STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

MR R.S. LOVE (Moore — Leader of the Opposition) [3.09 pm]: I was on my feet speaking to this bill before question time commenced. I will continue. I think the Attorney General might be here somewhere. We have been through some of the background and history of the bill, and this repeal and amendment bill deals with many issues, many from a very long time ago. In fact, 1830 is the date of some of the earliest acts affected by this bill. I compare it with the current situation of repealing the Aboriginal Cultural Heritage Act 2021 under the Aboriginal Heritage Legislation Amendment and Repeal Bill that passed through Parliament this week. The Premier was just asked during question time when he would seek to have that proclaimed. Unlike these acts that have been sitting unused in some cases for over 100 years, the other repeal bill I speak about is a matter of great urgency and needs to be addressed as soon as possible. Despite the Premier's assurance, people are caught in a mire at the moment and cannot proceed with projects or gain approvals because the Aboriginal Cultural Heritage Act 2021 has not yet been repealed. It will not be repealed until the repeal bill is proclaimed, and we need to see that carried out at the very earliest opportunity.

It is possible that consideration in detail might be held on the Statutes (Repeals and Minor Amendments) Bill 2021. I will leave that to the conclusion of this speech so that the Attorney General is lined up to determine whether that is necessary. I will put a few questions to him now.

Nobody is paying attention, so we might be going into consideration in detail after all. With that, and the fact that the Attorney General is not able to take into account what I am saying, he therefore will not be able to —

Mr J.R. Quigley interjected.

Mr R.S. LOVE: Yes; okay. Good.

There are a couple of matters to look at. Some statutes affected by this bill are very old indeed. Compared with the Aboriginal Cultural Heritage Act situation, there is probably not a great deal of urgency to repeal them, although doing so would clean up the statute book. Members who have looked at this legislation may know that a number of acts go back to the imperial days before the state of WA was a self-governing colony. I ask the Attorney General about clause 4(1)(h) of the bill referring to the Judgments Act 1855. The explanatory memorandum refers to "duties of prothonotary fees for registration and searches". I think the Attorney General has this noted somewhere, so I am sure he will be able to explain it. The EM reads —

> … a "prothonotary": a position that exclusively applies to the Counties Palatine of Lancaster and Durham in the United Kingdom.

Can the Attorney General explain exactly what we are repealing? It is important that the house knows the position that will be done away with if this legislation is passed, because we should not repeal legislation that may have some importance even today. It is not unlike the situation of the Aboriginal Cultural Heritage Act 2021, which needs urgent repeal. Can the Attorney General explain to the house whether that matter needs to be repealed immediately and its import? What does that term mean, because nobody actually understands it, as is clear from reading the learned people's dissertations in the upper house, the Legislative Council, where this was discussed with the parliamentary secretary, who was unable to explain that term during Committee of the Whole.

Mr J.R. Quigley: I'll ask the new artificial intelligence.

Mr R.S. LOVE: The Attorney General can ask the artificial intelligence, because the intelligence of the other place could not answer the question. That will be interesting. I would love to go through all these acts in great detail and highlight some of the nuances of days gone by, but I am sure the member for Mount Lawley will have plenty to say about some of the more arcane aspects of this legislation. Unfortunately, I have urgent parliamentary business that means that I have to leave the chamber in the good care of the member for Central Wheatbelt for some time and allow other members to make a contribution. I wind up there.

I say again that the repeal of these acts, although important, does not seem to be urgent. It has been discussed and kicked around for many years and been the subject of numerous committee reports. There is an amendment and repeal bill that is urgent and needs to be proclaimed as soon as possible. I urge the Premier to advise the Governor as quickly as possible of the need for that proclamation so that certainty can be restored to the people of Western Australia over the implications of the failed Aboriginal cultural heritage legislation. As far as the rest of the Statutes (Repeals and Minor Amendments) Bill is concerned, with the understanding that the Attorney General will answer the very important question I just posed, I conclude my contribution to the debate and once again put on record our support for the bill.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [3.17 pm]: I rise to make a contribution to the debate on the important Statutes (Repeals and Minor Amendments) Bill. I thank the member for North West Central for confirming that the opposition will support the bill. I note the significant latitude given to the Leader of the Opposition during his contribution, as he seemed to focus more on other legislation than on the bill up for debate. Happily, being as benevolent as we are on the Labor side of the chamber, we did not call a point of order and ask him to return to debate the substance of the bill. He has made his political point and he has departed the chamber, as he says, on urgent parliamentary business. I am disappointed that he is not here to hear my contribution, given he was eagerly anticipating it, as we heard in his contribution.

I have a couple of things to say about the bill in question and the contribution to it and the bill's passage by the opposition. My final comments will reflect on some of the other legislation that has been brought before the house by the Attorney General. I anticipate the same degree of latitude if I do momentarily depart from the precise substance of this bill. The benefit of this measure is that it is an omnibus bill that will repeal a number of pieces of legislation, so I am sure I will be able to make the points I need to make without transgressing the relevance rules in the standing orders.

I start by saying that the Statutes (Repeals and Minor Amendments) Bill 2021 is an omnibus bill that makes a range of repeals and minor amendments to a number of acts under the umbrella of a single bill. An omnibus bill such as this is an avenue for making general housekeeping amendments to legislation. It is designed to make only relatively minor, non-controversial amendments to various acts and to repeal acts that are no longer required. Omnibus bills assist in expediting the government's legislative program and parliamentary business by reducing the number of separate amendment bills to deal with minor amendments and repeals. They also help weed out redundant legislation from the statute book. Bills of this nature are a recurring part of legislative review to ensure that the state's statute book is regularly updated and streamlined.

