

COURTS LEGISLATION AMENDMENT BILL 2017

Second Reading

Resumed from 29 August.

HON ALISON XAMON (North Metropolitan) [12.25 pm]: As I was saying on the Courts Legislation Amendment Bill 2017 before the house rose last night, the jury disqualification age was recently raised to 75 years in Western Australia and it is therefore illogical to maintain the inconsistency between the age of magistrates and that of the jury. I was about to quote University of Western Australia Professor Gillooly's submission to the Law Reform Commission of WA's investigation into the selection, eligibility and exemption of jurors in 2010. He stated —

... 'it is difficult to see why judges of the facts [that is, juries] should be assumed to be more capable than the judges of the law [that is, judicial officers]'.

This change is going to ensure that the Magistrates Court Act 2004 is in line with the District Court of Western Australia Act 1969 and the Judges' Retirement Act 1937. Both those acts require judges of the District and Supreme Courts to retire at the age of 70. I appreciate the benefits to magistrates of being able to continue to hold their tenured position rather than having to be reappointed as acting magistrates on their sixty-fifth birthday and experiencing a break in tenure, because there are accompanying consequences for their accrued leave entitlements and superannuation, but it is also important and appropriate that there is not a disparity between the retirement ages of magistrates and judges. That being said, and here I go to the intent of the amendment I have placed on the supplementary notice paper, I understand that former District and Supreme Court judges can be appointed at any age as auxiliary judges under section 18A of the District Court of Western Australia Act 1969 and under section 11AA of the Supreme Court Act 1935 for periods of up to 12 months at a time. The amendments to the principal acts we are debating in this bill will not allow magistrates the option to serve in an acting capacity following their retirement if they are aged 70 years or older, so although this legislation addresses one disparity—the retirement age between magistrates and District and Supreme Court judges—it creates another. I would welcome the government's advice about why the capacity for acting appointments of retired magistrates aged 70 years and older was not included in this legislation in the first place.

That issue aside, the Greens welcome the amendments within the bill, which are well and truly overdue. It is important that legislation is reviewed and updated regularly to ensure that it appropriately reflects and meets the needs of contemporary society. The Greens strongly believe that older Australians have equal rights to participate in social, economic and political life and that there should not be discrimination against older Australians entering or remaining in the workforce. The participation of older people in our community needs to be maximised and the contribution of their knowledge and experience should be valued. Generally, older people now remain in the workforce for longer and are active in the community to a later age. I acknowledge that remaining in the workforce is a possibility for only some older people and that it is particularly unlikely for those who have held more physically demanding positions. However, for many older Australians, it seems to be highly desirable to be able to continue in the workforce. Those of us who were born after 1 January 1957 must reach the age of 67 years before we are even eligible for the age pension, so requiring magistrates to retire before they reach this age obviously does not reflect current community expectations.

I acknowledge that our ageing population presents a challenge for current future policymakers, including challenging negative assumptions about older people and their contributions to the community. However, I think it is really important that, at the very least, we enable people, particularly, in this instance, people with great expertise, to continue working and participating in our community.

With those few words, I indicate again that the Greens will support the Courts Legislation Amendment Bill 2017. We have put up an amendment, but we are yet to receive any sort of appropriate feedback about why this issue, and the disparity that has been created as a result, has not been addressed. I look forward to being able to discuss that further in Committee of the Whole.

HON SUE ELLERY (South Metropolitan — Leader of the House) [12.32 pm] — in reply: I thank members for their contributions to the debate on the Courts Legislation Amendment Bill 2017, which aims to do three things to address management issues of the courts.

Hon Michael Mischin raised a couple of questions around fees, in the first instance. The fee on an individual basis is relatively modest, being \$91.50 per judgement as of 21 July 2018. The total sum, using the individual registration fee —

Hon Michael Mischin: Sorry, was the \$91.50 for an individual or a corporation?

Hon SUE ELLERY: It is for an individual, but I will give the member something in writing in a minute so he will have the numbers in front of him.

The total sums, using the individual registration fees, are as follows: in 2014–15, 305 judgements were lodged, at \$25 467.50; in 2015–16, 281 judgements were lodged, at \$23 463.50; in 2016–17, 223 judgements were lodged, at \$18 620.50; and in 2017–18, 198 judgements were lodged, at \$16 830.

I also have a table—I will table it—that contains the number of interstate judgements which have been registered under the commonwealth Service and Execution of Process Act 1992 and for which a registration fee was imposed over the last four years under the Civil Judgments Enforcement Regulations 2005. The table contains the jurisdiction, the financial year and the number of interstate judgements. In the Magistrates Court, in 2014–15, there were 295 interstate judgements; in 2015–16, 275; in 2016–17, 214; and in 2017–18, 196. In the District Court, in 2014–15, there were 10 interstate judgements; in 2015–16, six; in 2016–17, nine; and in 2017–18, two. For the Supreme Court, it is nil for each year. The total number of interstate judgements for 2014–15 was 305, for 2015–16 it was 281, for 2016–17 it was 223, and for 2017–18 it is 198. I will table that page of my notes, which basically sets out the dollar figures that I have referred to in terms of the fees generated, and then the number of interstate judgements. These are my notes but they include that information and it releases no secret government material.

Hon Michael Mischin: That's a blow.

Hon SUE ELLERY: Yes, sorry about that.

[See paper 1697.]

Hon SUE ELLERY: The member will get that document in due course.

The honourable member also raised the issue about the number of magistrates between certain ages. I can advise that as at 21 August this year, 14 magistrates are between the ages of 60 and 64. Of that number, 10 are in the Magistrates Court, two are in the Children's Court and two are in the Coroner's Court. As at 21 August 2018, six acting magistrates are over the age of 65, which is broken down into three full-time acting magistrates and three part-time acting magistrates for the Sunday Court. The average age of appointment of the current magistrates of the Magistrates and Children's Courts is 44.5 years. In respect of the change in the retirement age of magistrates, on proclamation of the change the position of current magistrates aged over 65 could be considered on a case-by-case basis. There is no set policy, noting that each of those appointments are made by the Governor for a fixed period.

