

WESTERN AUSTRALIAN JOBS BILL 2017

Second Reading

Resumed from an earlier stage of the sitting.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [2.58 pm]: I rise to offer my comments on the Western Australian Jobs Bill 2017. The opposition has indicated it will support this legislation, but it will interrogate it to ensure that it will achieve what the government purports it will for the community of Western Australia. One of the gaping holes in this legislation is the definition of “local industry” at the beginning of the bill. The bill states —

local industry means suppliers of goods produced, or services provided, in Western Australia, another State, a Territory or New Zealand;

The opposition is of the view that the argument that has been prosecuted by the government in the community is that this legislation will ensure that more Western Australian companies will achieve priority jobs with government and that there will be more opportunities for small to medium-sized Western Australian businesses and their employees as a result of this legislation. However, the legislation in fact does not allow for that. It allows local industry to include goods produced or services provided in not only Western Australia, but also the Northern Territory, Queensland, New South Wales, Victoria, Tasmania and New Zealand. I put to members that New Zealand would not be considered local by any Western Australian. Indeed, as a small business owner, I would consider a local small business to be one that a person can walk up to the front door of and that is located in Western Australia and owned by Western Australians. That is the whole definition of “local” in the minds of the very parochial Western Australians whom this jobs bill has been pitched to as some kind of rescue mechanism for local participation. We believe local participation is important. We did our utmost when in government to try to ensure local participation in government work wherever possible; however, it is not as easy to achieve as the Premier would purport. A legislative instrument is often not the easiest way to achieve those sorts of initiatives.

I would like to point out some issues with the legislation. Clause 14(b) provides that the supply contract entered into with a prospective supplier under the Western Australian industry participation strategy must include a requirement for reports to be given to the procurement agency in accordance with the participation strategy. The intention of including a reporting clause in supply contracts is to assist agencies in monitoring the implementation of commitments made and in reporting on the outcomes. Therein lies the problem with the legislation. The problem with this sort of legislation and these sorts of government initiatives is always in the implementation, monitoring and management of the program. Indeed, history shows that government agencies are not always terribly adept at following these kinds of policy initiatives. In fact, there have been many attempts at these sorts of policies in the past. Government procurement is a fairly tricky area and agencies find ways to circumvent even legislative requirements such as the bill before the house today.

I turn to clause 15(3). The explanatory memorandum states —

Clause 15(3) is aimed at transparency and requires that the procurement agency for a WAIPS supply publish on a website maintained by or on behalf of the agency, a ... notice of an exemption given to the agency, and if the exemption is amended or revoked, notice of the amendment or revocation.

This is an interesting clause in the legislation, because it refers to the ability of an agency to achieve an exemption in certain circumstances. We will get to see those circumstances when the government gets around to drafting the regulations, but at this point, as we examine the bill in this house, we do not know what those exemptions might be. In a short while, I will outline some of the problems we have had with exemptions to government procurement policy in particular, with agencies, by means of delegation from the minister, having been able to exempt themselves from the requirement to comply with instruments such as the one we are debating. The fact that there is an ability for an exemption and that the exemption needs to be published on a webpage allows agencies basically to have a toe in the door not to have to comply with the legislation.

Under clause 17(2), it is intended that monetary value thresholds will be part of the criteria for participation in the strategy and that there will be a requirement to have a WAIPS. However, we do not know what those thresholds will be; they will be prescribed by regulation. We do not know whether those thresholds will be \$5 000, \$20 000, \$150 000 or \$10 million worth of procurement. We do not know what those thresholds will be. The legislation is silent on that. They will be prescribed by way of regulation. The second reading speech does not give the opposition or this Parliament any indication of what those thresholds will be, which leaves us in the dark about the point at which this jobs bill and the participation strategy will kick in. There is a requirement, as usual with these sorts of things, for the minister to prepare a report and bring it to Parliament, and that is a good thing. It will allow for parliamentary oversight of the compliance of these agencies with the policy. We on this side of the house will be very interested to see that report, because there is a requirement in this legislation that the agencies incorporate the

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successful suppliers' participation plan commitments into any contract awarded. Indeed, it will be very easy for the Auditor General and others to go through those government contracts and find those that have complied with the legislation and those that have not.