The first task in formulating an omnibus bill of this nature is to identify which statutes are appropriate for inclusion in the omnibus bill. In formulating the omnibus bill, certain criteria need to be satisfied to be included. A matter will not be included in an omnibus bill if it affects any existing right, obligation, power or duty; changes any process provided for in legislation; or involves the insertion of new multiple sections into an act. That is the first part. That is the relevant criteria that need to be satisfied before the provisions are to be repealed. Once that exercise is undertaken, the next exercise is the parliamentary process. As a matter of parliamentary process, omnibus bills that seek to repeal obsolete legislation are usually introduced in the Legislative Council and are, by motion, referred directly to the Standing Committee on Uniform Legislation and Statutes Review. For future reference, I will call that body "the committee".

Omnibus bills are referred to the committee because one of its functions under its terms of reference by which it was established is to review the form and content of the statute book. The committee then scrutinises the omnibus bill and considers whether any of the provisions in the omnibus bill are suitable and non-controversial. In the ordinary course, the committee recommends whether the omnibus bill ought to be passed. The referral to the committee serves an important time-saving function for both houses of Parliament in that the committee uses its time, resources and skill to thoroughly examine the bill. That happened in the case that the member for Moore referred to in the 131st committee report. In addition to the 131st committee report, one of the other relevant committee reports in the formulation of this legislation was the 124th committee report.

The omnibus bill has a long history, and some of the repeal matters in this bill date as far back as being identified for repeal in 2012. These matters have been waiting for over a decade to be repealed. Some of the imperial legislation being repealed in this bill was identified by the committee in the seventy-ninth report, which was tabled on 15 November 2012 in the Legislative Council. The omnibus bill also includes a substantial number of matters identified in the committee's 124th report of 2019.

The bill that we are debating today in the forty-first Parliament is actually very similar to a bill that we debated in the fortieth Parliament, which was the Statutes (Repeals and Minor Amendments) Bill 2020. The 2020 omnibus bill was immediately referred to the relevant committee in the Legislative Council in accordance with the long-established practice. The Legislative Council recommended that it be passed and that its observations be noted. The 2021 omnibus bill is almost identical to the 2020 omnibus bill apart from minor editorial drafting changes; two provisions in the Insurance Commission of Western Australia Act 1986, which the Parliamentary Counsel's Office identified as suitable for inclusion; part 2 of the Business Licensing Amendment Act 1995, which the Standing Committee on Uniform Legislation and Statutes Review identified in the 131st report; and, finally, section 50 of the State Superannuation (Transitional and Consequential Provisions) Act 2000, which the Parliamentary Counsel's Office also identified for inclusion. I will recap the relevant reports. They are the seventy-ninth report from 2012, the 124th report from 2019 and the 131st report.

I turn to what will be repealed in this omnibus bill. This omnibus bill is the most substantial minor amendments repeal bill of its time to be introduced into Parliament in more than 20 years. At a glance, the substantial omnibus

bill will provide for the repeal of seven Western Australian acts, six imperial acts, one provision in each of two further imperial acts and an amendment to 70-odd Western Australian acts. The omnibus bill will repeal several acts in their entirety. Clause 3(a) of the bill will repeal the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015. I suspect that members will remember that this was the unfortunate attempt of the previous Liberal–National government to resolve that Gordian knot—that intractable legal dispute that launched a thousand legal careers, including those of some of my friends, member for Forrestfield, who are still in practice today—the Bell litigation. Unfortunately, because the previous Liberal–National government did not have an Attorney General of the calibre of our Attorney General, that legislation was struck down by the High Court. We will repeal that legislation. I will come back to the shadow Attorney General, such that it is not, shortly.

Clause 3(e) will repeal the fifth act listed in the bill, the Morawa–Koolanooka Hills Railway Act 1964, which provided for the construction of a railway line pursuant to an agreement with the state and a mining company. This whole act is obsolete for several reasons: firstly, the parties agreed to terminate the agreement, and in 1991 the act that gave effect to the agreement was repealed; and, secondly, the mine is no longer in operation and the railway line no longer exists, so the act serves absolutely no purpose and is obsolete.

The omnibus bill deals with imperial legislation and will repeal six imperial acts—I just complimented you, Attorney General, while you were out of the chamber—and two provisions in two imperial acts. Under a well-established common law rule at the time of the settlement of Western Australia in 1829, all statutes in force in the United Kingdom that were reasonably applicable to the conditions of the new colony automatically became part of the law of Western Australia. Generally, of the imperial statutes that were enforced, many are regarded as unsuitable for modern conditions in their current form, as they are considered inaccessible due to their archaic expression and limited availability.

A good example of these archaic expressions are the terms: "infants, femes covert, idiots, lunatics and persons of unsound mind" that are found in the Infants' Property Act 1830 (Imp), which governs the authority to manage the real and personal property of these individuals. Obviously, a number of those terms are not recognised by the Western Australian legal system and the protections that relate are provided for in a number of pieces of legislation that are cited in the explanatory memorandum to the omnibus bill. The Infants' Property Act 1830 (Imp) will be repealed in its entirety under clause 4(1)(g) of the omnibus bill.