Retirement ages in other jurisdictions are not uniform and they range from 65 to 72 years. The provisions related to extending appointments are also different across the jurisdictions. In the Australian Capital Territory, the retirement age for acting magistrates is 65 and for special magistrates it is 65 to 70 years. In New South Wales, the retirement age is 72, and for acting magistrates it is after 72 years but not extending beyond 77. It is worth noting that the Northern Territory no longer has magistrates. The Local Court Act of the Northern Territory, which came into effect in 2016, renamed magistrates "judges". If we compare that court, the retirement age is 60 and acting judges can be appointed up to 75 years of age. In South Australia, the retirement age is 60 years, but any additional age limitation is unclear from its legislation. It states that in the case of an acting magistrate, their tenure of office is "until the person's term of office expires". In Tasmania, it is 72 years, and permanent part-time or temporary magistrates can be appointed past 62 years of age for a period specified in the instrument of appointment. In Victoria, it is 70 years, and "reserve magistrates", which is a defined term, can be appointed up to 78 years of age. In Queensland, it is 70 years, and acting magistrates are up to 75 years of age. The abolition of the retirement age disparity between magistrates and judges will acknowledge and reflect the changed nature of the office of magistrates as part of the independent judiciary. It will also result in consistent superannuation periods across the judiciary.

Although we are going into committee, I will make some initial comments about the amendment foreshadowed by Hon Alison Xamon, which might assist members to think about it before we go into committee. The amendment provides for the appointment of an acting magistrate if that magistrate is either retired and under 70 years of age or qualified and over 70 years of age. The proposal is for a single period of extension up to 12 months. The auxiliary judge provisions in the Supreme Court Act 1935 and the District Court of Western Australia Act 1969 provide for unlimited extensions for time periods of no more than 12 months. If we compare the proposed amendment with those provisions, it does not appear to meet the suggested goal of achieving consistency across the jurisdictions. The government is of the view that a single extension of up to 12 months is not required for magistrates. Any resourcing requirements for the completion of cases for magistrates who have reached retirement age are already catered for in the act. The policy behind the Courts Legislation Amendment Bill 2017 is to equalise the retirement age of the judiciary and magistrates, and that is achieved through the bill. Auxiliaries as a concept do not appear in the Magistrates Court Act 2004. There is a question about whether this concept should be incorporated to go more towards the resourcing requirements of the courts. The government is satisfied that resourcing requirements can be adequately addressed through the current regime with the increased retirement age. Significant reform of the court's jurisdiction is underway with the Court Jurisdiction Legislation Amendment Bill 2017 and further

reforms of the District and Magistrates Courts under development. Those reforms consider the movement of matters from the District to the Magistrates Court, and we do not think that it is prudent to accept Hon Alison Xamon's amendment while that work is under consideration and things are yet to be settled.

I will leave my comments there. I thank members for their support and contributions. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon MICHAEL MISCHIN: I thank the Leader of the House for her advice about terms of service and the like. I note that we are dealing discretely with the Magistrates Court Act in part 3 so if the Leader of the House wants me to reserve my questions until that part, that is fine, but it traverses more broadly than that particular amendment. If I understand it, the average age of appointment of magistrates hovers around 44 and a half years, which suggests that at the moment they tend to serve around 20 years on the bench, unless they choose to retire earlier. Can the minister tell us the average age of appointment for a judge of the District Court and for a justice of the Supreme Court so we can compare the trends?

Hon SUE ELLERY: We requested additional information this morning anticipating that the member might ask for a comparison, but it has not yet been provided by the courts. If we complete the bill, I give the member an undertaking that I will provide it in any event. I suspect that it will not come in immediately as it is not already here, given that the officers are at the table. It was requested this morning and I give the member an undertaking to provide it to him as soon as I get it.

Hon MICHAEL MISCHIN: Perhaps I could add to that list the average age of appointment for judges of the Family Court of Western Australia. If my recollection is correct, there has to be at least a 10-year period of service in the Supreme Court, or achieving a certain age, to qualify for a pension. In any event, the average length of service of those judges would be useful as well. I apprehend that in a superior court the average length of service would be rather less than 20 years, but I am not sure about that. There is the risk, as I mentioned, that we end up with a magistrate being appointed at a relatively young age who will now be able to occupy a seat in the court for 30 years—I am not talking about a particular magistrate, but there have been times when the profession has taken the view that some have, like the Long Parliament, sat there too long for all the good that they have done. That is a risk that is presented by extending the retirement age. However, for reasons of consistency and the like, I think it is quite proper that there be an extension of the retirement age to 70 years.

Is there any plan to increase the age after which justices of the peace can no longer carry out court functions or be appointed? I often received representations from justices of the peace who, in a limited number of cases, discharge similar functions to magistrates, particularly if magistrates are not available in country areas, complaining that there is a cap on their ability to serve in courts. One of the reasons that cap was in existence was that there was also a cap on the retirement age of magistrates. It would seem incongruous and inconsistent to have justices of the peace being able to serve in court until an older age than magistrates. Can the minister explain what the situation is there and whether there are any plans to reform that?

Hon SUE ELLERY: I am advised that the Attorney General has asked for some work to be done on that. The work has not been completed yet and has not gone to the Attorney General. He has asked for the work to be done and I understand that it is being undertaken now.

Hon MICHAEL MISCHIN: Can the minister indicate when that work was initiated?

Hon SUE ELLERY: No, I cannot.

Hon MICHAEL MISCHIN: If I understand it correctly, when the government's amendments come into effect, unless there is some amendment to them, the position will be that any magistrate who is currently at the court and under the age of 65 will be able to serve to the age of 70, but any magistrate who has retired and had their term extended as an acting magistrate under the provisions of clause 9 of schedule 1 of the act will not have the benefit of that move.

Hon SUE ELLERY: As I said in my reply to the second reading debate, it will not be automatic; it will be considered on a case-by-case basis.

Hon MICHAEL MISCHIN: By how much can the period of appointment for acting magistrates be extended in the future?

Hon SUE ELLERY: It can be extended as long as required, as long as it is not beyond the age that the person turns 70.

Hon MICHAEL MISCHIN: At the moment can a person who has turned 65, is serving as a magistrate and is seeking to have their appointment extended beyond the age of 65 have that appointment extended at the discretion of the Governor, on the Attorney General's recommendation, by any length of time, so long as it does not exceed the age of 70?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: In future, a magistrate who is currently serving will be able to retire at the age of 70, but will not be able to have their term extended at all. Is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Why is that?

Hon SUE ELLERY: We are not sure what is not clear. Neither an acting magistrate nor a magistrate can serve beyond the age of 70.

