

PROCUREMENT BILL 2020

Second Reading

Resumed from an earlier stage of the sitting.

HON DIANE EVERS (South West) [5.09 pm]: I am getting close to the end of my contribution on this bill. Earlier, I referred to the 2019 report by the Public Accounts Committee in the other place, entitled “Knowing What Good Looks Like: Challenges in Managing Major Public Sector Contracts”. The report stated that we should make sure that we look for not just financial value for money, but also social value for money. Procurement, whether in the form of acquiring or disposing of things, can also, of course, have good or bad environmental outcomes. Clause 3 captures environmental value as well. As I have already mentioned, greenhouse gas emissions from the State Fleet vehicles end-of-life-cycle waste is another environmental issue with procurement. It can be far better value, environmentally and often economically, to buy a more expensive product with a long life cycle than to buy a cheap product with a short life cycle. Clause 4 of the bill confirms that the term “procurement” provides for disposing of goods or works, not just acquiring them. As we continue in humanity with the amount of waste we create, we will need to consider much more strongly where that waste goes and how it can get more into the circular economy. Procurement can have an effect on that if we actively favour procuring items that produce less waste.

This bill is consistent with the outcome of the review; it is broadly consistent with the outcome; and it will deliver a single act to address the problems of fragmentation and inconsistency. It will deliver on enshrined objects and the Greens are pleased to see “value for money” defined by reference to a triple bottom line. It will also provide for functional leadership by the Department of Finance but with agencies retaining autonomy in their purchasing. It also has scope for standards, policy and practice to apply right across government through the procurement directions. It also has scope for coordinated procurement and leveraging, which can lead to considerable benefits but it also has to be monitored to make sure it is not detrimental to those small businesses. Compliance monitoring with consequences for noncompliance by state agencies or suppliers is also covered by this bill and I look forward to seeing the debarring regime. The bill also provides for collection and use of procurement information by the CEO to allow for the ongoing identification of weaknesses in procurement practice or expertise and opportunities—for example, for aggregated buying. The bill provides plenty of opportunity to manage procurement much better than has occurred in the past. Importantly, this bill contains a review clause to check that it is working. I really appreciate that; it saves me trying to get one into the bill. The Greens have concerns about a couple of aspects of this bill, which I indicated, but they will come up in the Committee of the Whole House. For the most part, we support the passage of this bill.

HON SIMON O'BRIEN (South Metropolitan) [5.12 pm]: I listened with great interest to previous speakers and noted the comments of Hon Dr Steve Thomas, the opposition spokesman on the Procurement Bill 2020. I associate myself closely with all the observations he made. If members would like me to repeat all of that, I can but if members prefer, I might add some other material to the debate that might be of some greater use than if I were to go over old ground. I will therefore leave my observations about some things firmly to one side and offer the following as some constructive advice to those, firstly, with the management of this bill and, secondly, to other observers, including sundry officers from the Department of Finance.

I have had a bit to do with the Department of Finance. I set up the department when I became the Minister for Finance in December 2010. I think the department formally commenced on 1 July 2011, not that it particularly matters, but I think that was the date. I am very proud of that department and how it was set up. I think those who populate it and discharge its various onerous responsibilities should be proud of it, as well. Indeed, I imagine they probably celebrate the anniversary with a day off or a bonus payment or something every year. If it is not on 1 July, maybe it is on my birthday. But whatever they do, they do a good job, and it is a valuable part of business.

For members who are not immediately familiar with it, the Department of Finance has what I would call a number of silos attached to it. Those silos are interrelated in many ways, but they also have some distinct functions. I was particularly proud of the Building Management and Works division and the way that it went about its work not only on behalf of the Department of Finance, but also for the whole of government and all the various agencies that make up government. Prior to the days that I am alluding to, members may recall that it was not uncommon to have cost overruns on government building projects. In fact, commentators and newspapers and others may have had a button to press for “there have been cost overruns” or “the costs have blown out” and other expressions that were used. The idea of Building Management and Works consolidating the wider affairs of government in building programs—I am talking specifically about non-residential government buildings—was very, very successful. One thing that I was always proud to take to cabinet was a quarterly report that I used to take in just to keep cabinet aware of where we were at with a whole range of building projects in train, illustrated by a traffic light system of green for going well, amber for one to watch that was a bit dicey, and red for having gone off the rails. I am very pleased to report that it was by and large a sea of green, with the odd bit of yellow here and there for circumstances that were beyond our control. I will not try to quote the figures that I am alluding to for fear of

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inaccuracy—it does not really matter—but to give members a flavour of it, there had been a time in recent history when cost overruns had been very, very significant indeed, expressed as a percentage term. We had them down to basically a fluctuation of about one or two per cent; in fact, many projects were coming in below the estimates that had been provided by government. How did that happen? Being a government department, it actually had a term for it. It was called “strategic asset management”. It is now a standard part of whole-of-life management for buildings. It worked very well and it continues to work very well.

That is not the subject of this bill, but it is an important comparison to draw, because it is an example of how we can do things well by centralising certain aspects of control. Just think about it: who is used to putting out contracts to get government buildings done? Building Management and Works, as it was then called. I do not know what it is called now, but I imagine it is much the same. That department is the expert. It is the repository of experience as well as expertise, so it could be relied upon to do it. But if we contemplate some other government agency that gets the chance to build a new headquarters once in a hundred years or so, we soon find out that that agency does not know what it is doing. That is when we get all the aspects that come into play that lead to cost blowouts and it is when we get a shift in the specs for the new building as the process proceeds. We can recall a few mismanaged projects over the years. Perth Arena was one mismanaged project in which it was started either with or without an underground carpark. Then they put it in or took it out, and then put it back in or back out again. I think, ultimately, the place has been built with some underground parking, but those are the sorts of things that lead to massive cost blowouts. One could almost predict what was going to happen in days gone by, and this is not alluding to anyone in particular, but let us say there is a department that has nothing to do with building management—a forestry, environment or health department. It is not that department’s key business to have a pool of expertise to build a new headquarters, and if it did it would say, “Right, well, we’ve got to futureproof this and we’ve got to make allowance for these newfangled computer cables and all of that sort of thing.” It would then go through the process—perhaps building might have already commenced or at least a contract entered into, and then someone would have a great idea and they would say, “Oh, we need a new such and such incorporated in this building.” They would have variations to contracts and so on, changes in scope, and we know the result—we would end up with cost overruns, and no wonder!

After I had left cabinet, I remember wincing when they were talking about the Perth Children’s Hospital—a remarkable infrastructure that will serve our community very well for a very, very long time just as its predecessor did, just as so many of our institutions have been doing and particularly so during the recent pandemic emergency. One thing we do not do is we do not get doctors or other health professionals to design buildings—they need to be put firmly to one side. When I heard, as I did, people coming out—including some people in the then opposition—and saying, “No, this massive hospital is not big enough. You need to put another storey on it. That is what you need. You just whack another storey on it. It’s a big structure there. You can whack another storey on top of it and that’ll add—I don’t know—how many dozen extra beds. It’s only about space, of course. There’s no other considerations!” Of course there are lots of considerations. The figures being bandied around for this were \$100 million. That sounds like one heck of a rounded figure to me, plucked out of midair, but \$100 million is probably a true indicative cost of what it might have been if the government had entertained that prospect. I was sincerely hoping the government would not go down that path because we know where it would end.

I hasten to add that at that time the Department of Finance’s Building Management and Works division was not managing that process and that project; it was still with Treasury for some reason. Finance and Building Management and Works had nothing to do with this—more’s the pity! Perhaps a few other issues might have been forestalled if BMW had been looking after it, such is the respect that I have for that organisation and its officers. However, we know what happened there, and the good thing that happened there was that they did not muck around with the specs, with the scope of work, and say, “Oh, just throw an extra storey on Perth Children’s Hospital. It’s only \$100 million. What’s a kid’s life worth?” It is actually more about the convenience of doctors and specialists when we are talking about this, and it would have been a very big mistake. What would my response have been at the time to the proponents of that absurd suggestion? “Mate, I can build you a brand-new hospital, many times the size of this addition you want to put on, for \$100 million and still have change.” That is a pretty good answer. It is the response that needs to be given to overenthusiastic departmental people when they decide to change a scope of work in their new headquarters or whatever other project they are working on. There is an example of how centralised expertise can work. When we were building our schools, prisons and umpteen other projects, all going on at once—I am talking about having maybe 53 major building projects all going on at once, apart from a whole lot of little ones beside—yes, it worked well. It continues to work well. That is because of that strategic asset management element, overseen by a centralised system, and the overall approach of how we develop government buildings. With my reference to the Perth Children’s Hospital near-disaster and cost blowouts that might have ensued, we also see the problems that can occur when that sort of discipline is not attached to what we are doing. That is a whole lot of information about important matters that I hope are of interest to members but they do not have a heck of a lot to do with this bill, or do they? I suggest to members that there is an exact parallel with the policy of this bill and what has been spoken of.

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That does not mean that I am 100 per cent in favour of what has been proposed. The purpose of my making a second reading contribution now is to give some advice to government, whether or not it wants it, to help educate members of this house, whether or not they want to be educated, and hopefully provide some thought-provoking elements to officers and others from the director general down who are contemplating the debate and the progress of this bill through the house.

With those positive sentiments very much in mind, I would like to offer the following observations. I turn to the objects of the bill, which are set out in clause 3. I will not read them out; members can do that for themselves. The bill speaks for itself. They are fine words about promoting best value for money in government, reducing barriers to participation of small and medium businesses, strengthening integrity in procurement, coordinated this, leadership and devolved accountability that, and a whole lot of other things. They are fine words. I caution the government in these terms: we have all seen fine words contained in the objects of acts before. As a Parliament, we want to make sure that those sentiments are converted into reality. That is why we have to make sure that the legislative machinery is fit for purpose. I have some worries about this approach at the moment. When I took over as Minister for Finance—we had not had one for a number of years—the first thing I took to cabinet was a proposal to wind up the Office of Shared Services, which was proceeded with. If members go back through the history of the Office of Shared Services, they will find that at its genesis, a whole range of fine words were written and there were great aspirations, probably not that dissimilar to those found in clause 3 of this bill. It was all about efficiencies, oversight, value for money and all the rest of it. It was not; it was a waste of hundreds of millions of dollars conceived in good faith, executed with great energy and promoted with great zeal, but ultimately it did not work. I am not going to digress to explain all the ways that it did not work, but I see some very strong parallels with the Office of Shared Services, which was a failed experiment. If anyone wants to know why I say that, they can ask me on another occasion, but I certainly said it at the time.