The Leader of the Opposition, the member for Moore, touched but did not expand on an archaic term that is a "prothonotary", pursuant to section 9 of the Judgments Act 1855 (Imp). The word "prothonotary" means the principal clerk of a court and is derived from the Greek "prothonotarius", meaning "first scribe", which was originally the chief of the college of recorders of the court of the Byzantine Empire, and was awarded to certain high-ranking notaries. This provision applies exclusively to the fees payable to the courts in the County Palatine of Lancaster and the County Palatine of Durham in the United Kingdom; therefore, the section cannot apply to Western Australia, is obsolete and will be repealed under clause 4(1)(h).

A number of amendments that will be made are not controversial in nature, make corrections to grammar and update provisions to reflect the current status of the law. Clause 42 will amend section 8 of the Historical Homosexual Convictions Expungement Act 2018 to replace the second occurrence of the word "being" with "been" to correct grammar—that is, B-E-I-N-G replaced with B-E-E-N. Similarly, clause 45 will amend section 71 of the Minerals Research Institute of Western Australia Act 2013 to insert the word "who" at the start of certain paragraphs to correct the grammar to ensure consistency with other paragraphs in that section. Another example is: clause 54 will amend the Port Authorities Act 1999 to reflect that the Corporations Act 2001 came into effect on 1 July 2001 and superseded the then operating Corporations Law. Similarly, clause 55(4) will amend section 51 of the Public Trustee Act 1941 to delete the reference to the Guardianship and Administration Board, which was abolished in 2005. That is a summary of the particular points of this bill.

The next point that I want to make relates to the way this government respects the role of the Parliament and directs its attention to making sure that the Parliament is the pre-eminent institution in the state and is the voice and the house of the people. Out of respect for that institution, the Attorney General has introduced legislation to tidy up our statute book and make sure that practitioners and people involved in legal proceedings have the most contemporary and up-to-date statute book. I submit that this is a reflection of probably one of the hardest working Attorneys General Western Australia has had. I want to reflect on some of his record of achievement. This Attorney General has introduced a large number of significant legislative reforms into Parliament. Since 2017, we have dealt with around 70 bills, not just in his role as Attorney General but as Minister for Commerce; Electoral Affairs. Many of these reforms are historic. Often they have brought Western Australia into line with other states after an extraordinary delay or they have gone further than other jurisdictions. I will cite a few examples. It will not be an exhaustive list. One of his celebrated causes before he entered this place was his concern for the rights of people who had been charged, convicted and sentenced, and were serving custodial terms when there were significant questions about the basis upon which those convictions had been made. With the help of journalists like Colleen Egan, he was able to bring those stories to light. Parliament passed the second appeal laws. Those

laws introduced a statutory right for a person to make a second or subsequent appeal against a conviction when there was new and compelling evidence in the case. These new laws enabled cases like the Andrew Mallard case, which the Attorney General prosecuted as an advocate on behalf of the wrongly accused, to be presented directly to the Court of Appeal instead of being considered by the Attorney General of the day. The Attorney General introduced bail reforms to protect child victims and stricter parole laws for people linked to terrorism. He introduced a bill to overhaul the law relating to charitable trusts. Recognising changes in societal and community attitudes, he introduced legislation to allow superannuation splitting for de facto couples. He also introduced the Legal Profession Uniform Law Application Bill that makes access to Western Australian lawyers and the operation of the Western Australian legal system more accessible, efficient and cost effective.

[Member's time extended.]

Mr S.A. MILLMAN: In addition to those legislative achievements, he also worked with the McGowan and Cook Labor governments to bring about the settlement of the Bell litigation. One of the things I remember from that litigation is how much money came to the state of Western Australia. Millions of dollars benefited the state. The then Premier, Mark McGowan, made the very sensible and compassionate decision in the face of great pressures on Western Australian families to spend that money on a $400 electricity credit for every household. The coalition had failed in its unfortunate attempts to legislate a resolution to that matter, which was defeated by the High Court. The McGowan Labor government and Attorney General, John Quigley, were able to resolve the litigation, receive money and distribute it to the people of Western Australia. The Attorney General worked to thwart Clive Palmer's $30 billion claim against the state of Western Australia. The Attorney General reappointed the Corruption and Crime Commissioner, Hon John McKechnie, introduced legislation on unlawful consorting and prohibited insignia and tackled dangerous sex offenders and high-risk serious offenders. He introduced no body, no parole legislation; legislation for the presumption against bail for terrorists; legislation on withholding parole for mass murderers and serial killers; fines enforcement reform; a custody notification service for incarcerated Aboriginal people; electoral equality in the Legislative Council; voluntary assisted dying legislation; and a bill expunging homosexual convictions. He has also promoted women and women's participation in the law. We now have women heading the District Court, the Family Court, the State Administrative Tribunal, the Coroner's Court and the Director of Public Prosecutions as well as many other judicial posts. He appointed David MacLean as the first Indigenous District Court judge. He introduced family and domestic violence reforms and procedures. His response to the Royal Commission into Institutional Responses to Child Sexual Abuse was twofold. I was really proud to speak on those pieces of legislation. Firstly, the legislation removed the statute of limitations. Victims of historical child sexual abuse would ordinarily be unable to bring their claims for compensation and damages on account of the statute of limitations, which was set at six years. By amending the Civil Liability Act, we were able to lift the statute of limitations for civil child sexual abuse actions. That meant that victims were able to proceed against different defendants. As a result, we had the case of John Lawrence, for example, which I have spoken about in the chamber. In March 2021, a $1.4 million compensation payment was made. The Attorney General introduced legislation that was designed to assist tenants. Again, as we face a housing shortage, the Attorney General introduced the Residential Parks (Long-stay Tenants) Bill, the Commercial Tenancies (COVID-19 Response) Bill and amendments to the Residential Tenancies Act to make it safer for tenants by affixing furniture and so forth. That is an incredibly lengthy list of reforms.