Hon MICHAEL MISCHIN: I understand, but a magistrate who reaches their retirement age as currently stated can serve beyond their retirement age as an acting magistrate until the age of 70, because clause 9 of schedule 1 says that the Governor can extend it if the workload of the court requires it. Presumably there is a favourable report from the Chief Magistrate that says, "Magistrate Smith is good value, works hard and is familiar with court processes. We need him or her. Can he or she have his or her term extended by a period of years?" The Attorney General says, "Yes, that sounds like a good idea. I'll work on that recommendation." He then recommends it to the Governor and so be it. The magistrate retires but gets their term extended as an acting magistrate, but the cap is 70 years. Here, it is saying that a serving magistrate does not retire at 65; they retire at 70. But, should the workload require it, they cannot be appointed for any period—even a short period—beyond the age of 70. Is that correct?

Hon SUE ELLERY: That is correct, except for the completion of current cases.

Hon MICHAEL MISCHIN: For the record, can the minister assist us and tell us where that appears?

Hon SUE ELLERY: I take Hon Michael Mischin to schedule 1 of the Magistrates Court Act 2004, and specifically clause 9. Does Hon Michael Mischin have a marked-up copy?

Hon Michael Mischin: I marked it up myself.

Hon SUE ELLERY: On my version of the marked-up copy it is at the top of page 30. Schedule 1, clause 9(10) states —

If at the end of the period of an acting magistrate's appointment a case is pending before him or her, he or she is to finish dealing with the case and for that purpose the appointment is to be taken to be extended until he or she has done so.

Hon MICHAEL MISCHIN: Given that Supreme Court and District Court judges can be appointed for up to 12 months after retirement age, why can we not introduce a similar provision here that would allow service of up to 12 months after striking 70 in the case of a magistrate who plainly possesses their faculties, is doing a good job, is still active and is still conscientious?

Hon Sue Ellery: That is the heart of the amendment that is before us. I am quite happy if we debate it then.

Hon MICHAEL MISCHIN: Okay. I am just asking because I wondered why that had not been taken into account in the drafting to keep it consistent with the current philosophy in clause 9; that is, of being able to appoint acting magistrates beyond their retirement age up to a period of five years. I understand and accept that it is being extended to a retirement age of 70, but is there a reason it was not included as part of the redrafting of this clause to accommodate the extended retirement age?

Hon SUE ELLERY: I did respond to the amendment proposition in my second reading reply. Essentially, the policy is to equalise the retirement ages between the judiciary and magistrates. Auxiliaries, as a concept, do not appear in the Magistrates Court Act 2004. I guess the issue is around resourcing. We are satisfied that the resourcing requirements can be adequately addressed through the current regime with the increased retirement age. We have effectively put in that additional five years, depending on how old a person is now. We have effectively added all the resources that go with the capacity that is generated when the retirement age is increased. We think that is how to meet the resourcing needs.

Hon Alison Xamon; Hon Sue Ellery; Hon Michael Mischin; Hon Aaron Stonehouse; Hon Nick Goiran

Hon MICHAEL MISCHIN: Several acting magistrates are over the age of 65 at the moment. Three of them are full-time acting magistrates. Can the minister please tell us which courts they are serving in?

Hon SUE ELLERY: We do not have that information here. We can add that to the list of information that we required from the courts this morning.

Sitting suspended from 1.00 to 2.00 pm

Hon MICHAEL MISCHIN: Before the break, as I recall, I was asking about, among other things, the three full-time acting magistrates. I understand that the minister does not have handy the names of the courts where they operate from. I think the minister said that the three part-time acting magistrates are operating out of the Sunday court. Is that right?

Hon SUE ELLERY: That is what I said in my second reading reply.

Hon MICHAEL MISCHIN: Thank you. Has any difficulty been encountered by the Attorney General finding part-time magistrates to preside over the Sunday courts? I recall that the full-time magistrates prefer not to sit in the Sunday court because of resourcing issues and difficulties getting magistrates who had not yet retired over to that court. Has there been a similar difficulty finding judicial officers who are prepared to sit part time at the Sunday court?

Hon SUE ELLERY: We are not aware of any.

Hon MICHAEL MISCHIN: Thank you. Is the minister not aware of any because that is the advice she had or is she personally not aware of any?

Hon SUE ELLERY: Every answer I give is based on advice I am given at the table. I am not aware that there have been any difficulties.

Hon MICHAEL MISCHIN: Thank you. That is all I have to ask.

[Quorum formed.]

Clause put and passed.

Clause 2: Commencement —

Hon MICHAEL MISCHIN: This is a standard question about a standard clause. Part 1 of the bill comes into operation from the date of royal assent, and the rest of the act on a date to be fixed by proclamation, with different days for different provisions. Is there any particular reason why certain provisions of the bill cannot come into operation immediately?

Hon SUE ELLERY: There is no reason why it cannot be proclaimed, and the advice I have is that it will be proclaimed immediately after it is dealt with by the Parliament.

Hon MICHAEL MISCHIN: Would the minister be prepared to entertain an amendment that would bring the whole act into operation on royal assent?

Hon SUE ELLERY: I have not heard a reason why we would do that, but for the sake of getting the bill through, and not having debates about things that no-one has identified as being an issue, I will agree.

Hon MICHAEL MISCHIN: It is just a suggestion, given that the minister has indicated that there is no reason why it cannot. It is not as if it will be held up by going back to the Assembly, since it has never actually been to the Assembly. Notwithstanding that, I understand the Attorney General has put it about that it has been passed by the Assembly. In that case, I would move an amendment—I do not have it in writing—to delete all the words after “into operation” in clause 2 and replace them with “on the day on which this Act receives the Royal Assent.”

Hon Sue Ellery: Can I just make a suggestion to you? Why don't you write it like this.

Hon Michael Mischin: It's one you prepared earlier—is it?

Hon Sue Ellery: Well, we anticipate that you'll raise things.

Hon Michael Mischin: That's good; you're learning! There's a questioning process involved in this, and sometimes I will, yes. Thank you. That reflects what was in the Financial Transaction Reports Amendment Bill 2017.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Member, I believe you have to write the amendment and then sign it.

Hon MICHAEL MISCHIN: Okay; thank you.

What I propose, as the minister has provided, is that clause 2, “Commencement”, will provide that sections 1 and 2 come into operation on the day the act receives royal assent and the rest of the act will come into operation on the day after that day. Accordingly, I move —

Page 2, lines 5 to 9 — to delete the lines and substitute —

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 3 to 7 put and passed.