Hon Alison Xamon: Because it was.

Hon SIMON O'BRIEN: Because it was, yes.

To come back to a positive commentary, we want to make sure that this program succeeds. It was conceived in good faith, intended to do good things, and was promoted—as one would hope—with the professional zeal we have come to expect from the agency that will be charged with administering it, but we do not want it to fall victim to some of the problems that we saw with the Office of Shared Services.

I do not want to see this proposal create another layer of red tape and bureaucracy when it purports to be getting rid of layers of red tape and bureaucracy. I do not want to see that dead hand cast over this new organisation. A new organisation is contemplated here, which I think will take the form of a new division of the Department of Finance, called the procurement executive body. I am sure that the minister will correct me if I have misapprehended this. The provisions in the legislation indicate that, to some extent, it will be a semi-standalone outfit. It will be a bit like a Commissioner of State Revenue within the Department of Finance; they are part of the department and part of the ministerial portfolio, but a little bit separate in accountability.

That raises a number of questions. Are we getting rid of unnecessary bureaucracy or are we growing it? How many staff will be required to run the regime contemplated by this bill? How many more positions than those that currently exist will be required to undertake all the functions that are contemplated here? I would also like to know, and I think the house would be interested as well, whether staff will be taken from existing agencies and moved to this new division of the Department of Finance. Will procurement staff from some of the various agencies like the North Metropolitan Health Service or wherever be taken and put into the Department of Finance? That is important to know. The minister cannot respond by interjection to such a complex question but it is something that we need to know. I have seen it happen before and it does not work. I will give members a couple of examples.

Before I was a Minister for Finance, I was a Minister for Transport. At that stage, I did not have a Department of Transport; I had to set one up as well. It involved putting together the Public Transport Authority, Main Roads, the transport divisions, and the former Department for Planning and Infrastructure. It was called the Department for Planning and Infrastructure because if it had been called the department of planning and infrastructure, it would have had the acronym DOPI. No matter how appropriate the then government might have thought that was, it was not a good idea to combine those several functions. That is why we separated it and re-created a dedicated Department of Transport. I remember the gratitude of the director general of the Department for Planning and Infrastructure, the late Eric Lumsden, who we all regarded with great affection—in fact, I knew him well in a number of capacities. Honestly, it was quite heartwarming the gratitude he had for me in taking all the transport stuff off him so he could get on with his beloved planning and not be distracted by all these taxis and other things. He bought me a great present in the form of a map as a parting gift from what was to become the Department of Planning. It was a map of my electorate. It has pride of place in my office, together with his good wishes.

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One of the things that I discovered when I had to re-establish the Department of Transport was that the former experiment of “Let’s put all our planning agency eggs in one basket and call it DPI”, meant that in effect the transport sector became the loser. Its specialist transport planners had been removed, basically, from the places that they should have occupied and in the course of so doing, that expertise had become diluted, and so it was not readily replaced. I do not know whether there are still problems in that area but I do know that the renewed Department of Transport was left a poor relative as a result of Planning trying to take so much over. But we started a process to correct that and I hope it has proceeded well in the intervening decade.

That was a negative. I have a second and more spectacular example of where this can go wrong, and that is going back to the Office of Shared Services. To form the Office of Shared Services, people were taken out of all sorts of departments. Those people were what we used to call “personnel” or “human resources management”, or whatever term that that department or agency was using at the time, and co-located them in the old tax office out in Cannington where they could all be miserable together! They did not meet the needs of the very staff—the thousands and thousands of our employees, our officers—who they were meant to serve. When we had Alison, say, from personnel, it was a simple phone call or a walk down the passage to say, “I think I’ve got a problem with my payslip this week.” Try dealing with some megastructure that is all concentrated together and tied up in red tape out in Cannington! Clearly, there was not that level of service. I went out there to observe what was going on and I felt sorry for all of them out there. In many ways, what they were doing was not achieving the efficiencies that had been promoted. In many ways, all they had done was reduce to a lowest denominator of practice what had been all of these separate human resources management areas that, on their own, had been doing a perfectly good job. They were not responsive. If pays were delayed, they would try to get them fixed up. Staff at the Office of Shared Services were manually doing things that other government services had computerised decades ago. When we got rid of the Office of Shared Services, I wanted to make sure that those staff were looked after, incidentally, with a range of options, including redundancy for those who elected it, or in many cases, repatriation. The redundancy option was very heavily subscribed because they had had enough. Happily, though, many people wanted to return to their parent organisation and were greatly relieved to do so.

What has that got to do with all these efficiencies, the objects of the act, accountability and all that sort of thing? Let us never forget that we are in the people business. That is something that we forget at our peril as we pursue what is sometimes illusory and turns out to be false economies. I want to make sure that we are not doing that with this particular proposal, because I can see a lot of parallels between the Office of Shared Services and what is provided for in this bill. If this bill is implemented well, I think we can get the benefits that are laid out in those fine words in the objectives, but I want to make sure of that, so I am warning the government to please not make the mistakes that will lead to this becoming another Office of Shared Services; do not stuff it up. There is a great risk of that happening. Take heed of my words about stripping expertise out of agencies but not using it in the way that is intended by the authors of this bill. The government will not achieve the outcomes that it purports to achieve by just centralising everything.

Where are the danger points? Firstly, in a state the size of Western Australia, which, as the previous speaker observed, has a relatively small marketplace for its size and a budget that many might say is quite substantial when expressed in per capita terms, centralisation is not necessarily the answer. How many times have we had debates in this place about the need for decentralisation? Decentralisation of population, decentralisation of resources, decentralisation of expertise and decentralisation of decision-making is all one way, but from what I can see, this bill proposes to suck it all back the other way. If it is done rightly, the government might get away with it, but I think members can understand my fears. We can look at a number of examples in relation to this. I am presently chairing a select committee looking at local government. We will report in due course on a whole number of things, but we have already had 276 submissions, most of which are on the Parliament website so that people can read them. One of the ongoing concerns is related to procurement, tendering, the processes of procurement and how they are now being reviewed by the Auditor General, and the realities of the lack of suppliers in a number of regional areas. We can talk the talk all we like, but when it comes to walking the walk in this state, it can be rather more difficult. The minister might be kind enough to flesh this out a bit for us in other stages, but I do not know what is proposed for restrictions placed on people and departments to go for a panel of approved service or goods suppliers. That does not help the little guys that I fear will not get themselves onto the lists that agencies will be required to have recourse to when they are going to obtain the things that they need. Maybe there is a simple answer to that. I suspect there is not. I think there has been an overenthusiasm to centralise not only policy, but also practice. I do not see how this is going to work in a way that promotes local suppliers in suburban, let alone regional, centres because every time we centralise, the big entities and even the multinationals that have the capacity to put in to be suppliers end up getting themselves on panels and ultimately get all the good government work. Members will have seen plenty of examples of that in their own experience.

I had to fight tooth and nail to get Main Roads to stop putting bundled up programs of \$600 million out to tender as job lots so that locals could get a look-in. We have some very substantial road construction firms here that are

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unable to compete for that sort of mega-project package. I had to fight tooth and nail to get Main Roads to put aside about \$20 million a year for \$1 million projects, \$2 million projects and \$500 000 projects, so that local firms could use them as bread and butter rather than trying to compete against the big guys for a \$200 million package that they could not seriously tender for. I was only the minister! If I had to go through a process of drawing teeth to achieve that, what hope do the little guys have?

We will see all sorts of government claims that it is trying to look after Western Australians and give everybody a fair go, so I would appreciate some reassurance about how it is going to do that, because I do not know that the guarantees are in place. We now have the second reading debate on this bill and we will later move into Committee of the Whole. Now is the time for Parliament to contemplate all those matters. I am hopeful that through my observations, offered in good faith, I will cause the government to think about some of these matters and make sure it has its bearings right so that some future government will not have to come in and dismantle a failed experiment, as we have had to do in the past at a very great cost. That would not be an outcome that anyone would like to see.

With those comments, I again restate my confidence in the Department of Finance as the head agency for this project. If any department can make it work, I suspect it can. It has had the experience of having to disassemble the Office of Shared Services and it also has a good record of achieving many of the aims alluded to in clause 3 of the Procurement Bill 2020. I join with my colleagues in the opposition in supporting the second reading of this bill, but I do so in those cautionary terms that I hope are taken on board in the good faith with which they have been offered.

HON ALISON XAMON (North Metropolitan) [5.48 pm]: Thank you, Mr Deputy President.

The ACTING PRESIDENT (Hon Dr Steve Thomas): Acting President. I keep getting promoted tonight; I am doing very well!

Hon ALISON XAMON: You are!

I rise to make a few comments on the Procurement Bill 2020. My colleague Hon Diane Evers, as the lead speaker, has comprehensively outlined the Greens' response to this bill, but I am moved to also make a few comments, particularly arising from the work that I have been involved in for the past two and a half years on the Joint Standing Committee on the Corruption and Crime Commission. The committee undertook a self-initiated inquiry that resulted in the report, "Red Flags...Red Faces: Corruption Risk in Public Procurement in Western Australia". That report is quite pertinent to the bill that is before us today. Of course, the timing is interesting. The bill came to this place for debate and potential passage around about the same time that the committee finally tabled its report. What a lost opportunity it has been to ensure that we had a final bill that could have taken full advantage of the recommendations that came out of the particular inquiry that I was involved with that would have been quite pertinent and value-added quite considerably.

As stated in the report itself, public procurement, by its nature, is vulnerable to corrupt practice. In recent times, plenty of examples of corruption of Western Australia's public sector procurement processes have been exposed. I particularly want to thank those brave whistleblowers who came forward in those instances and ensured that those investigations have been undertaken. I particularly draw members' attention to recommendation 2 of the report, which states —

Corruption prevention and detection should be a core aim of the new procurement framework, rather than being an issue addressed *ad hoc* ...

It is that lost opportunity that I want to make some comments on, because I would have preferred a final procurement bill that perhaps more comprehensively and centrally addressed issues around corruption prevention. I recognise that a range of provisions in the bill reflect even in a cursory manner some of the recommendations that came out of the inquiry, but by no means would I suggest that it is as comprehensive as what I think the committee envisaged would be rolled out had the bill fully encompassed corruption prevention measures.