The Attorney General has been well supported by members of the government benches. An area in which numerous members of the government benches stood in support of the legislation that had been introduced by the Attorney General includes, amongst other things, the Criminal Law (Mental Impairment) Bill that was passed by the Parliament. That bill was introduced into Parliament on 1 December 2022 when it was first and second read. There was a 12-week break over the Christmas and new year period and Parliament resumed sitting in February. That bill was brought on for debate on 21 February this year. A number of contributions were made to the Criminal Law (Mental Impairment) Bill. As the Parliamentary Secretary to the Minister for Health; Mental Health, and as a former practitioner, I was particularly keen to make a contribution to that bill. We were also supported by a lengthy and thoughtful contribution by the member for Kalamunda, who sought an extension of time because he had so much to say. The member for Bicton made a terrific contribution and cited reports from the Mental Health Advisory Service statutory authority. That member also had to seek an extension, not least because of the numerous interjections by the member for Landsdale, which were well made and thoughtfully responded to by the member for Bicton. I also made a contribution, again, with a couple of interjections. The member for Dawesville, as an experienced paramedic, also made a contribution. The Leader of the House made a contribution because the Leader of the Opposition made what I thought was an astonishing contribution. Bear in mind that we had a 12-week break. The Leader of the Opposition has all the resources attached to his office. He has extra funding and staff and the opportunity to seek expert opinion and advice before talking about legislation. On a number of occasions during the debate, the member for Cockburn—here he is; the member for Cockburn is in the chamber!

A government member: Speak of the devil!

Mr S.A. MILLMAN: Not my words, member!

The member for Cockburn made the point that there were no opposition members in the chamber during the second reading debate on the Criminal Law (Mental Impairment) Bill 2022. About 45 minutes before that, the Leader of the House had made the same point—that there were no opposition members in the chamber for the debate, but eventually the member for Moore came into the chamber to make his contribution.

Mr D.A.E. Scaife: During my contribution.

Mr S.A. MILLMAN: No, it was during mine. I remember because I was disappointed. Ordinarily what happens is that the minister reads in the second reading speech and someone from the opposition adjourns the debate. When the second reading debate is resumed on another day's sitting, the lead speaker for the opposition stands up and articulates the opposition's position. They have 60 minutes to do that; plenty of time to say all the things they need to say about the bill. However, on this occasion the second reading debate was resumed 12 weeks after it had first been adjourned. The member for Kalamunda made a contribution and there was no response from the opposition; we did not know, at that stage, whether the opposition supported the bill or opposed it. The member for Kalamunda sat down and then the member for Bicton made a contribution. We still did not know whether the opposition was supporting or opposing the bill, and we did not know even know what the opposition was going to say. The member for Dawesville then stood up and made a contribution, and then I stood up and made a contribution. The Leader of the Opposition then came into the chamber and I asked him whether the opposition supported the bill. I said that it was customary for the opposition to go first, as the Leader of the Opposition did today for this second reading debate on the Statutes (Repeals and Minor Amendments) Bill 2021. The Leader of the Opposition had this to say, and I was frankly astounded. He said —

> I would like to make a contribution to the second reading debate on the Criminal Law (Mental Impairment) Bill 2022. The opposition will not be opposing the bill.

That was great. He continued —

> However, given the size of the bill and the complexity of the surrounding legal infrastructure, it is impractical to expect a single member of Parliament without legal training to offer a sufficient critique of this bill. For that reason, the opposition —

Not just the Leader of the Opposition, but the opposition —

> believes that this bill should be referred to the Standing Committee on Legislation in the other place for it to examine the clauses of the bill in great detail …
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> …
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> The upper house of this place has the ability and expertise to forensically examine the details of this very important bill.

He then went on to say —

> I cannot pretend to have an understanding of all the information that is contained in this bill, —

He had 12 weeks; he was the lead speaker for the opposition and the Leader of the Opposition —

> the background to the bill and the infrastructure of the justice system that will sit behind the bill. I will not be able to do justice to the discussion by having some sort of sham consideration in detail based simply on my reading of the letter of the law as written in this bill.

That was a great confession by the Leader of the Opposition that, when it comes to his job as a parliamentarian, he recognises that he is incompetent. All he needed to do was discharge his duty as a parliamentarian and lawmaker. Sure, for the member for Cockburn, the member for Landsdale and I, no worries; but if the qualification for being a member of Parliament is that one has to be a lawyer, that is fine, but the member for North West Central —

Mr D.A.E. Scaife interjected.