Clause 8: Schedule 1 clause 9 amended —

Hon MICHAEL MISCHIN: This is when we get to Hon Alison Xamon’s proposed amendment. I think I had already raised the subject of why no provision for an extension of the term of magistrates as acting magistrates beyond the retirement age of 70 had been imposed, at least on some short-term basis, to draw on that magistrate’s ability, if they are of sound mind, body and spirit, and are conscientious, when there may be a need for a magistrate to continue for some short space of time at least past the age of 70 years. The provisions in the Supreme Court Act 1935 and the District Court of Western Australia Act 1969 on appointing auxiliary judges to the Supreme Court and auxiliary appointments generally to the District Court are not reflected in the proposed changes concerning magistrates. I noted that the minister has said that a number of factors came into play there. If I can recall correctly, she said that courts legislation that would send matters from the District Court to the Magistrates Court is not only before the house but also being prepared. I am not sure what that has to do with the provision that allows for the appointment of acting magistrates beyond the mandatory retirement age as with other judicial officers. She also said something about resourcing. I would have thought that a magistrate continuing past their retirement age would make no difference to the resourcing elements. It is not compulsory. The Attorney General is not required to do it. It is a matter at his discretion as the need arises. I am not sure why the amendment was not taken into account or why it cannot be implemented while this bill is before this place and before it shows its head in the other place.

As I recall, Hon Alison Xamon first raised the prospect of an amendment to provide for this back in October last year. We were told that there was not sufficient time to consult and consider the matter. I suspect that there has been consultation and consideration in the months that have elapsed since then. I wonder whether the minister can expand on her reasons that an amendment in the form proposed by Hon Alison Xamon, albeit with some refinement perhaps, is unacceptable to the government.

Hon SUE ELLERY: I responded to the general proposition in my second reading reply and I also addressed the government’s reasons in the clause 1 debate. The honourable member is asking me to expand. I have nothing further to add to what I have put to the house already. The amendment has not been moved yet, so when the amendment is moved, I will repeat my arguments. I appreciate that the honourable member is now asking me whether I have anything further to add. I have nothing further to add to what I have already put to the house.

Hon ALISON XAMON: I am obviously rising because I wish to move the amendment standing in my name. I draw members’ attention to supplementary notice paper issue 3, which has been slightly tweaked. I move —

Page 5, lines 10 to 15 — To delete the lines and substitute —

- (1) In Schedule 1 clause 9(2) delete paragraphs (b) and (c) and insert:
 - (b) a person who would, but for the fact that he or she has attained the age referred to in clause 2(2)(b), be qualified to be appointed a magistrate or an acting magistrate; or
 - (c) a person who is a retired magistrate but has not yet attained 70 years of age, for such period not exceeding 12 months as is specified in that instrument.
- (2) In Schedule 1 clause 9(3) delete “but the period must not extend beyond when the appointee reaches 70 years of age;”.
- (3A) An appointment under clause 9(2) may be extended by the Governor by instrument for a further period or periods, but that appointment can only be extended on any one occasion for such period not exceeding 12 months as is specified in the relevant instrument.

I have already spoken briefly on this matter in my second reading contribution, but I would like to elaborate on my concerns and why I have moved this amendment. The bill in front of members is a good one because it is attempting to remove discrepancies in the retirement age of magistrates and judges, making sure that the retirement age is 70 years across the board. Unfortunately, a discrepancy remains; that is, should it be deemed desirable to allow a magistrate to continue beyond the age of 70 years for a set period of time, that is simply not possible except in the case of finishing cases that they have already undertaken. That is inconsistent with existing provisions in both the District Court and the Supreme Court. As I have said, it is already recognised that judges are able to work beyond the age of 70 should it be deemed useful or desirable for the court, and, as Hon Michael Mischin said, if it is deemed that they can make a positive contribution, and it is an additional option. I was also very interested to hear the observations in the earlier questions of Hon Michael Mischin that even justices of the peace, who are far less qualified than magistrates on all things legal, are able to continue to operate in their roles beyond the age of 70. Of course, as I illustrated in my second reading contribution, even jurors, who may have absolutely no or very limited legal understanding, are able to continue to contribute beyond the age of 75.

There are good reasons for allowing this sort of flexible arrangement to be made available to the Attorney General for magistrates. Some issues come to mind, say, for a specialist court. I think of two excellent courts, the Drug Court, or the Start Court, otherwise known as the mental health court, in which a degree of expertise has been built up over a period of time. It may be that there is a delay in the appointment of an appropriate magistrate into those courts. It may be only two months; it may be 12 months. In any event, it will enable us to do exactly what is done with judges—it will enable flexibility so that if it is deemed appropriate, a magistrate could potentially be kept on for a period of time, even though they are not sitting there with existing cases, until such time as that position is made vacant. Another suggestion is that if an appointment has been made but, let us say, the person in that position suddenly needs to take maybe four months off for health reasons, the Attorney General will have the capacity to bring back from retirement, if it is deemed appropriate, a person who has particular expertise, an otherwise retired magistrate, to fill that four-month vacancy. That is good for the consistency of the court. It is basically good court management.

I do not understand the way this particular provision has been handled by the Attorney General's office. I first raised this issue in the briefing about a year ago. I asked whether my interpretation was correct. It was confirmed that it was correct. When I asked why it had not been included, no satisfactory answer was given. It appears that such an issue had not been appropriately contemplated. At the time I was told that an amendment would not be contemplated because the Attorney General had not had time to consult and, therefore, that was the reason it would not progress. I put this amendment on the notice paper in October last year. I am going to presume that that consultation has occurred, or I am going to presume that if consultation has not occurred, the Attorney General has effectively failed to do his job. I am aware that calls were made this morning to some of my parliamentary colleagues from people saying, "Please make sure you don't support this amendment." Can I say that at no point has any such courtesy been extended to me. My office has been trying to get clarity around this issue from the Attorney General via the ministerial liaison officer for quite some time. I want to be very clear: I am in no way casting aspersions on the advisers, who I am sure are diligently doing their job. But this is an example of when I do not believe there has been appropriate engagement with me or my office about a very legitimate and, I would argue, important amendment that is consistent with the proposed policy of this bill. I am very unimpressed. I am going to make a comparison with the way that I was treated by Minister Papalia's office during the debate on the Liquor Control Amendment Bill. His office showed me the utmost respect and professionalism. I do not see this as an issue with this government, but there has been a problem with the way that the Attorney General has chosen to handle this particular amendment.