As I said earlier, the devil in these sorts of strategies is in their execution by, and the compliance mechanisms put in place for, the agencies. I refer to a report of the Office of the Auditor General published in 2011 into public sector performance and particularly agency compliance with procurement requirements. It is not a great report. The audit in 2011 found that compliance was inconsistent. Fewer than half the agencies that were looked at managed procurement strategically and only two complied consistently with the four principles of good procurement practice. Five agencies complied consistently with the principles of good procurement, but not all of them, and two agencies did not comply with any of the principles of good procurement—none. That is a significant problem. When the government introduces another piece of regulation, which is ultimately what this legislation is, agencies tend to buck up against those kinds of requirements—they do not like them—and suppliers dealing with government generally view these things as unnecessary red tape and do whatever they can to circumvent their participation in them. In 2011 the Office of the Auditor General looked at the strategic management of procurement by a number of agencies. Sadly, most of them failed the test. One of the agencies achieved a poor outcome. Four agencies received what I suppose we could call a grade of C, two of them got a B for average and two of them got good—I would say that is a B+ in the context of this report, because the report was not great.

One of the other initiatives that the Office of the Auditor General looked into at the time was the Priority Start building policy, which was introduced by the Labor government in 2007. The purpose of that policy was to encourage employers to take on apprenticeships and traineeships. It was a difficult policy to implement; indeed, compliance with Priority Start was incredibly poor, partly because its structure did not work. The mechanism by which businesses had to demonstrate that they could comply with the policy became quite cumbersome. There was ambiguity about what the agencies' reporting requirements were and the agency that was supposed to be managing the Priority Start program. The public sector's compliance performance with the Priority Start building policy was damning. The Department of Training and Workforce Development tried to manage the policy. It said in the Auditor General's report that its issue with being given the job of ensuring that government agencies complied with the policy was that the policy was never adequately resourced. Its view was that the systems and processes in implementing the policy were not clearly defined and certainly there was limited resourcing to enable the department to hold agencies to account in the letting of construction contracts and ensuring that there was compliance with the apprenticeship and traineeship uptake.

Some of the contracting arrangements, such as panel and staged contracts, made application of the policy difficult and costly for government and contractors, and that was a major disincentive to an otherwise useful strategy. That is where I see there will be problems with this Western Australian Jobs Bill. If the provisions are not really driven by government and not resourced adequately, if there is no clear collection of a business unit of public servants whose job it is to routinely go through every contract awarded by government in every agency to ensure that there is compliance with scheme and if things are left up to the agencies, they will take the path of least resistance and find ways to exempt themselves from participating in the strategy—and therein lies a significant problem. If agencies know that their budgets are clipped, they will try to save money any way they can and quite often their reasons for procuring externally from Western Australia is that the costs of delivering contracts to Western Australian companies are higher. Indeed, that was often the argument we would get in government.

When the Auditor General looked at the Priority Start building policy, he found that the policy required that head contractors maintain minimum levels of apprentices before they were awarded government construction contracts with an estimated labour component of more than \$300 000. Contractors were required to provide employment opportunities for a set number of apprentices and trainees. There is a similar kind of theme in the jobs legislation that is before the house. When the audit looked at the implementation of the policy, there were many inconsistencies in the key policy requirements of the head contractors. Of the 58 contracts that the audit looked at, the Department of Training and Workforce Development and agencies could not provide assurance that employment opportunities had been provided for in 55 contracts. For 55 of the 58 contracts, the agencies could not demonstrate that there had been any application of the Priority Start building policy or indeed that any effort had been made to make contractors comply with the policy. That is where the challenge will be in implementing this bill.

One of the issues with managing exemptions was that chief executive officers had the power to exempt procurements and they could delegate that power to staff. Eight of the nine agencies that were looked at had done so using their agency's standard financial delegations register, which meant that staff who were authorised to procure items also had the power to exempt agencies from market-testing arrangements and Priority Start participation. This government will face that challenge. If this policy is not resourced appropriately and if the

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government does not have a very strong compliance mechanism behind the implementation of the program, it will fail. And that, I put to members in this place, is always the challenge in government.