Mr S.A. MILLMAN: Yes, truly! But his job is to come in here, represent his community and do the work. He had 12 weeks; he should have spoken to a lawyer. That was plenty of time for him to get an idea about what he wanted to do with that legislation and turn his mind to it. He needed to pay attention to what was being required of him. That was the contribution of the member for Moore.

Again, that was completely inconsistent with convention. For most bills it is customary for the minister to deliver the second reading speech and then other speakers from the government benches will make contributions. It is not often the case that we will see a minister speaking to another minister's bill; perhaps only if they held the portfolio previously or if they have a particularly pertinent matter to raise, but on this occasion the Leader of the House absolutely took the opposition apart for criticising the government for the way in which it had progressed that bill

and the fig leaf that the Leader of the Opposition had tried to place on the way in which the opposition had dealt with it.

Today in question time we saw how incredibly unfit the opposition is for government. Happily, it has apparently conceded the 2025 election. As the Deputy Premier; Treasurer said during question time, former Leader of the Opposition Zak Kirkup threw in the towel seven days before the 2021 election and told the world that he was confident that his side stood no chance of winning. That was such an extraordinary concession that it was not only reported in *The West Australian* and *The Sunday Times*, but also actually made *The Economist* in London! It reported that Mark McGowan was so popular that the opposition in a democracy had completely thrown in the towel. Today the member for Vasse—former Leader of the Liberal Party and shadow Minister for Health —

Dr D.J. Honey: Current Leader of the Liberal Party!

Mr S.A. MILLMAN: Sorry; I thought the member for Cottesloe was the current Leader of the Liberal Party! Sorry; he is the former leader. The member for Vasse stood up and conceded the 2025 election, and suggested that the government has some nefarious conspiratorial plan to open the new women's and babies' hospital moments before the 2029 election, when we will be seeking a historic fourth term! Clearly, that demonstrates absolute unfitness for office. The opposition is supposed to be the alternative responsible government, but it has not reached that level of maturity.

I am also reminded that we have an Attorney General who has done all the work I have recited to the chamber, but the opposition does not even have a shadow Attorney General. Its most pre-eminent lawyer in the Legislative Council has been bounced out of the shadow cabinet and the opposition is left with someone who does not know what he is talking about, so we do not have a shadow Attorney General. We are now in a situation in which the opposition's lack of qualification for office is a genuine risk to the community of Western Australia. Between now and the 2025 state election, I will be making sure that my community knows that if it wants responsible and sensible government, it will need to re-elect a Cook Labor government.

MR D.A.E. SCAIFE (Cockburn) [3.47 pm]: I rise to make a contribution to the second reading debate on the Statutes (Repeals and Minor Amendments) Bill 2021. It has somehow again fallen to the lawyers to carry the can on this one.

Mr P. Papalia: You could talk under wet cement!

Mr D.A.E. SCAIFE: I have often said that I can talk under water with a mouth full of marbles, Minister for Police, so pick your analogy!

It is hard to follow the member for Mount Lawley, and I will tread some of the same territory, but I want to start with the observation that this is an omnibus bill that will repeal and make modifications and amendments to a variety of acts. One of the key pieces of legislation that will be repealed by this bill is the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015—otherwise known as the Bell Group act. I am not sure whether the member for Mount Lawley went through the full history, but for those who are unaware, Bell Group was Alan Bond's empire of various companies and business interests that went into insolvency and left a variety of creditors chasing their money. Of course, one of those creditors was the Insurance Commission of Western Australia, but there were also creditors in the private sector—banks and the like—that sought to recover their interests and debts from Bell Group.

It is notorious for being such a long case. It is Western Australia's Jarndyce and Jarndyce. That is a case referred to by Charles Dickens in *Bleak House*. Famously in that novel, the case goes over a stretch of more than 50 years or something like that. It only ends not with a resolution for the parties, but once the lawyers' fees have eaten up the whole estate. That is Jarndyce and Jarndyce. The Bell Group litigation was Western Australia's Jarndyce and Jarndyce. It was litigation that went on for decades. It had 404 sitting days. That is over a year's worth of days that a court met and heard different parts of the case. Of course, the first instance judgement of Justice Owen on the case was 2 643 pages long. The first judgement in the case was more than 2 600 pages—so, an absolute tome. The reason it went on so long was the amount of money involved. It was $1.5 billion, but not just $1.5 billion but $1.5 billion being chased by so many different parties, all of whom were trying to get their sharp elbows in and get the biggest slice of the pie they possibly could.

For somewhat understandable reasons under the previous Barnett Liberal–National government, there was a desire to resolve the litigation. I can see why that was the case. It had gone on for such a terribly long time. As the member for Mount Lawley suggested, it had really only been successful in launching the careers of a couple of generations of lawyers. My generation was probably the last generation to get their snout in the trough of the Bell Group litigation. I never worked in that area of law, but I certainly have friends who did. It was what we would classically call a lawyers' picnic. As I would sometimes say to my clients when I was giving them advice, we have to be careful that the lawyers are not the only people who are happy at the end. That was really what was happening with the Bell litigation. I therefore see why the government at the time wanted to rule a line under it, but the reality is that

governments are subject to the law as much as anyone else. Even the power of Parliament is circumscribed. It is circumscribed in a variety of different ways, but most obviously the power of the state Parliament to make laws is circumscribed by the terms of the commonwealth Constitution. It is a foundational principle of the Federation that a state cannot make laws on a matter that is the domain of the commonwealth and be inconsistent with the laws of the commonwealth.