One of the committee's findings—I think it has been reflected, to a point, within the legislation in front of us today—is that far too often we have complex and inconsistent processes across government procurement. Particular areas of corruption and misconduct have been identified around procurement, particularly around issues of fraud, conflicts of interest and gifts and benefits. Unfortunately—this evidence has come out time and again—it is very difficult to measure the full extent of corruption because its very nature is covert. Even the most recent high-profile corruption cases that have emerged around procurement have resulted from whistleblower activity. It is not being systemically picked up through our forensic audit processes and not because the Corruption and Crime Commission is initiating its own inquiries and uncovering corruption in public sector procurement. The inquiry also found that often a great deal of incompetence and inexperience is exhibited within that procurement process. The particular risk with that, of course, is that it can hide corrupt behaviour. Noting that the procurement framework in WA is fragmented, as well as being complex, inconsistent and difficult to navigate, I recognise that a more consistent framework across the state is a step in the right direction.

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I listened very carefully to previous speakers' comments about the risks of wholesale centralisation for the sake of it, and I think there are some intelligent learnings to be taken from that comment. We can look at making sure that we have a more consistent statewide framework without necessarily going down the centralisation path. My colleague Hon Diane Evers spoke at length about the value of ensuring that there is capacity for localised expertise in procurement matters, noting her great, ongoing passion for ensuring that regional Western Australia receives the best possible deals and that procurement processes are best able to provide ongoing benefits for local communities. We need to achieve a balance between ensuring that we have consistency across the state and can minimise the capacity for fragmented processes to increase the risks of procurement, but not centralise procurement to the point at which we effectively lose the capacity for informed and localised decision-making. I recognise that this is a challenge. This bill tries to at least deal with the fragmentation. The five-year review is obviously welcome. The Greens are always happy to see review processes engrained within the statute. Hopefully, that will help shed some light on how successful that is likely to be.

I note also that we have not been able to enshrine within statute many of the provisions in this report. Those provisions would have greatly enhanced the legislation.

I note the requirement for quality training across government. That is an area in which we do not do well. We need to provide training around how to do procurement properly. The report also goes into quite a lot of detail about the red flags that people who are engaged in procurement processes need to be aware of when it comes to corruption risks. The committee found that we need a dramatically different way of approaching the delivery of training around these areas within our public sector. I want to bring to the attention of the house one recommendation that this procurement bill has effectively jumped over. That is recommendation 3, which states —

The Department of Finance, as part of the procurement reform program, should assess public procurement processes in Western Australia against the principles of the Open Contracting Data Standard. Where procurement processes fall short of compliance with those principles, increased compliance (where practicable) should be addressed as a matter of priority. The Minister should report to the Parliament on where compliance could be increased in its response to this report or within six months of the date of tabling of this report.

We are yet to receive the government's formal response to the recommendations and findings within this report. I hope we will receive that soon. I note that the bill does not encapsulate the full scope of those recommendations. As I have said, that is a bit of a lost opportunity. The debarment regime is an interesting recommendation that should have been encapsulated. The Greens have indicated our concern about leaving such an important regime to be set through regulations. As my colleague Hon Diane Evers has said, the Greens would have preferred that regime to be enshrined within the statute. Nevertheless, the policy of the debarment regime is consistent with a number of the recommendations in the report, particularly finding 31, which states —

It is important that private industry is well informed of its obligations when dealing with the public sector. A greater emphasis and focus should be placed on educating contractors and tenderers on engaging in procurement transactions with the utmost integrity. The Committee will maintain a watching brief on the roll-out of the Ethical Procurement Framework by the Department of Finance.

It will be interesting to see how that debarment regime is enacted in practice. It is important that the government sends a clear message to contractors and to those from whom they procure a range of goods and services that it expects the highest possible standards of integrity, and that wrongdoing will not be tolerated. That will be an interesting regime to look at.

The report highlights that agencies generally have limited capacity to carry out audits and investigations, and that it is essential that audit committees and investigative branches within agencies are resourced adequately. The bill seeks to provide a more robust audit and investigation function to identify people who may engage in procurement corruption. We need to ensure that is appropriately resourced so that those provisions can be enacted appropriately.

A number of other areas of procurement need urgent reform in order to minimise corruption risks. We need to constantly ensure that conflicts of interest are managed appropriately. That is an ongoing challenge in a state as small in population as Western Australia.

Sitting suspended from 6.00 to 7.30 pm

Hon ALISON XAMON: I have a few more remarks. In summary, before we were interrupted for the dinner break, I said that the Greens support the Procurement Bill 2020 and mentioned that my colleague Hon Diane Evers had comprehensively outlined the Greens' response to the bill. For the last two and a half years I have been a member of the parliamentary committee inquiring into corruption risks in public procurement in Western Australia, and it is disappointing that this has not been seen as an opportunity to ensure that a lot of the learnings from that inquiry—we still await the government's response because the report was tabled only recently—instructed a better bill. What a lost opportunity that is.

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Before the dinner break, I was commenting on concerns around how we manage broader issues of conflict of interest in public sector procurement. In a state with a population as small as that of Western Australia, unfortunately, it can be very difficult to manage issues of conflict of interest because we have a limited supplier base. That makes it particularly difficult to manage conflicts of interest, particularly in smaller communities, and we need to find ways to effectively do that. There have been quite a lot of concerns about how that has been mishandled, particularly around local government issues.

It is not within the scope of the bill in front of us, but I want to put on the record that I think we have a long way to go in supporting whistleblowers within the public sector around issues of public sector procurement and corruption risks. The committee found that the public interest disclosure avenue of reporting is not being utilised as well as we would hope. Unfortunately, the committee received evidence that there is still significant disquiet amongst people about coming forward because of their concerns about not being adequately protected, and, at worst, they feel as though they will end up experiencing adverse consequences for coming forward. As I said, it is particularly concerning when we look at some of the more recent high-profile public sector procurement corruption matters that have come to the fore. They have, effectively, come about because of the bravery of whistleblowers. That is concerning, and I am hoping that we will see additional improvement in that area. The laws were reformed not that long ago, yet we apparently do not quite have that right.

Finally, I want to draw members' attention to finding 60, which states —

The Committee has identified a need for system-wide implementation of a procurement framework that prioritises corruption prevention and detection. Procurement frameworks across Australian jurisdictions generally place more emphasis on value for money (with some thought on anti-corruption as an additional consideration).

Unfortunately, when it comes to dealing with corruption as a primary consideration, I do not believe that the Procurement Bill 2020 has hit the mark. It is an area that I think we will need to do a lot more work on. Hopefully, that can be picked up as part of the five-yearly review, but perhaps it can be picked up as an additional bill in itself that will add to this procurement legislation before that five-year time frame is up. I think that it is really important that we heed the lessons from the inquiry. I think we need quite a lot of additional reform in this space. That is quite apparent. With those few words I would like to say that, as has been said, we will be supporting the bill, but I think we still have a long way to go.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [7.36 pm] — in reply: I thank all those honourable members who have made a contribution to the debate so far this evening. I thank Hon Dr Steve Thomas for his comments and his indication that the opposition is supportive of this bill. I thank Hon Diane Evers, Hon Simon O'Brien and Hon Alison Xamon, and I am grateful for their contributions. I propose to try to now answer as many of the questions that were asked as possible. I note, of course, that we will go into Committee of the Whole, but, hopefully, this will expedite the process. I will try to do it in the order of the bill.

Hon Dr Steve Thomas asked what role the Department of Finance will play. The Procurement Bill 2020 will, for the first time, set the Department of Finance as the functional leader for all types of procurement: goods and services, community services and works. This will involve establishing works-based, common-use contractual arrangements and cooperative procurement arrangements for use by other agencies. The Department of Finance will provide consistent procurement advice, standardised procurement templates, procurement guides, terms of conditions, and extensive training and education events across all types of procurement. Importantly, the Department of Finance will be driven to enhance procurement capabilities across the public sector and will undertake a robust procurement audit and investigation function.

Hon Simon O'Brien asked what we are doing to remove red tape. I indicate that the existing arrangements for public sector procurement in Western Australia are confusing, duplicated and, at times, inconsistent, particularly for works procurement. For a local small business this can mean navigating different tender documents, policy preferences and contract terms over and over, despite supplying the exact same thing to different state agencies. Business rightly points out that this complexity comes with a cost. The bill moves to reduce red tape through a consolidated policy framework covering all state agencies and all types of procurement. Undertaking that will replace the many individual arrangements currently maintained by state agencies. I note that the Civil Contractors Federation and the Master Builders Association have both released media statements welcoming this game-changing procurement reform, which will significantly reduce red tape.

I refer to small business. There was a question about the disaggregation of contracts. Procurement procedures and templates for goods, services and works procurement will become more consistent, to make it easier for small and medium-sized enterprises to navigate and respond to procurement processes. Under this new value for money policy, regional prosperity will be specifically referred to as a value for money consideration. In conjunction with existing policies such as the Western Australian industry participation strategy and the Buy Local policy, this will

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ensure that regional businesses are at the forefront of the new procurement framework. The Minister for Finance has requested that in developing the new policy framework to be introduced following the bill's passage, the Department of Finance consider further means to support small and medium enterprise participation. One such measure is the disaggregation of procurements into smaller accessible parts for small and medium enterprises when there is an available local market and doing so would not compromise service delivery to the community. I think Hon Simon O'Brien also alluded to something similar in his contribution.

Hon Dr Steve Thomas had a question about why the department was not defined. I am advised that responsibility for the administration of acts, and in some cases particular parts of acts, is determined from time to time by the Governor under the Interpretation Act 1984. This information is published in the *Western Australian Government Gazette*, as it can change from time to time. It is intended that this bill will be gazetted to the Minister for Finance, and therefore the department will be the Department of Finance, as per the clause 4 definition. This approach is adopted in a number of other acts. It was adopted in this bill to avoid having to pass amending legislation in the event of machinery-of-government changes in the future.

There was a question about negotiation and commercial skills, which I think Hon Dr Steve Thomas raised. The Department of Finance is reviewing its capacity and capability to provide contract negotiation support for the sector and the form this may take. In addition to the recent report into government spending, Finance has been looking at the current level of commercial acumen and negotiation skills, and has identified that capacity gaps exist in the areas of contract management, risk management and commercial negotiation. Finance recognises the need to upskill the sector in this regard, and work has commenced to outline the best approach to capacity building and to identify the support that Finance will need to provide to the sector. A strategy is being developed, and the development will draw on the expertise of the State Solicitor's Office. To better place the sector to manage these activities, subsequent stages of the reform program will look into what resources and training the Department of Finance can provide to agencies for contract negotiation. Finance is also exploring whether specialist resources can be deployed to agencies for these purposes.