I want to go a little further into the Priority Start policy because when I was Minister for Training and Workforce Development, we dumped that program because it was too difficult to comply with.

[Member's time extended.]

Mrs L.M. HARVEY: We changed the program so that it required businesses to prove to the government that they routinely maintained around 11 per cent of their workforce as apprentices and trainees before they could apply for government work rather than having in each individual contract the requirement that 10 per cent of those on-site be apprentices. In that way, businesses could get government work only if they could show a clear, long-term commitment to employing apprentices and trainees. There would be some job sites at which there were no apprentices and trainees but for other jobs they would be on-site. Generally, as a proportion of the employment base they needed to be running at about 11 per cent. That was a much easier policy for the construction industry to comply with and ultimately that is what we as a government were trying to achieve—long-term commitment to traineeships and apprenticeships. We wanted companies to demonstrate that they were committed to training our young people in particular if they wanted to get government work.

The first line in the conclusion of the Auditor General's 2011 report on the Priority Start building policy states —

Agencies were not meeting the objectives of the Priority Start - Building policy ...

That is pretty clear cut. In the detail of the report it states that in 2009–10, the Department of Treasury and Finance did not provide an annual report to the Department of Training and Workforce Development to demonstrate that the program met the intent of the policy. That failure went through to the ether. When the audit looked at what the agencies were doing, the agencies did not notify the Department of Training and Workforce Development that they were awarding 22 contracts. Of the 58 contracts that were examined, 19 had exemptions that did not require contractors to employ any apprentices—they exempted themselves. The Auditor General recommended that the government ensure that the policy be applied to all eligible contracts, and that is what this government will need to do. It will need to ensure the legislative requirement for local content. Local businesses in Western Australia, Queensland, Northern Territory, Tasmania, Victoria, New South Wales and New Zealand will need to comply with the legislation. The government will need some kind of registration mechanism for contractors who want to do business with government to ensure that they have a local content participation strategy. That will create a lot of work for a lot of small to medium businesses that want to do business with government. Most small to medium businesses simply do not have the resources to develop participation strategies such as those that I expect the department will require of them. Often there is a mechanism in the legislation to allow for a simplified form of a participation scheme. However, I can assure members that from the conversations I have had with small businesses, and being a small business owner, I know that small businesses do not have the resources and individuals to not only pull these schemes together but also demonstrate, via a reporting mechanism, that they have complied with the scheme. That is another onerous reporting requirement on small business by the government that will be an impediment to complying with the legislation. The legislation is silent on how this will work. Which agency is going to be responsible? Will a unit be established to ensure compliance with the legislation? One concern I have with the bill, which members might be surprised to learn about, is that there is no disincentive or penalty for either agencies or companies for noncompliance with the scheme. Clause 24, "Effect of contravention of Act or WAIPS", states —

- (1) No civil or criminal liability attaches to an agency or any other person only because the agency or other person has contravened this Act or the WAIPS.
- (2) A procurement decision made, or supply contract entered into, in respect of a WAIPS supply is not invalid only because an agency or any other person has contravened this Act or the WAIPS in relation to the WAIPS supply.

The government has brought in legislation that it says is going to be tough on agencies and will ensure that agencies procure locally in New Zealand, the east coast and, hopefully, Western Australia, to create jobs in Western Australia. The agencies may continue down the path they have followed for eons and find ways to exempt themselves from the requirements of the legislation, as they can under clauses within the legislation, because there is no penalty for them. If contractors enter into a contract with an agency, there is no penalty for them if they do not comply with the local participation strategy in that contract. One has to question whether the intention of the government is sincere. Generally, if one wants a piece of legislation to have effect, one builds in some kind of penalty for individuals who are not complying with the legislation. Sadly, some human beings work by way of incentive and some work by way of punishment—reward and punishment; that is how some of us are wired. We have seen the behaviour of some of these head contractors and businesses over time. We have seen head contractors