The Parliament and government can do many things, but there are limits to their powers. The state government and the state Parliament, in passing the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015, ran into one of those limits on its powers because the Bell Group basically tried to extinguish the litigation and carve up the assets that were left to the various creditors. Rather than waiting on a judgement of the court, the Parliament took over and said, "This is how much money is owing and this is how we're going to slice it up into the various bits and pieces. You get this piece, you get this piece, and you get this piece." The problem with that was that the Australian Taxation Office was one of the creditors that was seeking money from the Bell Group because the commonwealth government was owed tax revenue and had been chasing its money, so the commonwealth had a real interest in this litigation as well. The commonwealth looked at the Bell Group act and said, "I don't think you can do this because it's effectively overriding commonwealth taxation laws." The state Parliament was determining how much money the Australian Taxation Office and the various creditors would get. Rather than there being a strict application of the commonwealth taxation laws, in addition to other inconsistencies, it was unenforceable. That was the constitutional argument run by the liquidators and the commonwealth and, of course, it was run successfully. It was run so successfully that it was 7–0 in the High Court that ruled the Bell Group act to be unconstitutional and therefore invalid. It was quite extraordinary for a state government and a state Parliament to put through an act that was deemed 7–0 by the High Court to be unconstitutional. I also want to outline that they put through an act that was blatantly unconstitutional.

The member for Mount Lawley made the point that we are very fortunate to have an Attorney General who takes a very prudent approach to legislation. Our Attorney General has been in some pretty high-stakes battles, of course, most famously with Clive Palmer and Mineralogy over an arbitral award that Mineralogy and Clive Palmer were seeking to enforce. That case made its way to the High Court, but, of course, the state of Western Australia won that case under the leadership of the Attorney General and our excellent Solicitor-General. We won that case. We were successful in seeing off Clive Palmer. We were also successful in seeing off Clive Palmer in his constitutional challenge to our border controls. This Attorney General and this government have been in some pretty fierce constitutional battles in the High Court, but this government has prevailed. That can be contrasted with the efforts of the previous Barnett Liberal–National government, which spectacularly failed with the Bell Group act. It pushed forward and the Parliament passed a bill that was flagrantly unconstitutional. I want to underline that point by quoting from the decision of the High Court.

This is the decision of the High Court in Bell Group NV (in liquidation) v Western Australia [2016] HCA 21 delivered on 16 May 2016. In the joint judgement of six of the justices, they reached the following conclusion —

> Each special case may thus be answered by reference to the fact that the Bell Act creates a scheme under which Commonwealth tax debts are stripped of the characteristics ascribed to them by the Tax Acts as to their existence, their quantification, their enforceability and their recovery, with the result that the Bell Act purports to override the Commonwealth's accrued rights as a creditor of each of the WA Bell Companies and the rights of the Commissioner. The Bell Act thereby significantly alters, impairs or detracts from the rights and obligations created by a law of the Commonwealth and existing prior to the commencement of the Bell Act. That alteration or impairment of, or detraction from, the Tax Acts engages s 109 of the Constitution, which operates to render the offending provisions of the Bell Act invalid. The invalid provisions of the Bell Act are not severable from the rest of the Bell Act. The Bell Act is therefore invalid.
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> That being so, it is unnecessary to consider the other challenges to the validity of the Bell Act. There is no reason to depart from this Court's settled practice that it does not decide constitutional questions unless necessary for the decision.

In those concluding paragraphs 74 and 75, six of the justices made it clear that the Bell act overrode the commonwealth's taxation legislation and was inconsistent with it and was therefore unconstitutional and invalid.

I really want to quote from one of the justices, Justice Gageler, who will soon be our Chief Justice of the High Court. He issued a concurring opinion, but set out his own reasons. I want to read the final paragraph of Justice Gageler's judgement into *Hansard*. It is paragraph 98. He says as follows —

> The Commissioner concludes his written submissions with the observation that the basic problem here is that the drafter of the Bell Act either has forgotten the existence of the Tax Acts or has decided to proceed blithely in disregard of their existence. That, indeed, is the basic problem.

In lawyer speak, that is a dunking from Justice Gageler. He said that the people who drafted the Western Australian Bell Group act either had forgotten that the commonwealth taxation acts existed or did not care that they existed. Essentially, they were wilfully ignorant to their existence and just carried on regardless. They were wilfully ignorant to those laws and, therefore, proceeded with passing an act that was blatantly unconstitutional. It was deemed 7–0 in the High Court as being unconstitutional. It is actually extraordinary. There will always be constitutional battles over legislation. There have been many of those in relation to the implied freedom of political communication and there will be many more. That is because it is contested territory. There are big principles at stake and it is important that we have those fights. However, it is also important that when the limits of constitutionality are clear, the government and Parliament respect those limits. It is unfortunate that the previous Liberal–National government did not respect that and had to go all the way to the High Court for it to get a dunking by all seven justices, particularly Justice Gageler, for what was blatantly unconstitutional legislation. It is a very good thing that the Statutes (Repeals and Minor Amendments) Bill 2021 will do the work of repealing the Bell Group act. Arguably, the Bell Group act should never have been brought into existence. It was deemed invalid by the High Court not long after it was passed, so clearly there is no reason for it to be in force and on the statute book. It is entirely appropriate that the Parliament now act to strike the Bell Group act from the legislation that is in force and take it off the record, so I am happy to support this bill in doing so.

