CHARITABLE TRUSTS BILL 2022

Second Reading

Resumed from 7 April.

MR D.A.E. SCAIFE (Cockburn) [5.45 pm]: I rise this evening to speak on the Charitable Trusts Bill 2022, which is being led through this chamber by the Attorney General. This bill is significant because charitable trusts play a very significant role in the Western Australian community and economy. Hundreds of millions of dollars go through charitable trusts in Western Australia, and, in fact, they are the primary vehicle for the distribution of native title settlements. Much of the money that goes through charitable trusts is distributed to worthy causes, but it is particularly distributed to causes for the advancement and empowerment of our traditional owners. However, we have not updated the legislative framework around charitable trusts for many years, and, over those years, community expectations of the governance of charitable trusts, the purposes for which the money can be used, the commercial pressures that are applied to charitable trusts and their ways of doing business have all evolved. Because of the evolution of those administration aspects of charitable trusts, it is appropriate that the legislation that governs charitable trusts also be updated.

I went back into *Hansard* to find some speeches on the introduction of the bill that became the Charitable Trusts Act 1962, and I found that that original legislation was introduced for much the same reason that I have just outlined for modernising that act through this bill. I read from *Hansard* from the Legislative Council on 26 September 1962, when Hon Frank Wise spoke about the Charitable Trusts Bill. He said —

> The Law Reform Subcommittee of the Law Society said that it is designed particularly for the purpose of keeping trusts in a healthy condition. In applying it to the statute law of Western Australia it is not, in our case, intended to cure anything in particular—anything of an unpleasant or unsavoury nature that so far has been experienced—but to prevent unhealthy happenings that have taken place under other jurisdictions in regard to charitable trusts. The Law Reform Subcommittee of the Law Society stated in the text of its report that all the provisions are designed to prevent charitable trusts falling into disuse and decay, as so frequently they have done in the United Kingdom.

We can see there that the original Charitable Trusts Bill was enacted by this Parliament because it wanted to prevent anything bad happening through the administration of charitable trusts. That is really the reason that we are here today to debate this bill—to ensure that charitable trusts are properly administered and that there is proper oversight of the administration of charitable trusts into the future.

Unfortunately, unlike the introduction of the original bill, we are here today partly because of an inquiry that uncovered some concerns about the administration of charitable trusts, particularly the Njamal People's Trust. The need to modernise the act arises in many ways from the Njamal report, which was authored by Mr Alan Sefton, who was appointed Senior Counsel after this report was handed down. I congratulate Mr Sefton on that appointment. It is clear, if members read the Njamal report, that Mr Sefton took great care and was extremely diligent in the preparation of that report. It runs to well over 600 pages and deals with very complex issues. The inquiry reported on the operations of the trust distributing native title benefits to the Njamal people.

As the Attorney General said, following the introduction of the original act, native title has delivered many benefits to Aboriginal people in this country. The Native Title Act is a great legacy of the Keating Labor government spurred on by the decision of the High Court in Mabo v Queensland (No 2). I note it was recently the thirtieth anniversary of Mabo No 2, which was a landmark decision in the High Court that established the concept of native title in Australia, which was then regulated and codified by the Keating government through the Native Title Act. Despite the benefits delivered by native title, many Aboriginal communities still suffer significant disadvantage. The Njamal report uncovered the complexity of reasons for that disadvantage persisting despite significant benefits flowing to many communities as a result of native title settlements. I say very clearly that I am a member in this place who is always committed to the self-determination of Aboriginal people, as I know are many members of this chamber. That commitment to the self-determination of Aboriginal people means this Parliament taking a proactive stance on governance and regulation to make sure that we have legislative instruments that support the distribution of native title benefits to the communities that should rightly be the beneficiaries of activities like mining that take place on their traditional lands. That is what this bill will do.

The bill modernises the act in a number of important ways. Part 4, for example, gives the Ombudsman the power to carry out audits of trustees of charitable trusts. That is a slight departure from the recommendations in the Njamal report, which recommended that this power be given to the Auditor General, but I think it is appropriate that that power be given to the Ombudsman. The Ombudsman is an institution that is very well respected by members of this place. The Ombudsman is an officer of the Parliament and, because of that, is independent of the government of the day. The Ombudsman also has significant experience, through their other functions, to inquire into complex

issues and assist people from backgrounds in which they speak a language other than English at home, as many people in Aboriginal communities do; and the Ombudsman has a reputation as an institution that conducts frank and fearless inquiries. Although that part of the bill is a departure from the agency that the Njamal report recommended be given for the power to inquire into charitable trusts, it is a departure that is justified and should be welcomed.

Clause 45 of the bill will allow the Attorney General to remove a trustee from a charitable trust. It is really important to give the Attorney General, acting as the chief law officer of Western Australia acting in the public interest, the power to intervene in extreme cases to ensure that the trustee is an appropriate person to administer a charitable trust. Clause 46 essentially pre-empts that intervention from the Attorney General by prohibiting certain people from being involved in the administration of a trust in the first place. The idea of that, of course, is preventive. The purpose of the clause is to make sure that people who have perhaps been disqualified by the Australian Securities and Investments Commission from being a director of a company do not then refashion themselves into somebody who is associated with the administration of a trust. Unfortunately, that was uncovered in the Njamal report. Members of this place would agree that there should really be significant concerns about someone being involved in the administration of a trust when they have been found by the federal regulator to be an inappropriate person to be a director of an incorporated entity. This is a very good bill for a variety of reasons and goes to a very important and complex issue.

On the topic of charities and charitable trusts, I take this opportunity to congratulate my friend and constituent Jean Bruce on being awarded the Medal of the Order of Australia in yesterday's Queen's Birthday honours. Jean received the award for service to the community through charitable organisations. It was Jean's great work through charitable organisations, many of them relying on charitable trusts, that led to her being awarded the Order of Australia.

Since moving to Cockburn in 1999, Jean has volunteered countless hours without expectation of personal gain and throughout her ongoing battles with cancer, making her service to the community worthy of particular recognition. Between 2000 and 2017, Jean volunteered for the Salvation Army at its stores in South Lake and Cockburn Central. Jean carried out sorting and pricing tasks as well as customer service, always going above and beyond to provide a comfortable experience for visitors. She would also go out of her way to collect donation items from homes. In 2015, Jean received a certificate from the Salvation Army recognising her 15 years of volunteer service. Since about 2010, Jean has personally collected clothing, blankets, food, toys, nappies and sanitary items for a range of homelessness and community outreach organisations in the City of Cockburn. Those organisations include Little Things for Tiny Tots, the South Lake Ottey Family and Neighbourhood Centre, Perth Homeless Support Group, Homelessness We Care and St Patrick's Community Support Centre. Jean has also collected and donated pet supplies to WISH Animal Rescue Team Perth and to Native Ark, which is now known as WA Wildlife.

In February 2020, Jean was diagnosed with cancer. Over the following five weeks, Jean underwent aggressive chemotherapy and despite the effects of treatment Jean continued to organise collections and donations for these charities by using her house as a delivery and collection point. Jean collected and delivered pet supplies, and food and clothing on a monthly basis for Perth Homeless Support Group throughout the time she was undergoing chemotherapy. While she was undergoing chemotherapy, Jean also participated in a program at St John of God Murdoch Hospital cancer ward where patients knit beanies to donate to other patients and those facing homelessness. Jean knitted seven beanies during her treatment. St John of God staff were inspired by Jean to begin collecting clothing for Perth Homeless Support Group, and they continue to be regular supporters of the organisation.

I encounter many volunteers in my role as a member of Parliament. Although I value all volunteers, very few of them share Jean's dedication. For more than 20 years, Jean has demonstrated personal dedication to people who are homeless and disadvantaged in our community. Her work is conducted quietly, at the street level, and is focused on making a practical difference in the lives of people who are struggling. Jean represents the very best of our Cockburn community. During National Volunteer Week in 2013 and 2020, Jean was recognised by Volunteering Australia with a certificate of appreciation. On Australia Day 2021, Jean was recognised for her service by being named the City of Cockburn's community senior citizen of the year. I was proud to nominate Jean for the Medal of the Order of Australia and even prouder yesterday when her award was confirmed. I thank Josh Wilson, MP, federal member for Fremantle; Logan Howlett, JP, Mayor of the City of Cockburn; and Michael Piu, chief executive officer of St Patrick's Community Support Centre for supporting Jean's nomination. Jean, everyone in Cockburn is lucky to have you in our community. Your selflessness, kindness and generosity of spirit are legendary. Thank you for everything you do and congratulations again on receiving the Medal of the Order of Australia.

With that, I say that it is people like Jean who are advocates in the charity movement whose work is dependent on charitable trusts being administered properly. This bill will mean that the work of volunteers like Jean and charities like those I have just mentioned will be able to continue doing important work. I commend the bill to the house.

Sitting suspended from 6.00 to 7.00 pm

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [7.00 pm]: I rise to make a brief contribution to the debate on the Charitable Trusts Bill 2022 and I commend the Attorney General for bringing this legislation before the Parliament. It speaks to his diligence in making sure that the regulatory framework that pertains to the Western Australian jurisdiction is up to date, fit for purpose, modern and well designed.

I want to talk about two things in particular. I want to talk about the nature of trusts—in particular, charitable trusts and the role that this legislation plays in the regulation of charitable trusts. As the member for Cockburn mentioned, 11 days ago was the thirtieth anniversary of the Mabo decision, and I want to talk about native title and the negotiation of Indigenous Land Use Agreements under the commonwealth Native Title Act, and how that has given rise to an increased prevalence of charitable trusts. I then want to bring those two points together with the matter of the Njamal inquiry, which was conducted by Alan Sefton and commenced on 3 May 2017, pursuant to an instrument signed by the Attorney General immediately after he was sworn in. Once I have finished talking about the review, I want to talk about the recommendations that have been made in the review and the fact that those recommendations have been picked up in this legislation, which will bring me back to the point I started on: that the Attorney General has brought before the Parliament legislation that is designed to modernise and update the charitable trusts legislation.

Let us start with the nature and classification of trusts. Members, I am referring here to the sixth edition of Heydon and Loughlan's *Cases and Materials on Equity and Trusts*. It states —

> A trust imposes an equitable obligation on the holder of property in favour of another (or for a charitable purpose enforceable by the Attorney-General). The significance of the obligation being equitable …

That was a function of decisions of the English Court of Chancery in the fifteenth and sixteenth centuries. Charitable trusts derive, originally, from the definition of charity in what is called the Statute of Elizabeth, but I will come to that shortly. For trusts to come into existence there needs to be a beneficiary principle. It continues —

> The 'beneficiary principle', as it is known in the law of trusts, requires that a trust be for the benefit of either persons or charitable purposes.

Again, we can see the distinction between persons and charitable purposes —

> A non-charitable purpose trust is accordingly void.

Ordinarily, members, the trust would be established by a trustee for the benefit of beneficiaries—usually for the disposition of property. A good example of a trust being established is the equivalent of a will, whereby people would seek ways in which their property could be disposed. The trouble was that, over time, people wanted to leave their money to organisations and endeavours for the purposes of charity, and that was defined to include things like education, relief from poverty and religion. The trouble was that without a beneficiary, or a particular person to whom the trust would provide a benefit, any legal debate around the nature and characters of the trust was unlikely to be brought because there was not a person who had the standing to bring those proceedings in the Court of Chancery. The responsibility for charitable trusts became the preserve of the Attorney General, standing in the shoes of the state and the community. The Attorney General is the person who oversees charitable trusts. Because trusts are creatures of equity rather than creatures of statute or common law, the Supreme Court has jurisdiction over determining disputes pertaining to trusts. The Supreme Court is the only jurisdiction for determining disputes relating to equity and trusts because it has retained that jurisdiction from the Judicature Act. We have the charitable trusts and we have the Attorney General as the person responsible for looking over charitable trusts, and I will come back to why that is important when I talk about the review that was undertaken by Mr Sefton.

I will be very brief in my contribution. The next thing I want to talk about is native title because last week was the thirtieth anniversary of the High Court of Australia's decision in the Mabo case, which recognised for the first time in Australian legal history the fallacy of the doctrine of terra nullius and Indigenous Australians' right to native title. The policy problem that created for the commonwealth government was how to codify and legislate the new set of rights and entitlements that the High Court had just identified. If the commonwealth had not put that legislation in place, there would not be a system for determining disputes between parties about whether native title exists and, if it exists, what the nature of the native titles rights might be. Native title is not a simple right; it is actually a whole bundle of rights that are identified in connection with the customary use of the land by the native title claim group. The commonwealth government instituted the Native Title Act, which created a regime whereby disputes around native title can be resolved through negotiation and agreement making. What we saw over the course of the late 1990s and more so into the early 2000s was what was known as Indigenous Land Use Agreements. The maturation and the development of this agreement making, in the context of the native title area, is well captured by my friend David Ritter. He has written two books that I would like to recommend to the members: *The Native Title Market* and *Contesting Native Title*. The reason I recommend —

A government member: Are they light reads?