Hon Simon O'Brien asked a question about the procurement executive body, staffing and its role, as did Hon Dr Steve Thomas. The members asked slightly different questions, but I am going to answer both at the same time. The procurement executive body is only a legal entity; it has no staff. It is established under clause 18 of the bill as a CEO body corporate and is there for two reasons. The first reason is to be the legal party that executes common-use contractual arrangements and the second is to be a vehicle for the department CEO to use to borrow funds.

Hon Dr Steve Thomas: So it is, in effect, the CEO, which is what I suggested.

Hon STEPHEN DAWSON: Yes, sorry, but Hon Simon O'Brien went further than that.

Will staff be transferred from other agencies? The answer is no. I think Hon Simon O'Brien asked: why centralise everything? We are not. We have proposed centralised leadership and assurance, but with decentralised decision-making.

There was a question about how the function will be resourced. Jodi Cant, who is the new director general of Finance, has undertaken a very large restructure of the agency that has created the space, but we want to make sure this works, so if resources are needed, they will be given. It is fair to say that a lot will be asked of the agency around this.

Hon Dr Steve Thomas: It probably helps that the Treasurer is also the finance minister at the moment.

Hon STEPHEN DAWSON: I dare say it makes it easier for a finance minister when they are Treasurer too.

There were questions about what procurement directions are. Directions will provide a mechanism to rationalise the framework; to bring together existing and future procurement policies through a unified and more efficient process; to replace the existing State Supply Commission's procurement policies; to extend consistent policies to works and commercial lease procurements; to consolidate and replace, where appropriate, the need for a multitude of procurement-related Premier's circulars; and to provide ministers and future governments a means of readily implementing their commitments in a unified and consistent way across state agencies. A current priority is to support Western Australian businesses and the economy to navigate the current COVID-19 pandemic. This mechanism provides a tool to ensure that state agencies are acting in lock step, driven by central leadership and support as new measures are implemented.

Hon Dr Steve Thomas asked why contracts are not invalidated when there are errors in the administration of procedural directions. When a local business is awarded a contract by a state agency, it rightly expects that commitment to be honoured and to have certainty that the job will proceed. Minor administrative errors by a public officer may place that certainty at risk, potentially undermining the validity of a contract. This would be more problematic if procurement directions were considered to be written laws. Clause 24(2) recognises that there must be a degree of certainty in the state's awarding of contracts to create a stable business environment. Clause 24(2)

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provides that a state agency's noncompliance with a procurement direction does not of itself invalidate decisions made or contracts entered into. I am further advised that the Western Australian Jobs Act 2017 contains a similar provision for the same reasons.

Hon Diane Evers asked what the department's approach will be to publishing procurement directions. General procurement directions are required to be published in the manner approved by the minister. These directions will be published on the wa.gov.au platform. That way, state agency suppliers and the public will have open access in the one place to all procurement directions. Procurement policies and other whole-of-government measures would be given effect by these directions. On the other hand, agency-specific directions will be issued by written notification to the state agency and they will typically deal with internal government arrangements between Finance and that state agency. These agency directions may be used to set conditions for the performance or operations of an agency's procurement activities—for instance, circumstances in which the Department of Finance is to be involved. As they will not impact parties external to government, they will not be published, which mirrors the current administrative arrangements for public authorities' partial exemptions under the State Supply Commission Act 1991.

Hon Diane Evers asked also how cooperative procurements will operate and how small business will not be disadvantaged by this legislation. I am advised that cooperative procurement arrangements will allow a lead agency to create a collaborative contractor that other state agencies or bodies authorised by the act can purchase from in their own name and state agencies can procure from on behalf of other state agencies. For example, a department might take the lead in establishing a cooperative arrangement for medical protected equipment, an issue that has been live recently. Other frontline agencies across the state obviously have a similar need, so it makes sense to collaborate to avoid competing with each other for limited supply and to decrease the administrative burden on suppliers and agencies having to undertake multiple procurement processes for the same thing. In addition, this provision will allow us to work collaboratively with other jurisdictions, with local governments or with charities. With every positive opportunity, there can be the potential for negative outcomes. For example, these cooperative arrangements may limit market opportunity by reducing the number of tenders suppliers can bid for. The Department of Finance will be tasked with the policy setting and the oversight role to minimise these negative outcomes. For example, Finance may require these arrangements to be periodically refreshed or may not allow these arrangements if they do not sufficiently consider the regional and small business impact of them.

Hon Dr Steve Thomas asked for more detail about how part 6 audits will work. The audit and investigation functions in part 6 will focus on the procurement activities of state agencies. It will not duplicate the functions of other bodies such as the Office of the Auditor General. The auditing investigations under this bill relate to an agency's compliance with the bill, the procurement directions and other instruments. As a matter of practice, this will principally cover an agency's compliance with government procurement policies. The bill will not only require the Department of Finance to undertake programmatic audits of state agency procurement, but also enable Finance to take the lead on procurement matters to proactively identify issues, follow up supply concerns and undertake investigations when required. This expanded function will be crucial to continuously improving procurement outcomes across the sector by identifying areas for improvement and informing the development of training and capability material. The procurement directions mechanism may also adjust policies at a system-wide level or require specific agencies to take proactive or remedial measures when such action is required. The clearest benefit from these provisions is that they will apply to works procurement. There is currently no ability for central agency oversight and audit of these activities. This is a significant limitation of the current framework as there is no way to gauge compliance with, or assess the effectiveness of, the procurement system as a whole. The integrity of works procurement practices was called into question by recent incidences of serious misconduct within the Department of Communities and at North Metropolitan Health Service. As identified in the recent report of the Joint Standing Committee on the Corruption and Crime Commission, works procurement has been particularly susceptible to misconduct events, partly due to the absence of standardised procurement processes, central governance orders and oversight.

Hon Dr Steve Thomas asked whether the Department of Finance would be conducting audits of procurement within its own projects. The answer is yes, but I am advised that it will not conduct audits of all projects. The Procurement Bill includes provisions to deal with conflicts of interest in the Department of Finance undertaking its functions as the department assisting the minister and in the administration of the act and as the functional leader for procurement while performing its role as a major procuring agency. Clause 17 allows the minister to assign the investigative and audit functions of the department CEO to a chief executive officer of another department in the public service to enhance the independent performance of investigative and audit functions, to deal with a conflict of interest in a particular matter, or for any other reason the minister considers appropriate for the effective administration of the act. This is further supported by clause 29(4), under which the department CEO can appoint a person who is not an officer of the department to conduct an investigation into a complaint if it raises a conflict of interest for officers of the department.

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I refer to the resourcing of audits and the costs for the Department of Finance to implement this investigation and audit change. This is a new function for the Department of Finance and resources outside existing service areas will need to be allocated. The Department of Finance is currently undertaking an organisational restructure. If additional resources are required to fulfil this function following any efficiencies identified through the restructure, the department will seek resource supplementation in the next budget process.

I am getting close to the end. Hon Diane Evers asked for clarification that clause 31(2)(b) provides for publishing in the Department of Finance annual report. I am told that the CEO can undertake several actions under clause 31(2). I clarify that that includes publishing the name of the state agency and details of their noncompliance in the Department of Finance's annual report. I was asked why every decision will not be published. The bill provides the department CEO with various regulatory measures in response to an adverse finding, including the ability to publish the name and details of noncompliance of a state agency in the department's annual report, as I said. The CEO will also be able to prepare and publish reports and information under other provisions of the bill. However, there will be circumstances in which it is not appropriate to publish audit or investigation findings. An example would be a situation in which matters are uncovered and referred for examination by an integrity body such as the Corruption and Crime Commission. Additionally, publication of an audit or an investigation outcome would not be proportionate for minor instances of noncompliance, such as a slight misapplication of government policy whereby further training for departmental staff is an appropriate resolution. The department CEO will, in the administration of the act, determine the appropriate response to instances of agency noncompliance with reference to the variety of regulatory response measures available under clause 31. The response will be commensurate with the nature of the noncompliance and subject to other non-disclosure requirements that arise from other legislation.

I refer to the debarment regime. I want to bring this matter to Hon Dr Steve Thomas's attention. I am not sure whether he is aware that the Treasurer announced earlier today that he has released a draft Western Australian debarment regime for public comment.

Hon Dr Steve Thomas: No, I've been too busy.

Hon STEPHEN DAWSON: That is all right. Perhaps I can table this document if that would help members with the debate. That is out for public comment.

Hon Dr Steve Thomas: I can look it up.

Hon STEPHEN DAWSON: Are you sure? Okay—if the member is happy with that. It is out for public comment. He is seeking written feedback on the draft debarment regime by 27 July. That is out there now.

The grounds for debarment typically include offences such as bribery and corruption, extortion, and embezzlement or fraud, and exclude suppliers only on the grounds set out in the regulations. The debarring official is able to suspend a supplier for the duration of an inquiry into the behaviour of a supplier. A supplier who directly or indirectly supplies goods, services or works to state agencies—this includes any such prospective supplier, so part 1, clause 1—may tender but it may not be accepted.

I think Hon Dr Steve Thomas asked for how long a supplier could be suspended or debarred. I am not sure whether Hon Diane Evers mentioned that, too. The length of exclusion varies from jurisdiction to jurisdiction, but it is typically for periods of between five and 10 years. Some jurisdictions include lesser offences as grounds for exclusion, with a corresponding reduction in exclusion length. Some opt to enter into agreements with suppliers to remedy behaviour in lieu of exclusion. In our regime, for crime it will be up to five years. For other failures—for example, noncompliance with modern slavery reporting—it will be up to two years.

Hon Diane Evers asked about the State Administrative Tribunal and its determinations. SAT will be able to make determinations with respect to any of the decisions made under regulation, including a decision to exclude or suspend.

Some broad statements were made about the Joint Standing Committee on the Corruption and Crime Commission. This bill allows us to create the debarment regime that the Joint Standing Committee on the Corruption and Crime Commission identified as a useful tool in removing the risks associated with the government engaging suppliers that have undertaken wrongdoing. Hon Alison Xamon's commented on the tabling of the Procurement Bill being a lost opportunity to adopt recommendations from the joint standing committee's report. The Department of Finance has received the committee's recommendations and is progressing a whole-of-government response, and I think it is due for consideration mid-August. Although we have not finalised a response, the government notes that many of the recommendations contained within the report will likely be addressed through procurement reform, including a finding related to the introduction of a debarment regime. The enabling mechanisms within the bill provide the ability to address a variety of issues in the implementation of reforms following the bill's introduction—for example, through policies such as procurement directions. Therefore, I do not think we will have to wait for five years for a review. There is an opportunity for issues to be addressed much sooner than that.