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get work from the government and subcontract out to smaller operators, who are usually local Western Australian companies. Often the head contractors are from the other states and are not necessarily local Western Australian contractors. All head contractors will have to have a WAIPS in place, but they will push it down to the subcontractors. If their strategies are consistent with the way in which they have operated previously, it will be the subbies who will bear the brunt of the implementation of a scheme like this, and they are the ones with the least resources to be able to comply with these sorts of schemes. I have grave concerns about how this legislation will be implemented successfully. If there is no penalty and no disincentive for noncompliance, I question whether industry will take the legislation seriously in any event. If I were a business and there was a piece of red tape that I thought was unnecessary and onerous, and if I was managing to get government work via an exemption through an agency and there was no penalty for noncompliance, then there would not be much of a reason or incentive to actually bother to comply. That is a significant defect in this legislation. In my view, there should at least be a penalty for contractors for noncompliance. If the government is serious about this industry participation strategy, a significant penalty needs to apply to the agencies and contractors that do not comply with the scheme. That can easily be written into contracts. The agencies, in letting contracts, could require an industry participation scheme be entered into that ensures a significant proportion of the company's work is procured from Western Australian-based companies that employ local Western Australian people; and, if they did not, it could withhold 20 per cent of the contract amount or hold the final payment for the work in abeyance until the company had complied with the legislation. That would give this legislation some teeth. That would ensure that employers and businesses from New Zealand, which will be able to come over here and participate in this industry participation scheme, have to employ Western Australians and to source Western Australian companies when they are tendering for government work.

We will interrogate this legislation in the consideration in detail stage. As I have said, there are a number of considerable weaknesses in the bill. If the government were serious, it would not have made it so easy for agencies to exempt themselves from complying with this strategy, and there would be a penalty for noncompliance. None of that exists in the legislation. It makes it weak. Once again, it brings us back to what we have said since this government came to power—that it is disappointing and there is far more spin than substance. This is just another stunt piece of legislation that the government has prioritised ahead of victims of child sexual abuse, for whom the government was supposed to bring forward priority legislation. The Western Australian Jobs Bill 2017 allows for jobs in every state of Australia and New Zealand. It is not geared up as a legislative instrument to achieve what the government says it will achieve. I fear that the implementation of this legislation is going to be difficult and problematic and will cause unnecessary red tape for local Western Australian businesses that want to get government work.

MR R.S. LOVE (Moore) [3.28 pm]: I would like to make a brief contribution on the Western Australian Jobs Bill 2017. We are told that the purpose of the bill is to use the state government's procurement process to enhance local industry participation in government projects, particularly for small and medium enterprises. I just hope it does not end up being yet more red tape that strangles job creation and strangles small to medium enterprises, because they are struggling already. It is disappointing that part of this program is not about cutting some of that red tape, as far as I can see. I want to talk very quickly about an example in my electorate. Last year I went up to Dongara Marine and looked at the 18.5 metre pilot boats that it produces. The company was applying for a contract with a Western Australian government enterprise, in the form of one of the port authorities. It was actually quite well-established in the boatbuilding industry. It had been doing it for many years and these pilot boats were, of course, proven products. Unfortunately, in the end, the Western Australian port authority in question decided to get a Victorian producer to produce the craft, as I understand it, rather than a Western Australian producer, because this company was staffed mainly by guys from Victoria.

I believe that the Western Australian Jobs Bill 2017 has within it provisions for the development of a Western Australian industry participation plan and that it must not transgress the constitutional and legal requirements around allowing other states and New Zealand to also be suppliers of the goods. In the case of the Dongara pilot vessels, although it would clearly benefit Dongara, my electorate and Western Australia if those vessels were manufactured in Western Australia, as far as I can see this legislation would do nothing to assist the suppliers. I am not sure what it is we are actually hoping to achieve. I would have thought that if we are talking simply about competition from chief producers elsewhere that there would be other ways of assisting, because the actual benefit will be spread right across the nation, not just within Western Australia. I see some issues with that.