Mr S.A. MILLMAN: They are light reads!

The Native Title Market is actually a speech that David gave to the Australian Mining and Petroleum Law Association in 2006. These books relate to the way in which, over time, Aboriginal groups who have a claim to native title have been able to enter into negotiations to determine what is going to happen on their traditional land. A good example is the Yindjibarndi Aboriginal Corporation, which is an Aboriginal corporation in the Pilbara. The Yindjibarndi Aboriginal Corporation actually brought two native title claims to the Federal Court. The Yindjibarndi people brought their first claim with their neighbours the Ngarluma people; the Ngarluma and the Yindjibarndi peoples brought a claim together as the Ngarluma and Yindjibarndi claim. The Federal Court determined that those two groups had established a traditional connection with country that would entitle them to assert their native title rights, as against the whole world. Consequent upon that, the Ngarluma Aboriginal Corporation and the Yindjibarndi Aboriginal Corporation came into existence.

I understand more about what happened with Yindjibarndi than with Ngarluma. Over time, Yindjibarndi has been able, for the most part—there is one recalcitrant—to negotiate agreements with mining companies that have sought access to their land or with the state government or other proponents that have looked to do work or perform activities on their land. Part of the consideration for the settlement of those negotiations has been the payment of sums. What happens is that that money is disbursed into the Yindjibarndi community as the holders of those native title rights. One way in which it is disbursed is to the Juluwarlu Group Aboriginal Corporation, which is an associated entity. The Juluwarlu Group Aboriginal Corporation is responsible for protecting and preserving language and culture, so it does oral histories, stories and map making, and promotes and encourages law and culture for the Yindjibarndi people. Yindjibarndi is an incredibly well-run organisation; I hold it up as a terrific standard of a native title claim group that has been able to negotiate successfully and in a mature and sophisticated way with Mining Act proponents. Once it resolved its first claim—the Ngarluma/Yindjibarndi native title claim—the Yindjibarndi Aboriginal Corporation was able to completely delineate its traditional lands, being the whole area over which it had native title, and came back to the Federal Court with a second claim, which was called the Yindjibarndi #1 claim. It was able to do that on its own; it did not have to do it in concert with the Ngarluma people.

These organisations are strongly grounded in the principles of self-determination and negotiating in the best interests of their communities, but what we unfortunately saw with Njamal was the collision of the ancient British law of charitable trusts on the one hand with the brand new Australian law, following the Mabo decision in the High Court, of the Native Title Act. This charitable trust was generating a number of complaints, which I will summarise. Nick Butterly, a journalist at *The West Australian*, summarised the complaints very well in an article dated 8 May 2017. The article states —

> The WA Attorney-General has taken the unusual step of ordering a wide-ranging inquiry into the management of an Aboriginal trust with claims to large areas of mineral rich land in the Pilbara.
>
> John Quigley has appointed Deputy State Counsel Alan Sefton to probe the Njamal People's Trust, a charity representing an Aboriginal community in and around Port Hedland.

The article went on to say —

> Those paying royalties —

To the Njamal People's Trust —

> include Atlas Iron, Millennium Minerals and Pilbara Minerals. Fortescue Metals Group has a project on Njamal land but is not yet producing.
>
> Documents lodged with the Australian Charities and Not-for-profits Commission show the trust had income of $3.5 million last year and had assets of more than $5 million.
>
> The inquiry will give Mr Sefton broad powers to question anyone associated with the management of the Njamal trust and to examine financial records and company documents.
>
> While not commenting directly on Njamal, Mr Quigley said large sums of money were being paid by mining companies into charitable trusts that were supposed to be for the betterment of indigenous communities.

Hopefully, my hodgepodge explanation of the way in which the native title system works picked up that point. The article continued —

> "We are aware from time to time people are coming forward and complaining about the operation of these trusts, but with the internal politics of how this money should be spent is a bit mystifying and that's why we are appointing a formal inquiry," he said.
>
> "I don't want to at this stage canvass myself what the complaints are and what the concerns are, but suffice to say I have taken advice from the Solicitor-General of WA and they are of such sufficient import to justify the initiation of this inquiry."

The reason the Attorney General had the power to make that inquiry was that since the 1960s, WA has had the Charitable Trusts Act. As I said earlier, when it comes to the law of trusts, it is not a beneficiary who has standing to institute proceedings to inquire into the way in which trusts are dealt with; that power resides in the Attorney General as parens patriae—the father or parent of the nation—who is responsible for the wellbeing of the community through the oversight of charitable trusts. The inquiry conducted by Alan Sefton was absolutely comprehensive and thorough. The instrument of appointment was made on 3 May 2017, just after the Attorney General had literally walked into the office after being re-elected as the member for Butler about five weeks before. He had been sworn in as Attorney General, but he had not yet been re-sworn in as the member for Butler in the Legislative Assembly. Straightaway, he got down to work on this important issue for which he had a duty. The instrument of appointment states —

> I, John Quigley MLA, Attorney General for the State of Western Australia, hereby appoint Alan John Sefton, Deputy State Counsel, to examine and inquire into the Njamal People's Trust and to examine and inquire into the nature and objects, administration, management and results thereof, and the value, condition, management and application of the property and income belonging thereto.

It was a very sensitive inquiry, because it was coming up against the principles of autonomy and self-determination. Aboriginal people should be able to decide the way in which the revenue they receive as a result of the native title rights that have been established are distributed for the benefit of their community. One thing I was impressed with was the work Mr Sefton did and some of the acknowledgements he made. As I said, he was thorough and comprehensive in his inquiry. The report stretches to 681 pages and made a number of recommendations, which I will come to in a second. But let me go back a step. The Attorney General provided the foreword to the report of the inquiry, which was handed down in December 2018. It states —

> As Attorney General, I am responsible for the protection of charitable trusts. This is reflected in the supervisory powers conferred on me by law, including my power to conduct an inquiry under the *Charitable Trusts Act* …

He then went on to say —

> Soon after taking office in March 2017, I became concerned by the reports I received from the State Solicitor's Office and others of allegations that some charitable trusts established for the purpose of assisting Aboriginal communities were affected by serious governance issues.
>
> While Native Title has brought many positives for Aboriginal people, I am concerned that some of the communities which these charitable trusts were designed to assist are still blighted by poverty and disadvantage.
>
> In May 2017, I decided to appoint, under section 20 of the … *Act*, Deputy State Counsel … Alan Sefton …

He further stated —

> Mr Sefton's report into the Njamal People's Trust highlighted some of the problems previously identified in the review and can be used to inform amendments to the *Charitable Trusts Act*. Mr Sefton's recommendations for legislative change are directed towards modernising the Act and ensuring more rigorous oversight of those entrusted with the management of charitable trusts. My officers' work on the proposed amendments is already at an advanced stage.
>
> My authority under the *Charitable Trusts Act* is obviously limited to charitable trusts. However, it is important to recognise that other regulatory bodies such as the Australian Securities and Investments Commission, the Commonwealth Office of the Registrar of Indigenous Corporations, and the Australian Charities and Not-for-Profit Commission, may have a role to play in relation to those charitable trusts or the persons involved in their management.

That was the response from the Attorney General when he received the report. The report also contains some acknowledgements from Mr Sefton, who gave —

> … my sincere gratitude to the Njamal People, including in particular the Njamal Elders, the members of the Trustee Advisory Committee, the Applicants, and other witnesses for their time, assistance and candour, as well as their considerable patience while the Inquiry has conducted its work.

We can clearly infer from that that the inquirer was cognisant of the delicacy of ensuring that autonomy and self-determination remained front of mind.

He also thanked a number of other people. He would have been provided with excellent assistance from some of these people, including Cheyne Beetham, who was at the State Solicitor's Office—I am not sure where Cheyne is now—Kathryn Cobbett, Fiona Cohen, Daniel Goncalves, Eugene Ashe and numerous others, including Dr Eric Heenan. He thanked them for their tireless efforts and significant contributions. As we come to debate these legislative reforms to the Charitable Trusts Act, it is worth recognising the contribution of those who assisted the inquirer during

that inquiry, because that in turn has well and truly informed the amendments the Attorney General has brought before this place.

[Member's time extended.]

Mr S.A. MILLMAN: One of the organisations that was referred to by the Attorney General was the Australian Charities and Not-for-profits Commission, and I will join the chorus of relief around the country that Turnbull-appointee Gary Johns has decided to step down from his position as the commissioner of the Australian Charities and Not-for-profits Commission. Andrew Leigh, MP, has been quite clear about the benefits for the nation as a result of that resignation. I will leave that for other people to comment on more fully.

This bill picks up the recommendations of the Sefton report on the Njamal inquiry. It will modernise the Charitable Trusts Act, which, given that the original legislation was passed in 1962, is a timely thing for us to do. It will give Western Australia the most rigorous and comprehensive charitable trusts legislation of anywhere in Australia or New Zealand, and it implements the recommendations of the inquiry report.

When regard is had to the history of charitable trusts and to the history of native title in Western Australia—the number of representative bodies, claim groups and claims for native title—it is incredibly important that the regime that we have in place is modern, sophisticated and well tailored. Our state benefits greatly from its mineral wealth. One of the great aspects of the native title regime is that it distributes some of that mineral wealth back to the traditional owners of the land from which the wealth is extracted for their benefit. Given we have so many native title groups and so much mineral wealth, it is incumbent upon the government of Western Australia to make sure that, at least from our perspective, the framework under which those arrangements operate is the best possible.

Moments after being sworn in, the Attorney General took the necessary steps to conduct this inquiry. He utilised the powers that were available to him under the Charitable Trusts Act. He received the comprehensive report from the expert who he had retained to conduct that inquiry—a report that was provided with terrific assistance from experts in the field, particularly with respect to the law of equity and trusts. He reviewed the recommendations of that report and consulted widely with the community and with stakeholders—the Western Australian Bar Association, the Law Society of Western Australia and many others. He formulated the legislation and then brought it before this Parliament in order to enact it so that the operational framework for delivering benefits for Aboriginal people exists in a way that ensures the trust system is operating fairly. It has all been done professionally and expeditiously. For all those reasons, I wrap up my contribution and commend the bill to the house and congratulate the Attorney General for bringing the legislation forward.

MS M.J. HAMMAT (Mirrabooka) [7.23 pm]: That was a very good contribution from the member for Mount Lawley. I am not sure what else there is to say now that he has explained it with such clarity! It is a great pleasure to rise to speak in support of the Charitable Trusts Bill before the house. As has been outlined already, this bill comes to us today after a fairly lengthy period of consideration and gestation, if you will. As others before me have done, I congratulate the Attorney General—and others who have been involved at various stages along the way—for his work in bringing this bill here. It is a significant body of work, and, as others before me have noted, there have been many complexities to work through.

In essence, the bill is a modernisation and updating of the Charitable Trusts Act 1962. The existing act has been around for some period of time—60 years, in fact. I think it has been amended on a few occasions, but the overall scheme of the act has remained largely unchanged since its inception in this Parliament. Therefore, a rethinking of the provisions of the act is well overdue. I think it is also worth pausing to consider that the context for charitable trusts has changed dramatically in the intervening period of time.

These charitable trusts are established for a range of different purposes. The funds that they hold can be used only for so-called charitable purposes. They are different from other trusts, in that there are beneficiaries of the trust who may in certain circumstances be empowered to undertake actions to question how the trustee is administering the requirements of the trust. Charitable trusts do not have beneficiaries as such; they are there for charitable purposes. They might have quite considered objectives—relief of poverty, advancing education and doing a range of things as part of a native title settlement. They are not trusts for people, and so they need to have a special framework that allows for proper accountability and transparency and a proper review process for when things need to be questioned.

I will talk about native title claims. This year we celebrate 30 years since the Mabo decision. We passed that significant milestone on 3 June. It has dramatically changed our understanding of native title, and with that has come a very different purpose for the use of charitable trusts in Western Australia. They now manage considerable funds, and they do so to deliver benefits to Aboriginal people, communities and organisations as part of native title settlements. That has been a really significant change, one that was not at all envisaged when the 1962 act passed this Parliament.