I also draw members' attention to the fact that I have circulated an updated amendment and I would like to explain the two minor amendments that I have made to it so that they are aware. The wording in front of members pretty much replicates the current wording in the acts that pertain to the Supreme Court and the District Court, but there have been two amendments. Those particular acts refer to a commission, yet the schedule to the Magistrates Court Act refers to an instrument. I originally had "commission", but I have changed that word to "instrument". It does not change the meaning, but it is better drafting because it is more consistent with the Magistrates Court Act. That is the first change that I have made.

The second change I have made is to incorporate proposed subclause (3A), which again has wording taken pretty much from those other acts. It makes it very clear that, if it is deemed appropriate by the Attorney General and also, obviously, the Governor, magistrates can be appointed for a 12-month period but also potentially successive 12-month periods. The concern raised during the second reading debate was that my initial amendment would limit an extension to 12 months. As such, I have corrected that to make it clear that there are multiple opportunities for a magistrate to be appointed. But I point out the irony of suggesting that perhaps my amendment was inadequate because it allowed for only one 12-month extension, when in fact the bill in front of us allows for no extension.

I ask members to consider voting for this amendment. It is consistent with the intent of the bill, which is to make sure that magistrates and judges are treated in exactly the same way. There are no additional resourcing implications for the bill, other than the fact that it will give the Attorney General additional scope to appoint people to particular roles that require high levels of expertise, if that is deemed to be desirable, whether it is a specialist court, a regional court or a court that requires extraordinary hours, such as a Sunday court. In any event, if the Attorney General does not want to appoint any of the current magistrates beyond the age of 70 years, he does not have to. This will not compel him to do anything. This will allow him and any future Attorney General the option to do that.

Hon SUE ELLERY: I am trying to figure out what the outrage is about. As far as I can tell, it is with the way that the member has been treated.

Hon Alison Xamon: It is because there has been no courtesy extended.

Hon SUE ELLERY: I have the call.

Hon Alison Xamon: You asked a question. I answered.

Hon SUE ELLERY: Through the Chair, I think the outrage is that someone from the government—it was not me; I do not know who it was—on seeing the amendment on the supplementary notice paper and knowing that this matter was coming up today, contacted members of other parties to ask them not to support the amendment. I think that is what the outrage is about.

Several members interjected.

Hon SUE ELLERY: Let us deal with one thing at a time. The government does not support the amendment. The government considered the amendment in the period between when the first version was put on the supplementary notice paper and today. It has considered the amendment and, as I set out in my second reading response, will not support it. I appreciate the amendments made over the lunch break. I indicated my concerns in my reply to the second reading debate, so I appreciate that Hon Alison Xamon has amended her original terms to address the point that I made about auxiliary judge provisions in the Supreme Court Act and the District Court Act providing unlimited extensions, so the original version would have been inconsistent across extensions. I appreciate that that problem has now been fixed in the amendment before us on supplementary notice paper 23, issue 3.

I do not consider it in any way impolite, rude, inappropriate or unprofessional for the government to seek to make contact with other parties to ask them not to support an amendment. There is nothing unprofessional about that. I reject that it is somehow unprofessional to contact other parties to ask them to consider not supporting an amendment. I do not know that there is any obligation to advise whoever has moved the amendment that the government has already indicated that it will not be supporting it and that it is trying to get other people not to support it as well. I do not see that that is rude or unprofessional in any way.

Nevertheless, the issue before the house is the amended amendment on supplementary notice paper 23, issue 3. There is still the argument that I put previously, which I will put formally now in light of the moving of the amendment. This amendment still goes beyond the government's policy intent for this bill, which is about retirement age. I also reiterate the point I made that there is currently significant reform of the courts' jurisdictions underway. There is already the Courts Jurisdiction Legislation Amendment Bill 2017 and further reforms of the District and Magistrates Courts are under development. From the government's point of view, it would be imprudent to consider this amendment while those potential reforms regarding the movement of matters from the District to the Magistrates Court are being considered. That work is underway and those things are yet to be settled. Although I appreciate the amendment and the changes made since I indicated one of the issues that the government has with it, the substantive issue for opposing the amendment remains the same; that is, it goes beyond the original policy intent of lifting the retirement age, and other work is underway to reform the way in which the courts do their business and we do not want to pre-empt the outcome of that work.

Hon ALISON XAMON: With respect, I do not think there was a deliberate decision to exclude the capacity to extend magistrates' terms beyond 70 years of age; I think it was just one of those issues that had been overlooked. Of course, I have no evidence of that; that is just my very strong suspicion. I remind the chamber that when I first raised this amendment, the only rationale given at the time for not supporting it was that there had not been time to consult. Much time has now elapsed so that concern falls away. I again remind members that I was advised only yesterday, finally, that the government would not support this amendment. My office has been attempting to engage on this for quite some time, because one of the things we also wanted to know was whether there was any legitimate concern about what had been drafted and whether something needed to be taken into account. I did not find out that there were any concerns until I listened intently to the Leader of the House's reply to the second reading debate. Despite this amendment having been on the notice

paper since October, that is when I found out that there was a concern. As has been stipulated, that concern has now been rectified. I think this is an important provision to keep for the sake of consistency, but, importantly, it is going to mean that if it is desirable for a magistrate to stay on beyond 70 years of age for any reason, that could occur. I think it is a provision that sitting magistrates would like to know is there. As such, I urge members to consider supporting this amendment.

Hon SUE ELLERY: Not to respond to the issues raised, but something that could be fixed by way of a Clerk's amendment—on supplementary notice paper 23, issue 3, proposed subclause (3A) is at the bottom of the page. It should be (3a).

Hon ALISON XAMON: I am, of course, prepared to accept that amendment and, if it is easier, I am happy to move it, but I do not mind if it is done by the Clerk.

Hon Sue Ellery: The Clerk can do it.

Hon MICHAEL MISCHIN: I want to explore a few things. Firstly, I do not think it should be proposed subclause (3a). It is not a subparagraph of a subclause; it is a subclause so I think, consistent with drafting practice, it would be (3A), as it would be with a proposed section, but no doubt parliamentary counsel or someone would be able to sort that out.

I have listened with interest to what has been said about this issue and I have a few questions of the minister if she is prepared to assist before I indicate a final view, but my inclination is that this amendment be supported. I will deal with a couple of the matters that were raised in the course of the discussion so far. I am disappointed that the minister seems to think that the amendment is motivated out of some kind of outrage and cannot understand Hon Alison Xamon's problem with the manner in which she has been dealt.

Hon Sue Ellery: If we put the substance of the amendment to one side, I take no issue with Hon Alison Xamon moving it. She expressed a point of view of being unhappy about someone from the government apparently contacting other members. That is what I responded to. I do not have an issue with her moving the amendment that she seeks to move. We will not support it, but I take no issue with her moving it.