On the topic of repealed legislation, as members before me have noted, a variety of legislation that has been repealed or is being amended is included in this omnibus bill. It got me thinking about what other legislation has been repealed over the years, similar to what we are doing with this bill. I went looking for acts that are no longer in force in Western Australia. I also had a look at acts that are no longer in force in the commonwealth.

I found the Whaling Industry Act Repeal Act 1956. This is a commonwealth act that repealed the Whaling Industry Act 1949, the commonwealth act that set up and regulated the whaling industry at a commonwealth level. As we are doing in this bill, the act was repealed by the Whaling Industry Act Repeal Act 1956. I raise that because based on recent commentary by Hon Louise Kingston, the new Nationals WA member in the Legislative Council, we may soon be having a debate in this Parliament about the need for a whaling bill and a whaling repeal bill. It is troubling that we now have a member of the Legislative Council who is openly advocating for whaling. We may one day have to deal with a Liberal–National government that has brought in a whaling act to re-establish a whaling industry in Western Australia, and it will then fall to a future Labor government to do the responsible thing and repeal a whaling act in the future. Of all the issues I thought I would come across in my years in Parliament, I was not expecting a pro-whaling position to be one of them. Someone commented to me that Hon Louise Kingston is also pro-nuclear. I personally am antinuclear. I think that pro-nuclear is by and large a fairly fringe policy position in Australian politics, but I have to say that a pro-whaling position makes pro-nuclear look absolutely mainstream. I do not think I have ever come across anyone who has had a pro-whaling position. I was shocked—flabbergasted—by it. I refer to an article titled "New Nationals state MP Louise Kingston tells Parliament the 1978 end of Albany whaling was based on a 'lie'", published yesterday, 18 October 2023.

[Member's time extended.]

Mr D.A.E. SCAIFE: I thought it was strange that when Hon Louise Kingston was asked by *The West Australian* whether she stood by her comments on whaling, she doubled down on them. The article states —

> Asked if she believed the Albany industry should never have ended, Ms Kingston initially replied "absolutely" …

That is bizarre.

Mr J.N. Carey: Of all the issues you can raise in your maiden speech, you raise that!

Mr D.A.E. SCAIFE: It is quite extraordinary.

Ms M. Beard interjected.

Mr D.A.E. SCAIFE: I will get to that, member for North West Central. I take that interjection because there is actually no parallel between the end of the whaling industry in Albany and the end of the logging industry. I will explain why. It is because the whaling industry closed under the voluntary commercial decision of the employer that did the wrong thing by its employees and gave them only six weeks' notice. That is the truth. It had nothing to do with government intervention. That is the disingenuous part of the analogy that was being drawn by Hon Louise Kingston.

Going to the minister's interjection, we have seen a lot about the federal Liberal and National Parties saying that we should focus on cost-of-living issues. I think that, as a state government, we are doing that. We are providing electricity credits and trying to drive up housing supply and, therefore, make housing affordable for people. We are trying to give that relief to people in rentals. I think we are squarely on focus with that. Forgive me for saying this, Acting Speaker, but it seems to me that Hon Louise Kingston and the Liberal and National Parties are focused only on bread and blubber issues.

Mr J.N. Carey: Oh, no—it's pun season!

The ACTING SPEAKER: I resisted using that pun, member. That is how bad it is.

Mr D.A. Templeman: You've just harpooned the argument!

Mr D.A.E. SCAIFE: I am having a whale of a time, Leader of the House.

The government is focused on bread and butter issues. Clearly, the Liberal–National opposition is focused on bread and blubber issues, and it does a lot of blubbering in this chamber, that is for sure.

I will refer to a strange thing that Ms Kingston said to *The West Australian*. She referred to the closing of industries such as the whaling industry as "the cute furry animal syndrome". I thought that was really odd.

Point of Order

Mr R.S. LOVE: Perhaps the member could be brought back to the discussion. I know it is a second reading debate, but this seems to be a very wideranging discussion about another member of Parliament who is not in this house.

The ACTING SPEAKER (Ms M.M. Quirk): Member, it was linked to the repeal of whaling legislation and this is a statutory repeal bill, so members are able to range quite widely. However, maybe you should move on, member for Cockburn.

Debate Resumed

Mr D.A.E. SCAIFE: Thank you, Acting Speaker; I will move on very shortly. If the Leader of the Opposition had been in here, he would know that I spoke about the Whaling Industry Act Repeal Act at the outset, but he missed that. I will conclude in relation to the cute and furry animals reference. I show the chamber an A3 photo of a sperm whale. I do not know whether many people have seen a sperm whale, but it cannot be described as cute or furry; I think that is fairly clear.

Mr J.N. Carey: It might have some chest hair!

Mr D.A.E. SCAIFE: Maybe some barnacles, but I do not think fur. I have done a second version for Hon Louise Kingston and have put some fur on the sperm whale. I have given it a nice smile.

Point of Order

Mr R.S. LOVE: Come on! The member was asked to move along and instead of that, he is now explaining props and showing mocked-up pictures. I think this is becoming extraordinarily far from the topic of the repeal of any legislation and I ask that he be brought back to the bill.

The ACTING SPEAKER (Ms M.M. Quirk): I am not going to rule on that point of order; there is not one. Member, entertaining though it is, some members—I suspect the Leader of the Opposition might be one of them—would prefer that you moved it along a bit.