Not much information on the bill was made available. We did have a briefing from some gentlemen who were involved in the development of this bill, and I thank them for that. They answered the questions as best they could, but no real detail was provided on some of the criteria for the size of the projects and types of strategic supply that might be involved. All we had were just general discussions. It seems that an awful lot will have to be put into the development of the actual plan and the regulations surrounding the whole issue. Although we have the legislation,

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it does not actually tell us an awful lot or do an awful lot. Whether it turns out to be a good thing, time will tell. As I said earlier, small business owners, especially in country areas, already struggle to understand what it is the government intends to do and the regulations and hurdles that will prevent them from expanding their business. I just hope that this does not create another hurdle, because I assume that once the plan is set, the government will expect it to be followed. If the bill sets out some criteria that could effectively limit the ability of small business, especially in country areas such as mine, to participate, then that would be a very bad thing. First and foremost, the industry participation plans have to enable smaller enterprises to participate in government procurement and supply contracts. There is no magic bullet for these sorts of things. It is a good thing that at least the government is looking at such issues. The previous government had a Building Local Industry policy as well, which had a fairly high threshold. However, we do not know what the thresholds will be for these particular plans, so we are whistling in the dark when it comes to how this will work or whether it will work at all.

As we heard from other speakers, sanctions cannot be applied to government agencies as far as we can see, should they fail to fulfil their obligations under the act and the participation plan. There does not seem to be an understanding of the cost that would be involved to properly police these plans. It is all very well to draw up a plan and to have a policy, but it must be enforced and we need to have an understanding of how the businesses are reporting, whether they are reporting accurately and how the outcomes will be measured if the plan is to be implemented. At the moment, we are completely unclear on an awful lot. It could be a good thing, but it will take an awful lot of work. Having looked at how our state government agencies reported in the past and how they prioritise issues, it will be awfully hard to, first, get them to look at things other than price, and, second, get an understanding of whether they are taking any notice of these participation plans when the bill is enacted. Some serious thinking needs to be done on the level of resource that we can put in to ensure that the plans are being properly monitored and enforced.

One of the basic obligations that I would like to see involved in any of these types of plans is to restrict the situations that have developed in my electorate, at least on a number of occasions, whereby a largish contract is run often through a state government agency, which may not be particularly experienced at project management, that has a number of contractors cascading down the chain that do the work. At various points along that chain, occasionally, and quite brutally, I have seen interruptions, if you like, between the payment flows. People at some point in the chain get the money that is intended under the contract, but the local subcontractor—who might have put the tiling in at the Leeman boat ramp or might have provided the accommodation for workers in Kalbarri—is not actually contracted under any of the government agreements or agencies. They are that far down the chain that they are not recognised and they are still not getting paid. We need to make sure that the very small businesses that exist, especially in the regional areas, are recognised within those plans and there is a mechanism whereby if someone is not paying the people at the bottom of the chain, sanctions can be put in place to ensure that that happens. It takes an awful lot of effort for a very small business to make up a dead loss in income, especially if they have supplied materials as well. That is just about enough to send many small businesses under. It is a very sad thing to see a beautiful project being developed in an area and to see that the net effect, rather than being positive for the local business community, is that people are struggling to pay their bills because someone has not paid them.

We have already heard some discussions about how not much was done previously to provide or create job opportunities in the state. I totally and utterly reject that assertion. Certainly, within my electorate, a number of projects have been rejected by the government that were approved by the previous government and would have been job creators in the long term. For instance, the improvements around the Jurien Bay marina, which I think was an \$8.7 million project, were approved by the previous state cabinet back in August last year. That would have helped to create a more vibrant and more sustainable economy around that marina precinct which, if rebuilt, would be worth several hundred million dollars. Instead, it is struggling to pay the bills and cannot look after itself. Its marine environment is suffering and there are repeated problems with water quality and the like, which limits its ability to be used by other people such as fishermen, who cannot process crayfish there because the oxygen levels in the water that runs through the craypots are too low to keep the crays alive. The boats themselves are attacked by the acidic water, and the tourists, who would otherwise use the area, are driven away by the offensive odours and the sight of dead fish and other crustaceans and marine animals lying on the beach. It is not very good. If that could be turned around, it would be a tremendous asset for the area and would certainly help to build jobs.