Hon MICHAEL MISCHIN: True. I understand and I understood the minister's counter to that point. I have no doubt that Hon Alison Xamon will correct me if I am misinterpreting it, but one of her complaints about the way that the government treated her proposal was that, without approaching her directly to discuss whether the government would support or reject what she had proposed, approaches were made to other parties to encourage them to oppose the amendment. What Hon Alison Xamon had been hoping for, I think justly, was that in the nine months since she put forward this idea, there would have been some engagement with the government to say, "We accept what you want to do", "We accept what you want to do, but with some modifications to deal with technical problems," or "We reject what you want to do and these are the reasons we will not go along with it."

Hon Alison Xamon: That is correct.

Hon MICHAEL MISCHIN: Thank you. To categorise it as simply as her being bent out of shape because other parties were very recently approached to say, "Don't support this amendment that Hon Alison Xamon has canvassed" is really misunderstanding what has upset her. I think there is some justification for that. I am sure that when I was on the other side of this chamber it was something I did from time to time. In the hurly-burly of dealing with amendments and the like, there is an urgency about matters and communication breaks down, is incomplete, or unsatisfactory and the like, but it is not as though this has been foisted on the government by surprise. This has been sitting on the notice paper for the last nine months. I was curious about what the government's position might be because it is something that had not occurred to me when I first read the bill. I was prepared to accept the bill the way it was for the sake of an easy life and because there was nothing particularly objectionable to it. The member has obviously focused on the detail of it and seen what may be of potential assistance to the Attorney General of the day to allow for the principle that is present in other legislation for judicial officers to be reflected in this bill for parity's sake. It is quite a constructive amendment. There may have been an issue with the use of "commission" as opposed to "instrument" as a description of the appointment of an acting magistrate. There may have been an oversight about the period for which it could be extended and being an absolute rather than able to be renewed. I suggest that one might usefully look at whether there ought be a cap on it of 75 years or something, but I am not going to go down that path. It is not a silly amendment; it is a worthwhile amendment. All we have heard in counter to that and at this point is that it is beyond the policy intent behind the bill, which was supposed to focus on extending the retirement age, and that there are other reforms to the courts' jurisdiction that are either being pursued at present by way of legislation or being planned for the future. I will deal with each of those in turn, but perhaps the minister will be able to expand on what she has to say about those.

Firstly, to say that providing for an extension of service by way of appointment of an acting magistrate beyond the age of 70 is somehow a radical departure from the policy of the bill is, to my mind, untenable. This amendment seeks to correct a limit on service. Currently, there is a facility for extending service beyond the retirement age, and this is just another feature of that. It is a development taking into account the change in circumstances and the extended period over which magistrates can serve. It is not a radical departure from the bill; it is part of its philosophy. We are reforming magistrates' terms of service so that they can serve for longer, and part and parcel of that is the appointment of acting magistrates, and part and parcel of that is just how far into the future we appoint acting magistrates and whether it can be done past the retirement age, which is what is provided for in schedule 1 anyway. I do not understand that there is some great departure. Perhaps the minister can help with advice on whether this was even considered or was there some instruction saying, "Don't do that" as opposed to "Fix the retirement age and leave it there. That'll do to slap into this bill, along with a couple of other things that we've picked up along the way in order to get it through." That should be ascertainable.

Secondly, the fact that there are other reforms of the sort of business that courts do has absolutely nothing that I can see to do with retirement ages. The minister can take the entire jurisdiction of the District Court and throw it down into the Magistrates Court, but it has nothing to do with how old magistrates have to be before they mandatorily retire. The two have nothing to do with each other. If it is a resourcing problem, I would have thought that this would actually help the courts in dealing with resourcing crises down the track if so much jurisdiction has been thrown down there that the courts run out of capable people to appoint as magistrates or that they get overworked. I would have thought that this would help, but even that has nothing to do with the terms of service of the judicial officers concerned. But if it does, when that legislation comes rolling through this place, we can deal with it, because, presumably, if it has anything to do with the changes in jurisdiction, it will be contained in the relevant legislation that is put before this Parliament. At the moment, all things being equal—assuming that the status quo is as we have been presented, with the same jurisdiction and the same conditions of service in schedule 1 with an adjustment made to the period that magistrates can serve to a maximum age, and with there being some provision for an extension beyond the maximum age—I do not understand why we cannot deal with this now.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Michael Mischin has the call.

Hon MICHAEL MISCHIN: What I have not heard is a technical objection to it, such as, "This can't be achieved in the manner that you have drafted", "There is a problem with the terminology", "It doesn't fit with some other provision of the act or some other provision of the schedule" or "There's a complication that Hon Alison Xamon has overlooked that needs to be addressed." We have not heard whether there has been any consultation. I understood that the reason the government signalled that it could not support the amendment in October last year was the insufficient time to consult with the magistracy and take advice and consider its ramifications. That was nine or 10 months ago. I am sure we can do something about that. That is quite a stretch. Surely some consultation has taken place in the meanwhile and the ramifications have been looked at. Perhaps the Leader of the House will be able to assist us. In the absence of the government saying that there is a technical problem with the amendment or that something was raised in consultation that militates against it being a good and acceptable idea, my inclination is to support it. It would be a worthwhile additional feature for the talented magistrates who have acquired experience, as Hon Alison Xamon suggested, in a specialist court and the like during a handover period if necessary or when there is a reluctance in the magistracy to go into a specialist court, such as the Children's Court. We could appoint someone to sit alongside them to help them in the handover or assist with work overload, which might arise from time to time, or a lengthy case. We would not want to pull others out of the system when someone over the age of 70 and recently retired, but who still has all their faculties and would be able to do a competent and reasoned job for a variety of reasons, is willing to be thrown into the position for a space of time. We have the limitation of renewals at no more than 12 months, which gives the Attorney General of the day the ability to take advice, as they should, on whether there is a basis or a rational reason for extending the term beyond 12 months. Perhaps the Leader of the House can assist us. First, are there any technical problems with the drafting; and, if so, what are they and how can they be cured? Second, what consultation has taken place since October last year to assess the merits of what Hon Alison Xamon has proposed, albeit with some tweaking that might be necessary to refine or polish it?