Debate Resumed

Mr D.A.E. SCAIFE: Thank you, Acting Speaker; I absolutely take your guidance and I will put away my prop of the furry sperm whale! I tried to make it look cute, but, really, it just looks a bit terrifying. I am obliged to you, Acting Speaker, for not upholding the point of order, but I will say that I lean towards agreeing with the Leader of the Opposition that I have strayed a little far from the bill at this point. I think Hon Louise Kingston strayed a bit far from the issues that matter to the people of Western Australia and a bit far from mainstream political views.

The ACTING SPEAKER: Nicely brought together.

Mr D.A.E. SCAIFE: I say that in conclusion on that topic.

In wrapping up, I want to pause and speak on the particular—what is the word?—elements of an omnibus bill such as this one. Omnibus bills are often used in other countries that have different precedents and traditions. The United States of America uses omnibus bills to cover all sorts of things and to tie them together. They are used to tie together issues of great policy significance. There might be in the one funding omnibus bill issues to do with how the US Defence Force expends its budget and a provision about access to abortion, and they get cobbled together by lawmakers in this horsetrading kind of way. In my view, it leads to a very poor way of creating legislation because it leads to trade-offs between various interest groups that have nothing to do with one another.

One of the important protections that we put around omnibus bills in Western Australia is that we do not allow them to be used to make changes of policy significance. An omnibus bill cannot be used to effect rights and liabilities or to effect substantive expectations or legal frameworks that are built around particular policy areas. That is, as I say, an important protection. Instead, in this Parliament, all we can use omnibus bills for is to repeal acts that are uncontroversial, such as the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act, which is an uncontroversial piece of legislation to be repealed because it was deemed by the High Court seven years ago to be invalid and unconstitutional. That is a fair issue to be included in the omnibus bill.

Various acts will also be repealed by this bill. There are some acts that deal with railways, and there is the Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998. Obviously, FESA no longer exists as a government authority after the creation of the Department of Fire and Emergency Services, so that legislation has no work left to do and it is appropriate and uncontroversial that it should be repealed.

As I referred to, there is legislation in relation to railways. There is the Morawa–Koolanooka Hills Railway Act 1964—how do I say Koolanooka, member for Moore?

Mr R.S. Love: Koolanooka.

Mr D.A.E. SCAIFE: The Morawa–Koolanooka Hills Railway Act 1964 provided for the construction of a railway from Morawa to Koolanooka Hills pursuant to an agreement between the state and Western Mining Corporation Ltd. WMC was a significant player in the Western Australian mining industry for many years. Under that agreement act, there was a requirement for a railway to be built to facilitate the mining by Western Mining Corporation, but the Koolanooka mine is no longer operational and the railway no longer exists. For obvious reasons, that is another act that no longer has a purpose and is appropriately being repealed by this bill.

Another act in relation to railways is the Railway Standardisation Agreement Act 1961. It is being repealed because we were provided funding for the construction of the Kalgoorlie–Perth standard-gauge railway under the commonwealth Railway Agreement (Western Australia) Act 1961 and a corresponding Western Australian act. It provided for the repayment of the loan provided by the commonwealth for the construction of that standard-gauge railway in instalments up until 2041, but the commonwealth and the state agreed to an early repayment of the outstanding balance of the loan and that occurred on 30 June 2014. The loan that existed under the Railway Standardisation Agreement Act 1961 has already been repaid; it has been concluded between the commonwealth and the state of Western Australia, so there is no reason to have that legislation on the book any longer.

There is also the Water Services Legislation Amendment and Repeal Act 2012. That act amended the Water Corporation Act 1995 and repealed the Water Boards Act 1904 and other legislation made redundant as a consequence of the enactment of the Water Services Act 2012. All the provisions of the Water Services Legislation Amendment and Repeal Act 2012 have now taken effect. That means that that act is now effectively obsolete, so we can safely repeal the legislation.

I give those examples of the type of legislation that is uncontroversial and has become obsolete either because it has been deemed unconstitutional by the High Court, because the railway that it applies to no longer exists or because the loan has been repaid. Those are all examples of acts that should be repealed and there is no real contention between the different parties in Parliament about that.

One of the other protections that we put around omnibus bills like this is their referral to a committee of the upper house, which the member for Mount Lawley referred to earlier. That committee has been through a quite detailed examination of the various provisions of this bill. It has been considered in at least two, if not three, committee reports, because this bill has essentially been updated over the years. The bill has been germinating since about 2012, so we have collected a number of pieces of legislation that need to be repealed or modified. I make the point that not only do we use omnibus bills appropriately—we are not using them to bring together a range of unrelated or contentious issues—but also we have in place the safeguard of the committee of the upper house. The Standing Committee on Uniform Legislation and Statutes Review has scrutinised various iterations of this bill over the years to make sure that the content of the bill is appropriate and within the bounds of acceptability in our traditional use of omnibus bills.

I think it is a very good bill. Maybe there will be a need to update it again at some point, because new issues always crop up that we need to address. However, we are in the very safe hands of the Attorney General and I am sure that he will update us if there is a need to do that in the future. It is a good omnibus bill. It is an appropriate bill. It covers appropriate topics. It deals with the Bell Group act, railway acts and water services acts and I commend it to the house.

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