I also note that there was a discussion fairly recently around gold royalties. We know that the two sides of politics here do not agree on gold royalties and whether they should or should not be lifted. It seemed to me that the government had a rather cavalier approach to claims by the industry that thousands of jobs would be at risk under that royalty increase. In fact, there was some discussion today about the Telfer situation and that that probably would not have gone ahead had the royalty increase been brought in. Although the government makes a lot of noise about the production of more jobs, the proof is in the pudding. The government has brought in a piece of

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legislation that does not have anything really attached to it yet—it does not have any plans, regulations or very much thought attached to it. It should work on those details as opposed to trying to actively increase the gold royalty and put thousands of Western Australians out of jobs. There is a bit of a conflict there. I do not think the government has sold that story very well thus far.

There are a couple of other issues. The National Party was opposed to the recent proposals for payroll taxes to increase. I know the Liberal Party has agreed to allow that to occur, but I also note that the chief executive officer of the Chamber of Commerce and Industry of Western Australia said in a media statement the other day that between 1 335 and 5 297 jobs could be lost in the first year as a result of that payroll tax increase. Again, words and actions do not seem to be matching up here. The government says that jobs are a priority, but thousands of jobs could be just thrown away without a thought, as far as I can see.

In the country areas we have the community resource centres. Very significant opportunities are provided by community resource centres in country regions. I think the Premier was talking about this a little while ago. They grew out of telecentres, which once upon a time were all about providing internet access and allowing country communities to communicate with the rest of the world, but they have grown far, far beyond that, and they provide a whole range of services that are essential to the social fabric of the communities involved. They also act as enablers for start-up businesses and increase the preparedness of the community for employment by running various courses and providing opportunities for young people to do some training. They also provide an incubator base, in some cases, for small businesses to get going, so they are very important, but, of course, what have we seen? We have seen the government cut \$10 million from their funding over two years. That is \$10 million cut out of their potential to grow jobs. Again, it is rhetoric as opposed to action, and it does not seem to be matching up.

Finally, I want to talk very briefly about the previous government's record on jobs and the fact that the National Party and its Liberal Party colleagues were pushing billions of dollars of investment into country areas through royalties for regions. At last count, I think something like 3 700 different projects had been developed in country areas by royalties for regions, many of them direct employment creators, and some of them providing services that had not been provided in the past in those areas. It is not all about capital projects. Many of those funding opportunities, such as the Jurien Bay marina, for example, are being slashed by the current government as it hacks its way through the royalties for regions program. We will see, in the long term, that that program will be left as basically just a part of the recurrent payments being made for things such as water, sewerage and the like, instead of actually providing opportunities for development in regional WA, which is what it was all about in the first place.

A program that particularly interested me in my area was Seizing the Opportunity Agriculture, which was all about driving the economic development of agriculture, and it had the ability to create jobs. As we know, that is one of the industries that need to pick up some of the slack as mining employment comes down. There are tremendous opportunities in agriculture going forward. Unfortunately, the current minister seems to want to go back to the past and have a very large department full of people, when in fact over many years now we have seen a move towards a more nimble and far more profit-driven investment program in terms of knowledge and research. Although it might create a few direct jobs if we try to go back to what was happening in the Department of Agriculture and Food in the 1950s and 1960s, it will actually waste money and limit opportunities in agricultural areas. It will be very disappointing to see that happen.

I do not think I will need an extension; I am just about finished here.

Another very important job-creating tool that was used by royalties for regions was the development of more tourism opportunities throughout the regions—things like the Kalbarri Skywalk, the Parks for People program and regional events programs. They are all about driving tourism. Again, it is one of those industries that is needed to pick up the slack as we see mining construction retreat as a main driver for our economy.