Hon SUE ELLERY: As I understand, the Attorney General was not prepared to accept Hon Alison Xamon's amendment or what is being put by Hon Michael Mischin—bear in mind I was not involved in the briefings 10 months ago or whenever it was—because he did not have time to properly consider it or its ramification. Since that time, the government has considered the amendment and its possible ramifications. It has taken the view, as I have already expressed to the chamber, that it will not be supporting the amendment for the reasons that I have already explained to the chamber. An additional argument about the provisions in Hon Alison Xamon's amendment has been fixed in issue 3 and now falls away. I appreciate Hon Alison Xamon doing that, but the

government's position remains the same. We have considered the terms of the amendment and we still will not be supporting it.

Hon ALISON XAMON: I draw members' attention to the fact that on 10 October last year I received an email from the ministerial liaison officer advising that at the time, the Acting Chief Magistrate was supportive in principle of the amendment that had been proposed. There was concern that the amendment would be put up without the Chief Magistrate having been spoken to, as we thought that the amendment would be put up pretty much straightaway. Even then, the Acting Chief Magistrate indicated that they were supportive in principle. I remind members that if the forthcoming Court Jurisdiction Legislation Amendment Bill passes, the number of cases in the Magistrates Court's jurisdiction will increase because the bill will increase the dollar ceiling for cases that the court can hear. Should we follow through with the government's proposed legislative agenda in this space, we will be looking at the very real possibility of needing more magistrates. This amendment would help to facilitate that proposed reform of the Magistrates Court.

Hon MICHAEL MISCHIN: I am obliged to the minister for her response, but it has not taken us very much further. She said that there had been consideration, but did not expand on any other reasons for the government's rejection of this proposal other than it did not intend to do it as part of the policy of the bill and that other legislation is underway about the sort of work that will be assigned to the Magistrates Court from other courts. Has there been any consultation with anyone about this amendment? Has the Attorney General's office consulted with the Chief Magistrate?

Hon SUE ELLERY: I am advised that there was consultation with the Chief Magistrate. It was not about the precise terms of the amendment as it was then drafted, but about the proposition of capacity to extend a magistrate's appointment for a brief period. The Chief Magistrate indicated support for that proposition. The government considered that and, nevertheless, still holds the view I have expressed to the chamber. I am advised that there was no other consultation. Without looking at the precise details of the amendment, the Chief Magistrate was supportive of the concept of extending appointments for a short period. The government considered that, but still held the view that the policy of this bill is about retirement age and that no resourcing issues needed to be addressed. Therefore, for the reasons I have already outlined, the government will not support the amendment.

Hon MICHAEL MISCHIN: The Chief Magistrate in principle supports what Hon Alison Xamon has foreshadowed and it is just that the government is unpersuaded that it ought to be done. Is the Attorney General working on any other proposals for changing the conditions of service for magistrates under schedule 1?

Hon SUE ELLERY: The advice available to me is that there is no other legislation regarding conditions that is currently being worked on.

Hon MICHAEL MISCHIN: Notwithstanding that no legislation is being worked on, is the Attorney General exploring changes to magistrates' conditions of service?

Hon SUE ELLERY: I was quite precise in the way that I answered the previous question, because I do not have the Attorney General sitting here with me. What I have are the officers who, if there was legislation being requested, would be the ones working on it. The only information I can give Hon Michael Mischin in response to the question is the answer that I have already given him.

Hon MICHAEL MISCHIN: I was aware that the minister had answered it precisely, which is why I asked the supplementary question, because I do not want there to be any misunderstanding. To the minister's advisers' knowledge, has the Attorney General received any submissions from magistrates or others about changing their conditions of service, whether including the sort of proposition put forward by Hon Alison Xamon or anything else?

Hon SUE ELLERY: It would not come to these officers. I do not have the Attorney General sitting here, so I cannot talk to what others may have put to his office. The officers who are sitting with me at the table today are able to answer questions about legislation, if they had been requested to work on any, and I have answered that question.

Hon ALISON XAMON: As I heard the minister's response to this, nothing is being contemplated additionally around the issue of magistrates' conditions. If I have that incorrect, I apologise and I am sure the minister will rectify my error. If that is the case, this amendment is the opportunity to get this right, because it does not sound as though there will be another opportunity any time in the near future to rectify this.

Hon AARON STONEHOUSE: I have been listening to the debate and the contributions by my learned friends Hon Alison Xamon and Hon Michael Mischin and it seems to me that the government's contention that it has other amendments and reform around court jurisdictions underway does not seem to be a strong counterargument against this amendment, as it will in no way impact the retirement age of judges or this additional instrument, the ability

to extend a magistrate's service to sit as an acting magistrate. There does not seem to be any rush on this legislation either; it was introduced into the Legislative Council in October 2017, and it has only been brought on now. It has not even been to the Legislative Assembly yet, so we are not sending it back again. I found the government's counterarguments lacking and I am inclined to support this amendment, unless, as a layperson, I have misunderstood something and there is some compelling reason for this amendment to be overlooked. It seems to me that this instrument would not impose any additional resource requirements on the Magistrates Court or the Department of Justice. It would only be an additional tool that the Attorney General could use, if he so wished to use it. He will not be compelled to appoint acting magistrates in any way; it will just be an additional option to have available for magistrates with a need to sit beyond that 70-year mandatory retirement age. At this point, I am inclined to support the amendment.

Hon NICK GOIRAN: Briefly, with respect to the amendment before the chamber, I wonder whether members, in particular Hon Alison Xamon, might have at their disposal schedule 1 of the Magistrates Court Act 2004. If they do—I indicate these remarks are intended to be of assistance to the amendment Hon Alison Xamon seeks to move—item 1 of the amendment on the supplementary notice paper seeks to insert into clause 9(2) of schedule 1 effectively two new paragraphs. If the member has schedule 1 at her disposal —

Hon Alison Xamon interjected.

Hon NICK GOIRAN: If the member has clause 9 of schedule 1 at her disposal, she will see that it already has a clause 9(2) and that clause 9(2) has paragraphs (a), (b) and (c). With the first limb of her amendment, Hon Alison Xamon is seeking to replace paragraphs (b) and (c) with new paragraphs (b) and (c). I agree with what she is trying to do. There is no issue there. The second limb of her amendment to schedule 1 seeks to delete certain words in clause 9(3). Again, I have no issue with that. My question to the honourable member is about (3A). I suspect that the member intends to insert new clause 9(3A) into schedule 1. If that is the case, this amendment needs some slight modification.

