some direction from the federal government that it will support this industry and encourage people to move to electric vehicles charged with renewable energy, it is not going to continue trying to get into the Australian market. We are just hopeless at addressing these issues that other countries around the world are figuring out they need to do something about. We have the resources to do it. We are a lucky country. Why do we not get up and do something—do the things that will make this place a better place?

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Agriculture and Food) [11.05 am]: I thank Hon Diane Evers for that support.

Point of Order

Hon PETER COLLIER: The Leader of the House has had 15 minutes in response. According to the standing orders, the lead speaker gets 20 minutes and the government in response gets 15 minutes. I cannot work out why there are two ministers speaking in response. Surely, the second minister is entitled to only 10 minutes.

The PRESIDENT: I think you will find there is no point of order. I understand where you are going. I imagine that the minister is not responding as a minister. Given that she is the point of this debate, I imagine she has sought the call as a member to provide a response on her own behalf to what you put in your motion. There is enough time left today for the other two members who have already indicated they wish to speak, and it is my intention that after she finishes, they will also get the call.

Hon PETER COLLIER: That is not my point. My point is that the government has already had its 15 minutes.

The PRESIDENT: Yes, that is right. The Leader of the House responded with her 15 minutes, as she normally would. This member has 10 minutes.

Hon PETER COLLIER: There are 15 minutes on the clock.

The PRESIDENT: Are there?

Hon PETER COLLIER: Yes, that is my point.

The PRESIDENT: That was not my understanding. It was done in a different way. The Leader of the House got 10 minutes. I thought she was going to get 15 minutes because I understood she was replying on behalf of the government. This member should be getting 15 minutes, as it turns out. It has been done incorrectly. I understand

what you are saying, Hon Peter Collier. There has been a slight misunderstanding about who the lead speaker responding on behalf of the government was today. When the Leader of the House spoke, she should have received 15 minutes, but she received only 10 minutes. Hon Alannah MacTiernan will now get 15 minutes to respond and each other member after her will complete the time. I appreciate that is not how it should have happened, but that is the way it has happened today.

Debate Resumed

Hon ALANNAH MacTIERNAN: I can understand Hon Peter Collier being concerned —

The PRESIDENT: Minister, order! You have the call; there is no need for you to be yelling across the chamber.

Hon ALANNAH MacTIERNAN: I can understand Hon Peter Collier being concerned that I might have some time to answer many of these spurious allegations. The contribution of Hon Jim Chown was just so extraordinary today. He was promoting C.Y. O'Connor. I often felt like C.Y. O'Connor when I was building the Mandurah rail line. I had the opposition out there daily criticising that decision, which of course has now been greatly accepted. I just say to the member that he is the one who is unable to learn the lesson of C.Y. O'Connor. That lesson was that people had to think for the future and think boldly. I am proud to say that not only will I not object to the development of a new port in Kwinana, I am absolutely rusted on. Indeed, in 2008, our government committed to building that port because we, like eminent farmers such as Dale Park, understood that it would be needed in the future. We committed to that and, when there was a change in government, the subsequent government continued the planning in its own lukewarm way until that great day when Jamie Briggs, the disgraced ex–federal minister; Mathias Cormann; and Mike Nahan met in an office and decided that they would chuck all that aside to build the great big dud called Perth Freight Link. As a federal member, I was proud to lead the charge against the Perth Freight Link to get good long-term planning for this state. I am a great enthusiast for the development of a new port. It is absolutely the right way to go. I urge members opposite to get into the twenty-first century. I know they are obsessed with the nineteenth century, but C.Y. O'Connor's good solution in 1900 is not the answer today. We have moved on and our city has grown massively.

I turn to the comments of Hon Peter Collier. Hon Peter Collier is right. I owe an apology. I have, in one regard, misled the house and I genuinely apologise for that. When the question was asked the other day about what other companies had submitted a proposal, I responded that I had not been advised. I now know—the member was quite correct when he quoted that document—that the other companies are in a footnote. I am sorry, but I was not aware of that. There is no doubt that I would have read the footnote at the time, but it did not stick in my mind. They were not companies of which I had any knowledge. I was not involved in any way, shape or form with the selection criteria. However, I made an error and I apologise to the house. I find it incredibly ironic for Hon Peter Collier to get up as the person talking about standards. He arguably came to this house on the back of some very dodgy branch stacking. I have gone through the contributions of Hon Graham Giffard and the former member Martin Whitely in which they set out all the incidents when people said that they did not apply to be members of the Liberal Party and that it was not them who had signed those forms. Some people call him the undertaker; I prefer to call him the calligrapher. He is obviously very talented in that regard. I make that point —

The PRESIDENT: Member, you are not helping with the debate today by making those types of comments. Perhaps you might just adhere to the motion.

Hon ALANNAH MacTIERNAN: Thank you, Madam President.

I would have appreciated it—the Leader of the Opposition was making some pretty personal comments.

Point of Order

Hon PETER COLLIER: Madam President, you have made a ruling and, quite frankly, the response to the ruling is dissent. Can I say to you that the honourable member needs to respect your ruling.

The PRESIDENT: There is no point of order. The member is making comments defending herself. I am asking her to frame them in an appropriate way.

Debate Resumed

Hon ALANNAH MacTIERNAN: Thank you. I respect that, Madam President, but some pretty vicious attacks were made on me and I do not apologise for defending myself.

Last night, I made some comments about cultural differences between the two houses to try to explain why we had those very robust —

Hon Donna Faragher interjected.

Hon ALANNAH MacTIERNAN: Members opposite sought to criticise me for doing it and trying to explain to some of the members who have never been in the other place how different a place it is.

Hon Donna Faragher: The poor behaviour by your ministers!

Hon ALANNAH MacTIERNAN: You call that poor behaviour. I am saying it is robust debate.

There is a different culture of debate in that place. As I pointed out, those people have fought for their seats in the lower house in hand-to-hand combat. They have not just been on a list. That creates a different culture and a different style. I sought not to criticise members of this house, but merely to explain why stronger expressions of concern emanated from the other place.

Hon Donna Faragher interjected.

Hon ALANNAH MacTIERNAN: If members opposite do not accept it, they do not accept it. However, it was not done in bad faith. I simply sought to share with members the experience of how different it feels in the different houses.

I have been outed by Hon Peter Collier. I have long been an enthusiast for renewable energy and renewable energy in regional Western Australia. I have seen the potential for it to transform industry and give regional areas an opportunity to get in on the ground floor of the twenty-first century economy. Since about 2006, I have consistently supported Western Australian wave technology as a state minister, when I was out of Parliament and when I was in federal Parliament. In federal Parliament I saw a variety of different companies. I saw the work of Carnegie Wave Energy, Bombora Wave Power and Protean Wave Energy because I was genuinely interested in those companies. At no stage did I ever have any shares in Carnegie. In 2011 and 2012, I was a director of Energy Made Clean because I was keen to be involved in renewable energy. At the time, I was not in Parliament. Of course, when I became a federal member, I resigned from that position. In 2011 and 2012, I was a director of EMC, which was a completely separate company from Carnegie at that time. I was also on the board of the Sustainable Energy Association. When I was in federal Parliament, I kept involved and in touch with all the renewable energy companies in Western Australia. I promoted their work and supported the work done by the previous government to take Carnegie on its CETO 5 journey. Towards the end—I think it was December—Carnegie and EMC merged. That had nothing to do with any support that I was giving wave energy. That support totally predated the merger. By that stage, I had no active involvement in EMC. Indeed, the class of shareholdings I had were not in any way involved in that merger with Carnegie. At no time did I have any financial interest in Carnegie. I was aware there would be a perception of an interest because I had that other class of EMC shares, so when we won government and the Premier contacted me to invite me into the ministry, I immediately divested myself of those shares. I divested by way of giving those shares to charity so there could be not suggestion at any time that I had profited—even though, quite clearly, this class of shares was completely separate. I was absolutely determined that I was not going to sell them and that I was going to give them away, because my support for wave energy has been clearly demonstrated, over more than a decade, to have absolutely nothing to do with my personal interest. I continue to say that this is a project we would love to get up.

The member is quite right that Carnegie Clean Energy is having struggles and that it is a complex time for that company. Part of the destabilisation of that company has indeed been the fact that a very, very considerable change to the R&D tax rebate has been mooted. It is true that that has not actually happened yet, but, of course, because it is on the books, companies cannot go ahead and act as if they will get that rebate. The previous government used to budget on the basis of, "We might get a change to the GST floor, so we'll just write that into the budget." Honestly, this company, like many other companies, has been in hiatus from May, when this announcement was made, until now and going into next year, and it does not know what the situation will be over 2018–19. Of course that will affect how it structures its activity. If a company thinks that it will only be able to get one-third or one-quarter of what it was anticipating, it will have to pull back on the work that it does. A company cannot prudently go into and make commitments on the premise that it is going to get this R&D tax concession, when the federal government has a piece of legislation stuck in the Parliament that it cannot move on and no-one knows what is going to happen in that regard. Of course that will negatively affect these companies. I urge the member to read the letters written by Hon Mike Nahan and Hon Mia Davies, who actually set this out in respect of its impact on another very excellent Western Australian company, Northern Minerals.

Hon Peter Collier: How much will they lose?

Hon ALANNAH MacTIERNAN: What does the member mean by "How much will they lose?"

Hon Peter Collier: You said $12 million. How much will they actually lose?

Hon ALANNAH MacTIERNAN: My understanding is that it was proposing to spend considerably more than that $4 million. If the member tables these documents—I asked him to table the documents he is quoting and he just said —

Hon Peter Collier: It's in their report!

Hon ALANNAH MacTIERNAN: The annual reports are actually —

Hon Peter Collier: You should go and have a look at the legislation and have a look at the report and you will see that what I said is correct.

Hon ALANNAH MacTIERNAN: Show us the document! Member, the advice that we have had from many Western Australian companies is that the change in this R&D tax provision is changing what companies are able to do; they are having to slow down their projects because there is complete and utter uncertainty about the tax regime. All members opposite have proved today is that they are completely hopeless, they do not know what they are talking about and they have nothing of substance and, moreover, they have absolutely no vision for this state!

Several members interjected.

The PRESIDENT: Order!

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [11.24 am]: I rise to speak very briefly because I know that other members want to speak on this very important issue. Given that another regional member wants to speak, I look forward to their contribution.

I am exceptionally disappointed that the Minister for Regional Development's whole contribution was simply about herself. There was no communication about regional development —

Hon Alanna Clohesy: What was the motion about?

The PRESIDENT: Order!

Hon JACQUI BOYDELL: I have read the motion, member. It actually refers to regional development, agriculture and food. From my perspective, the Minister for Regional Development said nothing about her aspirations for regional development. That is an exceptionally disappointing, but expected, response given that —

Hon Alannah MacTiernan interjected.

The PRESIDENT: Order! No more yelling; we only have a few more minutes.

Hon JACQUI BOYDELL: Thank you, Madam President. It is to be expected, given that the royalties for regions fund and development commissions are in disarray, and community organisations, hospitals, education facilities et cetera are really struggling in regional Western Australia —

Several members interjected.

The PRESIDENT: Order! There is only one speaker on her feet. Hon Jacqui Boydell has the call.

Hon JACQUI BOYDELL: It is about how regional communities interact with this government. It is not only me saying that, it is also people I get out and speak to. Many, many people in regional Western Australia, in the Mining and Pastoral Region, feel the same way.

I indicate to members of this house—this underpins the Minister for Regional Development's ideology—that in 2009, during debate on the introduction of the royalties for regions legislation in the other place to establish the royalties for regions fund to provide infrastructure and services, to develop and broaden the economic base and to maximise job creation and improve career opportunities in regional WA, the current Minister for Regional Development, Hon Alannah MacTiernan, at that point, during consideration in detail of the bill, said —

> … how this bill gives any assurance that royalties for regions will continue as an amount of money additional to that which is routinely spent on regional areas? … What would prevent a future government from simply creating accounts to fund routine infrastructure and service delivery in the regions?

I suggest to members that that is exactly what the Minister for Regional Development has now done. I find that exceptionally disappointing, as do the people of the Mining and Pastoral Region. We have asked the minister and the Premier many times to come clean on their plans to dismantle the regional development commissions, to no avail.

Several members interjected.

The PRESIDENT: Order! It is very hard to hear Hon Jacqui Boydell over that.

Hon JACQUI BOYDELL: Thank you, Madam President. One person who professes to be a regional member is the member for Bunbury, Don Punch. He was the chief executive officer of the South West Development Commission for 18 years. Mr Punch's Labor Party bio lists his successes during his time at the head of the South West Development Commission, including supporting the development of aged-care services, youth services, town centre programs and tourism development—just to name a few. Thank you, Mr Punch, member for Bunbury. The expansion of and investment in all those areas is exactly what Mr Punch oversaw as the chief executive officer of the South West Development Commission, but he now sits within a government that has ripped funding from those programs.

The super departments have really buried regional development in terms of the Department of Regional Development. Also in my electorate, the Ministers for Health and Regional Development have paid lip-service to places like Laverton Hospital, which they have said is subpar. The government has pulled funding from that project, which had been promised, and the project has not seen any further government commitment. I look forward to that becoming a commitment. The Shire of Wiluna has had to hand back money, as have many other local governments.

I am trying to wrap up quickly. The Local Projects, Local Jobs program continues to be an issue for regional communities, particularly because no Local Projects, Local Jobs funding was promised in any Nationals WA or safe Liberal Party seats during the election campaign. We have seen the government roll that out. I look forward to the inquiry into this program so that we can understand how royalties for regions funds could have been ripped from regional communities to fund Perth election promises.

HON DR STEVE THOMAS (South West) [11.29 am]: I wish to make a contribution in the short time remaining. The Leader of the House mentioned projects, and I find that very interesting. Particular comments were made about the Carnegie project. Unfortunately for Hon Alannah MacTiernan, being Minister for Regional Development makes her the de facto minister for dodgy regional Labor election commitments. I am interested to know how involved she was in the decision-making process or whether she simply inherited that dodgy process from the Premier. I think the debate about Carnegie has missed a critical, critical point, and Hon Diane Evers may have missed the questions and answers given in the chamber in recent months. That project was first announced as an energy project. It was a trial to produce one megawatt of energy, increasing to 10 megawatts, but it has suddenly fallen apart. The answers of the Treasurer; Minister for Energy in *Hansard* tell us that it is now a trial—a research project—not an energy delivery project. The parameters have been changed. More importantly, a critical point has been missed in the debate for all those who like wave energy. I cannot find out how many full-time equivalent jobs this project has created in Albany. The best I can discover is that there might be one. This $20 million regional energy project—which is no longer a regional energy project—is as far as I can tell employing one person in the regional area in which it is supposed to be operating. If that is regional development, it does not appear to be working too well.

The same is true for another project. The Minister for Regional Development also inherited and oversees $30 million, in theory, for a Collie solar farm. The project that was mooted has been put together, but guess how many FTE jobs there will be in Collie as a result of the $30 million investment in a Collie solar farm managed by the Department of Regional Development. The answer is that it looks like none. It will not even achieve the Albany level of one job. There will be zero jobs. If at the end of the process it ever gets up, it will be operated remotely out of Perth. Regional development? We are up to $50 million and so far $50 million of regional development funding has resulted in one job in the regions, and the rest will go into Perth.

They are not the only ones. A $30 million biomass plant has also been mooted for Collie. If we ever get there, maybe there will be a couple of jobs in Collie for that—maybe someone will be sweeping up around the corner. The reality is that $80 million of regional development funding will not provide a lot of regional development. Whether the minister made those decisions or they were part of the cabinet process or the opposition process that promised them, in the end it is her job to deliver, unfortunately for her, projects that have become the regional development dud Labor election commitment process. The minister will have to face that significant problem for many, many years to come.

The Leader of the House made a couple of comments about what was said before and after the election. In the minute and a half left, I will talk about a key issue in regional development. I refer to the line item for Lake Kepwari on page 178 of the budget papers. I will read some comments about the development of Lake Kepwari in Collie by the Labor Party before and after the election because they are very interesting. On 6 December 2016, an article attributed these comments to the member for Collie–Preston —

> Lake Kepwari could soon become a premium water skiing and wakeboarding destination …
>
> He said no action had been taken for eight years to develop the lake and it "was about time something was done".
>
> …
>
> "This project has only been held up by a lack of political will from the Liberal–National Government and a refusal to cut through the red tape," Mr Murray said.

He then listed all the things that the Labor Party would do. After the election, in October 2017—the member for Collie-Preston promised it within six months—he said —

> "Lake Kepwari is close to opening and the people of Collie can be confident that they will be skiing on the lake by the time the weather has properly warmed up," …

That was 14 months ago. Let us have a look at what has been said recently, because this motion is about a problem with the Labor Party's regional development program. I quote from an article of 21 August 2018 —

> Premier Mark McGowan said the plan to open Lake Kepwari for public use was still an ongoing process … one year after it was promised.
>
> …
>
> "It's a complex issue, it involves a whole range of technical matters and they're not easy to resolve.

Motion lapsed, pursuant to standing orders.

HON PIERRE YANG

Disclosure Requirements — Personal Explanation

HON PIERRE YANG (South Metropolitan) [11.34 am] — by leave: I would like to explain a situation. Section 12 of the Members of Parliament (Financial Interests) Act 1992 states that, other than a trade union, if a body or organisation does not have as one of its objects or activities the promotion of the economic interests of its members in any occupation, there is no disclosure requirement. After being contacted by the media, I amended my return to add the Association of Great China Inc, the Northeast China Federation (WA) Inc, and the William Langford Community House. I thought I had failed to disclose them. After reading the newspaper articles on the Premier's press conference yesterday, I had a detailed read of the aforementioned section. I am of the view that although legally they were not required to be in my annual return, I should have disclosed my membership of those two organisations and William Langford Community House. I amended my return to reflect my membership of those two organisations and William Langford Community House. I have apologised for the oversight previously; I now apologise to the house for the oversight.

I did not seek to conceal my membership of those organisations. I disclosed my membership of one of the organisations in my expression of interest for preselection with the Labor Party. The other group did not exist at the time of my nomination for preselection. I chose to resign my membership of those two associations or organisations partly for my family, due to the intense media attention. My family has gone through a very tough time. I feel very sorry to have brought this on my wife.

A journalist and a cameraman came to my house this morning. I respect media freedom. I respect the freedom of the press. I am a beneficiary of this great country's democratic values and democratic institutions. I respect the media and the freedom of the press. I understand that the journalist and the cameraman had a job to do; I respect that. When I politely asked them to respect the fact that my children were just about to come out to go to school, they respected that. I sincerely thank them for giving that respect to my family.

I take my reputation seriously. I take my integrity seriously. I did not seek to hide my membership of those two associations. I am not and have never been a member of the WA branch of the Australian Council for the Promotion of Peaceful Reunification of China. I do not know why my Chinese name appeared on that website. I believe Hon Julie Bishop, MP, was similarly baffled when she was told that a "Julie Bishop Glorious Foundation" had been set up in her name. I instructed my lawyer to write to the association to remove my name last week.

Madam President, as a new member of this place I have to be very honest and say that it has been very tough over the past few days. I would like to thank those who have called and texted me, and come to me to voice their support and concern. This morning, one of my mates from my Australian Army Reserve training days texted me from far north Queensland to wish me well. He is an Australian of Western European heritage and I believe his family has been in Australia for generations. I want to say to everyone who has showed their concern for me that their support and trust means everything to me. For that, I thank them. I would like to thank the Premier for his staunch support and unwavering defence of me. I would also like to thank my colleagues—all of them—for their support.

It has been 20 years since I came to this great nation as an international student. I have had the most incredible experience as a migrant, including a world-class education in law and political science, a professional career as a legal practitioner, the honour of serving as an officer in the Australian Army Reserve, deployment on Operation Southern Indian Ocean, serving as a local councillor for the City of Gosnells, and the privilege and honour to be a member of this honourable house of the Parliament of Western Australia. For that, I am eternally grateful and humbled. Such a migrant experience is not always possible in other countries around the world. It is possible in Australia because it is Australia. Australians give a fair go to everyone, irrespective of their background. I deeply appreciate the opportunity I have been given by Australia and Australians. I have been an Australian citizen since 2006 and I am proud to be an Australian citizen. My wife, Hazel, is an Australian citizen. My two children, Pierre Jr, who is six years old, and Malcolm, who is four years old, were born in Australia and they go to a local Catholic school in my electorate. My mother married a Greek Australian, who has been living in Australia for 60 years, and after 17 years they are still happily married. Australia is my home. I wanted to be an Australian and I was given a fair go to be an Australian by Australia and my fellow Australians.

As a migrant, I served Australia and my fellow Australians in the Australian Army Reserve for more than 10 years. I reached the rank of captain, and I was deployed on Operation Southern Indian Ocean between 5 May and 22 June 2016—49 days—to the middle of the southern Indian Ocean, some 2 500 kilometres west of Perth. During weekend training in February 2016, my company commander came to my platoon with a piece of paper and asked me to distribute it within my platoon. It was a communication from Army headquarters calling for an Army reservist who could speak Mandarin Chinese to serve on Operation Southern Indian Ocean, which was to look for the missing Malaysian Airlines flight MH370. I told my company commander that I could speak Chinese and his response was, "Oh yes, of course you can. Sorry, I forgot about that." My company commander, battalion commander and battalion adjutant put in my name to the Army headquarters that weekend. Within a week, I was selected to be deployed by Army headquarters. I was excited to be deployed. During my training and service in the Australian Army Reserve, I was told that to serve Australia overseas on operations was a big deal and every

Army reservist should aspire to it. There were people from the American company Phoenix International, which is a major contractor for the United States Navy, and there were also people from Canada. The ship's crew was from China. I worked closely with and reported to the representative of the Australian Transport Safety Bureau, a gentleman who was from the United Kingdom. That year's weather was particularly rough. We had swells as high as eight metres and wind speed reaching 55 knots, or 30 kilometres an hour. Back on the shore of Western Australia, the wind was two to six knots and the swell height was 0.5 to two metres. I do not want to overemphasise a deployment of a non-combat nature, but I did put myself in situations of risks and hazards. Help would have been days away if there had been a safety issue while I was in the middle of the southern Indian Ocean. I served Australia and my fellow Australians, and I am proud of that service.

I want to be a role model for my children and the children of all Australians, including those who are of migrant and culturally and linguistically diverse backgrounds, to show them that every Australian, irrespective of their background, can be part of every facet of our civic community, including becoming a member of our great democratic institutions, the Parliaments. I am only the second member of this Parliament of Australian–Chinese heritage, and the only currently serving member. That is despite the fact that the first migrant of Chinese heritage came to this state in 1829, shortly after the establishment of the Swan River Colony.

I have tried every day for over two decades to be an upright Australian, and to suggest that I am not absolutely loyal to Australia is deeply hurtful. What hurts me even more is the thought that my children are Australians of Chinese heritage, who were born in Australia, and when they grow up they may be viewed as having questionable loyalty to Australia. As a parent, I am just shattered by that thought.

I want to make a contribution so that in the future children of all backgrounds can have the same opportunity to serve our country and our state in whatever capacity they wish. I know it is hard to be one of the first few in any occupation, but I hope that with my contribution it will be easier for future generations who wish to be part of this great democratic country and the great democratic institutions of our great commonwealth and our state. This is why I sought to serve in the Australian Defence Force, in local council and in my current capacity as a member of the Parliament of Western Australia. Australia is my home. My loyalty is to Australia and only to Australia.

Government members: Hear, hear!

CRIMINAL LAW AMENDMENT (INTIMATE IMAGES) BILL 2018

Committee

Resumed from 6 November. 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 4: Chapter XXVA inserted —

Progress was reported after the clause had been partly considered.

Hon SUE ELLERY: I need to make a correction regarding something that I said during the debate when this bill was last before the chamber. During debate on the bill on Tuesday, 6 November 2018, Hon Michael Mischin inquired whether an incapable person could give consent under the definition in proposed section 221BB. As I said at the time, the advisers at the table sought advice on this question from the Director of Public Prosecutions during the dinner break. The response I provided immediately after the dinner break to the effect that an incapable person would be deemed to be incapable of giving free and voluntary consent was intended to be a summary of that advice. I wish to make a correction to my response to more clearly state the legal position. An incapable person is not deemed to be incapable of giving free and voluntary consent, but, rather, depending on the evidence related to that particular person's capacity, there may be a strong argument that they are not able to give free and voluntary consent. To be clear, the DPP's advice was that there are many circumstances in which a person may be rendered incapable of giving free and voluntary consent, including mental impairment, cognitive deficiency or severe intoxication. Depending on the evidence in a particular case, the DPP may be able to prove that an incapable person or other person who is permanently or temporarily impaired did not freely and voluntarily consent, thus proving an absence of consent. Due to the fact that each case is unique, there is limited case law on this point but it is well established that incapacity can negate consent. I note there was a recent case reported in the media on 13 November 2018 involving a girl being raped by two men in Kings Park who were intoxicated and that the jury found her not to have freely and voluntarily consented. The two men were duly convicted of sexual penetration without consent and are awaiting sentencing.