It is also important to note that general community expectations in respect of directors, trusts and the administration of funds on behalf of others have also changed quite dramatically. I think the community at large has a greater

expectation of transparency and accountability than was the case 60 years ago, and we see community expectation changing fairly regularly when it comes to how moneys are administered when they are held on behalf of others. For a good example of that, we need only look at superannuation funds that have been subject to increasing requirements to ensure that they are administering funds to solely benefit members. These are changes that have been broadly afoot—not just in respect of trusts, but also generally in terms of those who manage money on behalf of others. This bill takes account of all those contextual changes and brings to this Parliament a bill, a scheme and an arrangement that is fit for purpose, given those significant changes.

Fundamentally, this bill modernises the Charitable Trusts Act. In doing so, it brings to this state the most rigorous and comprehensive arrangements for trusts of anywhere in Australia or New Zealand. I think it is important to consider the Njamal inquiry report that was tabled in this Parliament in 2018. It is a very comprehensive report of over 600 pages, with very detailed consideration by the author, Alan Sefton. It is a very detailed and comprehensive review of a particular set of circumstances, with recommendations that go to the heart of what would be required to put in place a modern scheme for these charitable trusts. I think that is a significant body of work, and, as others have done before me, I acknowledge Alan Sefton's very considerable contribution. I acknowledge the work of the Attorney General in making that appointment and in having undertaken such a vigorous examination of a very complex issue. I am not a lawyer, so I do not pretend to have an excellent understanding of trust law, so I was not going to speak much about that in my contribution tonight. However, I do want to make a couple of quick points.

One of them is to acknowledge the wideranging consultation that has occurred as part of the drafting of this legislation. Other members and I have talked about the Attorney General's work of putting in place someone to undertake a review of a particular set of circumstances and the detailed consultation that preceded that. A discussion paper was released in 2017 by the Attorney General. Once the *Report on Njamal People's Trust* was tabled in 2018, further consultation occurred about a draft bill, taking into account the very detailed recommendations made in the *Report on Njamal People's Trust*. Therefore, this has been a significant piece of work. We have had the review and we have worked with a number of stakeholders to ensure that there was proper consultation, so we know that this bill will be fit for purpose.

The introduction of the investigation arrangements is very significant. These investigation arrangements will allow for proper transparency and oversight to be put in place. In giving the Ombudsman the role of constituting the Western Australian Charitable Trusts Commission, we will ensure that someone who is well qualified to undertake investigations into complex matters has that role. The Ombudsman's office is eminently qualified. The Ombudsman is impartial and independent and is already receiving, investigating and resolving complaints about a number of issues. Therefore, this will be an entirely appropriate role for the Ombudsman to take on. Part 4 of the bill deals with the investigation scheme. I will not talk about it in detail, but I think it is very significant to put in place a proper mechanism that will allow for reviews when necessary. This part will create new offences and will give investigators powers to allow them to go about their business and undertake the reviews in a way that ensures that they get to the bottom of any issues that may arise.

In the remainder of my time this evening, I will take the opportunity to talk about the Mabo decision, because it is one of the significant decisions that changed the context for charitable trusts. As others have said, the Mabo decision led to the need to fundamentally review the charitable trusts legislation. I also want to talk about the Mabo decision because we have just passed the 30-year anniversary of that very important decision. On 3 June—now known as Mabo Day, which is an excellent development—we acknowledged the thirtieth anniversary of the High Court decision on Eddie Mabo's case. That was the day on which the High Court of Australia recognised that a group of Torres Strait Islanders, who were led by Eddie Mabo, held ownership of an island named Mer, also known as Murray Island, in the Torres Strait. In acknowledging the traditional rights of the Meriam people to their land, the court also decided that native title existed for all Indigenous people. As others have already noted, this decision gave rise to important native title legislation, which was introduced by the Keating government the following year, and finally rendered the concept of terra nullius a legal fiction forever.

People well understand that the claim of terra nullius dates back to when James Cook first claimed ownership of the east coast of Australia. Terra nullius was a principle that was based on the idea that the land belonged to nobody and it was uninhabited. Britain assumed that the Aboriginal people did not have any form of political organisation and therefore had no leaders with the authority to sign treaties and no ownership of the land. According to that idea, Australia's Indigenous people had no legitimate claim to the land on which they had lived for more than 60 000 years. It was to take 200 years to overturn that understanding about our land and who owns it. Eddie Mabo and others who were part of that claim spearheaded that very significant change in our understanding of not only land rights, but also the land and who owned it.

The Meriam people lodged their claim in 1982, 10 years before the Mabo decision in 1992. In that 10-year period, as they fought for their claim, they generated over 4 000 pages of transcripts of evidence proving that their people had occupied clearly defined territories of the island for hundreds of years.

It is also worth noting that the High Court originally referred the matter back to the Supreme Court of Queensland. While that work was underway, the Queensland Parliament passed the Queensland Coast Islands Declaratory Act 1985, which extinguished without compensation any Torres Strait Islander claims to their traditional lands. The Queensland Parliament took action to try to extinguish the claim by the passage of legislation.

We often talk about the second Mabo case. The first Mabo case in the High Court involved overturning that act of the Queensland Parliament so that the second Mabo case, which dealt with the question of land rights, could be heard.

So it was that on 3 June 1992, it was the decision of the High Court that the Meriam people held traditional ownership of the lands, and, as I said, that decision led to the passing of the Native Title Act 1993. Unfortunately, Eddie Mabo died five months before the High Court decision that bears his name, so he never lived to see the outcome of his labour. This principle now underpins so much work in the native title area, and many claims have been registered and many claims have been progressed to settlement. It has fundamentally changed our understanding of the land and fundamentally changed many situations for Aboriginal communities, giving them autonomy to determine their own destinies.

Over the intervening 30 years since the Mabo decision, it is also worth noting that we have seen a significant shift in our understanding of land rights and reconciliation. The idea now that a government would introduce legislation to extinguish those kinds of land rights is very foreign to us. People might recall that, at the time, Jeff Kennett, the then Premier of Victoria, hysterically claimed that every suburban backyard would be subject to a land rights claim. There was a lot of over-egging the pudding, shall we say, in respect of the Mabo decision at the time, but we have moved on.

Like many people, I have been very heartened by the commitment of our new federal Labor government that it will progress further on the pathway to reconciliation by implementing in full the Uluru Statement from the Heart. For people who are not familiar with the Uluru statement, it is built on three main principles: voice, treaty and truth. I really look forward to seeing the federal government progress this commitment because I think it is the next stage on what has been a long journey for the Australian community—to overturn the decision of terra nullius, to recognise the Aboriginal people's ownership and continuing connection to the land, and, now, to continue to walk the path of reconciliation. At the heart of that will be considerations about their land and their place in it.

This bill comes at an important time. It will put in place a modern scheme that will allow for charitable trusts to operate in a way that is consistent with community expectations about governance and transparency. This bill will ensure that those charitable trusts are fit for purpose for what is now a very common use for them in respect of Aboriginal land rights, agreements and other settlements. It is an excellent bill. I commend the Attorney General for his work on it, and I look forward to the continuing journey of the community with Aboriginal and Torres Strait Islander peoples to achieve the objectives of the Uluru statement and to achieve a deepening of the reconciliation that we so badly need in this country. With that, I conclude my comments.

DR J. KRISHNAN (Riverton) [7.39 pm]: I rise today to speak in support of the Charitable Trusts Bill 2022. I intend to make a very short contribution to this debate. A charitable trust differs from a unit trust or family trust basically because, unlike those trusts, it does not have beneficiaries. It is intended for a purpose, rather than to benefit persons. In the absence of beneficiaries, the Crown has a responsibility, as parent of the nation, to ensure that charitable trusts comply with all the requirements. Western Australia has many charitable trusts that hold native title and have substantial value. Those funds need to be used for the intended purpose of the trust rather than sit idle. The duty of the Crown is to ensure that those trusts function in such a way that they meet the purpose for which they exist.

The current act was established in 1962, about 60 years ago. Amendments to the act were made in 1998 and 2011. Those amendments made no significant or substantial changes to the act. Considerable changes have taken place over the last 60 years. The person in charge of a charitable trust is now less likely to be a genuine volunteer and more likely to be only a small component of a complicated corporate structure.

The bill seeks to achieve three main things. The first is that it will modernise the Charitable Trusts Act. The second is that it will give Western Australia the most rigorous and comprehensive charitable trusts legislation in Australia or New Zealand. The third is that it will implement the recommendations of the *Report on Njamal People's Trust*. Those are the key components of the bill.

Recommendation 54 of the Njamal inquiry report is that the Attorney General be empowered to appoint the Auditor General to conduct investigations into charitable trusts. However, it came to light during the consultation process that it would be more appropriate for the Attorney General to ask or direct the Parliamentary Commissioner

for Administrative Investigations, the Ombudsman, to conduct those investigations. There are people in the office of the Ombudsman who regularly advise the Aboriginal community, can communicate appropriately with non–English speaking people, and have expertise in dealing with complex problems in remote regional communities. The parliamentary commissioner has agreed to perform the role of investigator and to act as the newly created Western Australian Charitable Trusts Commission. That will implement that recommendation from the inquiry report.

I will now provide the background and history of the bill. The original legislation was first introduced in 1962. In 2017, the Attorney General released a discussion paper to a limited number of stakeholders. In December 2018, the Attorney General tabled in Parliament an inquiry report into the Njamal People's Trust. In October 2020, cabinet approved the drafting of a bill to repeal and replace the current act. In May and June 2021, a consultation draft of the Charitable Trusts Bill was sent to 14 different stakeholders for comment. After all these considerations, some key implementations were recommended, and the bill is now before Parliament for consideration.

I turn now to the key parts of the bill. The first is that a scheme must be developed for property held for charitable purposes. The property cannot be left to sit idle and do nothing. A scheme must be put in place for the property to ensure that the funds in the trust are executed and used for the right purpose. The second is that investigations of charitable trusts will be done through the Western Australian Charitable Trusts Commission, constituted by the Ombudsman. The third is to provide for proceedings in the Supreme Court of Western Australia to better regulate individuals involved in the administration of a trust. The fourth is to permit certain trusts to make tax deductible gifts to eligible recipients for philanthropic purposes, such as public hospitals, museums and art galleries.

Part 2 of the bill deals with specified recreational facilities. Although these recreational facilities are not considered as being for a charitable purpose under common law, this bill will preserve the charitable status of those facilities that exist under the current act. The bill will also provide protection from liability for people who are performing functions under the law relating to charitable trusts.

Part 3 of the bill deals with schemes for property held for charitable purposes. As I have mentioned, the purpose of those schemes is to ensure that the trust achieves its purpose and that the funding is used appropriately. The changes proposed in the bill will reduce legal uncertainty and the resulting legal costs, whilst also providing certainty that the charitable trust is used for the purpose for which it was established. The key changes in part 3 of the bill are removing the complex provision for lapse of a gift; allowing the trust to accumulate income beyond the perpetuity period; and imposing a duty on a trustee to seek a scheme, rather than idly sitting on the property or the title. The bill will also modernise the current requirement that a scheme must be advertised in both the *Government Gazette* and *The West Australian*. If a scheme is approved, notice must be published in the *Government Gazette*.

Part 4 of the bill deals with investigations. The bill will implement the Njamal inquiry report recommendations. The most important thing is that it will establish the Western Australian Charitable Trusts Commission, constituted by the Ombudsman, or Acting Ombudsman, and will enable the Attorney General to direct the commission to conduct an investigation rather than the Attorney General having to do it himself.

The bill will also allow a person to make a complaint about a charitable trust. The bill provides that the investigators will be the commission or an authorised person acting at the direction of the Attorney General. The investigators will be given the powers of a royal commission and will be able to issue a notice requiring a person to provide a document or information relating to the inquiry; carry out audits; and enter premises to gather information. That includes a provision to compel the production of privileged documents or information so that the investigators will be able to gather complete information rather than do only half an inquiry.

There is a statutory duty of confidentiality—that is, protection from liability for complainants and providers. It creates an offence for providing false or misleading information by those who are providing information to investigators and failing to comply with a requirement to provide documents, prepare a report on the investigation and present a copy of the report to the Attorney General. The Attorney General may then decide to table the report in Parliament. The Attorney General may also apply to the court to recover the costs and expenses of that particular investigation.