Hon ALISON XAMON: Thank you, honourable member, for seeking clarification of that. As I had indicated when I spoke to the revised amendment, due to the minister's second reading reply, I became aware that there was concern about the way my amendment had initially been drafted. It did not include a similar provision to what exists within the District Court of Western Australia Act and the Supreme Court Act that enabled those 12-month appointments to potentially be ongoing or to occur on multiple occasions. As such, that wording has been taken from those acts and it replicates that provision to enable any extension beyond the age of 70 to occur in multiple terms if that is deemed to be appropriate.

Hon NICK GOIRAN: The issue is that the amendment, as it reads on the supplementary notice paper, is for the chamber to agree to delete lines 10 to 15 of page 5 of the Courts Legislation Amendment Bill and to insert everything else that appears on the supplementary notice paper. The intent and the spirit of what is sought to be achieved is good and I support that. The first and second limbs of Hon Alison Xamon's amendment on the supplementary notice paper are excellent and have my full support.

My question is about the third limb. Do not worry too much about (3A). I think it should state "(3)". Forget about (3A). It should say, "In schedule 1, after clause 9(3), insert (3A)", and all the words that are on the supplementary notice paper.

The DEPUTY CHAIR (Hon Matthew Swinbourn): I understand that there are some issues with this clause, and I have been advised by the clerks that they will consult with the parliamentary counsel, and my advice is that they can be remedied. As I understand it, you have a point, people are aware of it, and they are in the process of addressing it.

Hon MICHAEL MISCHIN: Hon Nick Goiran has made a sound point about the way the supplementary notice paper is drafted. I would assume that what was being sought was the insertion of subclause (3A) in the appropriate sequence in the current clause 9 of the first schedule, but he is correct. Apart from that, there does not seem to be any technical drafting problem.

Hon SUE ELLERY: The government is still opposed to the amendment, but the technical point that Hon Nick Goiran raises about the need to insert, effectively—if I can describe it as such—an instruction, rather than the terms of the amendment, is correct.

Division

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

Extract from Hansard
[COUNCIL — Thursday, 30 August 2018]
p5421b-5434a

Hon Alison Xamon; Hon Sue Ellery; Hon Michael Mischin; Hon Aaron Stonehouse; Hon Nick Goiran

Ayes (17)

Hon Jacqui Boydell
Hon Robin Chapple
Hon Tim Clifford
Hon Colin de Grussa
Hon Diane Evers

Hon Donna Faragher
Hon Nick Goiran
Hon Colin Holt
Hon Michael Mischin
Hon Robin Scott

Hon Tjorn Sibma
Hon Charles Smith
Hon Aaron Stonehouse
Hon Dr Steve Thomas
Hon Colin Tincknell

Hon Alison Xamon
Hon Jim Chown (*Teller*)

Noes (10)

Hon Alanna Clohesy
Hon Stephen Dawson
Hon Sue Ellery

Hon Alannah MacTiernan
Hon Kyle McGinn
Hon Martin Pritchard

Hon Samantha Rowe
Hon Matthew Swinbourn
Hon Dr Sally Talbot

Hon Pierre Yang (*Teller*)

Pairs

Hon Martin Aldridge
Hon Simon O'Brien
Hon Ken Baston
Hon Peter Collier

Hon Adele Farina
Hon Rick Mazza
Hon Darren West
Hon Laurie Graham

Amendment (deletion of words) thus passed.

Hon ALISON XAMON: It appears that the amendment will proceed. We need to get the wording as precise as possible so that, hopefully, it will be complete. I am conscious that Hon Nick Goiran has raised a potential technical issue around the wording. It would be good to resolve that. I am aware that we have experts around the middle of the table at the moment who can provide advice on how the amendment can potentially be drafted. As such, I hope some improvements can be suggested.

Hon SUE ELLERY: The government has already agreed to the amendment. The way that Hon Nick Goiran has described what needed to be done is agreed. The clerks have advised the Chair that they can work with parliamentary counsel to fix it. We understand the way it has been described by Hon Nick Goiran. That is accepted by everybody. Rather than try to write something now, it is much better to accept the advice of the clerks and to construct it that way.

Hon ALISON XAMON: I am happy with that.

Hon MICHAEL MISCHIN: Just to make it clear, the amendment before us is, at page 5, to delete lines 10 to 15 and insert all the stuff that is listed. There are three different things. We are not inserting proposed subclauses (1), (2) and (3A); we are deleting certain paragraphs. The amendment was not framed properly in the first place, but I think everyone understands what is going on. In proposed clause 9(2), there will be a replacement of those paragraphs. In proposed clause 9(3), some words will be deleted. In proposed clause 9(3A), that is what is to be inserted. It is rather difficult. I wonder whether we have the vibe, so to speak, and we just accept it because we are not inserting all that stuff; there is a deletion involved in proposed subclause (2). I do not know whether it is best to move them as a whole or specifically move each proposed subclause separately to give clarity. We have already deleted paragraphs (b) and (c); we now need to insert those words. Then I think we need to move on to the next one and delete the words that are specified. Then we need to move on to the next one and insert what is described as proposed subclause (3A). I am not going to die in a ditch over it, but it seems that some logicity may be helpful so that Hansard can specifically identify what is being done along the way. If that involves three votes, so be it.

The DEPUTY CHAIR: Hon Michael Mischin, are you moving to postpone the clause?

Hon Michael Mischin: No.

Hon SUE ELLERY: I have sought advice. The advice I have is that the instructions to insert or delete the various provisions are missing. For the purpose of Hansard recording the government's position, we oppose the amendment. We agree, however, that the instructions reflecting the intent that was identified by Hon Nick Goiran and just spelled out again by Hon Michael Mischin are missing from supplementary notice paper issue 3. We are satisfied with the clerks' advice that the clerks will work with Parliamentary Counsel—assuming the amendment is passed—to reflect that we are dealing with inserting the instructions. It is not changing the words of the amendment; it is the instructions about where it goes. If the clerks' advice is still that that is a sound way to proceed, I am happy to proceed, but I have never found myself in this position before.

The DEPUTY CHAIR: The advice is that we need to postpone the clause.

Hon Alison Xamon; Hon Sue Ellery; Hon Michael Mischin; Hon Aaron Stonehouse; Hon Nick Goiran

Hon SUE ELLERY: It might take a few minutes, so I will also move that we report the bill. Then we can move to another bill so that we have time to do this correctly. I want to move to the Road Traffic Amendment (Driving Offences) Bill 2018.

Further consideration of the clause postponed, on motion by Hon Sue Ellery (Leader of the House).

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

[Continued on page 5451.]