Hon MICHAEL MISCHIN: I thank the Leader of the House for that additional information and clarification. The DPP has put its mind to the question of consent by those who would ordinarily be deemed incapable or, rather, considered incapable in respect of giving consent in other cases. Under the Criminal Code there are a number of offences involving sexual offences committed against people who are incapable. There is no specific provision proposed in the bill before us to address that issue, but it is probably something that we do not need to worry about at this stage because the government will do what it will do. But if an unforeseen problem arises, I trust that the government will address it. Certainly, review provisions will be inserted into the bill as proposed later in our supplementary notice paper. It is something that can be addressed within a reasonable period of time.

I have a couple of other queries about the question of consent. I want to posit an example that is germane to the amendments that I propose to move. The thesis in the legislation is that the non-consensual distribution of an intimate image is criminal. We have already canvassed the possibility of parents distributing baby photos of their naked infant without the consent of that infant because the infant is capable of giving consent at a young age. But let us consider the example of someone who at the age of 15 might be asked by their mum, "I've got some baby photos of you and I've already sent them in the past to others and shared them with relatives. Do you mind if I send these photos?", to which the 15-year-old responds, "Yes, I don't have a problem with that. They're baby photos and grandma might like to see them." In that case, has the parent committed an offence if they distribute those photos?

Hon SUE ELLERY: I am going to make the same point that I have made previously. Although the member might keep raising a series of particular examples, case studies or scenarios and asking for a definitive position, the answer will depend on the circumstances. I can tell the member—I think I have said this before in any event—that two elements would be applied to the kind of scenario he is talking about. The first one is the prosecutorial discretion. Safeguards and procedures are in place to ensure that innocent conduct will not be brought before the courts. The decision to lay charges and prosecute is governed by the DPP's prosecution policy and guidelines. The guidelines provide that a prosecution should proceed only if it is in the public interest. That is to be assessed against a range of factors, which include whether there are reasonable prospects of conviction, whether any lines of defence are available to the accused, the degree of culpability of the accused, and the likely length and expense of a trial if disproportionate to the seriousness of the alleged offending. Then there are particular provisions, if a charge were laid, in respect to acceptable conduct. I take the member to proposed section 221BD(3)(d), which states —

> a reasonable person would consider the distribution of the image to be acceptable, having regard to each of the following (to the extent relevant) —
>
> (i) the nature and content of the image;
>
> (ii) the circumstances in which the image was distributed;
>
> (iii) the age, mental capacity, vulnerability or other relevant circumstances of the depicted person;

The list goes on.

Hon MICHAEL MISCHIN: Prosecutorial discretion only kicks in at a later stage. Our government heard a lot of criticism from the then opposition regarding the use of prosecutorial discretion as a safeguard—most notably, as I recall, in the mandatory minimum jail sentences for assaults on public officers committed in the course of their duty. That is after it is quite plain that an offence has been committed, but there is a question of whether the bodily harm is sufficient to warrant a prosecution. We heard that that was not an adequate safeguard. I will assist the minister here. Yes, the parent does commit an offence. If a mother says to her 15-year-old, "I have some of the old baby photos and I would like to send them to grandma. Do you consent to that?", and the 15-year-old says, "Yes, I don't mind" —

Hon Sue Ellery: A 15-year-old can't give consent.

Hon MICHAEL MISCHIN: That is right, minister; a 15-year-old cannot give consent, so the mother is committing an offence. There is a possible defence for the mother, but she has committed an offence. It is criminalised. It is unlikely that the police would charge in those circumstances and, if they did, the mother might be able to avail herself of that defence in due course and in the fullness of time it may be that the DPP would decline to indict. Nonetheless, she has committed an offence; she is a criminal, unless she can establish that defence. It is not a question of saying that she is not criminally responsible because of the circumstances—that conduct has been criminalised as a matter of policy by this bill. The reasons for that have been disclosed to me in respect of the amendments that I have posited on the supplementary notice paper. It may be worthwhile for me to cover those reasons now, without moving my amendment at this stage.

Hon SUE ELLERY: Perhaps I could seek some assistance from the Chair. I am happy to debate the amendment, but I would like to do that when we are actually debating the amendment.

The DEPUTY CHAIR: Could you talk to that point, Hon Michael Mischin?

Hon MICHAEL MISCHIN: I would like to debate the amendment when we get to the amendment, too, but what I am driving at here is directly related to the answer the minister has just given and whether an offence has been committed as the law currently stands. I have received advice from the Attorney General's office, which sets out the philosophy of the government. It confirms that my view of it is correct. I received this document only last week—I am sorry; I do not have the covering email. It is headed "Criminal Law Amendment (Intimate Images) Bill 2018—Government Response to the Amendment Proposed by the Hon Michael Mischin MLC". I will read it out. I am happy to table a copy. I do not have a clean copy before me at the moment, but I shall do that. It sets out the philosophy on which this bill has been built to date, and purports to answer why my amendment is not accepted by the government. I will get to that in due course. I do not know whether other members have received a copy, so I shall read it out. It says —

> On Wednesday, 7 November 2018, the Honourable Michael Mischin MLC placed a proposed amendment to the Criminal Law Amendment (Intimate Images) Bill 2018 ('**the Bill**') on the Supplementary Notice Paper.

> The proposed amendment converts the existing 'acceptable conduct' provision in subsection 221BD(3)(d) of the Bill from a defence, which the accused would need to prove on the balance of probabilities, into an exculpatory circumstance, which, if raised by the accused, would need to be disproved by the prosecution beyond reasonable doubt.
>
> The proposed amendment follows concerns raised during debate on the Bill on 6 November 2018 regarding the potential criminalisation of conduct that is in line with community standards.

That is precisely the point Hon Simon O'Brien raised and that both Hon Nick Goiran and I spoke to. It continues —

> An example provided was that of a parent who displays a naked baby photo at their son or daughter's 21st birthday party.

I digress for a moment to point out that this can happen at an earlier stage. It can happen in a most innocent fashion—a parent asking their juvenile child whether they mind if an intimate photo of them be distributed to relatives as a trip down memory lane. That is with the consent of that child. But the child is under 16, so they—never mind an incapable person—cannot, by law, if this bill is passed, give consent to that. The advice continues —

> The concern expressed was that the Bill would effectively make the parent guilty until proven innocent, placing an unfair onus on them to prove their innocence before the courts.
>
> After giving serious consideration to these concerns, and to the remedy proposed by the Honourable Michael Mischin MLC, the Government has concluded that it will not be supporting the amendment for the following reasons:
>
> 1. The amendment would undermine the policy intent of the Bill;

The policy intent of the bill, as will be revealed, is to criminalise the distribution of intimate images without consent, which is exactly what this hypothetical parent is proposing to do. It continues —

> 2. The amendment is unnecessary in view of existing and proposed safeguards.

We do not yet know what the proposed safeguards are. One of them is foreshadowed in this advice, but we do not have it yet. It continues —

> The Government's position was reached following Departmental consultation with the Director of Public Prosecutions (DPP), the Western Australia Police Force and the A/Commissioner for Victims of Crime. A further explanation of the Government's position is provided below.

Under the heading "Policy implications", the advice goes on —

> The Bill aims to:
>
> - Send a clear message that image-based abuse is unacceptable;

I do not know about the example I have given being abuse as opposed to common, accepted behaviour in the community. It continues —

> - Enable victims to secure criminal justice through the courts.

Those aims are so vague. They could be applied to any piece of legislation, with respect, rather than focused on what is going on here. But it is a "clear message" anyway. It continues —

> The current drafting supports this intent by creating a presumption that the non-consensual distribution of an intimate image is a criminal act.

That is exactly the point that Hon Simon O'Brien, Hon Nick Goiran and I were trying to make. It is a criminal act; that parent is a criminal by presumption. It continues —

> If the accused believes that their conduct was acceptable *despite* the lack of consent, the onus is on him or her to prove it.

That is precisely the point that I am concerned about—a criminal parent potentially having to prove their innocence. That is something that we have heard an awful lot about from members on the other side of the chamber during the course of debating many bills in the past, but there has been a deafening silence in this case. It goes on —

> The amendment effectively reverses the position.

That is an acknowledgement of the point I am making —

> The principle that the non-consensual distribution of an intimate image is a criminal act would no longer be the starting point, but something that the prosecution would need to establish in case after case.

That is not going to be hard. A parent has sent a baby photo of a naked infant to someone else. The infant, now 15, cannot consent by law; end of story—criminal. There may be other examples, I should add, that we just have not thought of yet, but that is the most obvious. We will stick with that because it is so clear-cut. It continues —

> The DPP has confirmed that in practice —

In practice, not in law —

> this change would make it much harder —

That is where I propose an alternative for the prosecution to prove the elements of the offence —

> for the prosecution to prove the offence in the cases that are likely to come before the courts.

That is arguable, too. I do not know why it would. Perhaps the minister, notwithstanding the reluctance of the government to descend into cases and examples, can give us an example in which it would be that much harder if the prosecution and the police have done their job and actually built a case based on evidence. It continues —

> The change would also equivocate the Bill's message about the unacceptability of image-based abuse.

I find that hard to believe. We are making it a criminal offence to do this unless a person falls within certain exculpatory circumstances, just like an unlawful assault under the Criminal Code and just like every other piece of behaviour under the Criminal Code in which the prosecution has to prove the unlawfulness of the conduct. I should add, if I just intersperse here, with the guidelines, "National Statement of Principles Relating to the Criminalisation of the Non-Consensual Sharing of Intimate Images", which was tabled, I think, by the minister on one of the last occasions we were before the house. Those principles mention what I propose as being an acceptable possibility. We have seen that reflected in the New South Wales legislation. It is not a problem legally; it does not seem to have caused a problem in New South Wales. One of the factors under "Consent and harm" in paragraph 12 says —

> Consideration should be given to the merits and risks of offence structures to address the lack of consent to distribution by the person depicted in the intimate image as each jurisdiction deems appropriate.

Paragraph 12.1 reads —

> The issue of consent may be addressed in a variety of ways, whether by inclusion as an element of the offence, as an available defence, or considered when determining whether conduct is contrary to community standards of acceptable behaviour.

That is broad enough to encompass the sorts of possibilities that I have canvassed and that the New South Wales legislation has reflected. I go on with the advice from the DPP that it will make it much harder and equivocate the bill's message. It states —

> The A/Commissioner for Victims of Crime has further elaborated on what this shift could mean for victims of image-based abuse:

I think I am going to have to seek another call.

The DEPUTY CHAIR (Hon Dr Steve Thomas): Just before you do, I ask you to take a seat for a minute before I give you the call again. Hon Michael Mischin, I have listened very carefully to the construct of the debate. For consistency, I traditionally feel that a debate prior to the moving of an amendment should reflect whether or not the amendment will proceed and some of the issues around it. I have given you a fair bit of largesse in that regard, and I intend to give you a little more to make the case as to whether we should proceed. But I would be thinking of an argument that suggested perhaps some compromise that would not require the moving of the motion as part of the debate, because if we are simply going to debate the content of the motion, I ask you to then move the amendment. I will give you a little largesse in the meantime, but limited. I call Hon Michael Mischin.

Hon MICHAEL MISCHIN: Thank you. I understand the point you are making, Mr Deputy Chair, but I am reinforcing the current philosophy of the act in the point that I am trying to make. I understand the minister was saying that it will be dealt with on a case-by-case basis. She has referred to prosecutorial guidelines, the likelihood of charges being laid, what might happen in court, what an accused might plead and all the rest of it. The point that I am making is that the legislation is currently crafted to criminalise across the board with no nuance in it. There is another, and better, approach. I want to confirm the way that this legislation has been crafted, so it is quite clear that the point that I am making is based on the manner in which this legislation has been drafted. The advice continues with the points made by the Commissioner for Victims of Crime, which read —

- First, because existing prosecution guidelines require a reasonable prospect of conviction, any additional hurdle to conviction will reduce the likelihood of a complaint leading to prosecution. This could create a perception that the criminal justice system remains unresponsive to victims of image-based abuse.

I do not see that. That is more argument than based on any rational approach to the principles of criminal law. It continues —

- Second, any additional hurdle to conviction could be expected to reduce the proportion of accused persons who enter a guilty plea. This means that more victims will experience the delays and anxieties associated with trial.
- Third, if the accused asserts that their conduct was acceptable, the prosecution—and by extension the victim—would effectively need to justify the complaint.

That is the whole point of prosecution and proof beyond reasonable doubt —

> This could signal to victims that *their* attitudes and actions, not those of the accused, are being scrutinised by the court.

No; with respect, that does not follow at all —

- Fourth, the amendment would incentivise —

There is a word! —

> arguments that reflect outdated and demeaning assumptions about acceptable conduct; arguments such as 'boys will be boys', 'it was just a bit of fun' or 'it was just a picture'. While such arguments could be raised in connection with the existing acceptable conduct defence, —

I stress the word "defence" —

> the proposed amendment would substantially lower the bar for their success.

I do not accept any of that necessarily. That is as far as I will go with this at the moment, but I make the point that there is also a legislative principle. I would like that to be borne in mind and I alert the minister at this stage so that she can turn her mind to it. It is on page 3 of the "Fundamental Legislative Principles (FLPS): Department of the Legislative Council" pamphlet. We have heard this cited in the Standing Committee on Legislation as a matter of routine every time it delivers a report on legislation and has regard for these principles, and most recently, I think, in the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 that we debated last week. It reads —

> **Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?**
>
> At common law, it is ordinarily the duty of the prosecution to prove all the elements of an offence beyond reasonable doubt; the accused is not required to prove anything. Provisions in some legislation reverse this onus of proof and require the person charged with an offence either to prove or disprove some matter to establish their innocence (legal burden) or to point to some evidence that suggests a reasonable possibility that the matter exists or does not exist (evidential burden).

That is what I am proposing is the appropriate approach to this and one that has been adopted by New South Wales, upon which this legislation seems to be modelled —

> Generally, reversal of the onus of proof of an element of an offence (especially in criminal matters) is objectionable on the basis it trespasses on personal rights and liberties. However, justification is sometimes found in situations where the matter to be proved by the defendant is peculiarly within the defendant's knowledge and would be extremely difficult, or very expensive, for the prosecution to prove.

That is their state of mind, in other words. None of this, proposed in the bill, requires the proof of a state of mind. Consent is something that can be established. Honest and reasonable mistaken belief in consent is something the accused can raise as an evidential burden and be disproved. Otherwise, things such as acceptable community conduct are objective matters that can be established, not subjective. The prosecution ought to be well aware of whether it is acceptable conduct that a parent be allowed to distribute an image, even of someone who cannot legally consent, or a reasonable belief that it is acceptable—for example, a 15-year-old telling his mum that he does not mind if she sends a copy to his grandma of a photo of him in the bath when he was two years old. The government would say that it sends the wrong message to say that it is not criminal and would require mum to turn over in her mind whether she is going to be charged and whether she has a good defence, even though the son cannot consent because he is under 15, and whether prosecutorial guidelines are to be followed and which ones.

I think that is wrong. I foreshadow my amendment. At this point I am simply trying to confirm that the manner in which the government has approached this exercise has been by taking a blanket, heavy-handed approach rather than a nuanced one, all for convenience, rather than having regard to basic legislative principles—ones that this government, when in opposition, steadfastly promoted in just about every circumstance. Unless the minister has

anything to say about the fundamentals and how this bill is currently structured, I will move amendment 2/4 on supplementary notice paper 76, issue 3. I move —

Page 6, line 12, to page 7, line 23 — To delete the lines and substitute —

(3) A person is not criminally responsible under subsection (2) if a reasonable person would consider the distribution of the image to be acceptable, having regard to each of the following (to the extent relevant) —

(a) the nature and content of the image;

(b) the circumstances in which the image was distributed;

(c) the age, mental capacity, vulnerability or other relevant circumstances of the depicted person;

(d) the degree to which the accused's actions affect the privacy of the depicted person;

(e) the relationship between the accused and the depicted person;

(f) any other relevant matters.

(4) It is a defence to a charge under subsection (2) to prove that —

(a) the distribution of the image was for a genuine scientific, educational or medical purpose; or

(b) the distribution of the image was reasonably necessary for the purpose of legal proceedings; or

(c) the person who distributed the image —

(i) distributed the image for media activity purposes; and

(ii) did not intend the distribution to cause harm to the depicted person; and

(iii) reasonably believed the distribution to be in the public interest.

(5) Nothing in subsection (2) makes it an offence —

(a) for a member or officer of a law enforcement agency or their agents to distribute an intimate image when acting in the course of their official duties; or

(b) for a person to distribute an intimate image in accordance with, or in the performance of the person's functions under, a written law or a law of the Commonwealth or another State or Territory; or

(c) for a person to distribute an intimate image for the purposes of the administration of justice.

Hon SUE ELLERY: The government will not be supporting the amendment. The honourable member is quite right that there have been debates in this house on many occasions about whether the proposed legislation's reversal of the onus of proof is appropriately balanced in all of the circumstances in the policy, the bill and in the safeguards that might be built into the legislation. We have had those debates, and on many occasions. The reversal of the onus of proof is not new or unusual and neither is debate about it in this chamber. The question always to be determined is whether the policy of the bill—the policy of this bill has already been set by the second reading—and the safeguards built into the respective legislation are balanced. I just make that point.

The first point to note in response to the honourable member is that the bill does not establish a presumption of criminality or in any way interfere with the presumption of innocence. The prosecution must still establish and prove all of the elements of the offence in the usual way, beyond reasonable doubt. The elements to be proven here in respect of this piece of legislation are, in the first case, distribution, and in the second case, a lack of consent.

Although it is true that the bill places the legal onus on the accused to establish the defences—that is what is referred to as "reversing the onus of proof"—it is not unusual under the Criminal Code to include the acceptable conduct defence in proposed section 221BD(3)(d), and we say that is reasonable and appropriate in the circumstances. There are numerous offences under the Criminal Code that provide defences that must be proven by the accused on the balance of probabilities, particularly in circumstances in which the facts giving rise to the defence are peculiarly within the knowledge of the accused. The position adopted in the bill before us does not require the accused to prove an essential element of the offence, but rather asks them to justify why it was acceptable to distribute the image, despite the fact that the victim did not consent.

The difference between us is that the honourable member is arguing that this reversal of the onus of proof is not justified. That is essentially the argument he has put; that is, he does not accept, in these circumstances, that it is appropriate to reverse the onus of proof. The government has a different view. Our view is that the existing safeguards and procedures are adequate. I will provide a more detailed response, and some of it will involve me repeating some of what has been heard from the honourable member, because he just read into the house a response

he was provided with when he asked the advisers about this very issue. Some of this members will have just heard, because the document he was referring to is the document, prepared by the advisers and shared with him, that explains why the government took the particular view it did.

The government has considered the concerns raised during the debate and the remedy proposed by the honourable member in his amendment on the notice paper. We will not be supporting it. Our view is that the amendment would undermine the policy intent of the bill and that the amendment is unnecessary if there are existing and proposed safeguards. We reached this position following consultation by the Department of Justice with the Director of Public Prosecutions, WA Police Force and the Acting Commissioner for Victims of Crime. With respect to the policy implications, the amendment would undermine the key principle that image-based abuse is unacceptable. The bill requires the prosecution to prove beyond reasonable doubt that the accused person distributed an intimate image without consent. If the accused believes that their conduct was reasonably acceptable despite the lack of consent, proposed section 221BD(3)(d) places the onus on them to prove this on the balance of probabilities; that is, it provides a defence. The opposition's proposed amendment would effectively reverse this. The principle that distributing an intimate image without consent is prima facie unacceptable conduct will no longer be the starting point, but something that the prosecution would need to establish in case after case.

The DPP has confirmed that, in practice, the opposition's amendment would make it much harder for the prosecution to prove the new offence in the cases likely to come before the courts. That is an important caveat, because we have already talked a little bit about what the government's expectations are for cases likely to come before the courts. Instead of the accused having to prove why the distribution was reasonably acceptable, the prosecution would have to prove that the distribution was not acceptable. This would effectively signal to victims that it is their attitudes and their actions, not those of the accused, that are to be scrutinised by the court. It would also incentivise arguments that reflect outdated and demeaning assumptions about acceptable conduct—this is one of the bits that the honourable member was just referring to—arguments such as "boys will be boys", "it was just a bit of fun" or "it was just a picture". Although such arguments could be raised in connection with the existing acceptable conduct defence, the proposed amendment would substantially lower the bar for their success.

In addition to these policy reasons, the government considers that the existing safeguards and procedures are adequate to ensure that innocent conduct, such as that in some of the examples we have heard already, will not be brought before the courts. The decision to lay charges and prosecute is governed by the DPP's "Statement of Prosecution Policy and Guidelines 2018". As I have said already, those guidelines apply to both WA Police Force and the office of the DPP. Among other things, those guidelines provide that a prosecution should only proceed if it is in the public interest. This is to be assessed with regard to a range of factors that are directly relevant to the concerns raised about the bill and particular examples or scenarios that have been provided. Those factors include whether there are reasonable prospects of conviction, any lines of defence available to the accused, the degree of culpability of the accused, and the likely length and expense of a trial if disproportionate to the seriousness of the alleged offending. In addition to the guidelines, the Director of Public Prosecutions has agreed to develop a specific charging note for the intimate image offence. The charging note will provide further information to the Western Australia Police Force and prosecutors about the exercise of the discretion to prosecute having regard to the public interest and the application of the factors set out in the legislation.

At a procedural level, the decision to lay charges will also be subject to internal checks within the Western Australia Police Force. The recommendations of the investigating officer will be reviewed and either endorsed or rejected by a senior officer. In the event of uncertainty, the matter can be referred to the Office of the Director of Public Prosecutions for advice. Once a matter has been referred for prosecution, it will be open to the relevant prosecutorial service—either the Western Australia Police Force of the Office of the Director of Public Prosecutions—to discontinue the matter if there does not appear to be a sound basis for proceeding. In the government's view, these various safeguards will make it very unlikely that the type of conduct raised during the debate will make its way to the courts. For those reasons, the government will not support the amendment.

Hon ALISON XAMON: I rise to indicate that I have some sympathy for the amendment that has been put forward by Hon Michael Mischin. I am still not quite persuaded either way about the best way to move forward. On the one hand, I am very concerned that the proposed amendment could water down the policy effect of this legislation, which is to change community attitudes and behaviours around the circulation of intimate images and to set a very clear and unequivocal line in the sand that tells people that the circulation of such images without consent is unacceptable and is in breach of what we consider to be appropriate societal standards. On the other hand, I remain genuinely concerned that innocent people may get caught up in this. There has been a fair bit of discussion around the legitimate concern, I think, of parents, grandparents and family members who lovingly circulate quite innocent images of their loved children that do not breach the standards of child pornography, which we already understand. We are talking about very innocent pictures in which there may be some degree of quite innocent nudity that no sound person would find offensive. I recognise that it is unlikely that those situations will come to the court's attention.

I want to get a bit more information in a moment about the nature of the charging notes that have been referred to. We have tried to get information from the briefings, but we have not been able to get more detail about them.

I return to a concern I raised in my second reading contribution—that is, the sort of defences that will be made available to people who circulate intimate images only as a means to stop harassing and intimidating behaviour. I am not convinced that the current defences in the act are sufficient to protect people who forward intimate images—they can often be quite crass images—simply because they have had enough and are sick of receiving them and being harassed and intimidated, and do so as a form of public shaming. I am concerned that the amendment before us is potentially too broad. In its current wording, I think it would make prosecution quite difficult as we try to change community attitudes and community behaviours and send a very clear message from the courts that circulation of private images without consent is unacceptable conduct. I ask the minister for more information about the nature of the charging notes that keep getting referred to. I am aware that it has been agreed that prosecutorial guidelines will be forthcoming. That is good because we should always have prosecutorial guidelines, but first I would like to have a bit more information about the nature of the charging note. I wonder whether the minister has any comments on my concerns about the circulation of images for the purposes of trying to stop intimidation and harassment?

Hon SUE ELLERY: Firstly, I understand that Hon Alison Xamon's office was advised that the Director of Public Prosecutions will not be in a position to start drafting the charge notes until the legislation has been determined by the house. I am not in a position to give the member any more information than that.