I turn to part 5 on court proceedings and clause 44. Most frequently, the basis of a complaint is a lack of transparency and this bill makes changes to allow for transparency and for investigations when needed. Clause 45 is a new provision, again implementing the recommendations of the Njamal inquiry report. If there are circumstances in which there is misconduct or mismanagement or a person is not fit and proper to be involved in the administration of the charitable trust, the Attorney General can intervene to disqualify that person. Clause 46 extends beyond the trustees to include administrative officers such as the CEO or the secretary involved in running the charitable trust. There are some disqualification criteria—if a person is insolvent, disqualified from managing corporations, convicted of an offence or is a body corporate with any such person as a director who has committed an offence or been insolvent. These disqualifying categories will be strictly monitored and the Attorney General has the power to remove

that person from being responsible for managing the charitable trust. Clause 47 deals with complainants who want to remain anonymous.

Part 6 of the bill preserves the ability of pre-existing ancillary trusts to continue making donations on a broader category of recipients. There are miscellaneous changes in this bill as well to protect the Attorney, an examiner and inquirer and associated staff from liability in performing an inquiry. There are some transitional prohibitions in this bill when an inquiry might have been commenced but not completed. In that case, the Attorney General has the discretion to apply the new act or the existing act. The basic purpose of this bill is about making a charitable trust work for a purpose and not for a person, and to hold that a person who is not making the trust work for a purpose accountable with means and processes in place. I congratulate our Attorney General for bringing this bill to the house and I thank members for the opportunity. I commend the bill to the house.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [7.54 pm]: I rise on behalf of the opposition to talk very briefly about the Charitable Trusts Bill 2022 introduced to the house by the Attorney General earlier this year, on 7 April. I say at the outset that the opposition will be supporting the legislation. I am the lead spokesperson in this house, but, of course, I am not the shadow Attorney General—that is Hon Nick Goiran, who is much more able to talk authoritatively on the wide range of issues that is canvassed within this bill than a simple layman such as myself could ever do. I will not hold up the house for a long time, but I simply want to put on record our support for the bill and outline an understanding of some of the basic matters that it seeks to undertake.

As I understand it, the bill makes provisions for five key areas, including covering charitable recreation facilities such as sporting fields and community centres; schemes for properties held for charitable purposes; the investigation of charitable trusts by the Attorney General; and a newly established Western Australian Charitable Trusts Commission constituted by the Ombudsman. It is interesting that the Ombudsman has been given this role, because, as we know, this legislation came about as a result of a report by a chap by the name of Sefton, commissioned by the Attorney General.

A member interjected: State Counsel.

Mr R.S. LOVE: Yes. He made a report, and recommendation 54 seems to indicate that the Attorney General would enable the Auditor General to undertake some of these investigations et cetera, yet it is the Ombudsman. Maybe the Attorney General will explain why the Auditor General is not the preferred choice in this circumstance to be the person who undertakes the roles of the Western Australian Charitable Trusts Commission. That is something to discuss, as well as the circumstances in which the Auditor General, with, I imagine, more forensic accounting skills, might be brought to bear on some of these matters.

Going back to those five key areas, they also deal with proceedings of the Supreme Court in relation to these trusts and gifts by certain trusts for philanthropic purposes. We know that the reform of this legislation was prompted by the Sefton inquiry into the Njamal People's Trust in 2017 by then Deputy State Counsel Alan Sefton, appointed by the Attorney General. I am reading from the Attorney General's press release from 4 December 2018, which gives a bit of background to the situation and in which he is quoted —

> "As the Attorney General, I have a responsibility to protect property devoted to charitable interests, and to look after the interests of the public in relation to charitable trusts.
>
> "In the case of the Njamal People's Trust, the Trust Deed outlines that the funds are to be used for the primary purpose of relieving poverty, sickness, suffering, distress, misfortune or destitution.
>
> "I have been concerned for some time that some of the communities which these charitable trusts were designed to assist are still disadvantaged. In some cases, it is difficult to see how the funds are being used to improve outcomes for our indigenous communities.

They are the Attorney General's words and were part of the reasoning behind the calling of that inquiry. As a result, 63 recommendations were made by Mr Sefton. Some of them were taken on board and the one I just outlined —

A member interjected: The Ombudsman.

Mr R.S. LOVE: Yes. That was one area where there was a bit of a disagreement between the result and what was recommended in the first place.

The bill will seek to expand the powers of the Attorney General or whoever is conducting the inquiry into a trust. Again, it is going back to that responsibility the Attorney General feels to ensure that properties are protected and devoted to the charitable interests in looking after people in relation to charitable trusts. A charitable trust, as we know, is something that is for a purpose rather than just for people. It is there to provide for a purpose, not like a trust that provides for a particular person. We are looking forward to some discussion in the consideration in detail stage around some of these matters, which I sure we will go into perhaps tomorrow. I do not see any advisers here, so I assume we are not going to do it tonight—or maybe there are.

Mr J.R. Quigley interjected.

Mr R.S. LOVE: Okay. The Attorney General would be doing it on his own but that might be something he would like to do! I do not know.

Mr J.R. Quigley interjected.

Mr R.S. LOVE: There will be very little time tomorrow, so we will have to be brief, because by the time we have had private members' business, there is not much time left on a Wednesday. We will try to get through it in a fairly short time, because we want to see the Charitable Trusts Bill 2022 go through to the other place for interrogation in that arena, where people who actually know a bit about the law will be present and can put it through a bit more scrutiny than I can.

The opposition put a number of questions to the Attorney General in a briefing back in April, I think, just after that time. Questions were asked and responses were provided, but I am not going to run through them; I think they will come out as we go through the bill in consideration in detail. I know the shadow Attorney General has consulted with the Law Society and others, and the Law Society advised that it had been consulted by the government on an earlier draft of the bill. It provided the feedback that it supported the purpose of the bill to expand the powers of the Attorney General in respect of charitable trusts so that such trusts can be held to account and any shortcomings of governance or performance can be discovered. It also supports the whistleblower protection but is wondering about some of the matters around confidentiality under clause 37. We can interrogate those a little further. There were also some matters around cost recovery.

I will not hold up the debate much longer. As I say, I am not the opposition's legal expert, so it would be pointless for me to deliver a long speech outlining the virtues of the Attorney General for bringing forward this legislation, other than to say that the opposition supports it. I will note that there seems to be a number of draft amendments; I daresay they will be on the notice paper tomorrow. Quite a bit of redrafting has gone on; there are amendments to three clauses and several subclauses. The Attorney General is undertaking a bit of a redo of the legislation, so he will no doubt be able to explain what that is all about when we come back to dealing with these matters tomorrow. With that, I will conclude my very brief contribution by saying that the opposition will support the bill, but obviously there will be some investigation and discussions so that we can tease out some of the finer details.

MR C.J. TALLENTIRE (Thornlie) [8.02 pm]: I am very pleased to speak to the Charitable Trusts Bill 2022 and to say how welcome it is. I have had constituents come to me with matters of concern relating to charitable trusts. These are constituents who have put a lot of time and energy into researching their concerns, and have had to cope with a legal landscape that is complex and inevitably draws a lot of emotional energy from them. To that extent, I want to acknowledge the excellent work done by my constituents Noel Morich, Diana Ponton and Malcolm Williams. They have been very interested in the operations of the Noongar Charitable Trust. They have been in contact with the Attorney General about some of their concerns.

I am really pleased to see this legislation come to this house. As other members have said, the legislation currently in force dates back to 1962. It has had amendments, but since then there has been the welcome developments of native title and Indigenous land use agreements and often, through the Indigenous land use agreement process, there has been the creation of large sums of money. There needs to be a vehicle for those large amounts of money to be correctly administered. That is why we have had the creation of these various trusts.

Charitable trusts are not limited to Aboriginal organisations. Indeed, there is a charitable trust for my former employer, the Conservation Council of Western Australia. That trust is administered by volunteers, and their commitment to conservation and their high degree of integrity and commitment to the cause ensured that that substantial amount of money—well over $1 million—was well administered. There was always a temptation to draw down on the capital and use it to fill the gaps if a program had been cancelled, instead of using the interest that the trust accumulated. Most of the funds in the Conservation Council trust were in various ethical investment firms; there is a high degree of respect for the whole process of good ethical investment, which is something to be admired.

That charitable purpose is one means by which a charitable trust can operate, but there are other organisations that have beneficiaries. I heard the member for Moore quoting the Attorney General from a media release in which he mentioned the Njamal People's Trust and talked about how it was specifically targeted at people who were suffering from poverty, distress, misfortune, destitution, sickness and other suffering. Indeed, the Njamal People's Trust is a trust that has been set up with the very best of intentions and it is a very worthy end place for funds. However, we have to be confident that we have in place the institutions and legal frameworks necessary such that if there is ever a hint of anything going slightly off the rails, there is the capacity to rein things in. That is what this legislation is designed to do, and from what I can see, I am very confident that it will do so.

I have a question for the Attorney General that will no doubt come up in further discussions about the potential for class actions around professional negligence, recognising that these charitable trusts often have quite complex

corporate structures. That, in itself, can be the cause of people making mistakes and misunderstanding how things can operate, which can lead to some degree of negligent activity, sometimes involving considerable amounts of money being misplaced. The legislation also deals with powers for the removal of people from charitable trusts, and indeed, that is a welcome development as well. It also sets out processes for the disbursement of funds from trusts. The legislation will enable the Attorney General to better protect the property of charitable trusts, and that is something that is also very welcome.

I note the four key things this bill does. It sets out a process for property to be held by schemes. One can well imagine that if funds are invested in property, the management of that property has to be comprehensively covered in such a way that the rent money that comes in is properly disbursed amongst the beneficiaries. Another key thing that the bill does in the next stage, which other members have touched on, is around the capacity of the Attorney General to ensure that investigations take place if there is a complaint, and the creation of a Western Australian Charitable Trusts Commission, constituted by the Ombudsman. The previous speaker was asking about that. I think the initial recommendation from the Sefton report was around the Auditor General looking at those complaints and instead, it will be the Ombudsman, through a WA Charitable Trusts Commission. I think it is essentially around the fact that the Ombudsman has a greater affinity and capacity to deal with people who are speakers of English as a second language. There is a more open approach to community members, whereas the Auditor General typically works with government agencies. It is quite a different framework, but no doubt the Attorney General will be able to clarify that matter further for us. We see that proceedings can also be held in the Supreme Court, and that includes the capacity to better regulate the activities of individuals relating to these trusts.

This new legislation will permit certain trusts to make tax-deductible gifts to eligible recipients for philanthropic purposes. This is where there is some form of government connection, so it would need to be a philanthropic donation towards an entity like a hospital, museum or art gallery. That could be where the funds, interest or rent, whatever money is made by the trust, could go.

Part 3 of the bill touches on the creation of schemes and will allow for changes to charitable trusts. This is important, because sometimes the intention is for the funding to go to one purpose, but it might no longer be open to the trust to invest in such a way. We then get into the doctrine of cy-près. It is interesting that the legal fraternity should corrupt the French a bit by spelling it with a C-Y, rather than S-I. Cy-près means as near as possible. The aim is to have the application of funds for something that is as near as possible if the original target of the funds might not be open to the trust any longer.

I want to make a little comment about advertising of proposed schemes. This is clearly an important part of the transparency. Currently, we have a requirement to advertise in the *Government Gazette* and *The West Australian*. I do not know that many of my constituents read *The West Australian*, and I do not think very many at all read the *Government Gazette*. The suggestion is that advertising will be done, perhaps by social media. That will be a way to communicate to the broader community far more effectively to let people know what is going on. It is essential that this legislation makes for a far greater amount of transparency, demystifying an important legal mechanism for the delivery of funds to people who are legitimate beneficiaries, helping them to understand the procedures for the operation of the trust. That is very important. I notice that there is a very significant increase in the penalties for noncompliance. A fine of $50 000 is mentioned as a penalty for various misdeeds that might occur.

This legislation is really welcome. As I said at the outset, I have constituents who have undergone a considerable amount of stress and upset with the maladministration of various trusts. It will be very welcome to them to know that there will be the capacity for investigations to take place, and for their concerns to be thoroughly investigated by competent authorities and if malpractice is going on, perpetrators will be sought out and the problem can be righted. That will make a big difference. We have a useful legal mechanism in charitable trusts. They are a very beneficial aspect of our legal structure for managing wealth. It is vital that we have good structures in place that enable the general community to raise concerns, have complaints properly investigated and wrongs righted. I congratulate the Attorney General on bringing this bill to the house. I am very thankful for it, and I know my constituents are as well. I commend the bill to the house.