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Hopefully, I have answered all the questions that have been asked of me. I commend the bill to the house, and, obviously, we will now go into committee.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon Dr STEVE THOMAS: We will just try to deal with some of the general functionality before we get into it a bit more, part by part. From the comments that the minister has just made in his second reading reply, I want to confirm that it is the intent of the government, as in clause 12(2), that —

... State agencies remain responsible and accountable for their procurement of goods, services or works.

However, there is a leadership role for the Department of Finance over those departments. At what point will the Department of Finance step in more significantly? In particular, I assume that we will not just have some upskilling of agency negotiation and contract negotiation capacity. Surely the experts will be centralised in the Department of Finance to some degree because they are the people who have to upskill the departmental people. At some point, if the government is going to achieve the aims of the bill, which are to have greater success in that contracting, the Department of Finance will have to be far more intimately involved than what appeared in the second reading reply to be a bit more of a “hands off teacher” role rather than a more active “engaged during the process” role. Maybe the minister can give us an indication of the government’s intent relating to the functions of the Department of Finance.

Hon STEPHEN DAWSON: It is really a leadership role for Finance. There are smaller agencies in government—for example, the Metropolitan Cemeteries Board—that would not have the expertise or capacity to undertake the processes internally. In those cases, the procurement will be carried out by the Department of Finance. For bigger agencies, the work will be around ensuring that they have the capacity and they are trained, bearing in mind agencies already carry out procurement right across government. This is about making sure that we have a standard in place across all agencies; there is a bar, and everybody operates to the same bar. Once this bill has passed and procurement takes place, if we see deficiencies in processes in agencies, we can work with those agencies to bring them up to the bar.

Hon Dr STEVE THOMAS: I thank the minister. I am concerned to placate Hon Simon O’Brien in his concerns about duplication and additional bureaucracy. The explanatory memorandum states —

The fragmented approach to procurement across government does not make it easy for suppliers ...

It refers quite a lot to a fragmented approach to procurement. If the role of the department, which is now to oversee procurement, is primarily aimed at training those departments that are already engaged in procurement, how is this not a bit like the Hon Simon O’Brien model, in which we are a bit half pregnant? We are not necessarily stepping in to take over procurement, although we can certainly do so under clause 14(1)(d) of the bill, which enables the CEO to undertake procurement, admittedly after having gone through a process. I am still concerned that we are discussing adding another layer of bureaucracy by attempting to mould it to the existing layer of bureaucracy that is currently involved in procurement at an agency and departmental level. At what point will the Department of Finance step in and how rigorous will be the Department of Finance’s assessment of the existing procurement processes? I will use the term “Department of Finance” all the way through, assuming that is what we are talking about. Is Finance going to review and assess every existing government department’s procurement processes? What allowance will it make for the procurement process within each department? Most agencies now have a system that they think meets their needs. I would imagine there is going to be a degree of conflict in this upskilling process because the agencies think they are doing a reasonable job. We are debating the Procurement Bill 2020 because it appears that the government, the opposition and the crossbench all agree that the job could be done better. It appears to me that we are operating in a *Kumbaya*-like mode. When the rubber hits the road and we have to force better results on agencies, how will the Department of Finance generate that function? When it gets tough, at what point will the department step in, or will we rely, for all the major agencies, on an education and training model?

Hon Stephen Dawson: That was lots of questions.

Hon Dr STEVE THOMAS: Sorry; it is one of the three or four really critical components.

Hon STEPHEN DAWSON: We are not creating a new layer of bureaucracy. The Department of Finance currently exists. We are giving it audit and investigation powers so it can look at the procurement work that is being done by agencies. If it finds deficiencies and the procurement process does not meet the new standard we are going to have across the public sector, it can step in and work with the department to ensure that it meets the criteria. It is

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not about creating new levels of bureaucracy. It is about bringing everybody up to the same standard and quality so that, for example, a small to medium-sized enterprise that deals with government in whatever agency will get some consistency. It will help them to better navigate the process, not create more layers or make it more difficult to navigate.

Hon Dr STEVE THOMAS: That requires the procurement and a process to have occurred and issues to be picked up in an audit. If we build a \$2 billion something, for example, and an issue is picked up three or four years down the track in an audit, it will go back and say the processes are inadequate. From reading the bill, I was under the assumption that the department would also be involved in the early stages of overseeing the contract negotiation. To me, that is a fairly important part of the process of stepping in early. Is that going to occur? Is there a trigger for the Department of Finance to step in to examine a contract before it has been signed in the first place?

Hon STEPHEN DAWSON: The bill allows flexibility to help different agencies, depending on where they are. An agency such as Main Roads WA, for example, has the capacity. It builds train lines and other modes of transport. At the moment, it builds freeways, and does it quite well. We can work with agencies at an early stage to make sure that their processes are right, if we needed to. Really, for smaller agencies that do not have in-house capacity or capability, this Procurement Bill will enable us to get in there at the very early stages to make sure that they are absolutely doing everything right. We can do other things, including the audit investigation stuff. It is not just audit investigation after the fact; we also have the capacity to get in there at the very early stages to help an agency meet the bar. We will also have this educational role to make sure that everybody can reach the bar. There will be a standard across the sector.

Hon Dr STEVE THOMAS: I still have some concerns about this issue. Let us take the Main Roads example. The minister said that Main Roads does big contracts, and I agree that it does it very well. That is generally right a lot of the time. Part of the second reading debate was about the need to disaggregate some projects. At this point, Main Roads is not very good at disaggregating projects. It tends to put Metronet out in massive bites. It was a bit of a war to get the Bunbury Outer Ring Road project disaggregated to the point that some smaller operators could get in there. I may have misinterpreted what the minister said. It appeared to me that the big departments would be very much left on their own and there would not be a step in for the Department of Finance in the early stages; it would come in later at the audit stage. The smaller ones would have a step in at an earlier stage. Am I right in that interpretation or would Finance potentially step into the big departments as well to change some of those outcomes early on?

Hon STEPHEN DAWSON: We would set consistent policies across the board. The member is correct: I know that smaller contractors have previously struggled with some of those bigger projects. Under this bill, social and economic considerations will be given. The government is committed to ensuring that local small to medium enterprises in regional Western Australia benefit from contracts. We would have standards across the board that those bigger agencies would have to adhere to. We can issue procurement directives that mean they have to do this. We are absolutely focused on ensuring that SMEs and businesses in regional Western Australia benefit from government projects. To date, that has been hit and miss.

Hon Dr STEVE THOMAS: The government would release a procurement policy, for example, that says major projects need to have the capacity to deliver to SMEs. The government may need to require them to disaggregate certain components of these major projects. Will the Department of Finance do that at the beginning of major projects following the promulgation of this legislation or will there be a lag period? Are we waiting for a review process for the major projects? The smaller departments that do not have the capacity generally put smaller projects together and they are the easiest to get SMEs into at the moment. It does not necessarily appear to be the case that the Department of Finance will walk into those big projects early and demonstrate that it is going to enforce a government policy to disaggregate, if that is what the policy ends up being. I am looking for some sort of commitment that that is the direction the government is prepared to go in.

Hon STEPHEN DAWSON: What the honourable member just suggested is the intention.

Hon Dr STEVE THOMAS: I have one last question before I give someone else a crack at it. Finally, to bring this all together, I was under the expectation that we would need the best and brightest in the Department of Finance because they will be training everybody else. There are some very good people there now, but it probably needs enhanced capacity. The minister has said that if that is required, it will be put in place and I appreciate that. Is that the case? If the best and brightest will bring everybody up to scratch, should they be more involved in the actual procurement negotiation processes or is this a different situation? I am worried about the process; it is like the old saying, "If you can, do; if you can't, teach". We do not want to end up with the best and brightest in the overseeing role, because we need those people in that contract negotiation role at the agency level. It will be pretty critical that the best brains in the business will be in that instructing role in Finance. That is probably as much a comment as a question and the minister probably does not need to answer it, but he needs to look at whether the government will be doing the negotiations itself or instructing. There is no point in not having the best and brightest in Finance and then going to Main Roads to look over its contracted procurement negotiations. The government will absolutely

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have to have the best people, and in some cases I suspect Finance will need the best people involved in the early stages, even with the big agencies in contract negotiations. I am happy if the minister says that the government has not put that together yet, but that it will be doing some work on that. If we swapped places and I was sitting in the minister's seat—which is hopefully only nine months away; we will see how we go—I would probably say that the intent is to try to ensure that we get better integration earlier. I am looking for the minister to give us an undertaking that it is a similar position from his side.

Hon STEPHEN DAWSON: The intent is to get that better integration early on. We have good people in Finance now, as we have good people in agencies. I do not think we want to have every good person in Finance alone and not have good people in the agencies, too. It has to be a balance.

Hon Dr Steve Thomas: If they are even, you've got a problem.

Hon STEPHEN DAWSON: Absolutely. We want good people in the agencies doing this stuff, but equally, centrally, we want good people setting the standards and doing the negotiations; that is the appropriate thing. At the moment, Jodi Cant, the director general of Finance, has been going through a restructure with this new "one finance" kind of theme, and then from that she will essentially do a stocktake to see what further expertise is needed to enable Finance to do what the Procurement Bill wants it to do.

Hon COLIN TINCKNELL: From what I have heard so far, it is all really good. I really like the idea that we are trying to get smaller businesses involved, whether they be through subcontracting to a major business or a company. I would like to get some feeling and idea about the groups that the minister may have consulted with. I know that that is a pretty wideranging question, but I am more interested in those smaller business groups and groups that probably feel like they have not had a fair go in the past. I can touch on that a bit later.

Hon STEPHEN DAWSON: We did some extensive consultation. All the bigger state government agencies were consulted, as was the Coal Miners Welfare Board of WA and smaller organisations like that—the Swan Bells Foundation Inc, for example. Both large and small government and non-government agencies were consulted. There was also an open survey and, through the local content advisers based in the regional development commissions, we worked on targeted consultation in regional Western Australia. A great deal of consultation took place.

Hon COLIN TINCKNELL: Would I be right in saying that the Noongar Chamber of Commerce and Industry was one of the groups that the minister might have consulted?