The honourable member raised image-based harassment when the matter was last debated. I provided a response then, but I will do it again. The person is likely to have committed the offence of using a carriage service to menace, harass or cause offence under the commonwealth Criminal Code. This is information that I provided when we last debated this. The maximum penalty for that offence is three years' imprisonment. Depending on the circumstances, the person may also have committed an offence under state law such as a stalking, using electronic communication to expose a child under 16 to indecent matter, or making a threat to do something unlawful. The recipient of the image could obtain a misconduct restraining order, the breach of which would be a criminal offence. There are options for responding to image-based harassment that do not involve shaming the person depicted by public distribution. It does not necessarily follow that a person would be prosecuted or convicted if they had tried to respond to harassment by shaming. Firstly, the shamed person may be disinclined to report the matter to the police; secondly, the police may decline to prosecute on the public interest grounds; thirdly, if a prosecution is commenced, the defendant could seek to argue that the image in question is not an intimate image for the purpose of the offence due to the absence of a reasonable expectation of privacy; and, finally, the defendant could argue that the defence provided in proposed section 221BD(3)(d) that a reasonable person would consider the distribution to be acceptable applies. It is entirely plausible that the court would be sympathetic to such an arguments, but it will ultimately be a matter for the court to determine, if the matter were to make it to court at all.

When we last debated this bill on 6 November, I gave the member an undertaking that I would ask the Minister for Police to raise two matters with the Commissioner of Police—that is, whether there would be specific prosecution guidelines and whether police would be encouraged to take image-based harassment more seriously. I have already advised the chamber about prosecution guidelines. I have raised the matter of image-based harassment with the Minister for Police and drawn it to her attention. I have asked her to raise it with the police commissioner. I have not yet heard back, but I imagine that the minister will do that.

Hon SIMON O'BRIEN: I read the *Hansard* of Tuesday, 6 November to recapture the discussion that was being held when I raised this matter in the Committee of the Whole House at an earlier stage. In a moment, I want to zero in on the particular matter that is in my mind, because it applies to not only this potential piece of legislation but others, so it is an important principle. I listened closely to the remarks of Hon Alison Xamon just now when she was indicating an openness to further explore and decide upon the merits of the amendment before us. I think it is a tremendously important amendment. I want to explain why. In doing so, I want to pick up on some remarks that emanated from the committee chair just now when we were reminded that the policy of the Criminal Law Amendment (Intimate Images) Bill 2018 had been determined with the second reading vote and, indeed, it has. What we need to clarify is the policy of the bill. As I understand it, the house is virtually in unanimous agreement about the policy of this bill not only in its broad terms, but even in its specific terms. However, I need to remind members that the policy of the bill does not mean an endorsement of every detail written in black and white. In particular, the committee stage of a bill is about examining those matters of detail and determining whether they best give effect to the policy of the bill and about matters of efficient procedure. Those are the sorts of things we are concerning ourselves with now. Most particularly, we can apply that to the amendment currently before the Chair. I urge the government not to be too defensive about this and say, "No, hang on, we're not changing anything; we've decided what we will do and it's not up to us to change that." We are not seeking to interfere, as supporters of this amendment, with the policy of the bill. We are trying, though, to make sure, firstly, that the bill works better in achieving its aims—that the detail of the bill does not give rise in due course to public concern about whether the law is properly constructed and whether it will work in practical terms without trespassing quite improperly on the rights of ordinary, decent Western Australians. These are weighty matters and that is why I really want to impress upon members the comments I am about to make.

I have had a good look at the bill in light of some of the concerns that, anecdotally, Hon Michael Mischin has raised about the bill being brought before the house. I have been reassured, simply through reading the bill and the associated material, about the scope to which it applies. For example, people are concerned whether they could be taken before a court if they distribute an image of some people innocently gathered on the beach. It might be just a group and they are perhaps wearing bathers, holding a soft drink or something, posing with a surfboard, but if there is someone in the background on the beach with their top off, will that be captured by this law? That would be a pretty poor thing. Of course, they will not be captured by this law because they were in a public place. This is about images of people engaged in a private act and, further, in circumstances in which the person would reasonably expect to be afforded privacy. Anyone who is concerned about that, for example, can be reassured, as, indeed, I was. I want to deal with malicious acts. I want to put a stop to people's privacy and dignity being attacked, in particular, in a way that can have terrible consequences. We have already heard from a member this morning in unrelated matters about the impact that excessive incursion into one's private life and people making claims or counterclaims or inquiries can cause great distress. Daily we hear about the problems of cyberbullying and how that impacts on people of all ages, for example. Of course we want to put a stop to that. We want to send a clear message as a Parliament. That is why we, as a Parliament, are happy to endorse the policy of this bill and we are not scared of it.

We come then to the detail, in particular, the mechanics. The amendment before us now is couched in terms that I think are already in the bill but they have been rearranged slightly. For those outside who are perhaps following this debate, proposed section 221BD entitled "Distribution of an intimate image" sets out at proposed subsection (2) a crime. It states —

> A person commits a crime if —
>
> (a) the person distributes an intimate image of another person (the ***depicted person***); and
>
> (b) the depicted person does not consent to the distribution.
>
> Penalty for this subsection: imprisonment for 3 years.
>
> Summary conviction penalty for this subsection:
>
> imprisonment for 18 months and a fine of $18 000.

This is serious stuff, but succeeding subsection (3) provides defences to any charge under subsection (2). The defences are laid out in proposed subsection (3)(a), (b), (c) and (d). Finally, proposed subsection (4) lists three circumstances in which it sets out quite clearly the circumstances in which it is explicitly not an offence against subsection (2). That relates to law enforcement officers in the course of their official duties performing a function under another written law or otherwise being involved with the administration of justice. The amendment standing in Hon Michael Mischin's name seeks to vary all that and to say that a person would not be criminally responsible under proposed subsection (2) in a range of ways, having regard to half a dozen considerations that, in the mind of a reasonable person, would be acceptable circumstances. I am paraphrasing a little there, but that is the gist of it. It goes on to preserve the other elements—that is, the other defences, as they are currently characterised, and the explicit exemptions from an offence, which are also in there. The net result is to give effect to the matter I raised on 6 November 2018 when I objected to the construction of this provision.

The DEPUTY CHAIR: Members, the question is that the amendment be agreed to.

Hon SIMON O'BRIEN: Thank you for the courtesy. We have since then heard comment about the reversal of the onus of proof. I think I can fairly say that the minister acknowledged that this is something that comes up in this place not infrequently and that sometimes it can even be observed as a matter of degree. In the past, I have said that I am not fundamentally philosophically opposed to having in a bill a provision that reverses the onus of proof. Those members who have heard me give an example of why that is the case a hundred times before should brace themselves, because they are about to hear it for the 101st time! The example I give is an offence under either state or commonwealth law that prescribes that it is an offence for someone to avoid paying any duty or tax that is payable. How on earth does a prosecutor prove that an individual citizen has not paid a tax that is payable? Do they bring in every tax record in the whole department for the last five years and make the court go through it all and then say, "See, the defendant's name is not mentioned here"? Of course they do not. But there is a defence against that charge that is easily brought about; that is, the person under investigation can simply say, "Yes, I did pay this tax or duty and here is my receipt." That is easily done. It would not even get to court. That is an example of the reversal of the onus of proof that is right, proper, sensible and reasonable.

My objection to the way the proposed section is currently drafted is that it is not right, proper and reasonable for a person charged with distributing an intimate image to have to rely on a defence that they would have to prove in court—no, no, no! The onus that would cast on people would be dramatic. I know what has already been said about guidelines, procedures and contemplating the public interest—all those sorts of value judgements. Nonetheless, I predict that an unfortunate circumstance will arise in which someone who should not be charged under this provision will be charged, and it will be publicised that they have been charged with an offence under what will be known as the Criminal Law Amendment (Intimate Images) Act. Contemplate, in the eyes of

reasonable people and community standards, the situation of someone who wakes up to find that they have been charged under that act and it is plastered all over the papers. What impact will that have on them? The authors of this bill are saying, "It's all right; they have a defence when they get to court." That would be no comfort to a person who has already been publicly held up as an offender under this legislation. It would then get worse, because it takes a long time for a court to resolve these matters, if they ever are. In the meantime, they would have incurred all sorts of disruption to their life—possibly lost a job, and certainly not obtained a job or a promotion—and massive expense with lawyers. They would get none of that back when the court finds, "Yes, you do have a defence. Case dismissed." None of that harm would be undone and the damage would be incredible. If a handful of cases arise in those circumstances, we will have failed. At the point of considering Hon Michael Mischin's amendment, we need to recognise that and do something about it. That is one reason I am supporting this amendment, and I propose that the rest of the house does so as well.

I want to mention something all members know about—that is, the nature of humanity. Let us apply human nature to a bill, for example. A policy decision is made and people say, "Here's our policy decision. Let's go about putting it into legislation." So, off they go and they do their consultation, drafting and everything like that, and then they go up through the hierarchy of departments and to ministers' offices showing how their legislation is needed and it is the way to go. Notes are then made up for ministers to accompany their cabinet submission to convince cabinet that, yes, this is the way to go. Ultimately the ministers get out in the media and say, "We're going to introduce a bill, because this is the way to go." The bill is brought into this place and the minister delivers a second reading speech that says, "This is the way to go." That is what they do. Very rarely, during any of those processes—until right now—does someone stand up and ask, "Hang on, what's the downside to this? What are the alternatives, and the potential risks and pitfalls?" On 6 November, the minister was mulling over the ideas that I and others were raising—I know that she was taking it on board and that she got it. We have a representative minister, of course, which is a difficult position to be in. In due course, the government went away and sought advice. We have just had the benefit of that advice officially. Who did the government seek advice from? We were given a list of the parties—the police, various judicial personalities and so on—but they are the same people who own the current wording and mechanics in the bill. Of course they are going to turn around and say, "No, you don't want to amend this. This the right way to go." That is human nature.

Everything about the approach taken with this legislation screams at me that it is not the right way to go. It is not the right way to go if a charge could be laid against someone who is eminently innocent and who will suffer the outrageous treatment to which I have just alluded, and that somehow that will be made right by saying that they have a defence if it gets to court. No. We need to make sure that the first test is that a case has to be made against a person before they have to respond, and that proof of the elements of an offence has to be established by the prosecution and not disproven by those who are innocent. It is as fundamental as that. None of my remarks and nothing in the honourable member's proposed amendment are against the policy of the bill. It is about ensuring fairness and justice in the future for all our citizens, while at the same time not undermining in any way the policy of this bill. That is why I put to members that they should embrace this amendment; and, if not, I hope they have some good explanations as to why not.

Hon MICHAEL MISCHIN: I thank Hon Simon O'Brien and Hon Alison Xamon for their contributions. I am encouraged that Hon Alison Xamon is not beyond persuasion on this matter, provided that some of her concerns are addressed. I hope that that is the case. It does not surprise me that the government has rejected the proposition set out in the amendment on the supplementary notice paper. We have learned at length, from experience over the last two years, that the Attorney General does not like being persuaded that there are alternative ways to approach a problem. We have had some surprisingly good successes after a great deal of time, such as on the National Redress Scheme, and a few other concessions along the way.

According to the government, the bill aims to send a clear message that image-based abuse is unacceptable. It is not the transmission of images and not even the transmission of images without consent if no harm is done that is unacceptable; it is image-based abuse. What I have proposed in my amendment does not detract from that policy. The government says that the legislation will enable victims to secure criminal justice through the courts—namely, someone will be punished for that. Again, I do not propose to change that. I urge members to look at the manner in which the amendment has been constructed. It is entirely in accordance with long-accepted principles of criminal law and consistent with the manner in which most, other than exceptional, offences are dealt with. By way of analogy, I will use an offence like assault. If I were to ask whether it is right to send a message that assaulting someone is unacceptable, people would say that it is right. An assault is the application of force by one person to the person of another without that other person's consent. People would say, "Of course it is terrible that someone could apply force to the person of another if it is not consented to."

Hon Simon O'Brien: It should be a criminal offence.

Hon MICHAEL MISCHIN: It should be a criminal offence, and we need to send out a strong message that assault is wrong. Of course, assaults can arise in a variety of ways.

Sitting suspended from 1.00 to 2.00 pm

The DEPUTY CHAIR (Hon Matthew Swinbourn): Members, we are continuing to deal with the Criminal Law Amendment (Intimate Images) Bill 2018 and with the amendment moved by Hon Michael Mischin. The question is that the words to be substituted be substituted.

Hon MICHAEL MISCHIN: Thank you. I think that in fact we are dealing with the deletion of the words first, but I am happy to jump a step if that helps!

The DEPUTY CHAIR: Yes; so the question is that the words to be deleted be deleted.

Hon MICHAEL MISCHIN: Before the luncheon adjournment, I was about to address the merits of the amendment I have moved. I had reinforced that the first of the two alleged policy aims of this bill is to send a clear message that image-based abuse is unacceptable. I should add that it is not image distribution, nor even image distribution without consent; it is image-based abuse. The amendment I have moved does not detract from that in the slightest. The second policy aim of the bill is to enable victims to secure criminal justice through the courts—"justice" being the operative word. Again, the amendment I have moved is consistent with the general principles of criminal responsibility and does not detract from that aim. The amendment will align what is proposed in the legislation with accepted general standards of criminal responsibility.

I had been about to discuss this by using the analogy of assault. Assault is the application by one person of force to the person of another without that person's consent. Of course we would all agree as a matter of principle that that is a bad thing. Is it outlawed as such? No, it is not. That is because in addition to proving the assault, it has to be an unlawful assault—that is, an assault not authorised, justified or excused by law. That is not a defence to the charge, unlike what the government proposes in this legislation. In fact, it is quite the contrary—it is an element of the offence that the prosecution must prove beyond reasonable doubt. There may be an evidential burden on the accused; nevertheless, the prosecution bears the responsibility of proving its case. By way of example, if I was to strike Hon Alison Xamon, that would be an assault. If that strike was by way of a casual pat on the back, that would also be an assault, but whether it is unlawful is another question. The prosecution would need to be satisfied there was a prima facie case and a reasonable prospect of conviction and it was not so trivial as to not warrant the attention of the criminal courts—precisely the criminal prosecution discretionary guidelines that need to be addressed in this. But that does not mean that I have to have a defence that I have to prove on the balance of probabilities.

My proposed amendment would align this legislation with the generally accepted principles available in all other legislation dealing with criminal responsibility. We have already established that innocuous cases may arise—who knows how many other cases there may be. At present, proposed section 221BD(2) says that a person commits a crime if the person distributes an intimate image of the other person without their consent. Proposed subsection (3) prescribes a raft of defences that, to succeed, have to be established by an accused on the balance of probabilities. So if the activity is criminalised, there is a defence available. We are told not to worry if mum sends a photo of the infant in the bath because it is not likely to be prosecuted, and there are some great prosecution guidelines that would most likely mean that that would never get to a court, but it is criminal. I propose to realign it in the following manner: to retain proposed subsection (2) in its current form, but, consistent with other exculpatory factors within the Criminal Code and elsewhere, say in a proposed new subsection (3) —

> A person is not criminally responsible under subsection (2) if a reasonable person —

Hon Alison Xamon was worried about standards in the community and the like; reasonable person standards are hopefully what we are trying to incorporate. That is the touchstone. My amendment continues —

> would consider the distribution of the image to be acceptable, having regard to each of the following (to the extent relevant) —

I have listed in proposed paragraphs (a) to (f) only what is currently set out in proposed subsection (3)(d), but it is framed in terms of a defence to prove that a reasonable person would consider the distribution to be acceptable, and so on and so forth. They are precisely the same factors, but I have put it at the start of the criminalisation process.

During my previous incarnation as a prosecutor, I gained a considerable amount of experience in having to prove cases like this, but I fail to see how that makes it unacceptably burdensome to the prosecution to prove a charge. We would still be applying the reasonable person test. But instead of saying, "What you have done is criminal. You prove that a reasonable person would find it acceptable", the prosecution would have to say, "Is this reasonable? Would a reasonable person consider this to be unacceptable conduct?" That is where the community standard comes into play. That is consistent with all other legislation dealing with obscenity, improper conduct and the like. I fail to see why, in this case, other than making the job of the prosecution a little bit more difficult, inasmuch as they have to make a case and turn their mind to the reasonableness of the conduct, it has become such an impediment to proving a charge in appropriate circumstances. Otherwise, the matters set out in proposed section 221BD(3)(a) to (c) are reflected in my current amendment; they just become proposed subsection (4). Proposed subsection (5) is the current proposed subsection (4). The only material change is the quite proper one, I would suggest, of translating what is currently proposed as a defence, with the burden of proof on an accused currently contained in proposed subsection (3)(d), into a new proposed subsection (3), being a threshold of criminal responsibility that has regard to the same factors.

It is plainly not a problem for other jurisdictions. New South Wales seems to have done it comfortably. I have heard nothing from the minister or from the government saying that it has proved to be an impediment to the prosecution of these cases. I have heard nothing from the government saying that what I propose is technically wrong, poorly framed or somehow does not achieve the policy that I have established for it. The only complaint from the government is that it does not like it because the Director of Public Prosecutions thinks that it makes her job a little more difficult, the police think it is much easier to prosecute under what has been framed in the way it is, and the Commissioner for Victims of Crime has raised a number of arguments of a speculative nature about what people might think about the message that is being sent. Otherwise, as far as I am aware, there has been no consultation on this bill, or the manner in which the offences have been framed, with the Law Society of Western Australia, the Legal Aid Commission, the Criminal Lawyers Association or any other such organisations, only with those who would find that their job is made a little bit easier by throwing the burden of proof onto an accused and saying, "Trust us; we're going to prepare some guidelines and things down the track that will make it even better." There are existing safeguards, we are told, and there will be more at some time.

The DEPUTY CHAIR: Hon Michael Mischin.

Hon MICHAEL MISCHIN: I urge members to have regard to the basic legislative principles, unless there is some defect of a technical nature that the government has now decided needs to be brought to the attention of the committee. The drafting seems to be sound and, unless some problem can be identified with the manner in which these provisions have been framed in New South Wales that has not been disclosed to date, I urge members to support the amendment. It will not detract from the operation of the legislation. It will reflect some of the problems that we have discussed and, if it proves to be a problem, we are proposing, and the government is proposing, a review on the third anniversary of the passing of this legislation. If it turns out that the laws need to be toughened up at that stage, let us do it. At least we are being consistent with the philosophies that have been expounded in this house for at least the last eight or nine years and the general principles of criminal responsibility that this house has accepted need to be adhered to.

Hon SUE ELLERY: Prior to the lunchbreak, Hon Alison Xamon had been canvassing some of the issues around the concern about a person who forwards an intimate image that they receive unsolicited, and whether they would be captured by and convicted of the new offence. The proposition is that the victim of this kind of harassment—that is indeed what it is—may show the images to supportive family or friends or, in some cases, even seek to shame the harasser by circulating the image online. In fact, that is a thing that many women, including myself, may well do as a way of saying that they are not going to tolerate that behaviour and that they are going to shine a light, so to speak, on that kind of behaviour by sending a message that it is completely unacceptable. I just wanted to make some comments about that.

The prosecutorial discretion to charge will be relevant in this kind of scenario. I reiterate that the victim of the harassment may, depending on the circumstances, be able to rely on the acceptable conduct defence that is contained in proposed section 221BD(3)(d). In particular, the court must have regard to a number of factors that would be particularly relevant in this scenario, including, amongst other things, the circumstances in which the image was distributed, and this provides for consideration of the broader context of the conduct—namely, the campaign of harassment by the person who sent the offending image; the relationship between the accused person and the depicted person, and this provides for consideration of the reality that the person depicted in the image has been harassing or potentially even stalking the accused; and any other relevant matter. In this case, it is clearly relevant that the person who sent the image by way of harassment is likely to have committed an offence under section 474.14 of the commonwealth Criminal Code to which I have already referred—that is, using a carriage service to menace, harass or cause offence—or stalking under section 338E of the Criminal Code. All these factors are highly relevant to the kind of scenario that Hon Alison Xamon has raised. Of course, it is equally important to emphasise that the person who is receiving those unsolicited and offensive images is able to report the matter to the police. In addition, Hon Aaron Stonehouse raised a question with me just as we broke for lunch. I want to reiterate that in addition to the guidelines that I have already described, the Director of Public Prosecutions will develop a specific charging note for the new intimate image offence. The charging note will provide further information to the Western Australia Police Force and prosecutors as to the exercise of the discretion to prosecute having regard to the public interest and the application of the factors set out in the legislation. Other than that, I have already articulated the reasons that the government will not be supporting the amendment.

Hon MICHAEL MISCHIN: I want to emphasise one thing from what the minister has said. In light of what Hon Alison Xamon is plainly concerned about, she should be in no doubt that what the minister is saying is that what Hon Alison Xamon's constituent is concerned about is an offence. If the member's constituent has received an unsolicited intimate image and she then wants to shame that person by distributing it to others and showing them what so-and-so has sent her, or if she wants to get advice from a friend and shows them what so-and-so has sent her, that is an offence. If she can more likely than not prove, on the balance of probabilities, that a reasonable person would consider that distribution to be acceptable, she may have a defence, but she has committed an offence. I am proposing that before the police charge, and in considering whether an offence has been committed, they should consider whether a reasonable person would consider the distribution of the image to be acceptable

having regard to all those factors. If the police come to the view that it is not reasonable to send a copy of this intimate image, unsolicited and without consent, to her friend to get advice on it—no, that is not what a reasonable person would do; it would not be acceptable to a reasonable person having regard to the nature, content and circumstances et cetera—a charge can be laid, and then we get to prosecution guidelines and the charging notes. However, there is no question that at the moment that constituent has committed an offence. There may be a good defence, but she has committed an offence. I urge Hon Alison Xamon to bear that in mind.

As to Hon Aaron Stonehouse's concerns about charging notes, they are fine; they are guidelines. However, none of them has yet been prepared, yet we are asked on the strength of that to throw a defence. As I have indicated, it is only those things currently in proposed subsection (3)(d) that are being put as the threshold for whether there would be criminal responsibility. That would involve a prosecutor and a police officer turning their minds to what a reasonable person would think in the circumstances, rather than saying, "Hey, an offence has been committed. If they think they have been reasonable, let them prove it." I urge members, in the absence of any technical objections and in the knowledge that this has been done in New South Wales and there have been no complaints raised there about it being impossible to prosecute, that this is consistent with the policy of the bill and it is also consistent with general principles of criminal responsibility. In respect of the fact that the government opposes it, the government has opposed just about every sensible amendment that we have put forward that has ultimately, after a great deal of stress, anguish and waste of time, finally been accepted.

Hon ALISON XAMON: I rise to comment and respond to Hon Michael Mischin's contribution just then. Of course, Hon Michael Mischin is correct on a number of fronts. He is correct in rightly identifying that the particular class of person that I have raised concerns about could potentially be prosecuted under the current wording of this legislation. Also, I say that he is correct in terms of our concerns that to date it has been very difficult for members in opposition parties to ascertain what are genuine deal-breakers and what are simply a reluctance to engage in amendments to legislation just for the sake of it.

Having said that, I have thought quite long and hard about this particular amendment proposed by Hon Michael Mischin. As I have said, I recognise that there is significant merit in why it has been put forward. The reason I will not be supporting the amendment that has been proposed is that I am concerned that as it is currently drafted, it almost provides too much defence, to the point that I am concerned that it will undermine part of the policy intent of this legislation—that is, to try to address cultural reform around the distribution of intimate images and the subsequent damage that that causes to people's lives. The review clause that we will be debating shortly will, hopefully, become a quite critical part of assessing whether the legislation as it may or may not pass goes too far or whether it ends up having a tangible effect in addressing inappropriate and, in fact, sometimes downright dangerous conduct by people who circulate these images. However, ultimately it is a balancing act, and that is the issue that we have to try to grapple with within this place.

I want to stress again that I do not believe that the arguments that Hon Michael Mischin has put forward are wrong. The issue is around the tension between how we ensure that those people of whom I think this house has a shared understanding are never captured by the provisions of this legislation, and having robust legislation that positively contributes to societal reform.