MS C.M. ROWE (Belmont) [8.16 pm]: I rise to make a contribution to debate on the Charitable Trusts Bill 2022. I acknowledge the wonderful work of the Attorney General in bringing this very important bill before us this evening. As many of my colleagues have discussed, this bill seeks to modernise the Charitable Trusts Act, which I think is some 60 years old, if not more. It will give us the most rigorous and comprehensive charitable trusts legislation in Australia or New Zealand.

Many members have made excellent contributions about these reforms in great detail. I would therefore like to take this opportunity to highlight some of the work undertaken by charities in Western Australia, Australia and globally. I would like to specifically look at the work done by charities in the environmental space. This is at the forefront of my mind as something I am deeply passionate about, and it stems from my childhood. I was very interested in

preservation of the environment and so forth. It was something that came to mind when some of my Labor colleagues and I did a tour of the Zoo with the Minister for Environment last week. It was an illuminating experience. It is obviously fantastic to see adorable animals up close in their habitat there, but it was really important to see the work that goes on from a conservation perspective. I had the opportunity to speak with Wendy Attenborough, who is the CEO, and I peppered her with questions as we did the tour about this fantastic work. I should just speak for myself, but I wonder whether the broader population is aware of the work that goes on behind the scenes at the Zoo, not only on native species, such as a turtle that has been brought back from the brink of extinction in the electorate of the member for Swan Hills, and rehabilitating injured Carnaby's cockatoos and so forth. I was particularly interested in some of the conservation work that the Zoo does with critically endangered species such as orangutans and Sumatran tigers. I donate regularly to charities that look to help the preservation of these critically endangered species in the wild. I was really interested to ask not only Wendy, but also the other people who participated in giving us a tour of the Zoo, their views on the likelihood of when these types of species might no longer be able to thrive in their natural habitat. I was pretty devastated to learn that they were certainly of the view that it would be within two decades at best, but one decade more likely, particularly for Sumatran tigers and orangutans.

It was not all bleak news, because Wendy went on to explain that the Zoo does fantastic work with charities and not-for-profits in situ. For example, the Zoo will work on the ground with local communities in other countries to build other industries that will provide sustainable work for people living in those areas. It was really interesting because that is a critical element for change. One of the major factors in the loss of these species in the wild is mass deforestation, which is happening at scary rates. One of the biggest contributing factors is the prevalence of palm oil in many products that we use day to day in our homes. It is not only used as a biofuel, but also in products from cosmetics to household cleaning products. It is very cheap. Often it is not harvested in a sustainable fashion, and the natural habitat of endangered species is cut down for palm oil plantations, which is a major factor in the loss of habitat. It was very interesting to learn about the work done in countries such as Indonesia, in parts of Sumatra, to work with communities to find alternative jobs, because palm oil plantations and the production of palm oil in these countries employs tens of thousands if not hundreds of thousands of people. That of course is something that must be considered.

I will highlight one organisation that does incredible work in the charity space, which is an organisation that was set up 30 years ago by Leif Cocks, who does fantastic work. The member for Thornlie said that he worked with him briefly at Perth Zoo some years ago. Leif Cocks set up the Orangutan Project—a charity that raises awareness around how critically endangered orangutans are in the wild, and, of course, Sumatran tigers as well. I think only 300 Sumatran tigers are left in the wild. Through his charity, Leif Cocks supports people in those communities so they do not rely on money from, potentially, poaching and selling those animals, but also deforestation around their habitats for palm oil plantations. Charities can do critically important work in many areas, but I wanted to highlight that particular charity because it does amazing work, and it is very difficult for people like me, who might have a particular passion for these issues but do not have a whole lot of levers available to us in the Western Australian Parliament to raise these things. I congratulate the Minister for Environment for supporting those programs by the Zoo, and of course charities that play this critical role in helping us with this really important work. If we do not act and make some pretty radical reforms globally, we will see the extinction of these critically endangered and beautiful animals, which I find truly devastating. I take this opportunity to highlight the fantastic work that Leif and many other people in charities do. I commend this bill to the house.

MR J.R. QUIGLEY (Butler — Attorney General) [8.23 pm] — in reply: I was waiting to see whether there were any other takers who wanted to stand up and say what a good job had been done.

I rise to thank all members who have spoken on the Charitable Trusts Bill 2022, and note that each member who has spoken to this bill has spoken in support of it, has spoken of the need for it and spoken of the utility that it will bring to this area of public finance and charitable trusts, both in terms of the powers of the Attorney General in approving schemes that are under $100 000 or have an annual income of $20 000 without the necessity of going to court, and also powers of the Attorney General to investigate. I hasten to add at this point that my office will not conduct investigations. As members have noted, the new act will establish the statutory body of the Western Australian Charitable Trusts Commission. The Attorney General can refer a complaint for investigation to that commission, but obviously the Attorney's office is not equipped to conduct investigations.

The member for Moore raised a question and sought my explanation, and I will give further advice on that tomorrow. For those listening to debate tonight on this matter, the member for Moore pointed out that in the Njamal report conducted by Mr Sefton, SC, he postulated that there could be amendments to the legislation empowering the Auditor General to look into charitable trusts. After receiving the Njamal report, it became obvious to me that the requirement was not amendments, but a whole new act. This act is a first in Australasia in terms of the way it deals with charitable trusts. As I said, the member for Moore raised the question as to why we had moved from the Auditor General's office to the Ombudsman WA's office to investigate charitable trusts. It was not until after the government received the report that we sat down and went through it item by item to work out what would need

to be done in a new enactment. When Mr Sefton postulated that it might be the Auditor General, there was no Charitable Trusts Commission or anybody else to look at it. I am not being critical of what the member said, but it is more than looking at the accounts of the trust, which is what the member said; the commission will look at the conduct of people within trusts. We have had allegations of people bribing community members to vote for a particular trustee. An audit of the accounts would not adequately address those sorts of issues. It also became obvious in the Njamal inquiry that some trustees were more than reluctant to hand over documents; they stubbornly refused to hand over documents or to answer questions in a timely manner. Therefore, it was more appropriate that the Ombudsman's office house the Charitable Trusts Commission. As members have noted, clause 29 of the bill sets up the Charitable Trusts Commission, a statutory body that has the powers of a royal commission, including powers to enter premises and to compel someone to answer questions, which are powers the Auditor General does not have. It will also have the power to demand the production of documents, which is another power the Auditor General does not have. In any event, the Auditor General deals with government agencies and now local government agencies, and charitable trusts are private affairs. For all these reasons, it was considered far more appropriate to establish the Charitable Trusts Commission. This was not a recommendation in Mr Sefton's report on Njamal; this was developed after we started to look at his recommendations. We thought that what we needed in Western Australia was a Charitable Trusts Commission, so that if members of the public believe that they fall within a group of people who should be benefiting from funds held in a trust, they can go to the commission to make a complaint, rather than to the Office of the Attorney General. An alternate route would be for them to come to the Attorney General and the Attorney General would then have the power to refer the matter to the Western Australian Charitable Trusts Commission, which, as I said, will have virtually all the powers of a royal commission—the power to enter, the power to compel production and the power to compel answers to questions.

This is a first in Australia, I believe. I have to say that more utility is made of charitable trusts in Western Australia than in other states. Perhaps this is reflective of the fact that there are more land rights claims and settlements in Western Australia than in the other states. Some of these settlements involve large sums of money. An agency came to me recently and said, "Under a native title settlement, we have to pay $34 million into a charitable trust. Is it safe, Attorney?" I said, "If I get my bill on before the Parliament real quick, it will be a lot safer!" We think that the superintendence of these trusts under this bill will be light-years ahead of what we have had and really at the forefront of Australia in this area of the law. As the bill got national publicity in *The Australian*, two other Attorneys General have asked me to forward the bill to them once we have dealt with it in this chamber, and I will do so. I think this will be a leading reform in Australia in this space.

There is one other matter I just wanted to touch upon. The member for Moore mentioned that there is a page and a half of amendments. Most of those amendments deal with deleting the words "Legal Profession Act 2008" and replacing them with "Legal Profession Uniform Law Application Act 2022". That act will be operative from 1 July this year and there will be no more Legal Profession Act. A page and a half of those amendments involve changing the name of that act. The first amendment, of course, is to change the words "trust, or is otherwise to be applied, to" to "trust for, or is otherwise to be applied to,". It is only the most minor of amendments that has been suggested by the State Solicitor's Office, I believe.

I thank members for their support. We hope that this bill will get quick passage through the Parliament, because there are a lot of people, especially in the regions, who are waiting to hear that this legislation will be proclaimed and become law so that they can deal with any issues with the trusts in their areas. Someone asked me what the priority for this legislation was. It is not that there are hundreds of thousands of dollars in these trusts; millions upon millions of dollars are being channelled through these trusts. As I said, a lot of that is to do with land rights settlements. I know that many people out there are anxious to hear the news that this bill has become law. I thank all members and look forward to the consideration in detail stage.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1: Short title —

Mr R.S. LOVE: It was mentioned that the Law Society of Western Australia had looked at an earlier draft of the bill. Were any significant changes made to the bill between the first draft and this one? This is the only version of the bill that we have seen. Were any changes made along the way as a result of some of those discussions the Attorney General had with the Law Society and others?

Mr J.R. QUIGLEY: There was consultation, to which we responded with some amendments. There is a whole chart of them, but there was consultation. I do not know whether the member wants me to go through pages of consultation summary, but I am happy to do so this evening.

Mr R.S. Love: I would be happy if you tabled it.

Mr J.R. QUIGLEY: No, it is okay. They are just my notes. No significant amendments occurred, but the Law Society did respond.

The DEPUTY SPEAKER: Attorney General, would you like to remove your mask? It might make it easier for people to hear you.

Mr J.R. QUIGLEY: I am very careful; the last time, it cost me a grand!

Mr P. Papalia: It's okay, there are no Liberals in the chamber. You'll be all right.

Mr J.R. QUIGLEY: I thank the member. That is a good observation.

The Law Society responded by thanking the government for the opportunity to comment on the draft legislation. The Law Society of Western Australia was pleased that the government had taken action to give effect to the important recommendations from the report into the Njamal People's Trust. The Law Society supported the purpose of the bill to expand the powers of the Attorney General so that charitable trusts can be held to account for any shortcomings of governance or performance. The Law Society was totally supportive of the bill, and there has not been a substantial change since then.

Clause put and passed.

Clause 2: Commencement —

Mr R.S. LOVE: Clause 2 concerns the commencement dates for the various parts of the bill. It states —

> This Act comes into operation as follows —
>
> (a) Part 1 — on the day on which this Act receives the Royal Assent;
>
> (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

I am wondering whether the Attorney General can give us an idea of when he thinks the entire bill will come into operation and how certain bits of it will come into operation before others. What will be the effect of that, given that there is a current range of legislation? I would have thought it would be enacted quite quickly. Perhaps the Attorney General could explain which bits will take a bit longer.

Mr J.R. QUIGLEY: That provision was put in because we did not know when the Ombudsman would be ready. The Ombudsman said he would be ready as soon as the legislation passes, so the whole of the bill will come into operation on the day after it receives royal assent—the whole of it.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Terms used —

Mr J.R. QUIGLEY: I move —

> Page 3, line 9 — to delete "trust, or is otherwise to be applied, to" and substitute —
>
> trust for, or is otherwise to be applied to,

Mr R.S. LOVE: Could the Attorney General perhaps explain exactly why this amendment is needed? I know the Attorney General gave a brief explanation for this in the second reading speech.

Mr J.R. QUIGLEY: Parliamentary Counsel's Office had to look at the bill again because of the Legal Profession Act and the new Legal Profession Uniform Law Application Act. In doing that, Parliamentary Counsel picked up what he considered to be a drafting error in clause 4, and the better form of words is now in the amendment. I shall certainly be taking other amendments forward during consideration in detail. We will be happy to correct that little drafting error in the wording, but it will not change the legal effect.

Amendment put and passed.

Mr R.S. LOVE: I am wondering whether any changes to the definitions that have been deleted from the previous legislation are not being carried forward. Can the Attorney General explain why?

Mr J.R. QUIGLEY: Apart from cleaning up the drafting, the definitions have not been deleted, but they have been inserted—for example, the definition of "investigation" and "investigator", because they were not in the old act,

of course. The "Principal Registrar of the Supreme Court" was deleted because complaints will now go to either the Attorney General or the Ombudsman. The registrar of the Supreme Court was not needed under the new drafting, so it was deleted.