Hon STEPHEN DAWSON: We are not aware of whether that organisation was consulted, but I missed out saying earlier that various industry bodies were consulted. I mentioned in my reply to the second reading debate that the Master Builders Association, the Civil Contractors Federation, the Chamber of Commerce and Industry of Western Australia and other industry groups like that were consulted, but I cannot tell the member specifically about the Noongar Chamber of Commerce and Industry because we do not have that information.

Hon COLIN TINCKNELL: One of the objects of the bill is —

- (a) to promote best value for money in government procurement so as to deliver sustainable economic, social and environmental benefits to Western Australians;

I asked that question because so much could be gained from Aboriginal businesses picking up contracts. Obviously, they are pretty small in most cases and they would need to be subcontractors to the larger contractors that would probably win government business. I can see many social benefits coming from that for that group of people. Another object is —

- (b) to reduce barriers to the participation of small and medium businesses in government procurement ...

Is that a special focus for the government? It seems like it is, and I am encouraged by the language I have heard. Is that a special focus?

Hon STEPHEN DAWSON: We have a policy in place that allows us to directly engage Aboriginal businesses, so that certainly has been a consideration of government. Aboriginal businesses can deliver so much more for communities than just value for money; they can influence the social fabric of many of our regional communities. Therefore, that is something that we have been focused on thus far, and certainly more opportunities will come as a result of the Procurement Bill 2020, if it passes.

Hon DIANE EVERS: In the minister's response to the question about the State Administrative Tribunal, he said that it could reverse a decision if someone was excluded or suspended. I just want to confirm whether that is also for someone who has been debarred. From what I understand, it can be revoked if a decision is made incorrectly or if the situation is fixed or changed so that it is no longer a problem.

Hon STEPHEN DAWSON: I have different advisers for that part of the bill. I would much prefer, if it is possible, that the honourable member ask those questions at the appropriate clause rather than me having to swap people in

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and out. I am always very happy to have wideranging and free-flowing debates at clause 1, but when I am limited in the number of advisers who I can have next to me in this COVID-19 environment, it would be more appropriate to ask that question once we get to the appropriate clause.

Hon DIANE EVERS: I have another question for which the minister might have the same answer. I refer to the causes of debarment.

Hon Stephen Dawson: It's the same thing.

Hon DIANE EVERS: I will leave it to later.

Hon COLIN TINCKNELL: In the same vein as what we were talking about before, what is the focus when it comes to, let us say, foreign-owned businesses, eastern states businesses and local Western Australian businesses, bearing in mind that this is a post-COVID-19 bill and obviously we want to get people back to work? That is my thought process. Does the government have a special focus on local WA businesses?

Hon STEPHEN DAWSON: Honourable member, there is a COVID-19 element to this bill. It was deemed a COVID-19 bill in the other place. We had conversations behind the Chair in this place and the indications were that debate on this bill would not take an inordinate amount of time so I did not declare it a COVID-19 bill here. However, the Minister for Finance has taken action to introduce changes that encourage agencies to source more goods and services locally. These include allowing agencies to directly purchase from local suppliers up to the value of \$250 000, allowing agencies to seek written quotes from local suppliers for purchases between \$250 000 and \$500 000 and increasing the public tender threshold from \$250 000 to \$500 000 when at least one local supplier will be invited to submit a bid. These changes are about turbocharging local economies to ensure that wherever people are in Western Australia, if there is a project locally, small to medium enterprises in those communities can participate and benefit. It is about spreading the opportunity.

Hon COLIN TINCKNELL: Will the leadership from Finance that the minister talked about be a part of the push to remind agencies that it is slightly different from business as usual and that we now have a different focus because it is post-COVID-19?

Hon STEPHEN DAWSON: Absolutely. This is about changing the mentality of some agencies. It is not about the lowest price at all costs. There is a commitment to ensure that regional businesses, small to medium enterprises and Aboriginal organisations can benefit as a result of projects on which the state is spending money.

Hon DIANE EVERS: With regard to small businesses and their application, or submission, to tender, I believe I read somewhere in the bill—I cannot find it at the moment—that there would be assistance with education and training to allow people to be better able to do this. Can the minister give me more detail about what that will entail, or will that come up in one of the procurement directives?

Hon STEPHEN DAWSON: We are still working through that issue. At the moment, we do some training in relation to goods and services. As a result of this bill, we will now be able to extend that to works, which is obviously a different cohort and different money limits. The detail is still being worked on.

Hon DIANE EVERS: In relation to that detail, would that be done at each agency level or would the Department of Finance manage that?

Hon STEPHEN DAWSON: The Department of Finance would do it centrally, on behalf of government.

Hon Dr STEVE THOMAS: The obvious question is that a lot of this stuff will come about by way of regulation. What does the time frame look like for regulation development and presentation?

Hon STEPHEN DAWSON: For the priorities that I identified earlier in relation to COVID-19, we can do that almost immediately. The regulations required around debarment will take a bit more time. As I indicated, it went out for public comment today, and that will close at the end of July. I think it will take the rest of the year to land on the final regulations, but certainly there is capacity as a result of the Minister for Finance's wish to get on with the COVID-19 stuff.

Hon Dr Steve Thomas interjected.

Hon STEPHEN DAWSON: Absolutely, is my understanding.

Hon Dr STEVE THOMAS: Is the department looking at thresholds for the size of procurement at which it would take various actions? Would it be involved in discussing with departments procurement over a certain minimum or under a certain maximum threshold? Does the minister have any idea what those thresholds might look like that would stimulate the Department of Finance's interest in the early or later stages and at almost the audit stage of the process?

Hon STEPHEN DAWSON: We are looking at it, but there has been no landing on it yet.

Clause put and passed.

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Clause 2: Commencement —

Hon STEPHEN DAWSON: I will speak to all three amendments standing in my name on supplementary notice paper 191, issue 4, because they are linked. On 19 May, the government announced in the Legislative Assembly its intention to accelerate aspects of procurement reform. This included specific measures designed to streamline procurement in the Western Australian government and make it easier for local small and medium enterprises to engage in supply opportunities. The proposed amendments seek to modify the bill to allow for the accelerated introduction of these support measures. The bill as introduced specifies in clause 2(b) that the act, other than part 1, will come into operation on a day fixed by proclamation. The amendment in my name to clause 2 seeks to amend clause 2(b) to allow for different provisions to commence at different times. The amendments in my name to clauses 40 and 52 are supplementary amendments to ensure consistency with the amendment to clause 2(b). These amendments will provide the ability to use sections of the act on an accelerated time frame to implement measures to support Western Australian businesses, particularly those operating in the building and construction industry. This flexibility will allow the act to be used for the urgent introduction of the COVID-19 economic stimulus measures referred to by the Minister for Finance, while more time is taken to develop and consult on the regulations and other instruments relating to other sections of the legislation, such as debarment. I urge members to support the amendments. I move —

Page 2, line 8 — To delete “proclamation.” and substitute —

proclamation, and different days may be fixed for different provisions.

Hon Dr STEVE THOMAS: The opposition is keen to support this amendment because it will advance the process. I note that the minister’s description of this amendment indicated that it would assist particularly small to medium-sized enterprises in the early stages of the COVID-19 response component, so we will be watching very carefully to make sure that that occurs. It is more of an issue for the Minister for Finance than it is for this minister, but perhaps the minister can let the Minister for Finance know that the opposition supports this amendment in the expectation that that action occurs to give SMEs greater access. As I said in my contribution to the second reading debate, it is a critical component of the opposition’s support for the bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 3 to 8 put and passed.

Clause 9: Procurement to which Act does not apply —

Hon Dr STEVE THOMAS: Clause 9 refers to the sorts of procurement to which this act does not apply. We are dealing with leases and relevant leases for the first time. My understanding of the bill is that we are looking to make sure that leasing of office space, particularly for state agencies, is conducted in a way that will give the best benefit to the state of Western Australia. Do we have any indication of the number of leases for office space and their value? How big a risk factor are we dealing with? It may be a question that is not readily answerable—if we do not have the answer; we do not have it!

Hon STEPHEN DAWSON: The information will be available somewhere, honourable member. We do not have it with us tonight, so perhaps I will undertake to ask the question after this debate and if I can provide the answer to the member and the chamber, I certainly will.

Hon Dr STEVE THOMAS: Clause 9(2) states —

This Act does not apply to the following —

(a) the acquisition or disposal of land or of an interest in land ...

The rest of that provision makes sense; it does not apply to the staff of an agency et cetera. I am interested in the acquisition or disposal of land. Does the government think that the purchase of land is not a big enough issue to be caught under the procurement procedures?

Hon STEPHEN DAWSON: I am told the acquisition and disposal of land and interests in land are dealt with by different legislation—that is, the Land Administration Act 1997. The leasing activities have been included because these are typically of a commercial nature; for instance, the leasing of office buildings is entered into by state agencies outside the requirements of the Land Administration Act 1997.

Clause put and passed.

Clauses 10 to 13 put and passed.

Clause 14: Functions of Department CEO —

Hon DIANE EVERS: I have an amendment to this clause on the supplementary notice paper, but I understand that the government has another amendment that takes the place of what I intended to do, which was to take a provision about fleet vehicle management that was in the State Supply Commission Act and bring it into this

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legislation. The provision makes a specific case that the efficiency of those vehicles should be included in the Procurement Bill. To that extent, I hope that people will support the amendment. As I said, it will not change anything. With the State Supply Commission Act being abolished, that provision will be put into the Procurement Bill.

Hon STEPHEN DAWSON: I move —

Page 10, after line 24 — To insert —

- (1A) The Department CEO must, in connection with the management of the State's vehicle fleet under subsection (1)(e) —
 - (a) minimise, so far as practicable, the net greenhouse gas emissions associated with the use of the vehicles in the fleet by maximising, so far as practicable, the fuel efficiency of those vehicles and offsetting the greenhouse gas emissions of those vehicles; and
 - (b) report annually on the greenhouse gas emissions associated with the use of the vehicles in the fleet.

As Hon Diane Evers has indicated, it was her intention to move an amendment to the bill before us. Her amendment mirrored a provision in the State Supply Commission Act. We have, essentially, used the provision from that act, but have put it into the words used in the bill before us. It means the same thing, but the language is more consistent with the words in the Procurement Bill. We support the member's request that we minimise, as far as practicable, the net greenhouse gas emissions associated with the use of vehicles in the fleet by maximising, so far as practicable, the fuel efficiency of those vehicles and offsetting the greenhouse gas emissions of those vehicles. We will get the same outcome, but I think this amendment fits in better with the bill before us.