Division

Amendment put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (14)

Hon Jacqui Boydell	Hon Colin Holt	Hon Robin Scott	Hon Colin Tincknell
Hon Jim Chown	Hon Rick Mazza	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Michael Mischin	Hon Charles Smith	
Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Steve Thomas	

Noes (15)

Hon Robin Chapple	Hon Diane Evers	Hon Samantha Rowe	Hon Darren West
Hon Tim Clifford	Hon Alannah MacTiernan	Hon Aaron Stonehouse	Hon Alison Xamon
Hon Alanna Clohesy	Hon Kyle McGinn	Hon Matthew Swinbourn	Hon Laurie Graham *(Teller)*
Hon Sue Ellery	Hon Martin Pritchard	Hon Dr Sally Talbot	

Pairs

Hon Martin Aldridge	Hon Stephen Dawson
Hon Colin de Grussa	Hon Adele Farina
Hon Nick Goiran	Hon Pierre Yang

Amendment thus negatived.

The DEPUTY CHAIR: We are dealing with the amendments on supplementary notice paper 76, issue 3. I understand that the amendment on the supplementary notice paper in the name of Hon Alison Xamon is not going to be pursued. Is that correct?

Hon ALISON XAMON: I confirm that I will be withdrawing my amendment on the notice paper. I prefer the government's amendment.

The DEPUTY CHAIR: There is nothing to withdraw, because the member is not pursuing it. We will now deal with the next amendment on the notice paper, which is in the name of the Leader of the House representing the Attorney General.

Hon MICHAEL MISCHIN: Before we get to the next amendment, I have a question on proposed section 221BE(6). As a logical sequence, that comes before what is proposed to be inserted on page 8, after line 29. Proposed section 221BE(6) provides —

> A person who, without reasonable excuse, fails to comply with an order made under subsection (2) commits an offence.

The penalty prescribed for that appears to be a summary conviction penalty. Proposed section 221BE(2) provides —

> If a person is charged with an intimate image offence, the court may order the person to take reasonable actions to remove, retract, recover, delete, destroy or forfeit to the State any intimate image to which the offence relates within a period specified by the court.

Let us say that the court specifies within seven days, and that seven-day period expires. What seems to be contemplated is that a charge is then able to be laid under proposed section 221BE(6), which requires the prosecution to disprove beyond reasonable doubt, if the evidential burden is raised, that there is no reasonable excuse. It is not a defence. We have had an argument about how important it is that these things be defences, but the prosecution must prove beyond reasonable doubt that there was no reasonable excuse. However, we do not have a continuing offence penalty prescribed. The failure to comply may be a one-off breach, but it may continue for quite some time. Why has the government not specified a continuing offence for this failure?

Hon SUE ELLERY: I am advised that this clause is constructed and crafted that way because the most similar offence contained in the Criminal Code, the offence of disobeying a lawful order of the court created by section 178, is also not a continuing offence. By virtue of the operation of section 71 of the Interpretation Act, the obligations created by the order will not lapse upon conviction. Rather, the offender will commit a separate offence for every day that they remain noncompliant, with a daily penalty of $50.

Hon MICHAEL MISCHIN: The minister is saying that if I am given until, say, 1 January to comply and I fail to comply by 1 January, I am charged with having failed to comply by 1 January. Is a charge lodged against me for every day after that or will it be a charge after I am convicted for that failure, or what? Is the minister seriously suggesting that a charge will be laid for every day that I have exceeded the time limit?

Hon SUE ELLERY: Theoretically, the proposition put by the member is correct; that is, after conviction the offender would be committing a separate offence for every day, and they could be charged with a separate charge every day. In a practical sense, I am advised that is probably unlikely to happen. The matter would still be pursued but whether or not a separate charge would be laid every day is a matter for the prosecution to determine.

Hon MICHAEL MISCHIN: We have made it easy to prosecute and we have made it pretty toothless when it comes to enforcing the requirement for complying with a court order to remedy the harm. What the minister is saying is that if I fail to comply by 1 January, I am charged. The police can get on the case immediately and slap a charge against me saying that I had not complied by 31 December and I committed an offence on 1 January. When it finally wends its way through the Magistrates Court six to 12 months later, I am convicted. If the image is still there, I may or may not be charged with a further offence after that. Is that the substance of it, minister?

Hon SUE ELLERY: No, and again I do not agree with the pejorative language used by the honourable member. The substantive penalty for failing to comply with an order is 12 months' imprisonment and a fine of $12 000.

Hon MICHAEL MISCHIN: Those being maxima—correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: So it is not going to be necessarily 12 months' imprisonment and a fine of $12 000; it is something less than that—correct?

Hon Sue Ellery: Correct, member.

Hon MICHAEL MISCHIN: Why is it not that in proposed section 221BE(6), given that we have been told how hard it is to prosecute these cases if the threshold question is "reasonableness" and so forth, this is not an offence framed in terms of "A person who fails to comply with an order made under subsection (2) commits an offence"? It is a defence if there is a reasonable excuse for it. Why has the government not been consistent in the manner it has framed the legislation if it is so critical, as the minister said during the previous debate, that these things be made defences because of the difficulty of proving them?

Hon SUE ELLERY: The honourable member is trying to compare apples with oranges. The first relates to the policy around the nature of the offences and the kind of message that we want to send about that. This is about penalties and, as I said when I answered Hon Michael Mischin's question on this originally, the most similar offence already in the Criminal Code—the offence of disobeying a lawful order of the court—is created by section 178 and is also not a continuing offence.

Hon MICHAEL MISCHIN: The minister missed the point. I am not talking about whether it is a continuing offence. The government has decided that is has to be done in a different fashion—that is fine. Why has the government not reversed—to put it in lay terms—the onus of proof in the enforcement provision by making it a defence of reasonable excuse just as it has made it a defence to a charge of distribution without consent? Why has the government not done that when it is so hard to prosecute the others, but, here, the prosecution has to prove beyond reasonable doubt that there has not been a reasonable excuse? Why is the government not consistent?

Hon SUE ELLERY: Indeed, this is about consistency. This is after the person has been convicted. The conviction has already been established. The consistency here is with the similar provision that already exists in the Criminal Code about disobeying a lawful order of the court. I move —

Page 8, after line 29 — To insert —

221BF. Review of amendments made by *Criminal Law Amendment (Intimate Images) Act 2018*

(1) The Minister must review the operation and effectiveness of the amendments made to this Code, the *Restraining Orders Act 1997* and the *Working with Children (Criminal Record Checking) Act 2004* by the *Criminal Law Amendment (Intimate Images) Act 2018*, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Criminal Law Amendment (Intimate Images) Act 2018* section 4 comes into operation.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

This is in response to matters raised during an earlier debate. The proposal is to amend the bill to require a statutory review after three years. The review will assess the operation and effectiveness of the bill, including the operation of the acceptable conduct defence and any other issues that may arise in the practical implementation of the offences.

Hon MICHAEL MISCHIN: I indicate the opposition's support for the proposed amendment. At least there will be some check on the manner in which this legislation will operate.

Hon ALISON XAMON: I indicate that the Greens also support this proposed amendment. I think it is actually better than my original amendment, although it is largely in the same terms. Considering the issues that arose during the course of the second reading debate, an earlier review would be beneficial.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5 to 14 put and passed.

Title put and passed.

Report

Bill reported, with an amendment, and, by leave, the report 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 an amendment.

PUBLIC AND HEALTH SECTOR LEGISLATION AMENDMENT (RIGHT OF RETURN) BILL 2018

Second Reading

Resumed from 8 November.

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [2.45 pm]: When we were last debating the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018, I was coming to the end of my contribution. I want to recap some of my comments on this bill, given the debate was a few weeks ago. I indicate that the Nationals WA will support this bill. Some of the issues members had with the bill have already been raised, and I am sure there will be some answers from the minister in her reply to the second reading debate or as we go into the Committee of the Whole.

As we know, the bill seeks to restrict the right of return of officers in the senior executive service and health executive service to the first two years of their initial executive contract and to reduce the maximum amount of compensation payable in the event of the early termination of their employment. Two things were of concern to me. One has also been raised by other members of the house. The public sector is exceptionally important to any government. A government needs to seek a structure in the public sector that assists it to make strategic decisions and create transparency and clarity in the way it operates. If restrictions are placed on employees at senior levels of government, even considering their current positions, they may seek employment elsewhere. That happens in the natural course of attrition anyway; however, it may be a direct result of this bill. A new government requires all the experience it can gather, but it needs to balance that with community expectations about compensation payouts for senior executives and the way they move between departments. I think there is a public expectation that contracts are managed, which is why I support the bill, and that they are in line with the corporate and private sectors. I have no objection, except to say that with machinery-of-government changes already occurring, there are major concerns about the experience left in the public sector, which may in turn create a negative reflection on the sector due to no fault of its own. Restrictions, public sector reform and machinery-of-government changes are big changes to deal with in their own right, and it is very difficult to deal with them all at the same time.

The other issue I briefly touched on in my previous contribution was the expectation that once a contract is signed, its terms should be fulfilled. I would like to hear how the government will justify that decision-making in the legislation. If this was someone in the retail sector, the corporate sector or the resources industry—you name it—once the terms of agreement of their contract are reached, the contract is signed and that employee operates in good faith under the terms of that contract, and they would expect those terms and conditions to be carried through. I think that would be the fundamental expectation of people when they enter employment contracts. That is a bit of a concern for the people who will be affected by this bill. I am sure that they will not be happy about having the terms of their contract renegotiated seemingly without much consultation.

Those two issues have been raised by other members, and I raised them in my prior contribution. I think we need some answers from the government on the record about how we can manage to continue to operate in good faith, with genuine intent for those employees who will be affected by this legislation. It is difficult to balance the expectations of the community around the public sector. There is no doubt that the government has a difficult job managing contracts and compensation payments within the public sector. Potentially, there is no right answer. The government seeks to put one of its answers on the table. I support the bill, as will my National Party colleagues, but I look forward to the other contributions and the answers to some of the issues raised by other members during the debate.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.51 pm]: To the extent that the government wants to manipulate the employment contracts with public sector officers into the future, that is a matter for it. I am concerned about the increasingly apparent encroachment of politicisation into the public sector, and I deplore that. But that is for another day. I do not intend to address that part in particular. We will address those issues.

Hon Alannah MacTiernan interjected.

Hon MICHAEL MISCHIN: I know that Hon Alannah MacTiernan is quite happy to politicise the public service when she is in government. I do not propose to address that particular issue. To the extent that the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 interferes with current employment contracts that have been entered into in good faith and jeopardises the livelihoods, careers and income of these public officers in these difficult times, I cannot support the legislation.

I note with some comfort that Hon Alison Xamon will introduce what might be called a preservation or grandfathering clause into the legislation, and I will be supporting that. Having regard to the philosophy expressed by members of the Labor Party in the past, I hope that we will hear from other members of the Labor Party who hold employment contracts sacrosanct and who have been members of unions that have fought for adherence to contracts. For example, Hon Dr Sally Talbot waxed lyrical during debate on the workforce reform legislation back in 2013 about the importance of preserving good faith and employment contracts, as did Hon Sue Ellery. I will quote her on the Workforce Reform Bill 2013. That bill introduced some modest provisions to deal with public

sector officers who could not be placed or retrained and were surplus to requirements. It was opposed every step of the way by the then Labor opposition. Every member of the Labor opposition back then got on their feet and started to tell us how terrible it was to interfere with employment contracts.

Hon Sue Ellery: Calm down.

Hon MICHAEL MISCHIN: I thank the Leader of the Government for telling me to calm down. As I recall, at one stage during that debate, when I was at the committee table, Hon Ken Travers leant across and screamed at me, "I hate you people!" Some of the appalling behaviour we saw and self-righteous indignation we heard from members of the now government was astonishing. I look forward to Hon Dr Sally Talbot getting up to say how important it is to preserve employment contracts in good faith and Hon Sue Ellery getting up to say she cannot support this bill because it is contrary to Labor principles. Hon Matthew Swinbourn is involved in the union movement, so he knows the importance. I am sure that Hon Kyle McGinn will have something to say about the sacrosanct nature of employment contracts and how it shows bad faith on the part of those who have bargaining power over others to suddenly change contracts in retrospect and abandon the promises that they had made, which might jeopardise careers and the like. I am sure Hon Martin Pritchard, with his union background, will have a lot to say about that and preserving the interests of employees. I look forward also to hearing Hon Samantha Rowe and Hon Darren West, who we know is a great champion of the working class. He would never dream of doing the same thing with an employment contract with one of his staff at his ranch out in the wilds. I am sure that he would never dream of saying, "You've been acting in a position that is giving you a greater income and now I am going to remove the possibility of you going back down to whatever job you had before at a lesser income. You'll have to elect what you do and I am changing the employment contract." I am sure that will be anathema to him! I know it is anathema to Hon Sue Ellery. On 20 March 2014, when talking about employment agreements and the like and how terrible changing them is, she stated that a proposed change —

> … is in effect a retrospective provision because this bill strips away arrangements entered into before the amended law came into place. When the people involved reached their agreement, they did so under another law. They entered that agreement and made whatever trades-offs and accepted whatever wages on the basis that certain terms were locked in for them for the duration of the agreement. That is the terms that cover whether or not their employment can be terminated due to redundancy, and how they are to be treated with regard to redeployment.

She went on to state that it was not fair or reasonable that terms and conditions negotiated by government should be suddenly changed arbitrarily and thrown away. How quickly attitudes change when people are in a position of power! This government has already interfered with an independent tribunal that was set up to depoliticise the remuneration process for members of Parliament, senior public servants and the like. It was set up specifically to depoliticise the process—to put it in the hands of an independent tribunal—but for political gain and a few headlines this government decided to interfere with the discretion of the Salaries and Allowances Tribunal. That was all for a few headlines! So much for principle! An appointment has already been made of a commissioner to the Western Australian Industrial Relations Commission without advertising that position or revelation of the selection criteria or who was involved in that process. In opposition, members of this government complained that we were imposing the mere requirement that the Salaries and Allowances Tribunal have regard to wages policy; it was not an instruction that it had to follow it. We asked the tribunal to have regard for it. That was considered to be too much of an interference in its independence. So much for the high principles and the self-righteous indignation of the Labor Party! I can see that Hon Sue Ellery is mocking the whole idea. I will remind members of what the Premier said when he was in opposition. Talking about workplace reform and agreements that were being modified for the small group of public servants who were redundant to requirements and could not be used otherwise, he stated —

> They were the clauses in the two agreements. The government might not like those clauses, it might think they are wrong, and it might think they do not fit with whatever standard it wants to adhere to, but they form part of an agreement, and guess who the agreement was with? It was with the government; the government signed it. These are the government's agreements, so if the government did not want those clauses in the agreements, it should not have put them in …

We now have a new government, so it can change things how it likes. He goes on, with regard to state agreements —

> That should not be done with state agreement acts. State agreement acts are sacrosanct.

Yes, the acts are. I know there is some contemplation about changing one now, and we will get on to the merits of that in due course. The sanctity of contract that he talks about is particularly interesting. He says —

> … the sanctity of the contract came through and the government thought that perhaps it should not rip up those contracts. It should not do that to householders or with state agreement acts, but the government is doing it with this bill. How is that right?

He was talking about the Workforce Reform Bill. We know this government's attitude to contracts; it said before it got into government and afterwards that it was going to rip up contracts it did not like. Look at what it is doing

now. It is picking on a small group of public servants who had relied on some security due to their ability to go back into their jobs in due course. Now the government is saying, "No; you have to elect to get out because we don't want you." Here is another contribution from Dr Tony Buti, the member for Armadale, talking about —

> … the sanctity of the doctrine of freedom of contract, and would see it as quite dangerous that any contract freely entered into between two parties could be changed or abolished at the whim of any government.

I do not know which government he was talking about then; obviously not this one. Maybe his views have changed, too. I do not know whether he spoke against this legislation in the other place. I doubt it.

Hon Nick Goiran: I think, in fairness to him, he is not part of United Voice, so he does not get a voice.

Hon MICHAEL MISCHIN: Yes. You have to be part of United Voice to have a voice in this Parliament. Dave Kelly, the member for Bassendean says —

> … the government to override a contract of employment. Premier, I find that remarkable.

The current Minister for Commerce and Industrial Relations, talking about workplace agreements and the sanctity of the contract, says —

> I am not trying to put words in the Premier's mouth but I understand that he said last night that a piece of law will, in a technical sense, override an enterprise bargaining agreement. He went on to say that it has happened under Labor and Liberal administrations. I make the point that that is not correct. I pointed out earlier, but the Premier did not explain himself on this issue, that when the Labor Party cancelled workplace agreements, there was a specific provision in that legislation to ensure that the contract of employment continued with the conditions that existed in the workplace agreement.

Obviously, that does not apply when one is not part of a union and people's contracts of employment can be overridden simply because the government can do that. That is what is being done in this place. Before it is thought that this is simply academic, I will read into the record an email I received from someone whom this affects. I can provide a redacted copy so as not to identify the person concerned because I think that would be unfortunate, knowing the way this government operates. The email is dated 3 September 2018, and the subject is Public and Health Sector Legislation Amendment (Right of Return) Bill 2018, and it states —

> Dear Mr Mischin
>
> I am writing to seek your assistance in speaking against the PUBLIC AND HEALTH SECTOR LEGISLATION AMENDMENT (RIGHT OF RETURN) BILL 2018 as it proceeds through Parliament. My husband, a long serving public servant, is caught in the net of the policy and its killing him. At his age he is and will always find it impossible to compete on an even surface with younger applicants.
>
> The Government plans, through the Bill, to amend the Public Sector Management Act 1994 and the Health Services Act 2016 in order to restrict the "right of return" for officers in the senior executive service and the health executive service to the first two years of their initial executive contract, and to reduce the maximum amount of compensation which these officers may be eligible to receive in the event of the early cessation of their contract of employment.
>
> Firstly, the current legislation provides for a "right of return". This condition of the legislation provides for a public service officer, having been successful in a merit selection process and having entered an employment contract in a designated senior executive service position, to return to their previous level when the contract expires or is terminated.
>
> The Bill largely removes the original provision, except in the first two years of a first contract. But the Bill also includes a 6 months window for existing contracted senior executive service officers during which they may elect to exercise their existing right of return. This retrospective application of a new policy is both unjust and unfair, it cannot be right and must be opposed vigorously.
>
> New senior executive service employment contracts will be entered into by officers, or not, in the full knowledge of the provisions and features of the conditions available at that time, which is reasonable. The intended retrospectivity however is unjust and unfair and must be overturned.
>
> The Bill is unjust as it is changing the conditions offered by the employer, which informed the officer's ambition to seek advancement and successfully enter the senior executive service. The Bill is unfair as the existing group of loyal senior public officers caught in its … net are being treated worse than the officers who preceded them and those who follow. It is unjust and unfair and cannot therefore be the right thing for the Parliament to do.
>
> Secondly, and less pressing than my husband's treatment, as a consequence of the removal of the "right of return" the Bill, if passed, will see the Western Australian public sector's senior executive service cease to be a meritocracy and become a service populated by itinerant and transient employees who, by dent of the uncertainty of their employment, will be in a constant state of nervous insecurity and constantly seeking other, more stable opportunities.

Yes, like employers that will actually fulfil their employment contracts. The email continues —

> Appointment on merit is a foundation stone of the modern Westminster system of public administration through a professional public service and follows the British government's Northcote-Trevelyan report of 1854. A permanent, meritocratic Public Service, based on the guiding principles of integrity, honesty, objectivity and political impartiality that we see and adhere to today will be lost if the bill is passed.
>
> The senior executive service will cease to be a committed and professional body of public servants and become simply a reflection of the commercial world, with personal benefit and profit the key characteristic. This is clearly not in the interest of retaining corporate knowledge, strategic thinking and action nor in the interest of stability in the services provided to the Western Australian Community.
>
> As a direct and foreseeable consequence the Western Australian public sector will be in a constant state of flux and will fail in its duty to provide frank and fearless advice to Ministers. This advice is necessary if our ministers are to be properly informed and accountable to the community through their Parliament, the key feature of our system of parliamentary democracy. The provisions of the Bill must be vigorously opposed.

I expressed some acknowledgement of this lady's concern for her and her husband's prospects, and she wrote back to me on 17 September —

> Dear Mr Mischin,
>
> Thank you for acknowledging my earlier correspondence regarding the unfair and unjust nature of the Government's intentions as detailed in the Bill. I am writing to you again to seek your assistance in speaking against the PUBLIC AND HEALTH SECTOR LEGISLATION AMENDMENT (RIGHT OF RETURN) BILL 2018 as it proceeds through Parliament.
>
> I have previously detailed my objections to the removal of this important Western Australian public service statutory employment condition, and its inevitable adverse consequences. Further to those earlier objections to the Bill I'd like to raise three other matters concerning this unfair and unjust Bill.
>
> Firstly, the Government's intentions concerning the removal of the right of return for permanent public servants in the senior roles targeted by the Bill is in stark contrast, indeed a direct reverse of its concurrent intention to offer permanency to existing non-permanent public service officers.

That is quite an irony, is it not? The email continues —

> The Premier, in a media statement dated 9 August 2018, announced arrangements whereby all employees with more than two years of service, in fixed-term or casual roles, will have their contracts reviewed and if they comply with the criteria, they will be offered permanency. The Public Sector Commission is to issue instructions for eligibility criteria including:
>
> - The job is correctly defined as a fixed-term position;
> - The person has been employed in the same or similar role for at least two years;
> - There is ongoing funding for the position into the future;
> - The person is not facing formal disciplinary or substandard performance action; and
> - The process complies with the Public Sector Management Acts requirements.
>
> The statement goes on to say that the Government expects the changes will allow departments and agencies to better retain quality staff, making the public sector more efficient, improving services to the community and reducing expensive outsourcing and consultancies. Comments attributed to Premier Mark McGowan include:
>
> > *"I'm very pleased my Government is able to offer stable jobs and improved services for Western Australia.*

I interrupt to say: stable jobs for some. He continues —

> > *"Despite the fact that they may have been employed in their role for a number of years, fixed-term employees often face uncertainty, which makes it difficult to plan for the future. Being employed on a fixed-term basis can also create roadblocks when applying for home loans.*
>
> In media on its website, a major public sector representative organisation, the CPSU/CSA, quotes its Assistant Branch Secretary Rikki Hendon who said:
>
> > *"We are pleased that the McGowan Government has listened to us, has listened to our members and is delivering on its election commitment to bring fair, decent work back to people who deliver our public services.*

> *"Creating a pathway to permanency will genuinely change lives for the better, and enable the public sector to retain talented staff, who are too valuable to lose."*

That is in contrast with this particular proposal. The correspondence continues —

> On one hand, on 9 August 2018, the Premier is pleased to offer permanency to officers who have voluntarily entered into non-permanent arrangements and served two years in public sector positions, contracts without any offer of permanency, while almost in the same breath, his 15 August 2018 media statement advises his introduction of this Bill into the Legislative Assembly, a Bill which unilaterally removes public service officers' permanency.
>
> Secondly, I bring to your attention that the explanatory memorandum, published on the Parliament's website, states that the principal purpose of the bill is to amend the *Public Sector Management Act 1994* and the *Health Services Act 2016* to restrict the right of return for officers in the Senior Executive Service … and the Health Executive Service … to the first two years of their initial executive contract, and to reduce the maximum amount of compensation which these officers may be eligible to receive in the event of the early cessation of their contract of employment.
>
> In the 15 August 2018 media statement advising his introduction of the bill into the Legislative Assembly I referred to above, the Premier advised that the change enabled the public sector to better prepare for workforce planning and to bring about more efficiencies. As the right of return does not impact on the cost of the Public Sector negatively, indeed saving recruitment costs through the return of effective officers to vacancies and avoiding compensatory payments, or impact on its efficiency as the practice prevents loss of corporate knowledge, the change must be designed to assist workforce planning. According to the Western Australian Public Sector Commission's 2017 *State of the sectors* report the Western Australian public service includes more than 110,000 positions. It is beyond reason to claim that the return of officers to the sector impairs workforce planning when, even were all 400 —

I think that means of the SES —

> to elect to return at once, the total proportion of those officers is less than 0.4% of the sector! Hardly a planning challenge.

I have to agree. It continues —

> Thirdly, a consequence of the Bill and the new two-year window for senior executive officers to return to their earlier permanent position is to provide the senior executive officers appointed recently and those appointed in the future, a two-year window to make an election to return. In stark contrast, the Bill limits existing permanent public servants, in existing senior executive officers' contracts, to no more than 6 months from the date of the change. This Bill treats these two categories of public servant officers is demonstrably inequitable.
>
> If the Parliament determines that the current right of return is to be discarded, the fairest and most just decision of the Parliament would be to amend the Bill to provide for at least the grandfathering of the existing, contracted right of return for those public service officers who entered contracts on this basis, allowing those public service officers considering taking up senior executive officer contracts in the future, to make that decision on the basis of the statutory arrangements which exist at that time.
>
> Members of Parliament should be an appalled with the obvious double standards and conflicting logic proposed by the Government in this Bill's singling out of one category of permanent public service officers and reject its offending elements.