Clause, as amended, put and passed.

Clause 5: Recreational facilities for charitable purposes —

Mr R.S. LOVE: I note that the inclusion of recreational facilities is one of the new aspects of the legislation. Can the Attorney General explain exactly why that was seen as an important introduction and why it is a specific part of the bill on its own?

Mr J.R. QUIGLEY: This will not change anything. We have tried to modernise the act to make it more understandable. Section 5 of the act states —

> (1) Subject to the provisions of this Part, it is, and shall be deemed always to have been, charitable to provide, or to assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare.

The amendment at clause 5 that appears before the member is a more streamlined, modern and hopefully more understandable drafting. At common law, in equity, recreational facilities were not included. A charitable trust was for uplifting welfare to deal with poverty, but the member knows that in the regions a sporting oval or a community hall might be very much needed as part of the social fabric, and so this clause will modernise the legislation but it will not really change the thrust of it.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Savings for *Charitable Trusts Act 1962* —

Mr R.S. LOVE: Can the Attorney General confirm to a layman whether this clause basically means that existing charities will continue to operate in the same way they have always operated?

Mr J.R. QUIGLEY: Yes, that is correct. It deals with recreational purposes in part 2 of the act.

Clause put and passed.

Clause 8: Terms used —

Mr R.S. LOVE: Basically, this provision allows for a scheme to record the property of a charitable trust. What is the basis, or the rationale, for introducing this particular provision?

Mr J.R. QUIGLEY: This was always part of part III of the Charitable Trusts Act 1962, "Schemes in respect of charitable trusts". This will continue what is in the act already but will modernise its drafting and, hopefully, make it more digestible. The scheme jurisdiction will remain the same when it is modernised and, hopefully, it will be easier for the member and for everyone to read.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Property disposed of for other charitable purposes —

Mr R.S. LOVE: I am looking at this clause in the explanatory memorandum. On page 3, about halfway down, it says —

> Clause 10 replaces the existing regime in section 7 of the Current Act, but does not include the restriction found in section 7(3) of the Current Act. In broad terms, section 7(3) excluded a scheme under section 7 if both:
>
> (a) the intended gift would otherwise lapse by reason of a rule of law; and
>
> (b) the property would not be applicable for any charitable purpose.
>
> There were differences in opinion as to how section 7(3) was intended to operate. This caused confusion and complications and therefore increased legal costs. However, the provision did not change the outcome of any proposed schemes under the Current Act. For those reasons, that section has been removed.

When the Attorney General says that there were differences of opinion, who provided those different opinions? Were these matters of legal dispute or opinions from consultations?

Mr J.R. QUIGLEY: It is just a difference of opinion between academia and the judiciary on this provision. It does not include the restriction found in section 7(3) of the Charitable Trusts Act 1962. In broad terms, section 7(3) excluded a scheme under section 7 if both the intended gift would otherwise lapse by reason of a rule of law and

the property would not be applicable for any charitable purpose. These complex provisions have been removed for a lapse of a gift whereby there was no general charitable intention. There are differences in opinion, both judicial and academic, about how section 7(3) of the Charitable Trusts Act is intended to operate upon section 7(1) in circumstances in which the gift has failed or lapsed due to initial impossibility or impracticability. Given that section 7(3) has resulted in confusion and complications, and therefore increased costs of litigation in several cases and had not changed the outcome of a proposed scheme in any matters that the State Solicitor's Office is aware of, section 7(3) has been removed.

Mr R.S. LOVE: Clause 10(2) refers to an "alternative charitable purpose". Can the Attorney General provide an example of what an alternative charitable purpose would be?

Mr J.R. QUIGLEY: Any charitable purpose approved under the scheme means that it has to be as close as possible to the original designated charitable purpose. We want to keep the thing onstream. The bill will legislate that it be closely reflective of what the courts have ruled in common law; that is, if there is going to be a new scheme, it has to be as close as possible to the charitable purpose contained in the trust.

Mr R.S. LOVE: At the end of the clause 10 explanation in the explanatory memorandum, it states —

> The Current Act —

Not this bill —

> permits property of low value (generally less than $15,000) held for a charitable purpose, where certain conditions apply, to be the subject of a scheme to dispose of the property, to distribute the proceeds to that charitable purpose or another charitable purpose, as approved by the Attorney General, and to terminate any trust that exists … This existing provision has not been expressly replicated in this Bill as similar objectives can be achieved by the operation of clauses 10(1)(b) and 12 of the Bill.

Why was it deemed necessary to expressly remove this provision from the act? Is it because it might be found in other clauses of the bill?

Mr J.R. QUIGLEY: Under the Charitable Trusts Act 1962, section 7A provides for the termination of small trusts. It is a section very, very rarely used or relied upon, whereas there are other sections in the act that could achieve exactly the same purpose and clean out what was regarded as superfluous. That is why, in the explanatory memorandum, it says —

> … any trust that exists (section 7A, read with sections 9(1)(b) and 10A of the Current Act). This existing provision has not been expressly replicated in this Bill as similar objectives can be achieved by the operation of clauses 10(1)(b) and 12 of the Bill.

Therefore, it was not deadwood, but superfluous. It was not being used, and we want to trim the act down to its practicable usage. That is all.

Clause put and passed.

Clauses 11 and 12 put and passed.

Clause 13: Schemes for approval —

Mr R.S. LOVE: Clause 13, "Schemes for approval", states —

> (4) If the consideration by the Court or the Attorney General (as the case requires) of 2 or more schemes will involve consideration of substantially similar issues, the persons in whom the property is vested may jointly prepare, and seek approval for, the schemes.

Is that something new in the bill or was it already included in the act?

Mr J.R. QUIGLEY: No; it is not new. Section 9 of the Charitable Trusts Act 1962 reads —

> (3) Where the consideration by the Court or the Attorney General, as the case requires, of 2 or more schemes will involve consideration of substantially similar issues, the trustees of all of the property and income concerned may jointly prepare, and seek approval for, the schemes.

Therefore, that provision already exists and the member will see in a later section to do with procedure that if the trustee is a trustee of two schemes, he or she or it can apply in relation to both trusts. Clause 13(4) states —

> If the consideration by the Court or the Attorney General (as the case requires) of 2 or more schemes will involve the consideration of substantially similar issues, the persons —

Not the trustees —

> in whom the property is vested may jointly prepare, and seek approval for, the schemes.

That is what I said before. They can jointly seek approval. As I have pointed out, section 9(3) of the current act is very similar in its purpose.

Clause put and passed.

Clause 14: Submitting schemes to Attorney General —

Mr R.S. LOVE: This is the clause that I think the member for Thornlie might have been alluding to. It sets out the circumstances in which the Attorney General is required to prepare a scheme report and give it to the persons in whom the property is vested for consideration of any amendments. Subclause (4) states —

> A scheme report must refer to the matters referred to in section 25(1).

It states also that the Attorney General must make the scheme report available to the public free of charge. Why is it necessary to make it available to the public free of charge? Who will facilitate that? What burden will be placed on the holder of the scheme to make that information public?

Mr J.R. QUIGLEY: This will replace section 10(3) of the current act, which states —

> The application, scheme, and report mentioned in subsection (2) shall be open for inspection by the public without any fee or charge.

We need to remember that a charitable trust does not have named beneficiaries—we have been through that, and I think the member has mentioned it himself; it has members of the public who fit within the class. They should be able to read the document and not be charged a fee. People in the Njamal community, for example, should be able to go to the trustee and ask to examine the trust deed to see whether it is being complied with, and not be charged a fee for doing so; and, if it has been amended by a scheme, to be shown that as well.

Mr R.S. LOVE: There is no compulsion to publish the scheme as such; it is just that it must be made available for inspection. How will this manifest itself practically? Will a person be able to get it by email, for instance? How will this be provided for practically?

Mr J.R. QUIGLEY: The trust deed itself will be held by the trustee, and people will be able to examine that. Any schemes under the trust deed will have to be published generally, and that will be done by publication in the *Government Gazette*. That is dealt with in clause 17(2), which we will come to in a moment.

Mr R.S. LOVE: Publication of the scheme would be under section 17(2), but in order to see the scheme report itself, would a person have to go to the holder of the deed or the trust to physically inspect the report? Is that what I am hearing?

Mr J.R. QUIGLEY: The scheme report has to be given by the Attorney General. People would be able to attend at the Attorney General's office or write to the Attorney General or come and see the Attorney General to have a look at the report. If court proceedings are then commenced, the Attorney General must forward it to the court, and people can then see it at the court.

Mr R.S. LOVE: Why is it specified that it must be provided free of charge? Is there absolutely no ability for someone to get some level of administrative fee or cost recovery from providing that information? Why has the Attorney General introduced the provision that it must be provided free of charge? Is that consistent with the practice in other jurisdictions?

Mr J.R. QUIGLEY: It repeats what is in the current act. We did not want to change this aspect. As I have referred to before, section 10(3) of the current act states —

> The application, scheme, and report mentioned in subsection (2) shall be open for inspection by the public without any fee or charge.

That has always been there. We did not want to and did not even think about imposing a new charge on members of the public who want to see what the trust is. When people have requested this in the past, we have just emailed them a copy. It should not be kept secret from people who are genuine beneficiaries—just email them a copy.

Clause put and passed.

Clause 15: Attorney General's fees for considering schemes and preparing scheme reports —

Mr J.R. QUIGLEY: I move —

> Page 11, lines 10 and 11 — To delete "*Legal Profession Act 2008* section 275(5); or" and substitute —
>
> *Legal Profession Uniform Law Application Act 2022* section 133(5); or

That is because of the change in the name of the legislation.

Amendment put and passed.

Mr J.R. QUIGLEY: I also move —

Page 11, lines 14 and 15 — To delete "*Legal Profession Act 2008* section 275(1)(b)(i)." and substitute —

Legal Profession Uniform Law Application Act 2022 section 133(1)(b)(i).

Amendment put and passed.

Mr J.R. QUIGLEY: I move a further amendment —

Page 11, lines 16 and 17 — To delete "*Legal Profession Act 2008* section 275" and substitute —

Legal Profession Uniform Law Application Act 2022 section 133

Amendment put and passed.

Mr R.S. LOVE: We are still on clause 15. This clause allows the Attorney General to charge fees for considering schemes and preparing scheme reports. I am looking at clause 15(1). The Attorney General will be able to explain to me all about determinations, legal costs and everything else for a layman. Clause 15(1) reads —

> The Attorney General may charge persons submitting a scheme under section 14 reasonable fees for the costs and expenses (including legal costs) incurred by the Attorney General in considering the scheme and preparing a scheme report.

I am wondering how this is to be calculated. Will there be some sort of schedule of fees or a guideline? Will people be able to get a rough idea of what they might be up against when they approach the Attorney General's office to investigate?

Mr J.R. QUIGLEY: Before the introduction of this clause, the Attorney General could always ask for reasonable costs to be paid but it was not anchored to anything. It was just reasonable costs. Now they must be charged in accordance with a legal cost determination made for this purpose under the Legal Profession Uniform Law Application Act 2022 or, if clause 15(2)(a) does not apply, in accordance with a legal costs determination in respect of contentious business before the court, maximum hourly fees and the like will be set. The court will set maximum hourly fees so it will not be open slather. Before, it was reasonable costs, but they were not anchored to an objective standard. Now they will be. The Attorney General could always charge an applicant for the costs of preparing the report. That might involve accountants or lawyers.

Mr R.S. LOVE: When the Attorney General said it is anchored to a determination of a fee, that does not say what the number of hours that could be charged might be. Is there any indication about that? Would there be a standard number of hours to expect for such an investigation? How would the number of hours be determined? Would a clock be used? Does the Attorney General sit there and time people to see how many hours it takes? How does it all work?

Mr J.R. QUIGLEY: The State Solicitor's Office does record time. The applicants to a scheme would always be encouraged by my office and others to consult with the State Solicitor's Office as to what it will involve and how long it will take. The State Solicitor's Office is not there to stand in the way of these schemes that are designed for public benefit, uplifting out of poverty, welfare and the like. The State Solicitor's Office and the Attorney General want to facilitate these schemes to help the impoverished in our community. If the trustees come to the State Solicitor's Office and say they have a scheme they want approved, they will get all the help they can be offered by the State Solicitor's Office, including what it will roughly cost and entail. No-one is going to be taken by surprise. This is not adversarial. This is the Attorney General's office and the State Solicitor's Office, which comes under the Attorney General's office, trying to facilitate the operation of these trusts for the benefit of the poor—for welfare, education and the like. We are all going in the same direction. It is not adversarial.