Hon Dr STEVE THOMAS: The opposition will support the government's amendment. It is, perhaps, a little neater than the proposal put forward by Hon Diane Evers. I absolutely take on board Hon Diane Evers' intent, and I think that the minister has met that intent to the best of his ability.

Amendment put and passed.

Hon Dr STEVE THOMAS: Clause 14 is about the functions of the CEO of the department, who will ultimately carry the seal and be the central point of activity. Particularly interesting is subclause (1)(h)—or “aitch” as my grandfather always used to correct me! It states that the CEO will have a role in —

setting requirements for strategic planning by State agencies about their future procurement of goods, services or works and for periodic reporting on their procurement activities;

I think that this is a really good move, but I am intrigued to see the extent of it. It might take us five minutes to work our way through this. For example, would this include future head office development? I will pick one. The department of agriculture has been complaining about its South Perth office probably for as long as I have been alive, and pretty vociferously for the last 20 years or so. I am interested in what the role of the CEO might be. Is this the kind of future procurement about which the department, through his auspices, would then seek information? How would that be assessed? We might end up with a fairly big ambit claim for infrastructure development down the track as departments start to look at the nominal replacement period for buildings and head offices.

Hon STEPHEN DAWSON: We are still developing the regime. We are still trying to work out what it might look like. It is fair to say that industry wants to know what is planned by government for the future so it can plan. If a company is going to build X big building, it may need to have more carpenters, plumbers, apprentices or trainees. Including this in the bill will allow for that forward planning. It will give industry a guide about what is on and what is planned in the future by government so that it can know, be ready and plan for it.

Hon Dr STEVE THOMAS: I accept that like lots of things, this is still a bit of a work in progress, and I understand that. This might be more of a comment than a question I suppose, but it will be interesting to see. If I were the director general of Finance, I would be asking particularly the larger agencies what their forward construction and timetables look like et cetera, and I suspect that we might find in the initial stages that we will get a pretty big ambit claim of a whole pile of necessary procurement over the next 10 years, and somehow the department will have to prioritise that within the political reality of governments having to choose where money will go. It is going to be complicated to get this in place. I am certainly not opposed to the clause or the government doing this; I am just raising it because I think it is something that the opposition needs to watch particularly closely over the next few years just to make sure that we are getting some indication.

I suspect the minister already knows the answer to this question, but with the forward planning, is it likely that the Department of Finance would make that information available publicly or to the Parliament? If we were sitting on that side of the house, we probably would not want too much information out there, but because we are sitting on

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this side of the house, we want all the information we can possibly get, and I absolutely understand that. Perhaps the minister could make a comment on what might be made public in that process.

Hon STEPHEN DAWSON: It is not intended to replace the strategic asset management framework, which falls under Treasury, and that happens currently. The intention for the potential future procurement of goods, services or works is to publish something on Tenders WA, but do not forget that it is the Expenditure Review Committee, Treasury and cabinet that tick off the money. This will not fall to the Department of Finance to do.

Hon Dr STEVE THOMAS: I accept that, but the minister might find that for the accumulation of agencies' future predictions of their procurement requirements, there will have to be a pretty solid interaction between Finance, Treasury and cabinet, so we will be watching that with great interest. Clause 14(2) states —

The Department CEO may do anything necessary or convenient for the performance of the ... functions under this Act.

Under most legislation, the CEO may do anything necessary. I am intrigued by the definition of “doing anything convenient”. I am not sure that I have seen that in a lot of other acts. What might be convenient but not necessary, or is there a reason this clause is written this way?

Hon STEPHEN DAWSON: I am advised that it is a standard clause that Parliamentary Counsel's Office puts into legislation now; there is no other reason.

Hon Dr STEVE THOMAS: I am sure PCO finds it very convenient, minister.

Clause, as amended, put and passed.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Diane Evers has a new clause 14A on the supplementary notice paper. Are you moving that amendment, member?

Hon Diane Evers: No.

The DEPUTY CHAIR: That now falls away.

Clause 15: Delegation by Minister —

Hon Dr STEVE THOMAS: Subclause (1) states —

The Minister may delegate to the Department CEO any power or duty of the Minister under Part 4.

It seems interesting that the power of the ministerial role will be passed on to the CEO of the department, who already has enormous power in his own right under the act. Is that a normal process? Would that power not be passed on to another minister acting in the role? I am thinking of ministerial accountability as part of this process.

Hon STEPHEN DAWSON: They are issues of a routine nature. The minister would not want to sign each document, so they would delegate functions to the CEO of the department in that case. With the Environmental Protection Act, for example, I, as Minister for Environment, delegate a number of things to either the chair of the Environmental Protection Authority board or the CEO of the department. They are mostly routine matters. We do not want every small decision sitting on a minister's desk because it bogs down the system and processes.

Hon Dr STEVE THOMAS: That may be the intent, but under “Delegation by Minister” it states —

The Minister may delegate to the Department CEO any power or duty of the Minister under Part 4.

Part 4 deals with procurement directions. I would have thought that the issuing of a procurement direction might relate to some pretty significant activities. If it is a procurement direction for the purchase of paper clips, which was the slightly facetious example we used during the second reading debate, it is somewhat immaterial, but it might potentially empower the CEO to issue some quite large and momentous procurement directions. I want to check that there is no limitation on the CEO if they have been delegated power by the minister under part 4 and the issuing of procurement directions?

Hon STEPHEN DAWSON: The minister can set conditions or limitations on the exercise of power or duty when delegating to the department CEO.

Hon Dr Steve Thomas: I suppose I was making sure that the minister would do that.

Hon STEPHEN DAWSON: I know as a minister that ministers make the big decisions themselves, but if there are decisions of an administrative nature lower down, which could include procurement directions of an administrative nature, they can be delegated. As I said, the minister can set those limitations.

Clause put and passed.

Clauses 16 to 22 put and passed.

Clause 23: Provisions relating to procurement directions —

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The DEPUTY CHAIR: I note that Hon Diane Evers has an amendment on the supplementary notice paper. Are you intending on moving that amendment?

Hon DIANE EVERS: First, I have a question. In the minister's response to the questions asked on this clause in the second reading debate, he said that the department would be required to put the procurement directions on the website. From the briefing, I understand that the department intends to do that, but there is nothing in the bill that says that it has to.

Hon STEPHEN DAWSON: I am advised that in a briefing session earlier this week, questions were posed to the Department of Finance on whether clause 23(4)(a) afforded the minister discretion to elect to not publish general procurement directions, due to the use of the word "may" in that clause. The department undertook to further consider the drafting of this clause and to seek relevant advice, and I am advised that that has occurred. The department is very confident that the clause as drafted requires the general procurement directions to be published. There is no other way to issue general procurement directions other than as provided for under clause 23(4)(a), which requires them to be published. The discretion available to the minister within that clause relates only to whether a procurement direction applies to all state agencies or to a specified kind of state agency, and the manner of publication of that direction. There is no discretion to not publish.

Hon Dr STEVE THOMAS: I want to confirm this. Clause 23(6) states —

A procurement direction is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

I am assuming the intent there is that it is not a disallowable instrument?

Hon STEPHEN DAWSON: Clause 23(6) provides that a procurement direction is not subsidiary legislation for the purposes of the Interpretation Act 1984. Inclusion of the provision puts beyond doubt the status of procurement directions in this regard. This has the effect that a procurement direction is not a written law for the purposes of the Interpretation Act and as a consequence is not to be generally interpreted as such in accordance with the Interpretation Act. Procurement directions are intended to be policy and administrative documents by nature, and to use procurement-related commercial and administrative terminology. Therefore, it is appropriate that they not be written laws for the purposes of the Interpretation Act. However, clause 23(7) of the bill directly applies select provisions of the Interpretation Act to procurement directions as if they are subsidiary legislation. These are mostly technical and interpretational provisions such as computation of time and the meaning of words and expressions used, consistency with the enabling act and so on. This limited application is convenient and appropriate and there are similarities with the approach taken with the State Supply Commission policies made under the existing State Supply Commission Act.

Hon Dr STEVE THOMAS: I just want to confirm that these directions are not going to be tabled in state Parliament. I am assuming that there is no disallowance. These are effectively policy decisions that governments make. I just want that confirmed.

Hon STEPHEN DAWSON: That is correct. When a local business is awarded a contract by a state agency, it rightly expects that commitment to be honoured and to have certainty that the job is going to proceed.

Hon DIANE EVERS: Further to the question that I asked about the publication of these procurement directions, I see what the minister is saying about the way this is worded. It says that, one way or the other, if it is for all state agencies, it has to be by publication, but it is at the direction in the manner approved by the minister, so that could mean that the minister could just say that these directions should be emailed to each of the agencies and they would not become public. Is there anything that says that it would be made public?

Hon STEPHEN DAWSON: The ordinary meaning of the word "publish" is that it be made available. The intention is that the general procurement directions will be published on the wa.gov.au platform, and, obviously in doing so, they do address current frustrations from the business community and from public officials. It will consolidate in one place government procurement policies addressing the current complexity whereby these policies are scattered across many different locations. But I indicate to the member that it is not about playing games; the intention is to publish, and the ordinary meaning of "publish" is to make this stuff available and not hide it.

Hon DIANE EVERS: With that answer and understanding that this does not mean publish it in a small corner on the left-hand side of a newspaper that nobody reads, I take what the minister said and I am pleased to have that answer recorded, so I will not need to move the amendment that I have.

Hon Dr STEVE THOMAS: In relation to that, is it possible that perhaps some procurement directions might contain confidential information, particularly if it is about an agency direction, or is it the intent that it be a procurement direction and not get down to the level of a direction in relation to a particular contract? I am thinking of an example in which an agency procurement direction might instruct an agency about a specific contract and that may raise confidentiality concerns. In accepting the intent of the government to publish everything, is it not possible that the government might find itself in a difficult position and require a little wriggle room?

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Hon STEPHEN DAWSON: The general government procurement directions may set whole-of-government rules and policies, so it is the intention to publish those. The agency-specific ones relating to procurement of goods, services or works for that state agency would not be published.

Clause put and passed.

Clause 24: Compliance with procurement directions —

Hon Dr STEVE THOMAS: An agency and its officers are required to comply with procurement directions. Is the only penalty anywhere in the legislation that the failure to comply would be noted in an annual report, because it mentions in subclause (4) the potential for disciplinary proceedings against a person for noncompliance. Subclause (2) is obviously the subclause that we have already discussed, and the minister answered that in his second reading response, but it raises the possibility of disciplinary proceedings. Is that going to be formalised or is it more likely to be handled in-house, in particular within agencies, under their existing policies and procedures?