I wonder what the government's motive really is. Is the government trying to have a transient public service in which people can be appointed from outside as whim arises, last one term of government, and then disappear, to allow for the politicisation and opportunistic manipulation of the expertise in the public service by engaging only those who are sympathetic to the Labor government of the day? I at least am holding firm with the principle that if these sorts of arrangements are to be changed, it should not be done retrospectively. We are not dealing with a small sector that is not serving its purpose or is redundant to requirements and for which every attempt that has been made to redeploy the employees in some fashion has been unsuccessful. This is not a last-resort piece of legislation to address a problem; it is a deliberate denial—an abrogation—of contractual rights solemnly entered into that will affect the careers and livelihoods of these officers. I was invited by this correspondent to speak against the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018. I have fulfilled her faith; I only hope that the government can be persuaded to be faithful to its public servants, particularly having regard to the very high and large talk we have heard from Labor members in the past about the importance of good faith in employment contracts, and the importance of governments holding faith with their public servants. I have not to date seen that. I do not expect to, but at least this lady can be reassured that someone is speaking up for her, her husband and her family. I will be supporting Hon Alison Xamon's amendment, and I will be opposing the bill if it remains in its current form.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.16 pm] — in reply: I thank members for their contributions to the debate on the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018. I will go through the issues raised by members, and we will deal with the series of amendments on the supplementary notice paper in the name of Hon Alison Xamon during Committee of the Whole House.

Hon Tjorn Sibma asked about the figures paid out to a range of senior executive service officers. Between 1 March 2017 and 25 September 2018, 68 compensation payments were made to SES officers under section 59 of the Public Sector Management Act at a total cost of $14 179 923. A further 30 SES officers elected to exercise their right of return to access a voluntary separation payment at a further cost of approximately $6 million. The member raised the issue that the SES cohort had been reduced from around 500 to something over 350 or thereabouts. Those figures are approximately correct. As at 25 September 2018, there were 370 SES officers and 35 health executives. At that date, the number of executives who possessed a right of return was 281. Prior to the government's SES reduction strategy and machinery-of-government reforms, the SES consisted of 521 members and 646 funded positions. A number of SES positions remain vacant, and the current expected maximum number of SES officers following the 20 per cent reduction is 417; the expected maximum number of health executives is 72.

The honourable member and others put the proposition of the potential for mixed signals about which industrial rights the government is prepared to defend. I have some comments to make on the points made by Hon Michael Mischin, so I might incorporate those in this response. The comparison drawn between these two groups does not reflect the fundamental differences between these roles. The conversion of fixed-term contract and casual employees to permanency aims to provide job security to thousands of workers, the majority of whom occupy lower classification levels and provide vital frontline services to the community. These conversions relate to positions that, for a variety of reasons, had been filled on an incorrect basis as fixed-term appointments. In contrast, fixed-term tenure has been a feature of SES employment since the Public Sector Management Act was first passed. Fixed-term tenure also supports a mobile executive group, supporting the objectives of the SES.

I will turn particularly to the point about overriding contracts and some of the issues raised by Hon Michael Mischin. Importantly, this bill provides for a transition to the new arrangements by giving individuals six months to choose to remain on existing contracts, exercise their right of return or take compensation in lieu of exercising that right. Under the existing provisions of the act, an individual can exercise their right of return at any point. The argument that the bill should not override existing contracts, despite the member's reliance on the *Hansard* transcript of the debate at the time, is in clear contrast to the previous government's approach in managing the passage of the Workforce Reform Bill 2013. That bill amended the Public Sector Management Act 1994 to provide for the introduction of involuntary severance. Specifically, it inserted a new section 95B(3) into the Public Sector Management Act, which relevantly provides —

> Regulations referred to in section 94 or 95A prevail, to the extent of any inconsistency, over the terms and conditions applying to an employee's employment under a contract of employment, whether entered into or renewed before, on or after the commencement of the *Workforce Reform Act 2014* section 14.

At the time of the passage of that bill, the then Minister for Commerce, Hon Michael Mischin, explained and defended the approach as follows —

> As I think I made apparent, the reason the government is introducing these provisions is to ensure that all public servants are dealt with in a uniform fashion, and it will apply the policy stated in the Workforce Reform Bill 2013 in respect of all agreements, whether current or future.
>
> …
>
> … every government has a responsibility to deal with matters affecting the peace, order and good government of the state according to its policies and views on an appropriate means of addressing such issues. Labor governments in the past have made certain policy decisions and those have overwritten employment contracts. I suspect that if there is ever a Labor government in this state in the future, it will likewise take a particular philosophical and policy view according to the issues of the day that face it and make such decisions. In this case, certain provisions, which one might say are extraordinary in this day and age—that no-one can ever lose their job—are thought by government to be inappropriate in the light of the needs facing the state and the need for public sector reform, and it is acting accordingly and readjusting those matters by way of legislation, as it has done in the past, as other governments of other political persuasions have done in the past, and as, presumably, governments will do in the future.
>
> …
>
> After an assessment of the need for reform in the public sector, it has been determined that one of the deficiencies in the current regime is the inability to discharge employees who are not able to perform a worthwhile function in the public sector. That is the basis for the amendments that have been proposed. As for the idea that there is a lack of good faith in bargaining, there seems to be confusion about the role of Parliament and the role of government in proposing legislation as opposed to the manner in which negotiations are conducted. It lies ill in the mouth of the opposition to suggest that we cannot change employment contracts.

The approach in this bill is similarly grounded. It seeks to override contracts as necessary to place all existing senior executive service members on a similar and consistent footing as soon as reasonably practicable. As I referred to earlier, the difference is that the transition to the new arrangements will give individuals a period of some six months to choose to remain on an existing contact, exercise their right of return or take compensation in lieu of exercising their right.

Hon Michael Mischin interjected.

Hon SUE ELLERY: I am not taking interjections, honourable member.

I will go back to the comments made by Hon Tjorn Sibma. He made the point that there is effectively a 50–50 split in which jurisdictions have a right of return. If this bill is passed, the number of jurisdictions without a right of return will be double the number of jurisdictions that do provide the entitlement. He made the point about the process through which natural justice is conferred and contractual rights respected. For SES and health executive service officers with an existing right of return, the bill provides a transitional period of six months or longer for officers who are within the first two years of the initial executive contract. Within that time, they may choose to exercise that right of return to permanent employment, after which it lapses. Six months was chosen as a fair and reasonable transition period, ensuring that a balance was struck between allowing sufficient time for affected officers to make an informed decision, while at the same time ensuring an efficient and smooth transition to the new regime that is not overly protracted. Those officers who elect not to transition remain eligible for compensation under section 59 of the Public Sector Management Act. Notwithstanding the intended legislative changes contemplated by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018, it is implicit that employment contracts need to be made within the law as it stands at the time. It is unreasonable to expect that recruitment activity across the entire cohort could simply be paused while awaiting these changes. The proposed changes were also clearly conveyed to affected parties through a range of announcements and information sessions to advise of the changes.

Hon Alison Xamon raised concerns about what will be on offer for future SES officers and whether it will be good enough to attract and retain accomplished, professional and committed people of integrity. Chief executive officers and other executives play a vital role in leading change. This government is committed to ensuring that the leadership cohort is provided with targeted and tangible professional development and other supports to assist with the demands of being public sector leaders. The public sector reform program also includes a range of broader initiatives to support and develop the public sector leadership cohort. The independence of the public sector was also raised. The independence of the public sector is protected by a number of sections of the Public Sector Management Act, which are not diminished by this bill. Firstly, the act precludes ministers from having involvement in the appointment or termination of public sector officers, apart from CEOs, for whom the act provides a legitimate role for the responsible minister to be consulted. Secondly, the act provides an ethical framework within which all public sector officers, including executive officers, must operate. The key principles of conduct for all public sector officers set out in section 9 of the act include a requirement to act with integrity in the performance of their official duties. This is further supplemented by the code of ethics, which requires that all employees act with care and diligence; make decisions that are honest, fair, impartial and timely; and consider all relevant information. Further, the role and purpose of the SES, as set out in section 42 of the Public Sector Management Act, which is to provide high-level policy advice and undertake managerial responsibilities in agencies, remain unchanged. The retention of a two-year right of return provides an opportunity for aspiring leaders to test an executive role to see whether it accords with their intended career objectives. This period of minimum security will be unique amongst comparative jurisdictions.

Hon Jacqui Boydell made some comments about the machinery-of-government changes. I make the point that the machinery-of-government changes and this bill are a small part of the government's public sector reform agenda to build a more collaborative, capable and high-performing public sector workforce that will include a renewed focus on talent management and workforce planning.

I think that canvasses the issues raised, but if there are further questions, we can deal with those matters in Committee of the Whole. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon TJORN SIBMA: I do not wish to make an elongated contribution; I might save my remarks until clause 8. However, I would like to get an indication—I thought the minister foreshadowed this in her second reading reply speech—of the government's impressions or likely position on Hon Alison Xamon's amendments, particularly as

I advised the minister behind the Chair that the Liberal opposition will be supporting those amendments. I seek an indication about whether the minister will be proceeding with them, in a desire to facilitate the passage of this bill, if we can.

Hon SUE ELLERY: I am not sure that I did, but, in any event, the government will not be supporting the amendments.

Hon TJORN SIBMA: In my second reading contribution I referred to the fact that I had received a document from the Premier's office.

Hon Michael Mischin: Did you rely on it?

Hon TJORN SIBMA: No, I did not rely on it. I inferred from this document that there was a set of proposed amendments that have not been put on the supplementary notice paper. They are similar to the amendments to be moved by Hon Alison Xamon, which is the only set of amendments that have been put on the supplementary notice paper. I am trying to determine whether the government has a philosophical problem with the substance of the amendments that have been put on the notice paper, since I am given to understand, and I have documentary evidence, that the government considered amendments that seemed to be very similar to Hon Alison Xamon's amendments. I think that it behoves the government to clarify its position and provide an overview of why it gave consideration to amendments of this sort but is choosing not to support amendments to be moved by Hon Alison Xamon that I would say are about 90 to 95 per cent similar to those amendments.

Hon SUE ELLERY: I want to get this clear, because it is not clear to me. Is the honourable member saying that he has something from the government that indicates we had a set of amendments that we were going to move?

Hon TJORN SIBMA: Yes, I do. I tabled this document previously on 6 November, I think. If not, I have a copy right here. I am not doing this to throw the cat among the pigeons, if I am allowed to use that phrase, but I have it.

Hon SUE ELLERY: I am not clear on what the member is talking about. If he could table it, that would be helpful.

Hon TJORN SIBMA: I seek leave to table the document I just referred to.

Leave granted. [See paper 2314.]

Hon SUE ELLERY: The advisers have something that the member sent them on the twenty-fifth, but it does not refer to amendments.

Hon Tjorn Sibma: I am happy to get clarification.

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

Hon SUE ELLERY: Deputy President, I ask that you leave the chair until the ringing of the bells and I will have some discussions with people. My proposition is that we go now to question time.

The DEPUTY PRESIDENT: You wish me to leave the chair?

Hon SUE ELLERY: It is just so that I can get that organised.

The DEPUTY PRESIDENT: Members, I shall leave the chair until the ringing of the bells.

Sitting suspended from 3.37 to 3.49 pm

BUSINESS OF THE HOUSE

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 questions without notice to be taken forthwith and that the afternoon tea break not be taken this afternoon.

QUESTIONS WITHOUT NOTICE

SUBCONTRACTORS — PAYMENT SECURITY

1324. Hon PETER COLLIER to the minister representing the Minister for Commerce and Industrial Relations:

I refer to the announcement yesterday regarding security of payment for subcontractors.

(1) Why has the Fiocco report not been publicly released and when will it be released?

(2) Will legislative changes be required to provide the additional powers to the Small Business Commissioner; and, if so, what legislative changes will be required?

(3) Will project bank accounts be rolled out to the private sector in accordance with the McGowan government's election commitment; and, if not, why not?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The Minister for Commerce and Industrial Relations has provided the following information.

(1) The McGowan government has received the report by Mr John Fiocco and Hon Matthew Swinbourn, MLC, and is considering its recommendations. The minister will be releasing the report shortly.

(2) Yes. Some legislative changes will be required to provide additional powers to the Small Business Commissioner to compel the production of documents.

(3) The merits of project bank accounts for private industry were considered and some recommendations were made in the report. The McGowan government is considering the recommendations and will make an announcement in due course.

HYDRAULIC FRACTURING — EXPLORATION INCENTIVE SCHEME

1325. Hon PETER COLLIER to the minister representing the Minister for Mines and Petroleum:

I refer to the minister's media release on Friday, 30 November 2018, titled "New exploration projects on the rise".

(1) Did any of the successful applicants' projects involve drilling for unconventional gas, including tight gas or shale gas?

(2) If yes to (1), does the extraction of this gas involve fracking or hydraulic fracture stimulation?

(3) If yes to (1), what are the names of those companies and how much funding did each company receive from the taxpayers of Western Australia?

(4) If yes to (1), will the minister table the applications of the successful companies?

(5) Did the minister approve the funding?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The Minister for Mines and Petroleum has provided the following answer.

(1) No.

(2)–(4) Not applicable.

(5) No. The selection of applications approved for co-funding is made by the Department of Mines, Industry Regulation and Safety based upon advice from independent experts.

INSURANCE COMMISSION OF WESTERN AUSTRALIA — BELL GROUP LIQUIDATIONS

1326. Hon MICHAEL MISCHIN to the minister representing the Treasurer:

I refer to my questions without notice regarding the engagement by the Insurance Commission of Western Australia of Messrs Wayne Martin, QC, and Jonathon Carson.

(1) How many other senior lawyers did the commission approach for assistance before engaging Messrs Martin and Carson?

(2) Who at the commission was involved in those approaches and the selection process?

(3) Who suggested to officers of the commission that Messrs Martin and Carson be approached?

(4) What precisely is the strategic advice on the conduct of, and resolution of, the Bell litigation that Mr Martin is expected to provide that is valued at $10 000 per day for one day's work per week for two years and does not involve legal advice?

(5) Has Mr Martin, in respect of this engagement, sought or received an exemption under section 15 of the Judges' Salaries and Pensions Act 1950 to protect his pension from forfeiture; and, if so, when, and for what reason?

Hon ALANNA CLOHESY replied:

I thank the honourable member for some notice of the question. On behalf of the Minister for Environment, who is out of the chamber on urgent parliamentary business, I provide the following information from the Treasurer.

(1) Twenty-one lawyers were identified as potentially having the skill, experience and absence of conflicts to undertake the envisaged roles. A number of these were approached. Four candidates were interviewed. Two candidates were interviewed a second time.

(2) Frank Cooper, John Scott, Yasmin Broughton, Rob Bransby and Rod Whithear were involved.

(3) The Insurance Commission consulted several members of the legal fraternity, including retired partners of law firms, to identify the 21 names mentioned in the answer above.

(4) The nature of the strategic advice will be determined based on events in the litigation and other dealings with creditors claiming to have rights to assets in the Bell Group liquidations.

(5) The consultant will not be providing legal advice.

QUALITY SCHOOLS REFORM — BILATERAL AGREEMENT

1327. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to the minister's answer to question without notice 1304 asked yesterday regarding the bilateral agreement signed this week between WA and the commonwealth on quality schools reform.

(1) Can the minister confirm that under the agreement, the commonwealth's funding contribution has increased from 15.37 per cent this year to 20 per cent in 2023, and the state's funding contribution has reduced from 84.43 per cent this year to 75 per cent in 2023?

(2) Can the minister confirm that by 2022, the state's funding contribution will be at the minimum level of 75 per cent?

(3) Can the minister confirm that by 2022, under the new arrangements, public schools will be funded to 95 per cent of the schooling resource standard?

(4) If yes to (1), (2) or (3), why is the state reducing its funding contribution by nearly 10 per cent between 2018 and 2023 and not maintaining a funding contribution that is higher than the minimum, as has been the case in previous years?

(5) As a result of the state's funding reduction, can the minister confirm whether schools will be better off in real terms over the life of the agreement?

Hon SUE ELLERY replied:

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

(1)–(3) The bilateral agreement sets out the minimum funding contributions from both the commonwealth and state governments over the life of the agreement. The minimum funding contributions are expressed as a percentage of the schooling resource standard—75 per cent for the government sector and 25 per cent for the non-government sector. The full bilateral agreement, including funding contributions, is publicly available.

(4) The agreement negotiated by the state reflects Western Australia receiving a fairer share of funding from the commonwealth that, by the end of the agreement, will no longer penalise the state for historically funding schools at a higher rate than any other state. The approach taken in Western Australia will also bring the state into alignment with the contribution provided by other states. A key factor in the state's funding share of the schooling resource standard declining over the life of the agreement relates to the schooling resource standard being indexed by the commonwealth at a higher rate—at least three per cent a year—compared with state-based cost growth of around one per cent.

(5) Over the life of the agreement, public schools in Western Australia will receive funding increases. The agreement ensures that about $200 million of additional funding flows into public education over the life of the agreement. The agreement positions WA to retain its status as the best-funded state education system.

MENTAL HEALTH — FLY IN, FLY OUT WORKERS

1328. Hon JACQUI BOYDELL to the minister representing the Minister for Commerce and Industrial Relations:

I believe this question has been redirected to the Minister for Regional Development representing the Minister for Commerce and Industrial Relations. I refer to the report released by the Mental Health Commission "Impact of FIFO work arrangements on the mental health and wellbeing of FIFO workers" and the subsequent statement by the government supporting the recommendations of the report.

(1) How does the government intend to work with companies who support a fly in, fly out workforce to implement the recommendations outlined in the report?

(2) Will the government commit to adopting a policy that minimises the mental health risk of FIFO workers by limiting FIFO camps to areas more than 60 kilometres from existing regional towns?

(3) If no to (2), why not?

(4) How does the government plan to reduce WA's reliance on a FIFO workforce and deliver improved mental health benefits for workers in Western Australia?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(4) The latest research information relating to the mental health of FIFO workers and their families was incorporated into the draft code of practice, entitled "Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors". The code will be published in 2019 along with online guidance, tools and other resources to support its integration into safe systems of work intended to improve mental health outcomes for employees.

The role of the Department of Mines, Industry Regulation and Safety is to regulate safety in accordance with the Occupational Safety and Health Act and the Mines Safety and Inspection Act, which legislate that, as far as is practicable, employees not be exposed to hazards at work. All new mining operations are required to submit a project management plan to the department, which includes identification of all major risks relevant to the operation and a summary of the strategies to manage those risks.

Western Australia has a significant FIFO workforce servicing the resources sector due to the remote nature of many of Western Australia's resources operations. FIFO work can have a significant impact in the complex area of mental health and wellbeing. As such, it is important to find suitable controls to manage these risks, regardless of work arrangements in use.

DEPARTMENT OF AGRICULTURE AND FOOD — MEDITERRANEAN FRUIT FLY

1329. Hon COLIN de GRUSSA to the Minister for Agriculture and Food:

Growers in the horticultural areas of Carnarvon are currently being levied to raise funds to support the eradication of fruit fly. Growers have recently raised concerns about how the levy is applied, after some growers had their levy increased fourfold while others pay nothing.

(1) What is the minister doing to ensure that the fruit fly levy system is fair and equitable in the way it is applied to growers in the Carnarvon horticultural region?

(2) If the state government moves to a fair and equitable system, will the minister reimburse those growers who have had to pay the levy when it was inequitable?

(3) Has the minister approached the federal government to source funds to contribute to the eradication of fruit fly in Carnarvon; and, what has been the result of those discussions?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(2) I am certainly very conscious of the amount of angst in Carnarvon. On Saturday, I was at the country race meeting with members of the FBI, the esteemed horseracing syndicate from Carnarvon, who put forward their point of view. On Monday, I was at Vegetables WA, and the growers there put forward their point of view. There is no doubt that it is massively important that we get on top of this medfly issue in Carnarvon and finish the job off. We have been doing this over a number of years and we are in striking distance of gaining medfly-free status, which will be of great economic benefit to growers. As with most things in Carnarvon, there is a lot of angst and different views about how this should be done. I have committed to going there before Christmas to have a public meeting, get all the different points of view and see whether we can land on a system that everyone thinks is equitable.

(3) Yes, of course, we will be absolutely making submissions to the federal government scheme. I hope we will get the opposition's support, if its mob is still in there any time next year, to make sure that this time round WA does get a reasonable share of that fund.

MINING TENEMENT APPLICATIONS — KALGOORLIE REGISTRY

1330. Hon ROBIN SCOTT to the minister representing the Minister for Mines and Petroleum:

Subsequent to question without notice 1286, can the minister confirm that tenements P26/4298–P26/4301 were applied for on 15 September 2017 and are still pending?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The Minister for Mines and Petroleum has provided me with the following information.

Yes, tenements P26/4298–P26/4301 were applied for and are still pending.

DOMESTIC GAS RESERVATION POLICY

1331. Hon CHARLES SMITH to the Leader of the House representing the Minister for State Development, Jobs and Trade:

I refer to the recent article on WAtoday dated 1 December headed "Why does energy-rich WA need to frack?"

(1) Does the government intend to toughen up domestic reservation policy and/or renegotiate export contracts in the near future to offset the reported looming gas shortage?

(2) If no to (1), why not?

(3) Is the government in favour of fixed-price reservation?

(4) If no to (3), why not?

(5) Why was Chevron allowed to defer domestic supply from its massive Gorgon and Wheatstone gas projects until well after initial production began?

Hon SUE ELLERY replied:

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

(1)–(4) The WA gas market is currently well supplied. Gas available under the Gorgon, North West Shelf and Wheatstone domestic gas arrangements can meet half of WA's gas needs over the next two decades at current levels of demand. At current levels of demand, the WA market will need new sources of gas within a decade. New gas supply could come from domestic gas commitments of third parties tolling gas through WA's existing onshore LNG facilities, the implementation of Pluto's domestic gas arrangements and the development of new reserves by domestic-only producers.

The next phase of LNG industry development in Western Australia is focused on brownfield sites with domestic gas arrangements in place. For example, the developers of the Browse and Scarborough, and Clio and Acme projects are seeking to toll their gas through existing LNG facilities in the Pilbara. The domestic gas arrangements covering these facilities will apply domestic gas obligations upon each of the third party users, consistent with the WA domestic gas policy. The WA domestic gas policy provides for gas prices and contract terms to be determined by the market.

(5) Domestic gas agreements are negotiated on a project-by-project basis in line with the WA domestic gas policy. They are negotiated at project inception and cover reservation; marketing, including timing; and infrastructure obligations. Gorgon gas is being marketed in two tranches. The 300-terajoule-a-day Gorgon domestic gas facility has been constructed, and it commenced supply of the first tranche of a little over 150 terajoules a day in 2016. Supply of the second tranche is expected by 2021. Commissioning of Wheatstone's 200-terajoule-a-day domestic gas facility is expected before the end of the year.

HYDRAULIC FRACTURING — MODELLING

1332. Hon ROBIN CHAPPLE to the Leader of the House representing the Premier:

I refer to the McGowan government's announcement on Tuesday, 27 November 2018, that it would approve fracking.

(1) On what basis was it decided that 400 petajoules a year would be the estimated output for a fracking industry in WA, as cited in the fracking inquiry report?

(2) Does the Premier agree with recent economic modelling by The Australia Institute, which concludes that gas prices may increase if unconventional gas is introduced into the WA domestic market?

(3) If no to (2), on what modelling is the Premier basing his opinion?

(4) Does the Premier agree with The Australia Institute's modelling, which estimates between three and 19 full-time equivalent jobs for Aboriginal people will be created by the fracking industry in WA?

(5) If no to (4), on what modelling is the Premier basing his opinion?

Hon SUE ELLERY replied:

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

I did have a note when the member tabled this question, but I do not have it with me now, about the description PJ/y. I know what terajoules per day is, but what is PJ/y?

Hon Robin Chapple: Petajoules per year.

Hon SUE ELLERY: The answer is as follows.

(1) Four hundred petajoules per year is equivalent to 1 110 terajoules per day, which is equivalent to the forecast total annual domestic demand out to at least 2022. At page 383, the inquiry notes —

> … a new unconventional gas field in Western Australia, may produce as little as 100 TJ/d over twenty years. At the other extreme, combined production from gas fields may approach 500–1,000 TJ/d. The Inquiry considered a 1,100 TJ/d scenario in our GHG risk assessment as it meets the forecast Western Australian domestic demand out to at least 2022, even though it is not likely that onshore fields based on hydraulic fracture stimulation technologies would entirely supplant domestic supplies from conventional sources in the coming decades.