All in all, if we compare the program of the previous government with that of this government, we will see that there were actually runs on the board under the previous government. Lots of money was being spent on very important projects throughout the state. The current government has simply cut a lot of those programs and, with them, the potential for many jobs. It has sought to bring in a number of tax increases when it said it was not going to bring in any tax increases. It has proposed increases in royalties and increases in tax, and thousands of jobs are directly at threat because of those proposed increases. What do we have? We have a piece of paper that says that the government is going to develop a plan for each government agency, each government trading enterprise. The government is going to have a plan for them all, and that plan will provide jobs for people because the government is going to make sure that businesses from New Zealand, Victoria, Tasmania, Queensland, New South Wales and South Australia, as well as Western Australia, can benefit from this scheme. It is a lovely piece of paper and I hope some good plans are drawn up, because there is an awful lot that has to be done to make up the difference between the two governments' records in job creation.

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MS J.J. SHAW (Swan Hills) [3.47 pm]: I rise to speak in support of the Western Australian Jobs Bill 2017. I advise that I am not the lead speaker for the government today. I want to focus on two key elements of the bill: the local content requirements, which will help local small businesses, and the strategic projects provisions that are really going to help my electorate. I particularly want to focus on the people of the community of Ellenbrook because it is a community that has really been left behind. It is in need of some love and attention and I am pleased to reflect upon the ways in which the WA Jobs Bill is really going to help my electorate.

Ellenbrook was the third-fastest growing suburb in Western Australia between 2001 and 2006, and then again between 2006 and 2011. In each of those periods, Ellenbrook doubled in size. In 2017, the population is a nudge over 43 000, and the City of Swan projects, in its most recent local area plan, that by 2036 more than 70 000 people will live in the Ellenbrook area. That is a 61.95 per cent increase in population. It is a great place, comprising seven villages around the town of Ellenbrook, all of them nearing completion, apart from the town centre. The town centre has really been waiting for a big strategic project to come along and finish it off. Within Ellenbrook itself there are about 3 000 small businesses, 500 of which are engaged in the construction industry. As a daughter of a bricklayer—my whole family is in the trades—and as a local as well, the first member, I will add, in nearly three decades who has been local to the seat of Swan Hills, I understand how important it is to deliver jobs into local businesses, local small businesses and construction businesses. I am on a bit of a charm offensive with the newly appointed general manager of the Swan Chamber of Commerce, Kelly Marshall, who is doing a great job. We will visit as many of the small businesses as we possibly can to talk about the way in which this Labor government will prioritise the generation of local jobs.

Twenty-one per cent of people in Ellenbrook are employed in the construction and manufacturing industry, but we have an unemployment problem. In the north-east corridor unemployment is sitting at around 6.6 per cent and about 18 per cent youth unemployment. Contrast that to unemployment in Ellenbrook in 2011 when it was 3.9 per cent. We also have a very high proportion of fly in, fly out workers. In its local area plan, the City of Swan is very cognisant that the downturn means there will be some unemployment issues. There has never been a more important time for a government to focus on generating and supporting local jobs in my community. I want to have a chat about how this Western Australian Jobs Bill will help local small businesses. Annually, the state government spends around \$23.5 billion and, as part of this bill's provisions, we are going to target opportunities for small businesses to supply and access some of this funding. We will help them identify opportunities, enable them to compete for government work and support them through the process—through the industry capability network the Premier announced during the state election.

We have already initiated a number of local projects. We are upgrading Reid Highway and dualling Lord Street, which will significantly change traffic congestion in the area. NorthLink will swing around the back of Ellenbrook. There are jobs associated with these projects for local earthmoving operators, civil construction companies, water carriers, dust suppression and basic raw materials operators that will, basically, support road and rail construction. We are already delivering local jobs into the area and this Western Australian Jobs Bill will only enhance that.

There is a really important second way that the Western Australian Jobs Bill will help the people of Swan Hills and the people of Ellenbrook, and that is the ability under this legislation for the minister to designate strategic projects. In his second reading speech the Premier said —

The government will apply this framework to significant projects that drive economic activity and job opportunities, such as the projects under Metronet.