Hon STEPHEN DAWSON: If the agencies demonstrate noncompliance, Finance can issue a directive that will allow us to undertake the procurement activity on their behalf at a lower level. If a public officer fails to comply, the consequences depend on the nature of the failure. If the noncompliance is of a technical nature, it might require further training. A more serious matter, such as wilful or systemic disregard, could give rise to a disciplinary matter being dealt with under the Public Sector Management Act, or matters of fraud would be referred to the Corruption and Crime Commission.

Hon Dr Steve Thomas: If it is a lower level disciplinary issue, is that likely to be dealt with under the policies and procedures of the existing agency or is it a role that the Department of Finance would take on?

Hon STEPHEN DAWSON: It depends. We have not set a threshold at this stage. It could be dealt with internally or, depending on the level, Finance could well get involved.

Clause put and passed.

Clauses 25 to 30 put and passed.

Clause 31: Regulatory action following investigation or audit or judicial or investigative proceedings —

Hon DIANE EVERS: I have a question relating to the response that the minister gave at the conclusion of the second reading debate. I believe that he said that the department “will” publish the name of the state agency and the manner in which the state agency has failed in the annual report. The bill states that the department CEO “may” take action. I am wondering whether that is what he means.

Hon STEPHEN DAWSON: If I did say “will” earlier, I should have said “can”. The department CEO can prepare and publish reports and information as a result of this bill. However, there will be circumstances in which it will not be appropriate to publish orders or investigation findings—for example, when matters are uncovered and referred for examination by an integrity body such as the Corruption and Crime Commission. In those cases, obviously, it is not appropriate, but the department can publish.

Hon DIANE EVERS: I understand what the minister is saying and that there will be cases when it would not be appropriate to publish that information. In the other cases, what would encourage the CEO to publish that information? I believe it is in the public interest to know, when possible, the name of the agency.

Hon STEPHEN DAWSON: The intent is really just to publish the more high-level issues or findings. There will be circumstances in which the publication of an order or investigation would not be proportionate or commensurate for minor instances of noncompliance—for example, a slight misapplication of government policy when further training for the departmental staff is an appropriate resolution. It would need to meet a threshold. If everything was in an annual report, there would be crisis and chaos, but the action needs to be commensurate with the action or the failure that has taken place.

Nothing would preclude a member of Parliament from asking questions about all the adverse findings, and the information would be available through the freedom-of-information process for a normal citizen. However, we do not want to publish findings at such a low level that they could be fixed by training a staff member to ensure the system works for everybody.

Hon DIANE EVERS: The minister is saying that both minor incidences and serious incidences will not be published, so what fits into that area? Is it possible the department will decide not to publish anything?

Hon STEPHEN DAWSON: I do not think I said we would not publish serious incidences. I said that for some cases it may not be appropriate to publish them because an organisation such as the Corruption and Crime Commission could be investigating them. The intention is to publish significant failures in the annual report with the caveat that if the CCC is looking at one, it would not be appropriate to publish it. I do not have a threshold at this stage so

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I cannot say absolutely what will definitely be published and what will not. The intention is that if the issue is minor and a bit of staff training can ensure that it does not happen again, or staff have failed to tick a box, I do not think it is appropriate to publish it in an annual report. If it is of a more serious nature, the intention is to do so.

Hon DIANE EVERS: I am comfortable with the minister's response and I note that the legislation will be reviewed not only in five years, but also throughout that period if things are not working. The threshold could be addressed to put at what level incidences need to be included in the annual report. At this point, I will not be moving my amendment.

The DEPUTY CHAIR: Will you move your other amendment?

Hon DIANE EVERS: No, they are all connected, so I do not need to move any of them at clause 31.

Clause put and passed.

Clause 32 put and passed.

Clause 33: Regulations relating to debarment of suppliers —

Hon Dr STEVE THOMAS: Clause 33 is the last part I would like to investigate in any detail. I think we have done a pretty good job with the bill so far. This is the last section of major interest. People find debarment quite interesting. The issue is going to be that the more detailed regulations are going to be decided upon in the future so we are offering the government carte blanche to develop the process. I want to start with fairly simple questions. What level of consultation has the government managed to undertake before the release of its consultation document today? I presume there has been a level of industry consultation. Has industry support been gauged?

Hon STEPHEN DAWSON: Consultation took place with industry groups, there was also an internal government working group and we released a consultation paper to industry groups. Also, the draft regime was sent to the World Bank, which has a debarment regime. I think somebody mentioned that in their contribution; perhaps it was Hon Diane Evers. All of that feedback was considered and included, where appropriate, in the debarment regime. Obviously, as I indicated earlier this evening, that debarment regime is now out for public comment until 27 July. A significant amount of conversation happened. We are committed to listening to and taking on board the feedback that we get through the consultation regime.

Hon Dr STEVE THOMAS: I refer to the investigatory powers of the CEO and the department. Will the CEO rely on the audit process that has occurred through either the internal agency audit or the audit instigated by the Department of Finance? Will it have investigatory powers beyond that to investigate or will that be a matter of referral? If it thinks further investigation is required, will that be referred to the Corruption and Crime Commission, for example, or the Office of the Auditor General for specific investigatory authority?

Hon STEPHEN DAWSON: We have not yet nussed out the whole process but we have certainly consulted with the Small Business Development Corporation and the CCC. A certain amount of audit investigation can be undertaken in-house but we will send those things that we think are appropriate to either the SBDC or the CCC.

Hon DIANE EVERS: I have a question about the reasons for debarment. In the draft that has come out—I know we are not debating that now—I notice there is no mention of any conviction for an offence under the Environmental Protection Act or the Environment Protection and Biodiversity Conservation Act. Has the minister considered including environmental issues in there, given there is that expectation of the triple bottom line view of this in terms of addressing social and environmental issues?

Hon STEPHEN DAWSON: I have just received a commitment that the Department of Finance will be very happy to work with my agency, the Environmental Protection Authority, to work out what is appropriate to include in there. The EPA and the Department of Water and Environmental Regulation can be consulted as part of the debarment regime and consultation process.

Hon Dr STEVE THOMAS: Back on the same topic again, the investigatory part: at the bottom of page 26 of the bill, clause 33(2) states —

(b) authorising the Department CEO to debar a supplier —

...

(iii) because the supplier failed to comply with requirements of this Part relating to an investigation of the supplier by the Department CEO;

That would seem to indicate that investigations will occur quite specifically by the CEO. The next paragraph states —

(c) investigations by the Department CEO into whether a supplier should be debarred;

I guess we are then taking it on trust that we will be allowing the government to hand those investigations off to other agencies. It is interesting that the minister raised the Small Business Development Corporation. That is quite appropriate and probably quite useful. Obviously, no-one is going to interfere with the Corruption and Crime

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Commission component of that, one would think. I am interested that the legislation appears to indicate that the department CEO, the current director general, is wearing a deerstalker hat and eyeglass, looking very carefully over accounts.

Hon Stephen Dawson interjected.

Hon Dr STEVE THOMAS: They do not wear a deerstalker hat?

Hon Stephen Dawson: No.

Hon Dr STEVE THOMAS: Okay, never mind. It might be a suggestion for down the track.

The legislation before us would seem to indicate that the CEO and, therefore, I assume by extension, the department, would be engaged in some sort of investigatory role. I do not want to put words in the minister's mouth, but I am keen to get the minister on the record to say that this means that it may require certain information to come out that may require certain activity by the department, but further investigation could be shared and spread with the SBDC and any other authorities, including the CCC and the police, I presume.

Hon STEPHEN DAWSON: Thank you, that is correct.

Clause put and passed.

Clause 34: Review by SAT of decisions under this Part —

Hon DIANE EVERS: This is the question I asked in the beginning before the minister changed his staff over. Regarding the State Administrative Tribunal again, the minister, in his response to the second reading debate, said that SAT could reverse an exclusion or suspension. I want to make sure that that is the case for debarment as well and that SAT would be able to revoke the debarment.

Hon STEPHEN DAWSON: Can the SAT overturn a decision to debar? Yes, it can revoke that.

Hon DIANE EVERS: In what circumstances could it do that? I understand that one instance would be if the situation had changed and the problem had been rectified, but I am also wondering whether it would be allowable when an incorrect decision was made in the first place, and any other circumstances.

Hon STEPHEN DAWSON: I am advised that it could in any or all circumstances.

Clause put and passed.

Clause 35 put and passed.

Clause 36: Miscellaneous provisions relating to debarment of suppliers —

Hon Dr STEVE THOMAS: Clause 36(1) states —

The ... CEO must maintain a public register in accordance with the regulations of suppliers who are debarred ...

Is it normal practice in other jurisdictions that debarment is made public? I can imagine there might be an issue with potentially small business entities—small companies that struggle. As long as the debarment is related to either corrupt or serious activity, then that would seem reasonable, but I am looking for some reassurance that we are not likely to find a company that has been debarred for a more minor infringement and is then blacklisted, to some degree. I would imagine that other private companies would view this list and form opinions about the capacity and veracity of companies. I am looking for some reassurance that a company that inadvertently falls foul will not likely end up on the list.

Hon STEPHEN DAWSON: If a decision has been made to debar—and yes, it would appear under this—the intention is to work with suppliers. It is only those who have done something terrible, if I can use those words, who would actually appear on the list in the first place. If they appear on the list, it is published.

Clause put and passed.

Clauses 37 to 39 put and passed.

Clause 40: Terms used —

Hon STEPHEN DAWSON: I move —

Page 32, line 31 — To delete “this Part” and substitute —
section 41

I moved amendments earlier this evening at clause 2 and I indicated then that the amendments standing in my name at 2/40 and 3/52 are consequential and would be moved for the same reasons.

Amendment put and passed.

Clause, as amended, put and passed.

Hon Diane Evers; Hon Simon O'Brien; Hon Alison Xamon; Hon Stephen Dawson; Hon Dr Steve Thomas; Hon Colin Tincknell

Clauses 41 to 51 put and passed.

Clause 52: Transitional regulations —

Hon STEPHEN DAWSON: I move —

Page 38, line 9 — To delete “transition day,” and substitute —

the day on which this section comes into operation,

I move this amendment for the reasons previously outlined.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 53 to 73 put and passed.

Title put and passed.

Report

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

As to Third Reading — Standing Orders Suspension — Motion

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

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

Third Reading

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