(2)–(5) The Premier notes the Australia Institute's longstanding opposition to all forms of natural gas development. The Premier gives greater regard to the two-volume, 609-page report prepared by the Independent Scientific Panel Inquiry into Hydraulic Fracture Stimulation in Western Australia, which considered over 550 technical papers on shale fracturing, 3 000 technical papers on all aspects of horizontal wells, and incorporates independent peer review by technical experts from across Australia.

METROPOLITAN REDEVELOPMENT AUTHORITY — 3 OCEANS TWIN TOWERS DEVELOPMENT — SCARBOROUGH — MEETING MINUTES

1333. Hon ALISON XAMON to the minister representing the Minister for Planning:

I refer to the Metropolitan Redevelopment Authority's commitment, reported in *The West Australian* of 21 March 2018, to publish the agenda and minutes of MRA meetings.

(1) Have the minutes of the meeting approving the 3 Oceans Tower in Scarborough been published?

(2) If yes to (1), where are those minutes available?

(3) If no to (1), why not?

(4) If no to (1), will the minister please now table those minutes?

Hon ALANNA CLOHESY replied:

On behalf of the minister representing the Minister for Planning, I provide the following answer.

(1) The decision of the Metropolitan Redevelopment Authority board to approve the application, along with details of the matters considered in approving the application and the documents of the approval, were published on the MRA website on 4 July 2018.

(2) The decision and documents were available on the MRA website from 4 July 2018 to 14 August 2018 and I table the attached document.

(3)–(4) Not applicable.

[See paper 2315.]

DEPARTMENT OF FINANCE — PROJECT BANK ACCOUNTS

1334. Hon SIMON O'BRIEN to the minister representing the Minister for Finance:

I refer to the government's media statement of 4 December 2018 advising of changes to project bank account arrangements, which apply to some projects administered by the Department of Finance.

(1) When was the current PBA arrangement introduced, and what are the parameters that define projects currently covered by PBA arrangements?

(2) What are the changes referred to on 4 December 2018 that are scheduled to come into effect on 1 July 2019?

(3) To what proportion of Department of Finance projects do PBAs currently apply?

(4) What proportion of Department of Finance projects will be covered by PBA arrangements after 1 July?

Hon ALANNA CLOHESY replied:

On behalf of the Minister for Environment, I provide the following answer that has been provided by the Minister for Finance.

(1) Since 30 September 2016, the Department of Finance has progressively implemented and refined the use of project bank accounts on construction projects tendered by Building Management and Works. Due to the administrative cost associated with their operation and differing risk profiles, project bank accounts are not typically used for low-value works, construction projects valued under $1.5 million, or when subcontractors are not utilised.

(2) The most significant change announced by the government is that project bank accounts will be applied to projects managed by other government agencies. Details of the rollout will be known in early 2019, when implementation planning is finalised.

(3)–(4) It is estimated that project bank accounts are currently applied to approximately 80 per cent of construction projects valued over $1.5 million that are managed by the department. This figure is not expected to immediately change as a result of the recent announcement, but the figure will increase over time as existing projects are finalised and new projects commence.

STATE FLEET — CARBON OFFSETS

1335. Hon Dr STEVE THOMAS to the minister representing the Minister for Finance:

I refer to the Tenders WA website and the $4.5 million contract awarded on 29 November 2018 for the provision of carbon offsets, and to my question without notice 1322 yesterday.

(1) Given that the contract commences at the end of November 2018 and the final expiry date is the end of December 2021, can the minister confirm that it is effectively a three-year contract?

(2) Given the minister stated in his answer yesterday that the annual emissions from the government fleet are estimated at 50 000 tonnes of CO_2 per annum, is it accurate to estimate the total carbon offset contracted would be 150 000 tonnes and that under a $4.5 million contract, this equates to a contract cost of $30 a tonne of CO_2?

(3) Does the contract include the cost of the carbon offsets themselves or does it cover only the costs of, and I quote, "creating a panel"?

(4) Given the minister's answer yesterday that the value of the 50 000 tonnes of annual CO_2 offsets, and I quote, "can range from $30 000 to $900 000" can the minister confirm that this equates to a value of 60c a tonne to $18 a tonne of CO_2?

(5) Can the minister confirm therefore that unless the cost of the offsets themselves are included in the tender, the government is spending $30 a tonne on the administration of a carbon offset program to purchase carbon offsets for 60c to $18 a tonne and can he justify that, or that if the offsets themselves are included, the government is spending $12 to $29.40 a tonne of CO_2 on administration?

Hon ALANNA CLOHESY replied:

I thank the honourable member for some notice of the question. I answer on behalf of the Minister for Environment, and the Minister for Finance has provided the following answer.

(1) Yes. The contract for provision of carbon offsets—request 2018/04988—is for an initial term of two years, with an option to extend the term for a further year.

(2) The contract accounts for the estimated 150 000 tonnes of offsets generated over the term of the contract. In addition, the contract includes a further 125 000 tonnes of offsets to be procured for previous fleet emissions. Under the estimated contract value, this equates to an average of $16 a tonne of CO_2.

(3) The estimated contract value includes only the anticipated cost of emission offsets. The estimated contract value indicated on Tenders WA is the expected maximum contract value.

(4) Yes. Dependent on the market-based opportunities available at the time of purchase, the value could be within the range of 60c a tonne to $18 a tonne of CO_2.

(5) As per (2) and (3) above, the government is not spending $30 a tonne on administration of its carbon offsets arrangement.

SOUTH WEST SALEYARD — EXPRESSIONS OF INTEREST

1336. Hon COLIN HOLT to the Minister for Agriculture and Food:

I refer to the south west saleyard solution expressions of interest.

(1) How many expressions of interest were received for the south west saleyard solution?

(2) How many have been selected to proceed to the detailed application process?

(3) Which criteria were used to decide which of the EOIs would proceed to the detailed application process?

(4) Who assessed the applications and made the final recommendations?

(5) Did the Western Australian Meat Industry Authority board consult other reviewers during this process?

(6) What feedback will be provided to the unsuccessful EOI applicants, and is there a process of appeal for those not selected to proceed to the detailed application stage?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1) Five expressions of interest were received.

(2) The Western Australian Meat Industry Authority has received advice from the Department of Finance that publicly releasing the number of respondents that have been selected to proceed to the full tender process may significantly lessen competitive tension, potentially reducing the benefit to the state. I indicate that once we have made the decision, I will make sure that that information is available.

(3) I table the evaluation criteria.

[See paper 2316.]

(4) An evaluation panel, established to make recommendations to the Western Australian Meat Industry Authority, consists of a representative of each of the following organisations: Western Australian Meat Industry Authority, chair; Department of Primary Industries and Regional Development, southern beef industry development team; South West Development Commission; Department of Planning, Lands and Heritage; Department of Primary Industries and Regional Development, finance branch; and Department of Finance, non-voting facilitator.

(5) No.

(6) The Department of Finance has a process for providing feedback for expressions of interest, which is outlined in the letter to all respondents. There is no appeals process. The process terms and conditions were provided to all potential respondents as part of the expression of interest documentation.

METROPOLITAN REDEVELOPMENT AUTHORITY —
3 OCEANS TWIN TOWERS DEVELOPMENT — SCARBOROUGH

1337. Hon COLIN TINCKNELL to the minister representing the Minister for Planning:

I refer to question without notice 1310, asked yesterday about the Metropolitan Redevelopment Authority. With respect, the minister has not appropriately answered either question (1) or (2).

(1) Regarding question (1) asked yesterday, I am aware that the MRA has discretionary powers, but I asked: is there any limit to those discretionary powers?

(2) Regarding question (2) asked yesterday, I asked: why were the basic criteria not met and why was approval still given?

I now resubmit those two questions today in the hope of receiving an appropriate answer.

Hon ALANNA CLOHESY replied:

I answer on behalf of the Minister for Environment, and the Minister for Planning has provided the following answer.

(1) The response yesterday referred to the provisions contained within the MRA's respective planning frameworks that confirm discretion is available and the matters that the MRA is to consider when determining the level of discretion that is appropriate. Although these provisions do not provide specific quantitative restrictions on the level of the discretion, they enable an appropriate qualitative assessment to be made based on the merits of an application.

(2) The application was approved as it was determined, despite variations to some specific quantitative controls, that the proposal satisfied the relevant matters contained in the Metropolitan Redevelopment Act 2011, the Scarborough redevelopment scheme, and related policy documents.

CLIMATE CHANGE POLICY

1338. Hon TIM CLIFFORD to the Minister for Environment:

I refer to the minister's announcement yesterday that the Department of Water and Environmental Regulation's climate change unit will develop a new climate change policy over the next 12 months.

(1) I have asked numerous questions in this place about the government's intentions on climate change policy development and have been assured that significant amounts of work have already been undertaken, including stakeholder consultation and a stocktake of climate change actions. Could the minister please explain why this policy will take a further 12 months to develop?

(2) Will additional resources be provided to the climate change unit to fast track the development of the policy; and, if so, will the minister please detail the extent of these resources?

(3) Will the minister consider introducing a renewable energy target, a net zero emissions target or a statewide ban on fracking as part of the climate change policy?

Hon ALANNA CLOHESY replied:

I provide the following answer on behalf of the Minister for Environment.

(1) Climate change issues cut across numerous sectors, impacting most areas of our economy, society and environment. The McGowan government takes climate change seriously and is committed to playing a positive role in developing an effective and carefully considered policy. Although many climate change issues are already being addressed by state agencies, industry and the community, it is critical that future climate risks and opportunities are carefully considered as part of the development of a new state climate change policy.

(2) Since coming to power in 2017, the McGowan government has re-established and resourced the climate change unit in the Department of Water and Environmental Regulation, which now has six full-time positions overseen by a director and executive director. The new positions were created to support the development of policy advice to the government and are currently considered to be sufficient. Should additional resources be required, this will be reconsidered.

(3) As I have previously stated on numerous occasions in this place, the McGowan government considers a national approach as the most efficient and effective way to deliver on Australia's international commitments to reduce greenhouse gas emissions. A broad range of policy objectives will be considered in the development of a new climate change policy as part of the process. The McGowan government has delivered on its election promise to ban fracking in Perth, Peel and the south west, and, in line with the findings and recommendations of the independent scientific inquiry, will be introducing world-class standards to regulate the industry in other parts of the state.

WATER CORPORATION — MANUKALIFE — SHARE-FARMING AGREEMENT

1339. Hon DIANE EVERS to the minister representing the Minister for Water:

I refer to the Water Corporation's share-farming agreement with ManukaLife on land near Walpole for which the Water Corporation will receive a share of revenue from the production of honey products.

(1) Was there a public process or tender for the use of the land; and, if so, can the minister please table the details of the process, including the dates advertised, the number of applicants and the uses proposed?

(2) If no to (1), how did the share-farm agreement with ManukaLife transpire?

(3) Will the minister explain how entering into a share-farm agreement for the production of honey is in line with the agency's core business to sustainably manage Western Australian water services?

(4) Will the minister explain how the proposed use of ManukaLife is considered a more suitable use than stock grazing, which is a compatible use of priority 2 catchment areas?

(5) Will the minister describe how an introduced monoculture addresses the Water Corporation's own water quality protection note 6, which refers to revegetation as diverse and of local provenance native plants?

(6) Will the minister please table —

(a) the cost–benefit analysis for the share-farm agreement; and, if not, why not; and

(b) a copy of the share-farm agreement; and, if not, why not?

Hon ALANNAH MacTIERNAN replied:

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

(1) The Water Corporation maintains an unsolicited proposal process. I table the attached information, which sets out the guidelines for that process. The Water Corporation received an unsolicited proposal from ManukaLife.

[See paper 2317.]

(2) Not applicable.

(3) The Water Corporation acquired the parcels of land for the purpose of long-term revegetating to ensure clean and safe drinking water sources into the future for the town of Walpole. The share-farm agreement allows the Water Corporation to —

(a) meet its objective of long-term revegetation;

(b) meet its objective in a commercially sound and cost-effective way;

(c) assist in the development of a new industry for Western Australia, that being medicinal honey products used for the treatment of burns to people and wounds suffered by animals;

(d) support regional development; and

(e) contribute further revenue to the state government from the proceeds of the share-farm proposal.

(4) The review titled "Walpole Weir Catchment Area: Drinking water source protection review", commissioned in 2016 by the then Department of Water, recommended that the Water Corporation investigate destocking the remainder of land under ownership to address water quality risks from pathogens. Stock grazing, especially by cattle, is a significant source of pathogens, including bacteria, cryptosporidium and giardia. Tree farms, such as the one proposed by ManukaLife, are considered to be a minimal source of pathogens. The "Australian Drinking Water Guidelines 6: 2011" states, "The greatest risks to consumers of drinking water are pathogenic microorganisms." The preference is that the risks to water quality be reduced on Water Corporation land regardless of the priority of the catchment area.

(5) The Department of Water and Environmental Regulation's water quality protection note 6 covers vegetation buffers to sensitive water resources. The plantings proposed by the Water Corporation are not proposed for the purpose of vegetation buffers; therefore, this protection note would not apply.

(6) (a)–(b) The Water Corporation requires written approval of parties to an agreement prior to publication of this agreement. The Water Corporation will consult with the parties to the agreement regarding the release, or part thereof, of the agreement. Subject to the approval being forthcoming, the Minister for Water will provide this agreement to the member.

It was a long answer.

MARBLE BAR ROAD — MAINTENANCE

1340. Hon KEN BASTON to the minister representing the Minister for Transport:

(1) Is there an ongoing and regular maintenance program in place for the unsealed sections of the Marble Bar Road between Newman and Marble Bar?

(2) If yes to (1), is that work carried out by a contractor?

(3) If yes to (2), what is the scope of works for that contract?

(4) On what date was that section of road last graded?

Hon ALANNA CLOHESY replied:

On behalf of the Minister for Environment representing the Minister for Transport, the Minister for Transport has provided the following answer.

(1) Yes.

(2)–(3) There is currently no ongoing contract in place due to the changeover in maintenance contracts; however, this is currently being developed. The scope of the contract will be based on Main Roads WA undertaking a monthly inspection and issuing a work order for sections that require work.

(4) The road was last graded in October 2018.

OPTUS STADIUM — MARKETING

1341. Hon JIM CHOWN to the minister representing the Minister for Tourism:

I refer to the statement by chief executive officer of the Tourism Council Western Australia, Evan Hall, that the Barnett government's Optus Stadium will recoup its building costs in just over 10 years.

(1) How much did the McGowan state government spend on marketing campaigns in the 2018 AFL season to drive visitation for football games at Optus Stadium?

(2) What specific marketing activities were undertaken by Tourism Western Australia as part of these campaigns, and in which months were they undertaken?

(3) What packages or deals were offered as part of these campaigns?

(4) How did these marketing campaigns encourage visitors to stay longer and spend more money while on their visit to WA?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The Minister for Tourism has provided the following information.

The answer is not available in the time provided. I therefore ask the member to place it on notice.

CHRISTMAS RETAIL TRADING HOURS

1342. Hon TJORN SIBMA to the minister representing the Minister for Commerce and Industrial Relations:

I refer to question without notice —

Hon Alannah MacTiernan: You have given notice of this, I presume?

Hon TJORN SIBMA: Yes. I have a question without notice of which some notice has been given. It has a number and everything, so it should be in the minister's pack.

I refer to question without notice 1279, asked on Tuesday, 4 December 2018.

(1) What evidence or information did the minister rely on regarding "consumer shopping patterns early in the Christmas trading period"?

(2) Will the minister table the evidence or information regarding "consumer shopping patterns early in the Christmas trading period"; and, if not, why not?

(3) Can the minister confirm that his initial proposal for extended retail trading hours for Christmas, which he sought submissions on, was for extended trading from 5 December?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The Minister for Commerce and Industrial Relations has provided the following information.

(1) The minister relied on the submissions of and discussions with industry participants.

(2) I refer the member to paper 2305, tabled in the Legislative Council on 5 December 2018.

(3) The minister did not have any initial proposal for extending retail trading hours for Christmas 2018, as each year requires a separate and unique decision in accordance with the act.

SENIORS HOUSING STRATEGY

1343. Hon PETER COLLIER to the minister representing the Minister for Housing:

I refer to the minister's response to question without notice 830, asked on Thursday, 9 November 2017, and question without notice 441, asked on Tuesday, 12 June 2018.

(1) Has the seniors housing strategy now been completed?

(2) If not, why not, and when will it be completed?

Hon ALANNAH MacTIERNAN replied:

On behalf of the minister representing the Minister for Housing, I thank the member for notice of the question. The Minister for Housing has provided the following information.

(1) No. The strategy is currently in its final stage of development.

(2) The Department of Communities has been undertaking extensive and ongoing consultation with older Western Australians, industry, the community sector and government. I expect the release of the future directions for seniors housing paper prior to the last quarter of 2019.

SWAN DISTRICT HOSPITAL SITE

1344. Hon DONNA FARAGHER to the minister representing the Minister for Lands:

I refer to the former Swan District Hospital site.

(1) Was a new expression of interest process expected to be undertaken in 2018 to identify interested parties to acquire the site?

(2) If yes to (1), has the new EOI process been announced; and, if yes, what was the opening date and what is the closing date?

(3) If a new EOI process has not yet been announced, when does the government intend to call for expressions of interest?

(4) Has the government lodged an application with the City of Swan to commence the rezoning of the site to special use, with a request that it be capable of subdivision into a number of smaller lots? If yes, when was the application lodged; and, if not, why not?

(5) If yes to (4), can the minister confirm that should the application receive planning approval, the government is intending to place a condition of sale over one of the lots that will be developed exclusively for the building of a new residential aged-care facility?

Hon ALANNA CLOHESY replied:

On behalf of the Minister for Environment, the Minister for Lands has provided the following answer.

(1) Yes. However, it was determined that it would not be prudent to undertake the expression of interest process prior to initiating rezoning under the City of Swan's local planning scheme.

(2) No.

(3) A revised EOI process will not commence until the site has been rezoned to special use.

(4) An application is likely to be lodged with the City of Swan in early 2019. Lodgement of the application has been held in abeyance while an opportunity to make part of the site available to the adjoining college for use as a boarding facility was investigated.

(5) Not applicable.

CHILD PROTECTION — CHILD SEXUAL ABUSE — ROEBOURNE

Question without Notice 1305 — Supplementary Information

HON SUE ELLERY (South Metropolitan — Leader of the House) [4.40 pm]: I have some further information for Hon Nick Goiran in response to his question without notice 1305, asked on 5 December 2018, which I undertook to provide.

I have received advice from the Department of Education that the Department of Communities advised Roebourne District High School of the students who were alleged perpetrators and also of students who were interviewed as part of Operation Fledermaus. I advised correctly that the Department of Education did not know whether any of the students at Roebourne District High School who had been interviewed were victims of the identified perpetrators.

QUESTION ON NOTICE 1790

Paper Tabled

A paper relating to an answer to question on notice 1790 was tabled by **Hon Sue Ellery (Minister for Education and Training)**.

PERTH CHILDREN'S HOSPITAL — HIGH DEPENDENCY UNIT AND PAEDIATRIC INTENSIVE CARE UNIT

Question without Notice 950 — Answer Advice

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [4.41 pm]: I have an answer to Hon Peter Collier's question without notice 950, asked on 16 October 2018, and 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 the question.

(1) The Paediatric Critical Care (PCC) unit at Perth Children's Hospital (PCH) has a 20 physical bed capacity. The level of funded PCC beds is ten. PCH does not have a separately funded High Dependency Unit (HDU).

(2) Yes. The PCC has not operated at full bed capacity (10) for approximately 78% of the time since the transition from Princess Margaret Hospital to PCH. The reason for this is a combination of patient requirement and availability of skilled staff.

(3) The PCC has operated at full or over capacity on 27 days since opening.

(4) 42 patients had surgery cancelled due to the acuity of patients in the PCC.

(5) Yes:

- 10 Cardiothoracic
- 3 Complex Dental
- 12 ENT
- 1 Gastroenterology
- 6 Neurosurgery
- 1 Oncology
- 1 Orthopaedic
- 3 General surgery
- 4 Reconstructive plastic surgery
- 1 Radiology

GERALDTON HEALTH CAMPUS — ELECTIVE SURGERY

Question without Notice 1221 — Answer Advice

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [4.42 pm]: I have an answer to Hon Martin Aldridge's question without notice 1221, asked on 27 November 2018, and I seek leave to have the response incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

I thank the Honourable Member some notice of the question.

For the time period of 27 November 2017 to 27 November 2018:

(1) 5.

(2) For the following dates, the primary reason a code yellow was declared was due to inpatient bed demand exceeding hospital capacity:

- 21 – 23 August 2018
- 4 – 5 September 2018
- 1 – 9 October 2018
- 21 – 24 October 2018
- 12 – 14 November 2018

The $73.3m stage one redevelopment of Geraldton Health Campus will assist in managing demand with the planned addition of 10 Emergency Department treatment bays and an additional 24 inpatient beds, including 12 Mental Health inpatient unit beds, 4 Mental Health Short Stay Unit Beds and 8 High Dependency Unit/Intensive Care Beds (collocated in Emergency Department).

(3) 421 elective surgeries were either rescheduled or cancelled.

(4) Surgery has been cancelled or postponed for various reasons including clinical requirements (such as emergency cases), clinical issues related to booked patients, availability of medical and nursing staff, administrative issues and bed availability.

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Committee

The President (Hon Kate Doust) in the chair.

Fifty-third Report — "Review of the Standing Orders relating to motions on notice" — Recommendation 1 — Adoption

Hon SIMON O'BRIEN: I move —

> That the temporary order set out in recommendation 1 contained in the fifty-third report of the Standing Committee on Procedure and Privileges, "Review of the Standing Orders relating to motions on notice", be adopted and agreed to by the Council to apply from 1 January 2019 until, and including, 31 December 2019.

Hon SUE ELLERY: If I may, I will take a moment to explain to the chamber that three reports from the Standing Committee on Procedure and Privileges have been the subject of discussion between all the party leaders. We have reached an agreement on a particular course of action that we will take for each of these reports.

The other matter we need to deal with before we rise today is the motion moved earlier today by Hon Michael Mischin, on behalf of the Standing Committee on Uniform Legislation and Statutes Review, for the committee to be granted an extension of time. There are three matters relating to the procedure and privileges committee and the fourth one relates to the uniform legislation committee.

Hon Nick Goiran: What about the right of return bill?

Hon SUE ELLERY: No.

Regarding the matter before the chamber now, this report recommendation deals with motions on notice. Members will recall there has been a discussion between the parties about how we might make the way that the house deals with motions on notice more efficient. The parties agreed with the recommendations of the report, with the exception of the speaking times for other members. This will be changed from 10 minutes to 20 minutes each. The effect of this change is that we will deal with motions on notice on one Wednesday over a two-hour period with speaking times reduced accordingly, given that we have reduced the period within which we will deal with the motion as a whole. I will move an amendment to the speaking times in section 5 of the temporary order. It will delete the provisions that appear in the report for the times allocated to each of the speakers, and will insert an alternative set of times. The speaking time for the mover of the motion is the same—20 minutes. For the responsible minister or parliamentary secretary, it will be 20 minutes. For other members, it will be 20 minutes, which is different from the 10 minutes that was proposed. The mover in reply will get five minutes and all members will have five minutes to speak on amendments.

Amendment to Temporary Order — Motion

Hon SUE ELLERY: I move —

To delete —

Motions on Notice (SO 15(2))

Mover	20 minutes
Responsible Minister or Parliamentary Secretary	15 minutes
Other Members	10 minutes
Mover in Reply	5 minutes
Amendments to Motions on Notice	
All Members	5 minutes

And substitute —

Motions on Notice (SO 15(2))

Mover	20 minutes
Responsible Minister or Parliamentary Secretary	20 minutes
Other Members	20 minutes
Mover in Reply	5 minutes
Amendments to Motions on Notice	
All Members	5 minutes

Hon PETER COLLIER: Very quickly, we support both the motion and the amendment. We had an issue with 10 minutes. We thought it diminished the integrity of motions on notice, so this fits very nicely into where we would like to end up with the overall motion. The Liberal Party will support the amendment.

Amendment put and passed.

Question put and passed.

Report

Resolution reported, and the report adopted.

Committee

The President (Hon Kate Doust) in the chair.

Forty-ninth Report — "Treaty function — Standing Committee on Uniform Legislation and Statutes Review" — Recommendation 1 — Adoption

Hon SIMON O'BRIEN: I move —

> That recommendation 1 contained in the forty-ninth report of the Standing Committee on Procedure and Privileges, "Treaty function — Standing Committee on Uniform Legislation and Statutes Review", be adopted and agreed to by the Council.