Mr R.S. LOVE: To satisfy my curiosity, would the scale of the trust or the expected amount of money that will flow into a scheme not be a consideration in the amount that might be charged? Would that automatically make it more complex if it were a larger amount or is it more the functions that make it complex?

Mr J.R. QUIGLEY: Right from the get-go, the fee is often waived for small charitable trusts that approach the State Solicitor's Office. We are not in this as a money-making exercise. It is to defray the public expense so that the trust will pay a reasonable fee to get its scheme up. It is not a money-making exercise. As I said, for small trusts that perhaps could not afford it or if it would deplete the trust capital too much, the fee is waived from time to time. It would be the same if they hired their own lawyers. They have to pay the hourly rate under the Legal Profession Uniform Law Application Act. They could ask for a cost estimate to know in advance what they will be up for, but when they go to the State Solicitor's Office, they will get all the help they can get.

Clause, as amended, put and passed.

Clause 16 put and passed.

Clause 17: Approval of scheme by Attorney General —

Mr R.S. LOVE: This clause deals with the approval of schemes by the Attorney General. There are a few mechanics in here about the approval of the scheme and how we will go about it. First of all, the explanatory memorandum states —

> This clause also provides that if the Attorney General refuses to approve the scheme, the Attorney General must set out the reasons for that decision in a scheme report and the persons in whom the property is vested may apply to the Supreme Court for approval of the scheme.

When the Attorney General is given a scheme to approve, is there any sort of negotiation or is it possible that he might suggest changes along the way? Does the Attorney General have to say no and then they go away and come back with another proposal? How does it work in practice?

Mr J.R. QUIGLEY: In respect of the schemes, firstly, when a scheme amendment is proposed, it will often be referred to the State Solicitor's Office. As I have already said, they will get assistance and some advice. If, however, they submit the scheme and it is not satisfactory, there are then two courses of action they can take. Firstly, they can go down to the Supreme Court to approve the scheme. The Attorney General will have to remit to the Supreme Court the Attorney General's report on the scheme. If the scheme has already been knocked back because of that report and it goes down to the Supreme Court, it might be slim pickings down in the Supreme Court. However, under clause 14(2), which we have already passed, the Attorney General may remit the scheme to the persons in whom the property is vested for consideration of any amendments suggested by the Attorney General. Obviously, those suggestions will come to the Attorney General from the State Solicitor's Office, seeking advice. We can then remit it back there and say, "If you make these changes, if you make these accommodations, we'll be prepared to change the report and approve the scheme." It will not just be dead-ended; there are two courses: they can go down to the Supreme Court, or go to the Attorney General and seek some more advice, and the Attorney General can remit it back and say, "Do this and you'll get the tick."

Mr R.S. LOVE: The explanatory memorandum states that clause 17(5) provides that the Attorney General may approve a scheme despite noncompliance with the procedural requirements of part 3 in relation to the scheme. Can the Attorney General explain what that provision means and why the Attorney General would seek to approve a scheme that has demonstrated noncompliance with the procedural requirements?

Mr J.R. QUIGLEY: What we are talking about is forgiving or passing over, for example, time frames when there has not been the proper advertising period; it might be a day or two short. Notwithstanding that there has not been strict compliance with the time frame regulation for advertising, for example, it can still be approved without attending to those minor technicalities. It comes under section 10(10) of the Charitable Trusts Act 1962, which states —

> The Attorney General may approve a scheme even if the procedural requirements of this Part have not been complied with in relation to the scheme.

It is exactly the same; we are not cutting any new ground.

Clause put and passed.

Clauses 18 to 22 put and passed.

Clause 23: Administration of property through schemes —

Mr R.S. LOVE: I am working my way through the very handy explanatory memorandum, which is very important for us to be able to understand the legislation. The entry for clause 23, "Administration of property through schemes", states —

> This clause replaces section 13 of the Current Act. It provides that an approved scheme may provide that the purposes of the scheme may, in whole or in part, be carried out, and that any property to which the scheme relates may be administered, by the trustees of an existing charitable trust, a health service provider, the Public Trustee or any trustees who could be appointed under the *Trustees Act 1962*. This clause is expressly stated not to limit a scheme in making other any provision for carrying out the purpose of the scheme or for administering any property to which the scheme relates.

Clause 23(2) limits the definition to existing legislation. Is this a change from the current act; and, if so, how?

Mr J.R. QUIGLEY: It is just the opening words in the Charitable Trusts Act 1962. The words have changed in drafting, but it has exactly the same effect as section 13 of the Charitable Trusts Act 1962. We have not changed the law.

Clause put and passed.

Clauses 24 to 28 put and passed.

Clause 29: Western Australian Charitable Trusts Commission established —

Mr R.S. LOVE: This clause establishes the Western Australian Charitable Trusts Commission. Can the Attorney General explain why he has chosen the path of a commission? It does not actually appear to be a standalone entity; it has powers, obviously, but as we know, it is going to be carried out by an existing organisation—basically, the Ombudsman. Is there not sufficient work for this to be a specialist organisation? What level of commitment from the Ombudsman does the Attorney General anticipate will be required to carry out the functions of the Western Australian Charitable Trusts Commission?

Mr J.R. QUIGLEY: There is not sufficient work to establish a separate, standalone bureaucracy; there are intermittent complaints. The Njamal People's Trust complaint is an example, but it went on for so long. The Ombudsman's office has been chosen for the reason I explained earlier: rather than setting up a whole new bureaucracy that might be just sitting around, waiting for the next complaint, which might be months and months, the Ombudsman's office has staff who are well trained in investigations, confidentiality and the whole kit and caboodle. The Ombudsman has assured the government that, with the employment by him of someone who can look at the accounts of trusts initially, his office will be well positioned to do this. I would also like to say that the Ombudsman will require an additional 0.4 FTE senior legal officer and 0.2 FTE officer, and resourcing functions under the bill will be considered as part of the budget process next year. Members should not forget that charges can be made and money can be recouped. The Ombudsman WA has assured the government that at the moment it has the capability of taking this on and its staff are trained; that all the procedures and software for document tracking are available there; and that it may require an outside accountant to be engaged. For the reasons I explained in my reply to the second reading debate, the Ombudsman's office is the more appropriate office to conduct these investigations.

Mr R.S. LOVE: My question might be ruled out of order, but it deals with the Parliamentary Commissioner for Administrative Investigations taking on the role of commissioner. I am aware of at least one other piece of legislation that has gone through by which the government has placed extra burdens on that office already. I wonder if at some point it will take on such a diversity of extra roles that it will threaten the ability of the Ombudsman to carry out its functions. It is trying to be all things to all people, if you like. Is there a limit to how many small functions the Ombudsman can pick up?

Mr J.R. QUIGLEY: It is a matter of resourcing, but we must remember that when an investigation is required, such as the Njamal inquiry, the state's Senior Counsel is tied up for months and months conducting the inquiry. Mr Sefton, SC, was involved in that. That was a huge burden on the State Solicitor's Office, whereas the Ombudsman, with all due respect to Mr Sefton, is better placed, especially under this bill, which confers upon the investigator all the powers of a royal commission, which sit with the Ombudsman now. The Ombudsman assures us that he can handle this. This is a matter of public finance, not governmental finance. Nonetheless, it is a matter of public finance, because this money is to the benefit of the impoverished members of our community.

Mr R.S. LOVE: For my enlightenment, can the Attorney General explain why it will be termed the Western Australian Charitable Trusts Commission? A commission implies some level of standing or responsibility in that specific area. Is there a particular attribute that goes with the name "commission" in legal terms that confers some particular status to the matter? I have another question after the Attorney answers.

Mr J.R. QUIGLEY: In preparing the legislation, the State Solicitor's Office and the Parliamentary Counsel's Office looked at other legislation around, and other charity commissions are called "commissions". For example, the Australian Charities and Not-for-profits Commission established under the Australian Charities and Not-for-profits Commission Act 2012, the Charities Commission of New Zealand, the Charity Commission for England and Wales and the Charity Commission of Ireland. It is commissioned with a purpose, which is to regulate and oversee charitable trusts.

Mr R.S. LOVE: I am trying to get an understanding of the terms used here. "Commission" is being used in this legislation to provide for a person who is basically an investigator, because when I look at the functions, it is clearly laid out that they will conduct investigations, and report and make recommendations. It has the functions of an investigator. I am aware that the government is considering, under a completely different minister's realm, an investigator in local government affairs who will be called an inspector. I wonder why there is different terminology across government and if there is any difference? Could the Attorney General have said "inspectorate" and the person holding the power was the inspector rather than the commission or the commissioner? I want to understand if there is any difference and, if not, why do two government ministers, under different legislation that provides similar roles, call it different things.

Mr J.R. QUIGLEY: I am not here to debate the Local Government Act or local government reforms at the moment, but there will be inspectors who are different from investigators. An investigator can compel a person to answer questions and produce documents, and can enter premises to search for documents. The investigator does not have those powers vested in him or her; they are vested in the commission and, under the act, the charitable trusts

commissioner will be the Ombudsman. We are investing in the holder of the office of Parliamentary Inspector for Administrative Investigations, the Ombudsman, the power of a royal commissioner, and, as such, he is called the charitable trusts commissioner. Investigators will work underneath him, will take oaths, will be bound by oaths of confidentiality and have to respect legal professional privilege—the whole lot. That is why we call it the commission; it is because he is the commissioner.

Clause put and passed.

Clause 30: Functions of the Western Australian Charitable Trusts Commission —

Mr R.S. LOVE: Clause 30 sets out the three functions of the commission—to conduct investigations, to report and to make recommendations to the trustees of the charitable trust in respect of matters arising out of there. Was consideration made to have any other functions for this organisation, such as providing documents or assisting in the reformation or restructuring of charitable trusts?

Mr J.R. Quigley: I missed the last sentence.

Mr R.S. LOVE: Has there been any consideration of any other roles, apart from those three, such as assisting with maybe restructuring or reforming charitable trusts as such or part of the recommendation role?

Mr J.R. QUIGLEY: The chamber has to bear in mind that the WA Charitable Trusts Commission will be a creature of statute law. As such, its functions must be broadly set out. Those functions will include conducting investigations and audits, making an investigator's report and making—here we go—recommendations to the trustees of a charitable trust on matters that arise out of an investigation. It will be able to make recommendations about the trust that it is investigating, but it will not be able to make more broad, sweeping recommendations. The Public Accounts Committee or something like that could do that, if it wanted to look at amendments to the act or such like. The Attorney General could do that as well. But the Charitable Trusts Commission will have to stay within the handrails of the trust that it is investigating.

Clause put and passed.

Clause 31 put and passed.

Clause 32: Investigation of charitable trusts —

Mr R.S. LOVE: This clause deals with the investigation of charitable trusts and says that there will be two types of investigators, being —

(a) an authorised person acting at the direction of the Attorney General —

(i) on a complaint to the Attorney General; or

(ii) on the Attorney General's own initiative;

(b) the Western Australian Charitable Trusts Commission —

(i) on a complaint to the Western Australian Charitable Trusts Commission; or

(ii) on referral by the Attorney General.

Why is there a need for two separate types of investigator? Can the Attorney General explain that for a start?

Mr J.R. QUIGLEY: Firstly, an investigation could be precipitated by a complaint to the Charitable Trusts Commission, but sometimes people write directly to me and make extensive submissions about impropriety or whatever in a charitable trust. Sometimes, I read about it in the media, when a person in a community—it might be in the Kimberley or anywhere—complains about the running of a charitable trust. In that circumstance, the Attorney General will be able to create an investigation of their own initiative or refer it to the WA Charitable Trusts Commission. Although the bill provides that the Attorney General will be able to investigate any charitable trust themselves, the Attorney General will also be able to appoint someone as an investigator under paragraph (a). If someone comes to the Attorney General about a discrepancy in a trust's accounts, the Attorney General might appoint an accountant to look at those figures to tell them otherwise or clarify the situation. The Attorney General could do that by appointing a special investigator for a limited purpose or by referring it to the WA Charitable Trusts Commission. We are trying to give flexibility.

Mr R.S. LOVE: Earlier, the Attorney General mentioned that the Ombudsman could in fact hire outside counsel or some other type of consultant. I am wondering why the Attorney General would have to appoint an accountant or auditor rather than the commissioner simply making an appropriate appointment themselves, if they are able to hire outside staff. Why is it really necessary to have these two distinct powers? Does the Attorney General feel that there might be occasions when the Attorney General might have a different reason to investigate, other than something that he or she wants to refer to the commissioner?