By way of brief explanation to members, this is the proposal to delete clause 6.3(c) in schedule 1, which is the examination of treaty provision functions by that standing committee.

Question put and passed.

Report

Resolution reported, and the report adopted.

Forty-fifth Report — "Outstanding Matters from the 39th Parliament" — Recommendation 2 — Adoption

Resumed from 24 August 2017 on the following motion moved by Hon Adele Farina —

> That recommendation 2 contained in the forty-fifth report of the Standing Committee on Procedure and Privileges, entitled "Outstanding Matters from the 39th Parliament", be adopted and agreed to.

HON SUE ELLERY (South Metropolitan — Leader of the House) [4.47 pm]: I think "free-for-all" was the expression that was used. If I can assist the house, this relates to how we deal with standing order 190(2), which has created a procedural obstacle or caused some confusion in the house when a corollary motion that would not ordinarily require any substantive debate has been moved following the tabling of a committee report. The standing order was adopted in 2013 as part of the review undertaken in 2012 by a previous Standing Committee on Procedure and Privileges. The effect of this standing order is that when any one of those motions is moved at the time of tabling a committee report in formal business, it is adjourned and becomes an order of the day for a later stage of that day's sitting. In order for the house to deal with that motion, the Leader of the House is required to move an order of business motion without notice later that day so debate can proceed on that motion or place the order of the day relating to that business on the Business Program for a subsequent sitting day. As a consequence, the way the standing order is currently worded precludes an agreed procedural motion, such as an extension of a committee's reporting time, from being immediately put and determined by the house without debate.

The Standing Committee on Procedure and Privileges noted that the rationale of this current standing order to automatically adjourn that motion is to provide members with the opportunity to consider the motion and determine whether to support it. However, when there is general agreement to a proposition that an automatic adjournment interrupts the flow of business and causes inconvenience, the Standing Committee on Procedure and Privileges considered that in circumstances such as a motion for an extension of time, when a chair's statement has provided the Council with sufficient information and when no member intends to speak because there is agreement, the Council should be competent to dispense with the motion immediately, so the privileges committee recommended the trial of that temporary standing order. This recommendation was discussed between the parties at our business management meeting on 9 October. We achieved consensus that we would oppose this recommendation and the key reason for opposing it was that under the proposed standing order change, if a member wanted to speak to the motion but was not in the chamber and no other member wished to speak to it, they would not receive the chance to do so. Therefore, we will not be supporting this recommendation.

Question put and negatived.

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Extension of Reporting Time — Motion

Resumed from an earlier stage of the sitting.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [4.52 pm]: I think I have given an adequate account of the reasons underlying the committee's request that the time be extended by effectively a month to enable us to discharge our responsibilities in an effective fashion dealing with the issues raised by the bill referred to the committee yesterday evening.

Question put and passed.

COMPLIMENTARY REMARKS

Statement by President

THE PRESIDENT (Hon Kate Doust): Members, it is that time of year. The year has moved along very swiftly. We have now completed the second full year of the fortieth Parliament, and I think for a lot of people in this chamber it has been a challenging year. It has certainly been a very busy year. I understand that 44 bills have been before the house and passed, and just in this last week we have seen a significant number of bills on the notice paper move through quite swiftly. I also understand that we have about 30 bills sitting there waiting for everyone's return in the new year, so I am sure plenty of people will be doing their homework over the break, getting ready to deal with those bills.

On top of the work that been happening here in the chamber, it has also been an extremely busy year for members participating on our standing committees. That has resulted in 22 inquiries this year. There have been 19 or so substantial reports tabled. There are currently three select committees afoot—the Select Committee into Alternate Approaches to Reducing Illicit Drug Use and Its Effects on the Community, the Select Committee into Mining on Pinjin Station and the Select Committee on Personal Choice and Community Safety—and another select committee, the Select Committee into Elder Abuse, recently completed a significant piece of work. Given that members in this chamber are usually members of more than one committee and, in some cases, three, it was a very busy year for them. I anticipate that that work will increase over the next year or so as well.

I would like to thank a number of people in the chamber for their hard work this year. I would like to thank the Deputy President, Hon Simon O'Brien, who has done an outstanding job chairing in this chamber. In his role as Chair of Committees, he has organised the Deputy Chairs. I would also like to thank the five Deputy Chairs—Hon Martin Aldridge, Hon Dr Steve Thomas, Hon Robin Chapple, Hon Matthew Swinbourn and Hon Adele Farina. I certainly want to thank Hon Dr Steve Thomas, who is away on urgent parliamentary business, who occasionally leaves a lovely piece of poetry after he has spent some time in the Chair. It is always good to reflect on his interesting work, having to listen to all of you. Maybe we will publish those poems at a later stage.

Those members who joined the chamber last year have certainly stepped up and are actively engaging in the chamber, presenting bills and establishing committees. I am sure that as they become more confident and experienced, their work in this place will increase.

I would like to acknowledge the various party leaders and their teams: Hon Sue Ellery, the Leader of the House, and the Labor team. I know they have worked very hard in this chamber. Hon Sue Ellery has pulled together a very effective business group to try to make sure that the management of the house runs smoothly. I also acknowledge Hon Peter Collier, the Leader of the Opposition, and his Liberal team. It is a significant adjustment to move from one side of the chamber to the other but he has certainly made that transition this year, and I think that has been noted. I thank Hon Jacqui Boydell, the Leader of the National Party, and her three fellow members very much for their contribution this year. Hon Alison Xamon and the members of the Greens in this chamber have also worked extremely hard. Hon Colin Tincknell, Hon Charles Smith and Hon Robin Scott have also made a significant contribution on behalf of their party. Although Hon Rick Mazza and Hon Aaron Stonehouse may not have parties behind them, they certainly make a significant contribution, and I always enjoy listening to what they have to say.

Part of the challenge for members in this chamber is that it is a small chamber. Although it might get feisty from time to time, particularly towards the end of the year, it is always useful to note that people are able to work behind the Chair and they are able to work well together on committees. We have seen that in the nature of the reports that have been handed down by our committees. It is very rare to see minority reports. I think that is evidence that people are able to work together for the common good and deliver good documents and good pieces of work to this chamber.

We are very blessed and fortunate in this Parliament—all my predecessors have made this comment as well—to have excellent staff working in this building. Regardless of the department they work in, they certainly look after us exceptionally well. I would like to acknowledge and thank all the staff in the Department of the Legislative Council, who are led by our Clerk, Mr Nigel Pratt, and his leadership team. Everyone in this chamber would acknowledge the hard work that they do for us, the assistance they provide, the advice they give and the support they provide to everyone in this chamber. I would like to acknowledge our Clerk, Mr Nigel Pratt; our Deputy Clerk, Mr Paul Grant;

Ms Suzanne Veletta, Mr John Seal-Pollard, Ms Renae Jewell and Mr Grant Hitchcock. I would also like to acknowledge all our fabulous chamber staff, who are constantly moving around making sure that things are happening, that members have a glass of water when they are on their feet and that we have the appropriate paperwork, which just seems to magically appear in our hands when we want it. I think they do an exceptional job. I would like to acknowledge Mr Peter Gale and Mr Brian Conn, who, as we know, has served for 30 years in this chamber, and I think that is worthy of another acknowledgement. I also acknowledge Ms Hayley Brown, Ms Lisa Parrella and Ms Rebecca Burton, the Clerk's executive assistant, who has also worked in the chamber from time to time throughout the year.

I have already mentioned our committees, but I would certainly like to acknowledge our committee team, which is led ably by Christine Kain. They have been under a lot of pressure this year with the increase in the volume of work that has come their way. We have seen a number of new staff working in the committee rooms. I met with two new staff today—one, in fact, who started only last week. It is probably the best time of year to start working on a committee, I would think. She will have the summer break to become accustomed to the work that she has ahead of her. The committee staff provide valuable resources for this chamber. I think we are very fortunate that we have a diverse group of people with very interesting and strong backgrounds for the nature of the work that they are doing here. I think this adds great value to the work that they do. I look forward to the work that they will contribute over the next 12 months to members of this chamber.

I would like to also thank the Parliamentary Services team, who provide all the essential services to make sure this building functions. A couple of times this year it has not quite functioned in the way that we would like it to, but I am sure that will improve in the future. I would like to acknowledge all in the Building Services team, who keep everything running and the lights on, and the garden is looking great. I certainly want to acknowledge the gardeners because they do a fabulous job. When we turn up to the car park on sitting days, we see them out there working and everything always looks fantastic. I must say that when I was chasing them last week to get a few kangaroo paws, they hoover through very quickly. They are a hard bunch of blokes to keep track of, but they do an outstanding job.

I acknowledge all our staff who work in Catering Services. I note that we had a couple of visitors in the chamber yesterday brought in by Hon Simon O'Brien because they had talked about our dining room. After the lunch that they had with Hon Simon O'Brien, I am hoping that they are able to go out and spruik how well we are looked after by our Catering Services team. I acknowledge the staff working in Finance and also Human Resources. The staff from Information Technology have constant challenges but are always very quick to respond to any issues that members may raise and anything that our staff raise. I acknowledge the Library and Information Services staff, who are always very accommodating and very keen that members are kept up to date with information. They provide research and support and are an exceptional bunch of people. I acknowledge our Parliamentary Education Office; we are very fortunate to have a very strong team in that area. Members will note that the number of visitors to our chamber has increased again in the last year. I think we have had more than 20 000 visitors to this building in the last year. It is made up mainly of students from primary schools and high schools, but there has also been an increase in the number of public visitors who elect to come here to take tours, be they general tours of the Parliament or the increasingly popular art tours that happen once a month. Our education staff certainly provide an informative and very active tour, in particular people such as Peter Dooley, who is very entertaining with the children. I am sure that they look forward to return visits.

Our Reception Services and Security staff certainly look after us. There are ever-increasing changes to access to buildings around the world, and I know that our security staff have to deal with significant challenges that members are not always aware of. There has been a lot of controversy about the recently placed bollards in front of Parliament. Although they may not be attractive, they serve a very important purpose. Even at my age, I am a firm believer in Santa Claus, so I am hoping that at some time in the future Santa may, in the form of the Treasurer, deliver some additional funds to Parliament so that we can get some retractable bollards put out the front to improve security. I have a long list for Santa but that will be a good start. I think we would all like to thank our Reporting Services team, the fabulous Hansard staff. They do an outstanding job. They obviously have exceptional hearing because even when things get a bit loud and robust in this chamber, when we read our copy of the pink, we find they are able to make us sound fabulous. They always make all of us look exceptionally good when our words have been recorded.

I would also like to acknowledge and thank Mr Rob Hunter, the executive manager of Parliamentary Services and all his team. I know that he has had a very interesting year. It is not always easy to squeeze every penny out of the pound, if you like, to try to make sure we can keep this building functioning, but he seems to have done that remarkably well—and done it with exceptionally good humour, I might say, as well.

I would like to acknowledge the very fabulous Ms Deb Kapoor, who looks after not only me in her capacity as steward to the President, but also all the members in this chamber and has been very accommodating. I think she is becoming exceptionally popular with people from the other place. I note that occasionally in the mornings members from the other place are loitering, hoping that Deb will make them a cup of her special coffee, so we might have to think about how we manage that! She does a great job for all of us.

I would like to also thank Tina O'Connor, who works for me in the President's office and certainly gets me organised and makes sure I am in the right place when I need to be. Thank you very much, Tina, for another great year this year.

Given that next year there will be an increase in the number of sitting weeks—I have already referenced that we have bills waiting for us—I am sure that next year the government will have more legislation coming into this place. I anticipate that it will be a very busy year as the government moves into its third year. I think it becomes more and more important for members to make the most of the break, to go away, to spend time with their families and to try to relax and clear their heads before they return in February, because it will be very busy.

The same goes for staff. I know our staff in this chamber work exceptionally hard. Even when we leave at night, more often than not they are here much longer than we are. I hope they get a decent break away with their family and friends and take some time out.

The other thing I was going to say is that although there are seven parties in here now and people may have different views and come at issues from different angles, I think it is always interesting that people find when they are working together that they probably have more in common than they do not. One of the things I hope for next year is that people are able to work constructively together to achieve that common-interest outcome, if you like, rather than being adversarial all the time.

I think this year has been a successful year in terms of the number of bills that have moved through this place. It has been an interesting year to watch people grow and develop as members in the chamber and through their work on committees. I hope people take that time out to have a break, and I wish that all the members and staff have a very happy Christmas with your families and a very relaxing break, and I look forward to working with you in 2018.

Before I finish, I will table the 2019 annual schedule of allocation of motions on notice.

[See paper 2319.]

The PRESIDENT: Happy Christmas everyone!

Members: Hear, hear!

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.08 pm]: Madam President, I join you in your words but I begin by thanking you for the role you play in our house. I also thank all the members and staff of Parliament, inside and outside this chamber, and throughout the various functioning areas of the house. I wish them all a peaceful festive season and encourage everybody to take time for family and to rest.

I send my particular regards to Chris Hunt, who lost his wife just a short time ago. People know Chris; he serves us well in this chamber. This will be a difficult Christmas for Chris and his family, and I know I send him the best wishes of the entire house.

I want to thank in particular the whole government team, and in particular my deputy, Hon Stephen Dawson, who is out of the chamber on urgent parliamentary business, and my ministerial colleague Hon Alannah MacTiernan. This morning, we had a celebration. As part of our farewell activities, we held a Christmas bake-off morning tea. Everybody was encouraged to bake something. If people could not bake something, we did allow a degree of outsourcing, and several people took that opportunity. I am pleased to reveal the scoop news of the day—that I have appointed the winner of the Labor Party caucus Christmas bake-off to be Hon Kyle McGinn.

Several members interjected.

Hon SUE ELLERY: I want to explain why. He made a fabulous Christmas log. It is a beautiful dessert. He made seven of them in Kalgoorlie, and he put them in the freezer. He then got in his car to drive to Perth and left them in the freezer in Kalgoorlie, so he made them again in Perth this week and brought them in this morning. I thank everybody for their contributions this morning, but in particular I pay homage to the effort of Hon Kyle McGinn.

I thank everybody in our team for their outstanding effort every day, whether they are in the house or working hard out in our electorates.

I also want to thank the opposition. I will start with the Liberal Party and Hon Peter Collier. I really value our working relationship. What I will miss over Christmas is the special attention I get every day from Hon Nick Goiran. If I could be so bold as to encourage him to perhaps look elsewhere for someone to pay his special attention to, that would be a relief to me.

The President noted that there are seven parties in this chamber to deal with. I thank the members of the National Party, led by Hon Jacqui Boydell. It is sometimes a challenge to work with seven parties, and sometimes juggling all those relationships is difficult. I have never found Hon Jacqui Boydell anything other than pleasant and professional to deal with. We do not always agree—that is certainly the case—but I have certainly never had any difficulty in my working relationship with her. Equally, I thank Hon Alison Xamon and the Greens for the professional working relationship that we have. I also thank the three gentlemen from One Nation for the working relationship that we have. I acknowledge that having come into this place only 16 or 17 months ago, they have

done an outstanding job to get their head around what sometimes must seem to outsiders a very strange—not that I think it is—working environment with a very strange set of rules. I thank Hon Rick Mazza for his ongoing professional relationship, and also the leader of the Liberal Democrats, Hon Aaron Stonehouse. It has been difficult at times to manage that working relationship, but I aim to do it in a respectful way, and I thank everybody for assisting me to do that.

I pay particular thanks to the staff in my ministerial office and my electorate office, who often are desperately trying to get my attention with regard to my portfolio or constituent matters but are not able to do it because I am doing the things that I am required to do as the Leader of the House in a house with seven parties. In particular, I thank Kris, Ollie and Shelley, who staff the office in Parliament House, in the crazy room that three ministers share. I know they will be watching—if they are not, I want to know why! I thank them for the work they do every day to make it easier for us to do our work and balance all the things we need to balance.

I wish everybody, genuinely, a peaceful and joyous Christmas and festive season. I hope you will take time to spend with your families and friends, and time to rest and recuperate, read some goods books, do nothing, drink some good alcohol and eat some great food.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [5.14 pm]: I stand to make a few comments on behalf of the Liberal Party. This is an interesting time of the year. It is when we all unite, arm in arm, and look forward to a bit of a break while reflecting upon the past year. It really is a good time, and it is what we are all about. I, first of all, reinforce the gratitude the President expressed to the entire parliamentary precinct, because it works in unison. We operate best when on automatic, and no matter what time of the day we come or go this place just seems to operate automatically. Everyone has their little place in the environment, and it just works so effectively. No matter where we are in this place, we feel welcome. Whether it is out in the gardens, in the corridors, the members' dining room or the chamber, everything just hums along. The staff are just so accommodating and so enriched with positive energy. It is a really, really good working environment.

In terms of this chamber, of course, Nigel and the chamber staff across the board are exceptional, as are the Hansard staff, and those outside. I do not want to go any further in case I miss someone, but the whole parliamentary precinct operates so well, and I express the gratitude of the Liberal Party for the job of work they do so consistently well.

I will start with you, Madam President. You have really welded into this position so effectively, efficiently and positively. You are just so professional in your job of work. On behalf of the Liberal Party, I thank you.

To government members, Hon Sue Ellery is correct—we have a great working relationship. We really do. There are a lot of laughs, not too much agitation—when there is, we always get over it—and that is what a good working relationship is all about. To Hon Sue Ellery, we have been, dare I say, mutual adversaries for a long time, and it is working. We have a good working relationship. Thank you very much to the members of the government. You guys, it is good working with you—it really is. No matter what happens, when we come in here we will continue to be good working colleagues.

On this side of the chamber, right across from the crossbench through to the Greens is a reflection of a dynamic society—it is great. That is why the upper house is so good. If members go back to my maiden speech, I always said I wanted to go to the upper house. Forget about the rank amateurs—we do it all up here! Thank you to every single one of you, from our great friends and colleagues in the National Party and their leader, Hon Jacqui Boydell, right through to Hon Rick Mazza, Hon Aaron Stonehouse and our three One Nation colleagues, and then of course the Greens. Collectively, this is a rich tapestry of what we are as a community. Each and every one of you brings something that is quite dynamic and diverse, and to see the way we have evolved as a house over the last two years is just so therapeutic as, dare I say it, a disciple of politics. Members know what happens, we become more attuned to the standing orders and mechanics of the Parliament, and that makes us an even more dynamic environment. It has been just so good to work with each and every one of you on the crossbench, including the National Party and the Greens.

To my colleagues, we were a seriously diminished crew after the last election. Yes, we hit the mat, but we really did get up straightaway. To my deputy, Hon Michael Mischin, and my other seven colleagues, you guys are terrific—you really are. We had our dinner last Thursday, and we reflected upon the past year. We feel that we had all contributed. There is not one person in our team who is more significant than anyone else. We feel that we all contribute, and when I look to my right, behind me or to my left I know I have someone there who can do a job of work well. It is such a privilege to be your leader, guys. Thank you very much to each and every one of you from the Liberal team.

Having said all that, we have come to the end of yet another year—halfway through now, guys!—and that is the good part. The opposition has a job of work in front of it—Madam President, you are quite correct—with the 30-plus bills that it will face when it comes back at the beginning of next year. I hope that you all take time out. I think we operate best in life when we are relaxed and confident, and we are best that way when we have a bit of time out. So spend a bit of time with those that you love and who love you, and I wish each and every one of you a happy and blessed Christmas. I hope 2019 will bring you good health and happiness.

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [5.19 pm]: I rise tonight as well to reflect on the year and thank all members of this house. This year has created some challenges along the way, but we have been able to work through them, and that is how we find ourselves having passed that number of bills. There has been a lot of discussion over those pieces of legislation, as it should be, and many varying and different points of view have been put to the house and considered in earnest. All of us accept that we do not always get the outcome that we want, but we try to work towards the best outcome that can be achieved by the house. I think all members work in that manner.

It goes without saying that the staff at Parliament House, in particular the Legislative Council staff whom we work with on a daily basis, do a wonderful job of supporting all the members, and each other I dare say, because I am sure that there are conversations about issues that staff struggle to manage, as we do as members. I have no doubt that that support network for staff is in place. The amount of work and dedication of each staff member at Parliament House is always noted by members. It is a joy to come to Parliament House and work here. I love to bring my associates and family to Parliament and introduce them to my friends who are staff here as well, because it is just such a welcoming place. I place on the record my thanks to those staff in particular.

I cannot let the year pass, from a National Party perspective, without noting the passing of Hon Dexter Davies, and what a difficult year it has been for us. He was a much loved member of our team, and an accomplished person in many ways, and a member of this house from 1998 until 2001. I also want to place on the record the presentation of a life membership to Hon Wendy Duncan, former member of the Legislative Council, from the National Party, and also member for Kalgoorlie in the other place until her resignation. She was a much loved member of the National Party, and she was awarded that life membership at our state conference this year.

I will touch on one challenge that all members and parties in not just the state Parliament but also the federal Parliament have dealt with this year—sexual harassment in the workplace. We have seen some of those challenges with incidents that occurred in the other place in our state Parliament. I think all members genuinely want to see an improvement in the way that sexual —

Hon Alannah MacTiernan interjected.

Hon JACQUI BOYDELL: Did the minister want to say something?

Hon Sue Ellery: She can have a conversation with me, if that is okay.

Hon JACQUI BOYDELL: I just wanted to make sure that she did not want to interject.

I think sexual harassment in the workplace is something that all members want to see an improvement on. The global recognition of the Me Too movement is bringing education in that space, and that is a really good thing. Along with some other parliamentary colleagues, I attended the Us Too movement luncheon in Perth, and we were very happy to do so and stand shoulder to shoulder with those women to continue the message that sexual harassment is not okay in the workplace. There is much work to do in that space, but I think, given the platform that members of Parliament have, it is incumbent on us to continue to work through that issue.

A notable step forward in our processes this year is the adoption of the welcome to country. That has been a major step forward. I also note the extensive work of committees. One of the most significant committee reports being considered by members at this time is that of the Joint Standing Committee on End of Life Choices. That will be one of the more significant pieces of legislation that the house will debate next year. In particular, I want to thank members for the hard work that they do on committees. It takes up a lot of our time but it is extensive, valuable work that we do. That committee in particular will bring much discussion to this house and its report will be a good research tool for members to understand that issue.

To my National Party colleagues in this house and the other house, I thank you for all your hard work, your tenacious attitude and your unfailing energy. We are a small but mighty team. Being in opposition is certainly different, but we have worked well together as a team as we work towards the next election. I look forward to working with you all into 2019. To members of the opposition, the crossbench and, indeed, the government, it has been a robust year, as I said, but it has been absolutely as it should be. It is also right that at the end of the year we put that discussion behind us and celebrate the coming festive season. To all the families who are waiting for us at home, I say thank you. It is not easy to be the loved one of a member of Parliament. Our jobs mean that we travel widely, particularly those of us who live in regional Western Australia, who spend a lot of time away from home. We miss our families and they miss us. I know that all of us in the house tonight are looking forward to being able to spend an extended period of time with our loved ones over the festive season.

Members, stay safe. Thank you for your friendship during the year and your debate. I look forward to being able to work with you all next year.

HON RICK MAZZA (Agricultural) [5.26 pm]: I would like to express my extreme disappointment that no-one has got up and sung a ditty this evening. I fear that we have been trumped by the other place.

Hon Darren West: Off you go!

Hon RICK MAZZA: No, you will not get that from me. I was expecting Hon Darren West to get up and maybe do an Elvis impersonation or something like that for Christmas

The PRESIDENT: Do not tempt him.

Hon RICK MAZZA: I concur with all those who have sent their best wishes to all the staff throughout the Parliament who make this place run. Being a single member, I would like to especially acknowledge the clerks, whose counsel I often seek. It is always first-class advice that I get to make sure that I do not trip up too much along the way. I would also like to acknowledge my electorate staff—Anne, Tim and Lucy, who I am sure will watch this tomorrow—for their great support and the fact that without them it would be very difficult for me to get across all the legislation that comes through this place. To the Leader of the House and the Leader of the Opposition, I thank you again for your counsel, too, and all the party leaders whom we meet with from time to time. I thank the crossbenchers and all members of the chamber whom I view as colleagues, despite our political differences. We do have those differences, which is as it should be—it was mentioned earlier—but at the end of the day there is an underlying goodwill and fellowship that exists amongst all of us.

I quite simply would like to wish everyone a very merry Christmas and a happy new year to you and your families. I hope to see you safely back here again next year.

HON COLIN TINCKNELL (South West) [5.28 pm]: Once again, I want to pay special thanks to the President of this house. She does a magnificent job. As she alluded to earlier on, there are quite a few new members in this house but we are now veterans of nearly 20 months and we have learnt a lot. We have relied on her counsel and the way she runs the house and we respect that. I also want to thank the staff. As new members, my colleagues alongside me and the crossbenchers have found the staff just magnificent. They support and help us so that we know we are going in the right direction to get the information we want, which makes all of our staff and our colleagues look good because we can get on with debating the issues. As many members have said today, that debate has been pretty robust. That is the value of this house—the debate that goes on and the diversity of the debate. It is great to be a part of seven different parties in a house. I value that, and I know my fellow colleagues do, too.

To my fellow party members, Hon Charles Smith and Hon Robin Scott—there are too many Robins and Colins in this place!—I really thank them. We have learnt a lot over the last 12 months and we feel like we are growing as a team. As a new party, we have gained a new president; the party is growing. That has taken a lot of pressure off us and we hope to get even better at our jobs in the new season.

To my fellow crossbench members, thank you very much. It is always good. We meet on a regular basis to discuss every issue and bill that goes through this house, and that is not easy. We all have different views, but we honour those views and we have robust discussions as well.

To the Leader of the House and to the Leader of the Opposition, and the leaders of the Nationals WA and the Greens, I thank you. It has been very good working with you. It is always difficult because we all try to get to the same result but we go about it differently. In the end, as they say, it is a very collegiate place and we work together for the people of WA.

Most of all I want to wish everyone a merry Christmas, especially the staff—the people who work for the three members of the One Nation party. We are in debt to those people; they help us a great deal. To everyone in this house and to everyone who makes Parliament run as well as it does, thank you very much. Merry Christmas to you all.

HON DIANE EVERS (South West) [5.31 pm]: On behalf of the Greens, I would like to express our sincere appreciation to the Parliament House staff, who do so well to look after our every need or request. Thank you to the Hansard staff, who seem to record exactly what we mean to say. Thank you to the catering staff, who deliver diversity, interest, and health in the food that they provide. Thank you to the security staff for being relaxed and lighthearted while carrying out such an important task. Thank you to the parliamentary education staff, who do so well to tell the really interesting stories. Thank you to all those who keep Parliament House looking its best and providing an inviting and open atmosphere to make our guests feel welcome. A very heartfelt thank you to all the Legislative Council staff, who provide structural support to our deliberations and who ensure that our work is facilitated and never limited by the workings of the Council chamber. I would like to also thank all other Parliament House staff. It has been a delight to have so many people willing to help us at every moment to make sure that we can do the best job that we are here to do.

I would like to thank you, Madam President. It has been a delight learning how this place works. I appreciate your guidance in here. I appreciate all the contributions from all other members in here. It has been, truly, a very interesting path to take.

I would like to thank the committee staff, who do so much to ensure that we are well informed in our roles as committee members, and also the staff who support me and my Greens colleagues to do so much to keep our agenda

front and centre so that we can do our best while we are here. I thank my colleagues Tim Clifford, Robin Chapple and Alison Xamon for helping this team contribute in the best way that we can to make this place work as well as it does.

To all members and all staff in the chamber, I would like to express our good wishes to you and your families for a safe, exciting, relaxing and joyful holiday break. I hope that all Western Australians are also able to enjoy a safe and joyful summer.

The PRESIDENT: Members, before we adjourn, I remind you that, traditionally, on the last sitting evening, I encourage you to visit the members' lounge and to perhaps share some good food and some wine together before you move on to enjoy your Christmas time away. With that, the house is adjourned.

House adjourned at 5.34 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

TRANSPORT — SCHOOL BUS CONTRACTS

1742. Hon Martin Aldridge to the minister representing the Minister for Transport; Planning; Lands:

I refer to school bus service contracts in Western Australia, and I ask:

(a) as at 30 June 2018, how many contracts exist by contract type;

(b) please detail the key features of each contract type;

(c) how many of these contracts or subsequent services exist to exclusively transport students attending non-public schools; and

(d) of those identified in (c), please identify the corresponding region in which the contract or service operates?

Hon Stephen Dawson replied:

(a) Evergreen Contracts – 689; Tendered Contracts – 83; Short Term Contract/Quote – 71; Cluster Contracts – 10; Composite Rate Model Contract – 1

(b) Evergreen Contract – The contract is a five year contract that effectively 'rolls over' for a new five year period providing the service is required and the contractor meets his/her key performance indicators.

Tendered Contracts – Tendered as life of bus contracts, usually ten years for small buses and 15 years for large buses.

Short Term Contracts/Quotes – Due to a moratorium imposed by the previous Government in 2011 on all school bus tendering while the Composite Rate Model fixed term contracts were converted to Evergreen Contracts, the PTA put in place short term fixed period contracts or quotes.

Cluster Contracts – Fixed term contracts with multiple services.

Composite Rate Model Contract – The only long term contract which was introduced in 2003 and did not transition to an Evergreen Contract.

(c) 52

(d) Kimberley – 3; Pilbara – 2; Mid West – 2; Wheatbelt – 5; Southwest – 11; Great Southern – 3; Perth/Peel – 26

MENTAL HEALTH COMMISSION — BED INCREASE TENDER — SOUTH WEST

1752. Hon Alison Xamon to the parliamentary secretary representing the Deputy Premier; Minister for Health; Mental Health:

I refer to the Mental Health Commission's request for tender seeking to expand the number of beds in the South West of Western Australia by up to three low medical withdrawal/stabilisation beds and up to 30 residential alcohol and drug treatment beds which closed on 30 July 2018, and I ask:

(a) have providers been selected to deliver these services;

(b) if no to (a), why not; and

(c) if yes to (1) please:

(i) list the successful applicants;

(ii) advise the number of beds allocated by location; and

(iii) advise if any beds are reserved for priority populations and, if so, which populations and associated number of beds?

Hon Alanna Clohesy replied:

I am advised that:

(a) Yes.

(b) Not applicable.

(c) (i) Palmerston Association has been awarded as a successful Respondent. The Mental Health Commission is continuing a preferred service provider negotiation process with Cyrenian House.

(ii) Palmerston Association's service will provide 19 adult beds and is located in Brunswick Junction. Cyrenian House's offer is still under negotiation.

(iii) Unable to advise until negotiation process has been completed.

ENVIRONMENT — BHP — TRAIN DERAILMENT

1758. Hon Robin Chapple to the Minister for Environment:

I refer to the BHP train derailment near Turner Siding on the 5 November 2018 and ask:

(a) was the Department of Biodiversity, Conservation and Attractions (DBCA) informed of this accident;

(b) if yes to (a), on what date and time;

(c) did officers from DBCA attend the site;

(d) how much fuel oil leaked from the locomotives;

(e) what methods were used to contain any spills of hydrocarbons;

(f) what methods were used for the remediation of the impact of hydrocarbon material that was spilt;

(g) was destroyed rolling stock disposed of locally or removed from site;

(h) if destroyed rolling stock was disposed of locally, what methods were used to contain all forms of hydrocarbons from axels;

(i) what was the estimated tonnage of iron ore spilt;

(j) what happened to the iron ore that was spilt;

(k) given there was a similar derailment at this location in 2011, is DBCA assessing cumulative impacts of buried material; and

(l) if no to (k), why not?

Hon Stephen Dawson replied:

(a) No. The Department of Water and Environmental Regulation (DWER) was notified of the incident through a report made under section 72 of the *Environmental Protection Act 1986*.

(b) Not applicable.

(c) No.

(d) BHP advised DWER that between 10,000 to 16,000 litres of hydrocarbon was released.

(e) No one was in attendance at the time of the derailment and no immediate containment was undertaken. The diesel spilled onto the soil at the incident site.

(f) Diesel-affected soil was excavated and placed into bunded areas that were lined with heavy duty plastic. Further remediation has not yet commenced.

(g) Rolling stock will be cut up on scene and removed by truck for recycling.

(h) Not applicable.

(i) Approximately 30,000 tonnes of iron ore was split.

(j) BHP advised that it will be disposed of to a licensed landfill.

(k) No.

(l) The Department of Biodiversity Conservation and Attractions has no statutory role in relation to assessing these incidents.

ENVIRONMENT — MAITLAND STRATEGIC INDUSTRIAL AREA

1759. Hon Robin Chapple to the Minister for Environment:

I refer to the Minister for Environment's letter, Reference 62,0269 to the Chair of the Standing Committee on Environment and Public Affairs, and refer to the statement: "The Maitland Strategic Industrial Area has been set aside for projects focused on the domestic market and potential future export-orientated industrial development.", and I ask:

(a) is the answer that the site is set aside for the domestic market in line with the proposal originally identified in the Maitland Heavy Industry Estate Karratha, Public Environmental Review – October 1994, prepared by AGC Woodward-Clyde Pty Ltd for Landcorp and the Department of Resources Development and the Gutteridge Haskins & Davey Pty Ltd strategy for the Maitland Strategic Industrial Estate, March 1999;

(b) if no to (a), why not;

(c) if yes to (a), how;

(d) when responding to the question relating to the cumulative air shed of pollutants and all emissions that impact on Murujuga, is it acceptable that the Environmental Protection Authority (EPA) will continue to consider any proposals on a case-by-case basis and not at a cumulative level;

(e) if yes to (d), why;

(f) given that the Government has ruled out the use of West Intercourse Island for porting and industrial purposes and, in response to information provided to the Standing Committee on Environment and Public Affairs by the petitioners, did the Minister consider that the option to use the original parcel of land identified in the Concept, the Pilbara Study and the DRD Pilbara Heavy Industry Site Evaluation Karratha Area for industrial development on the mainland (this parcel of land is part of Temporary Reserve 70/5461 and has a ministerial purpose for the industrial development of the Roebourne and Karratha area and is significantly closer to the Burrup than Maitland and has an existing infrastructure corridor); and

(g) if no to (f), why not?

Hon Stephen Dawson replied:

(a) No

(b) Heritage and environmental constraints make a new port at West Intercourse Island unfeasible. Export related projects at Maitland Strategic Industrial Area (SIA) would need to export their product via Dampier Port facilities at King Bay, located 30 kilometres away.

(c) Not applicable

(d) The Environmental Protection Authority (EPA) considers cumulative impacts as part of its assessment of proposals. As part of the requirement for scoping, the EPA requires proponents to address cumulative impacts, which are then discussed in the proponents environmental review document. This is then assessed by the EPA.

(e) Not applicable.

(f) No.

(g) It is noted that the Hon Member has referenced The Pilbara Development Concept for the 1970's, Department of Development and Decentralisation (no date), and Pilbara Heavy Industry Site Evaluation Karratha, Department of Resource Development, 1993, documents that are now outdated.

Since the 1990's, the State has invested significant resources in the planning and development of the Maitland SIA, including:

having the land zoned for Strategic Industry under the City of Karratha Local Planning Scheme, and preparation of an Improvement Scheme confirming the land planning framework to guide future industrial development at Maitland SIA;

negotiating statutory clearance with the Department of Mines, Industry Regulation and Safety to take interests created under the *Mining Act 1978* (WA); and

other environmental, geotechnical and hydrological studies to ascertain the feasibility of developing the Maitland SIA.

MINISTER FOR TOURISM — ROAD TRIP STATE CAMPAIGN — NATHAN HARDING

1760. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) Did the Minister or the Ministers Office have any conversation, meeting, text message, email or other correspondence with Mr Harding regarding a potential or perceived conflict of interest in relation to the 'Road Trip State' campaign, prior to the campaign being announced by the Minister on 19 October 2018?

(2) If yes to (1), will the Minister table this correspondence:

(a) if no to (2), why not?

(3) Whose idea was the Road Trip State campaign?

Hon Alannah MacTiernan replied:

(1) No.

(2) Not Applicable.

(3) Tourism Western Australia's Marketing team and its creative industry, Cummins & Partners.

ROTTNEST ISLAND — ARMY JETTY

1761. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

I refer to the Rottnest Island Authority Annual Report 2016–17, and I ask:

(a) in relation to Service 1 "jetties management" on page 67, was a strategic plan and/or improvement and maintenance plan developed for the army jetty;

(b) if yes to (1), what maintenance works were proposed as part of this plan, what was the proposed time frame for completion, and what was the anticipated cost;

(c) in relation to Service 1 "jetties management" on page 67, was a strategic plan and/or improvement and maintenance plan developed for the main jetty; and

(d) if yes to (3), what maintenance works were proposed as part of this plan, what was the proposed timeframe for completion, and what was the anticipated cost?

Hon Alannah MacTiernan replied:

(a) No.

(b) Not applicable.

(c) Yes.

(d) Maintenance was proposed to the sheet piles, fender piles, bollards, rock armour, barge ramp and hardstands to berths 4 and 5. The works have commenced and are scheduled to occur over 3 years, costing approximately $2.8 million.

ROTTNEST ISLAND — ASSET MANAGEMENT

1762. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

I refer to the *Rottnest Island Authority Annual Report 2016–17*, and I ask:

(a) in relation to Service 2 "sea wall" on page 68, was the sea wall made structurally sound; and

(b) if yes to (a), what works or maintenance was undertaken and on what dates?

Hon Alannah MacTiernan replied:

(a) Yes.

(b) The works involved:

propping of the wall;

grout column injections behind the wall to create a new mass retaining wall;

removal of top soil behind the wall on Vincent Way and trimming of intersecting tree roots;

installation of a tree root barrier system; and

conservation works to the face of the wall including removal of limewash to enable underlying cement mortar repairs and replacement of stone voids, before the limewash was repaired to match the existing sea wall colour.

The work commenced in November 2017 and concluded in June 2018.

ROTTNEST ISLAND — ARMY JETTY

1763. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) I refer to the Rottnest Island army jetty:

(a) how many times was this infrastructure inspected by a structural engineer for safety purposes in 2017 and 2018;

(b) on what dates; and

(c) who undertook these inspections?

(2) I refer to the Rottnest Island main jetty:

(a) how many times was this infrastructure inspected by a structural engineer for safety purposes in 2017 and 2018;

(b) on what dates; and

(c) who undertook these inspections?

Hon Alannah MacTiernan replied:

(1) (a) The Army Jetty is a decommissioned asset and was not inspected by a structural engineer in 2017 or 2018.

(b)–(c) Not applicable.

(2) (a)–(c) The Rottnest Island Main Jetty was inspected as follows:

Inspection type	Safety Inspection Date (b)	Inspected By (c)
Engineering – visual inspection report	3 May 2017	Broadspectrum (BRS) commissioned by the Department of Transport (Civil and Structural Engineers)
Dive inspection – pile testing and cathodic testing on sheet piling	9 January 2018	Shore Water Marine supervised by RIA Marine Engineer (Civil and Structural Engineer)
Engineering – fendering system confirmation	25 July 2018	Searle Consulting (Civil and Structural Engineer)
Engineering report Berth 4&5 inspection concrete deck	25 September 2018	Duratec Australia (Materials Engineers) supervised by RIA Marine Engineer (Civil and Structural Engineer)
Visual Inspection – tie rods	2 November 2018	West Water Marine supervised by RIA Marine Engineer (Civil and Structural Engineer)

ROTTNEST ISLAND — BOOKING SYSTEM

1764. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) Since 12 March 2017, has Oracle recommended any system updates or version upgrades to the Rottnest Island Authority for the booking system that have not been undertaken?

(2) If yes to (1):

(a) what updates or new versions of the Oracle booking system were recommended;

(b) what did each proposed update or new version of the Oracle booking system propose to fix or improve; and

(c) what was the reason for not undertaking these system updates?

Hon Alannah MacTiernan replied:

(1) No.

(2) (a)–(c) Not applicable.

ROTTNEST ISLAND — BOOKING SYSTEM

1765. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) Does the Rottnest Island Authority (RIA) measure customer booking wait times by telephone and, if yes, how?

(2) Does the RIA measure customer booking wait times in person and, if yes, how?

(3) Does the RIA measure customer satisfaction with the booking process and, if yes, how?

(4) Does the RIA measure the opportunities lost by disruptions to its booking system and, if yes, how?

(5) Why did the RIA remove the option for customers to be able to select the villa of their choice during peak periods?

(6) Why did the RIA remove the option for customers to be able to select the number of nights of their choice during peak periods?

Hon Alannah MacTiernan replied:

(1) Yes, telephone wait times are measured using the new 3CX phone system which was installed in September 2018.

(2) No.

(3) Yes, through an after-departure customer survey that includes a question specific to satisfaction with the booking service.

(4) No.

(5) The option to choose a specific unit from within a group of similar units was removed five years ago to increase the overall efficiency of unit allocation; improve availability and occupancy rates, reduce operational costs, and better manage planned and unplanned maintenance. The allocation of units/rooms at the operator's discretion is standard practice within the accommodation sector where multiple units/rooms are available. RIA customers can still choose the specific area or type of accommodation they wish to stay in and, outside of peak periods, requests for specific units will normally be met if the unit is available.

(6) The option has not been removed. Customers have not been able to select the number of nights of their choice during the peak periods of December/January school holidays and Easter/Easter school holidays since the previous ballot system was first introduced. That arrangement was not changed after the ballot system was discontinued.

ROTTNEST ISLAND — ASSET MANAGEMENT

1766. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

I refer to the *Rottnest Island Authority (RIA) 2017–18 Annual Report*, and I ask:

(a) what ageing infrastructure presents current challenges for the RIA; and

(b) can the Minister please list all infrastructure projects recommended for upgrades, the recommended time frame for those upgrades, and the expected cost of those upgrades?

Hon Alannah MacTiernan replied:

(a) All ageing assets present challenges. The Rottnest Island Authority (RIA) responds to safety issues as soon as they are identified, and the need for upgrades to infrastructure is carefully monitored and proactively addressed where necessary.

(b) Infrastructure projects recommended for upgrades during 2018–19 are:

Diesel Tank Upgrade PFM Yard	$430,000
Main Jetty Upgrades	$400,000
Army Jetty access works	$350,000
Fuel Jetty Improvements	$350,000
DSC Changing Places	$50,000
Commercial Leased Property Upgrades	$100,000
Staff Accommodation Upgrades	$100,000
Thomson Boardwalk	$25,000
Grease Traps (3)	$45,000
HV Line and Control Board Upgrade (Pinky Beach)	$250,000
Hydrant Main Improvements (Water Audit)	$250,000
Transfer Potable Water Pump Station	$234,000
SCADA / Controls Upgrade (Desalination Plant)	$100,000
Integration of Hydrant pumps to SCADA system (Water Audit)	$15,000
Replacement Longreach Pump Station	$600,000
Hotel Rottnest Water and Sewer Headworks	$260,000
Pinky Beach Headworks – Stage 2 (Sewer)	$30,000
Total	**$3,589,000**

ROTTNEST ISLAND — QUOKKA SELFIES

1767. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) Was actress Margot Robbie paid for her quokka selfie?

(2) If yes to (1), how much was she paid?

Hon Alannah MacTiernan replied:

(1) No.

(2) Not applicable.

ROTTNEST ISLAND — QUOKKA SELFIES

1768. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) Has Chris Hemsworth been secured to visit Rottnest Island and take a quokka selfie?

(2) If yes to (1), how much will he be paid?

(3) Have any other famous actresses, actors or Hollywood A-listers been approached by Tourism WA to visit Western Australia and take a quokka selfie:

(a) if yes to (3), who has been approached?

Hon Alannah MacTiernan replied:

(1) No.

(2) Not applicable.

(3) No.

(4) Not applicable.

ROTTNEST ISLAND — ARMY JETTY

1769. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) What specific proposal was approved by the Board of the Rottnest Island Authority for the army jetty redevelopment?

(2) What amount of funding was approved?

(3) As at 24 October 2018, when was the redevelopment of the army jetty scheduled to commence?

(4) As at 24 October 2018, when was the redevelopment of the army jetty scheduled to be complete?

(5) Who was undertaking the redevelopment of the army jetty?

(6) Was the redevelopment of the army jetty advertised for tender on Tenders WA website:

(a) if no to (6), why not?

Hon Alannah MacTiernan replied:

(1) Upgrade works and re-instatement of barge landing on the end of the former Army Jetty, on condition that management provides a fully costed redevelopment proposal for examination by the Board and undertake community consultation on the project.

(2) $400,000 for the upgrade works and re-instatement of barge landing.

(3)–(6) Approved works were to commence when the Board's conditions had been met and would have been subject to State Government procurement processes.

ROTTNEST ISLAND — ASSET MANAGEMENT

1770. Hon Jim Chown to the minister representing the Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Interests:

(1) Since 12 March 2017, has the Minister for Tourism received any formal proposals from the Rottnest Island Authority seeking funding for maintenance or upgrades to the army jetty, main jetty or seawall?

(2) If yes to (1), what works were proposed to be undertaken, what funding was sought and what was the proposed time frame?

(3) If yes to (1), was the funding approved or declined by the Minister for Tourism and what were the reasons for this decision?

Hon Alannah MacTiernan replied:

(1) No. The listed projects were being funded within the existing approved Budget.

(2) Not applicable.

(3) Not applicable.

ENVIRONMENTAL PROTECTION ACT — POLLUTION REPORTS

1771. Hon Robin Chapple to the Minister for Environment:

I refer to pollution reports about premises licensed under Part V of the *Environmental Protection Act 1986* in the Perth metropolitan area, and ask:

(a) how many premises were the subject of pollution reports made to the department's Pollution Watch service by the public in the year ending 30 June 2018;

(b) please list the three premises that received the most complaints, including how many complaints were received for each of the three premises for the year ending 30 June 2018;

(c) please list which premises was the subject of the most pollution reports in each of the years ending on the 30 June for 2015 to 2018; and

(d) why does the department still license any premises to burn coal within the Perth metropolitan area despite the well known health risks caused by exposure to toxic gas and particulate emissions generated by burning coal in a heavily urbanized area?

Hon Stephen Dawson replied:

(a) For 1 July 2017 to 30 June 2018, 140 premises were reported to the Department of Water and Environmental Regulation.

(b) Cockburn Cement Limited Munster (364); GD Pork Pty Ltd (Pinjarra) (325); and Pilbara Iron Pty Ltd, Cape Lambert Operations (216).

(c) 2015 – Cockburn Cement Limited Munster (76)

2016 – Nambeelup Farms (328)

2017 – Nambeelup Farms (303)

2018 – Cockburn Cement Limited Munster (364)

(d) The Department of Water and Environmental Regulation regulates emissions from prescribed premises through works approvals and licenses granted under the *Environmental Protection Act 1986*. Prescribed premises, which may include premises that burn coal, are regulated to ensure their emissions do not represent an unacceptable risk to public health or the environment.

EDUCATION AND TRAINING — PARLIAMENTARY SECRETARY — CENTRAL WHEATBELT VISIT

1790. Hon Martin Aldridge to the Minister for Education and Training:

I refer to the Parliamentary Secretary to the Minister for Education and Training's visit to the Central Wheatbelt on Friday, 16 November 2018, and I ask:

(a) please provide an unredacted copy of the Parliamentary Secretary's itinerary and travel arrangements for November 16, 2018;

(b) please provide all briefing notes and advice provided to the Minister or the Parliamentary Secretary in relation to meetings, functions and other commitments undertaken by the Parliamentary Secretary on November 16, 2018;

(c) who accompanied the Parliamentary Secretary during the visit and at each meeting, function or other commitments undertaken by the Parliamentary Secretary on November 16, 2018; and

(d) on what date, at what time and by what means were the following local members of Parliament notified of the Parliamentary Secretary's visit:

(i) Hon Mia Davies MLA;

(ii) Hon Martin Aldridge MLC;

(iii) Hon Colin de Grussa MLC;

(iv) Hon Laurie Graham MLC;

(v) Hon Rick Mazza MLC; and; and

(vi) Hon Darren West MLC?

Hon Sue Ellery replied:

(a) My Parliamentary Secretary, Hon Samantha Rowe MLC drove herself to Narembeen, departing Perth Thursday 15 November and staying overnight at Narembeen Caravan Park. A visit to Narembeen District High School was undertaken Friday 16 November 2018 and Ms Rowe returned to Perth that afternoon.

Attached is copy of Ms Rowe's meeting schedule. For privacy reasons the names of students, parents and teaching staff have been redacted. [See tabled paper no 2318.]

(b) [See tabled paper no 2318.]

(c) Mr Garry Hewitt, Assistant Executive Director, Early Childhood and Aboriginal Education – Department of Education.

(d) (i)–(iii) and (v) Email: Thursday 15 November 2018 at 3:21pm. Hon Jim Chown MLC was also notified.

(iv) and (vi) Email: Monday 12 November 2018 at 12:44pm