Mr J.R. QUIGLEY: A complaint on a trifling or relatively small matter might come to the Attorney General's office, and rather than burden the Ombudsman's office with it, the Attorney General could get a firm of accountants to give them a report if it is just a simple accounting matter. Bearing in mind that the capital is some tens of millions of dollars or more for some of these charitable trusts, the Attorney General might commission an inquiry by one of the big four accounting firms and a legal firm, so as not to swamp the Ombudsman's office. I would always discuss it with the charitable trusts commissioner, who might say, "On a preliminary look, this matter is potentially large and it could be a real cruncher for this office in terms of resources." It might already have an investigation on its plate, so the Attorney General could appoint a special investigator. As far as this Attorney General goes, I would not do that without first consulting with the charitable trusts commissioner and the State Solicitor's Office on whether the appointment of a special outside investigator was warranted.

Mr R.S. LOVE: I am a little mystified. If the Ombudsman has all the authority to hire whatever resources it needs and if it has the powers of a royal commission, why would the Attorney General need to find an alternative pathway? So far the Attorney General has advanced that the situation might be very simple or it might be hugely complex. Will we be able to rely on the commissioner to look at matters only in the middle of those? I would have thought that the Parliamentary Commissioner for Administrative Investigations, as the commissioner of the Charitable Trusts Commission, would have the capacity to investigate whatever is required, including by hiring one of the big four accounting firms if necessary.

Mr J.R. QUIGLEY: As I think the member mentioned in the second reading debate, the Attorney General ultimately has responsibility for all charitable trusts in Western Australia, so if he or she carries that responsibility, it is appropriate that the Attorney General have the same powers as the Charitable Trusts Commission. It would be perverse if the Attorney General, who is responsible for these trusts, did not have the powers of the commission itself to carry out an investigation. The Attorney General always has to have that power. There has to be somebody in this chamber who is ultimately responsible for all charitable trusts in Western Australia, and I carry that burden of responsibility. As such, it is appropriate that I am able to appoint a special investigator. When we talk about resources at the Charitable Trusts Commission, everything is finite. It depends on how much work comes in. I could stand here and say that there is not much work at the moment—there are only one or two inquiries or matters that I am considering—and suddenly a rush could come in that has to be dealt with quickly. If the commission was all hands on deck, I could bring in another investigator.

Mr R.S. LOVE: I am still not sure why the Attorney General could not simply refer the matter to the commissioner and provide them with the resources they need to get the job done. Can the Attorney General explain whether he could see a circumstance in which there might be two separate streams of investigation if he were not satisfied with what he got from the first one? There is still the extraordinary power that the Attorney General has to set, independent of the commission, which, presumably, will have built up a skill set of looking at these matters of charitable trusts after dealing with a number of them. Surely, getting people who do not have that background and that understanding would be less effective rather than more effective. I am still not certain why the Attorney General would need to have the power to directly appoint rather than simply refer to the commission.

Mr J.R. QUIGLEY: Anything is possible. I will talk to the charitable trusts commissioner. If he wants more resources to look at a particular matter, he will get more resources. As the Attorney General bears ultimate responsibility for these trusts, it is important that the Attorney General has the power to investigate them and to appoint someone to investigate them, and 99.9 per cent of the time that will be the Western Australian Charitable Trusts Commission. We have to include this as a fail-safe mechanism. We are not above giving the Ombudsman such resources as is required from time to time, and no doubt next year in estimates the member will ask him how this is going and what resources he has. We will make sure that he is properly resourced and that special investigators are properly appointed. What we will not have, and what we are moving away from, is the procedure under the old act whereby, without any investigative powers, someone comes to me and I have to ask the State Solicitor to look into it. The State Solicitor has no power to compel anyone to answer a question or produce any document. The State Solicitor tries to persuade people. The Njamal inquiry went for 18 months. Very soon we will have a Charitable Trusts Commission that will look at these matters.

Mr R.S. LOVE: Just to be clear, will there be no difference in the powers that the Attorney General's personally appointed investigator would have than the investigator who would be operating the investigation, or the commissioner or, I assume, their delegate?

Mr J.R. QUIGLEY: That is right. There is no difference in the powers because under the next clause, clause 33, an investigator will have all the powers, rights and privileges as specified under the Royal Commissions Act. They will have parallel powers with the Charitable Trusts Commission. At this stage, as I stand here, I cannot envisage the circumstances under which I would use those powers, save to say if there was a crush of work on or a little matter that needed an accountant to run a rule over while there was a crush of work on down the road. In that case, I might consider it, but I would never do it without consulting with the charities commissioner.

Mr R.S. LOVE: The Attorney General has touched upon the next clause. As the Attorney General said, that gives the investigator or the commissioner the same powers as those of a royal commission. Why, then, is it necessary to insert some power in clause 32? I am looking at clause 32(2), which states —

> An investigator may, in the performance of a function under this Act, give to a person a written notice (a ***requirement***) requiring the person to provide to the investigator —
>
> (a) a document or other information —

Would that not be implicit in the powers the investigator is being granted, or is that put there for a reason so that they must give notice? Is that different from if it was just the powers of a royal commission?

Mr J.R. QUIGLEY: The member and I have agreed that the powers of the investigator are the same as the powers of a royal commissioner, but we do not want these investigators to be able to exercise these enormous powers at large. They have to be ring-fenced, and so clause 32(2) provides —

> An investigator may, in the performance of a function under this Act, give to a person a written notice … requiring the person to provide to the investigator —
>
> (a) a document or other information —
>
> (i) relating to a charitable trust; or
>
> (ii) concerning any person involved in the administration of a charitable trust;
>
> or
>
> (b) any other assistance that is reasonably necessary.

I will just go to "any other person involved in the administration of a charitable trust". We have had an instance when a person who I will anonymise by calling "C" was banned from being a trustee, but we believe that he might be in the background using someone else on the trustee corporation to do his bidding. Because I have not got evidence of that to put before the chamber this evening, I will refrain from naming C. However, under clause 32(2)(a)(ii), an investigator may issue a notice concerning any person involved in the administration of a charitable trust. It could be the person who is hiding behind the curtain using their puppet on the trustee corporation or it could be a person who is trying to do it all by manipulating it at arm's length. The powers of the royal commission will be available to the investigator to require the person to come forth to produce documents and answer questions.

Mr R.S. LOVE: To be clear, will this constrain some of the powers under clause 33 that follows? Is that what I am hearing? Is this a constraint on that otherwise unbridled power that the investigators will be given?

Mr J.R. QUIGLEY: That is correct.

Clause put and passed.

Clause 33: Powers under *Royal Commissions Act 1968* —

Mr R.S. LOVE: I would like to talk about this clause a little bit because this is the nub of what we have been talking about. The Attorney General has indicated that there will be a restriction on the power. The investigators need to perform under the functions of this legislation relating to a charitable trust, a person involved in the administration of a charitable trust or any other assistance that is reasonably necessary. Would the powers under this clause force people who are not directly related to the administration, but who may be in some other way involved in the operation of the trust, to give evidence? I refer to persons in the community who might have knowledge about how the beneficial, or not so beneficial, operation of the trust is going, so to speak? One of the big concerns the Attorney General has outlined is that the money, in the case of the Sefton inquiry, might not necessarily lead to the betterment of the people in the way that was outlined. There may be other levels of evidence that the Attorney General might need. Do those powers exist?

Mr J.R. QUIGLEY: Clause 32(2) refers to "any person". It is not just the trustees who are under compulsion; it is any person to do with that. The investigators will be able to exercise the powers of a royal commissioner. I turn to section 9 of the Royal Commissions Act of Western Australia, which states —

> A Commissioner may cause a summons in writing under his hand to be served upon any person requiring him to attend the Commission, at a time and place named in the summons, and then and there to give evidence and to produce any books, documents, writings or things in his custody or control which he is required by the summons to produce.

Those are the powers of the royal commissioner that will be adopted into this bill. But, as we have already observed and as has already been stated, the powers must be used only within the limits of the four walls of the investigation of a particular trust.

Mr R.S. LOVE: Therefore, will the person who is appointed to have this power be the commission, the commissioner, a delegate of the commissioner or simply the commissioner themselves? Can the Attorney General's appointed investigator include the Auditor General? Those were two or three questions, but the Attorney General can run through them.

Mr J.R. QUIGLEY: Under clause 32(1), yes, I could appoint the Auditor General. I do not think she would be too happy having to conduct a forensic examination, which is more than examining accounts, but issuing summonses to appear at the Auditor General's office and then and there ask questions. But, yes, the Attorney could appoint any appropriate person to conduct the investigation.

Mr R.S. LOVE: In terms of the investigator's remit, if the Attorney General has appointed the investigator—I know this question probably would have been more appropriate to ask during clause 32—will he be quite specific about the range of powers that he will allow them to use under this clause, or will there be no specific parameters around what powers, under clause 33, they could use?

Mr J.R. QUIGLEY: The parameters are in the bill, and the investigator would have the powers, as the bill provides, of a royal commission. It should be a rare occasion when the Attorney appoints someone with those powers without discussing it with the charities commissioner. The Attorney General's office is not set up to conduct investigations. Previously, we would send it to the State Solicitor's Office, but it had no investigative powers. It is envisaged that, yes, the Attorney General will have those parallel powers and if ever a need arose when they had to be used, they could be.

Clause put and passed.

Clause 34: Western Australian Charitable Trusts Commission's power to carry out audits of charitable trust accounts —

Mr R.S. LOVE: I will be very quick on this clause, Attorney General. This is the clause of the Western Australian Charitable Trusts Commission's power to carry out audits of charitable trust accounts. The Attorney General has just stated that he does not think the Auditor General would be very happy about having to carry out a forensic audit in this regard. Therefore, will we assume that these audits will ordinarily be carried out by outside agencies, or will the Attorney General have some level of in-house ability in either the commission or the Attorney General's office perhaps—I do not know—to carry out such an audit? Will the costs of these audits be borne by the trust or the state?

Mr J.R. QUIGLEY: Just to be clear, to be sure, to be sure, I did not say that the Auditor General could not carry out forensic audits. That office could carry out forensic audits. What I was saying was that the forensic examination whereby there is a requirement to bring in witnesses and examine the person on their oath is not the function of the Auditor General. However, the commission can, and normally would, engage a qualified auditor, in the same way that the State Solicitor's Office, if it had to do a financial audit, might have to engage an outside auditor. We will soon come to—I am sure the member will ask me questions about it—clause 43, which deals with the recovery of costs of an investigation. Also, the Charitable Trusts Commission could always appoint a public service officer as the auditor to audit the accounts, so it does not necessarily have to go out and appoint. If it were just a straight-line audit, it could perhaps appoint the Auditor General or someone else in the public service with the appropriate audit qualifications.

Clause put and passed.

Clause 35: Power to enter premises —

Mr R.S. LOVE: I was hoping for a bit of encouragement from the other side there for a minute, but we will keep going for a while! Clause 35 states —

> For the purposes of conducting an investigation, an investigator may, at any reasonable time —
>
> (a) enter any premises occupied or used by a person to whom a requirement has been given; and
>
> (b) inspect those premises or anything on those premises.

Does this clause relate to the person's residence or is it strictly a business premise? Can the Attorney General give me some idea about any limitations that might exist on the power to enter premises?

Mr J.R. QUIGLEY: As to the time, it is any reasonable time; not, for example, like when the police normally execute a warrant under the Misuse of Drugs Act at 4.30 or five o'clock in the morning, but at a reasonable time one would expect, during business hours. A person whose premises can be inspected is a person upon whom a requirement—that is, a notice—has already been served under the hand of the Western Australian Charitable Trusts Commission. So if that person is already under a requirement to produce and appear, the commission can enter their premises and search those premises during a reasonable time. We have had a situation in which the State Solicitor's Office has been investigating a charitable trust for, and on behalf of, the Attorney General in which people have been reluctant to produce documents: they cannot find them; the dog ate them; they do not know where they are! The

investigator might want to enter premises to determine whether trust property is still in the hands of the trustee or to potentially protect that property by seeking orders from the Supreme Court for that purpose. The powers are consistent with the power contained in section 21 of the Parliamentary Commissioner Act 1971 and similar to the power given to the Auditor General under section 34(4) of the Auditor General Act 2006. It is consistent with the Njamal report recommendation 49, but broadens the powers of inquiry to include the power to enter premises. This reflects the extent of modern-day investigative practice.

Clause put and passed.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.