Obviously, that is a very key and a long overdue project for the people of Ellenbrook. On 9 February, the Premier confirmed the commitment to the Ellenbrook rail line. He outlined that there would be six new stations associated with the project and, indeed, one of those stations will be located in the heart of the Ellenbrook town centre. Its completion will create a vibrant, commercial and residential precinct. There will be 3 000 local jobs associated with the delivery of that project and thousands more statewide. That railway line will serve over 200 000 people throughout the north east metropolitan corridor. There will be jobs during construction and, more importantly, around these strategic projects, ongoing sustainable jobs will be associated with the delivery of these strategic projects. We have already started the work on the Metronet project. The earthworks associated with the Lord Street dualling will form the basis for the earthworks for the Ellenbrook rail line. At the town centre, where the station will be located, preliminary works have commenced to relocate a communications tower. We are getting on with the job. In the state budget, we announced \$22.1 million of funding for the detailed planning, design and engineering, which we really need to do to cost accurately the projects we intend to do. Last Friday, I was very pleased to join the Premier and federal opposition leader, Bill Shorten, to announce a \$700 million commitment from the \$ 1.6 billion Fair Go for WA fund. It is a long-overdue commitment and follows a long legacy of commonwealth and state government partnerships for key infrastructure projects—projects such as Gateway WA, the Perth City Link and upgrades to Great Eastern, Great Northern, Tonkin and Leach Highways, and the building of NorthLink. There is not a commonwealth government funded infrastructure project under way in

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Western Australia right now that was not funded by the former federal Labor government. It is fantastic that federal Labor will come to the party and support Metronet and strategic projects and the kinds of initiatives that will come to fruition associated with this Western Australian Jobs Bill. This is a very positive development. It will address the bleeding of GST from Western Australia to the eastern states. It will help us get our fair share and it is about getting a fair share for Western Australia and for Ellenbrook. It perfectly complements the Western Australian Jobs Bill.

I think it is really important that both sides of the chamber get behind this bill rather than seeking to scuttle it. As I have been listening to the debate I have been very frustrated at the degree to which those opposite have denigrated the Ellenbrook rail project. The shadow Minister for Transport openly admits that Ellenbrook rail is irrelevant to her and did not even ask a question about it during estimates. We know the Leader of the Opposition wants the project cancelled, despite the burgeoning population growth in the area and despite the traffic congestion problems there. Maybe those opposite should come out from their little strip of blue seats, their leafy green western suburbs and drive down Lord Street at 7.30 in the morning, when it takes 25 minutes to travel two kilometres. There is one Liberal, however, who has had an epiphany and has a new-found appreciation for the need for Ellenbrook rail. The federal member for Pearce has finally started coming to Ellenbrook. We remember his record as state Treasurer when he broke the promise to deliver Ellenbrook rail. Even in the media today—I think part of the reason we are in such a disastrous economic situation at the moment—reference is made to how he fundamentally stuffed up the assumptions made on the GST distributions, which now both federal and state Labor have to try to rectify. We remember his record as state Treasurer. We remember that, despite their efforts to try to soften up a sort of Ferris Bueller—Save Porter—kind of way to save his image and shift him into the Attorney General's portfolio. We remember the problems he had around the National Disability Insurance Scheme. We remember his responsibility for the robo-debt debacle and his support for cuts to paid parental leave, Newstart and the Youth Allowance. Let us just hope—I do hope—that his new-found interest in Ellenbrook and his new-found passion for Ellenbrook rail will mean that Turnbull will try to save Ferris and will try to match the Shorten opposition commitment to Ellenbrook rail. I nearly said the Shorten government; I really hope that becomes the case.

It is absolutely essential that we support the people of Ellenbrook. I can tell the people of Ellenbrook that I will be fighting really hard for this project and for every strategic project that will be delivered under the Western Australian Jobs Bill that will help my constituency. I commend the bill to the house.

MR P.A. KATSAMBANIS (Hillarys) [3.58 pm]: I rise to speak on the Western Australian Jobs Bill 2017. Initially, I was not going to speak on it, but having heard the contributions from both sides of the house, I thought I might be able to add something to it.

Several members interjected.

Mr P.A. KATSAMBANIS: Of course, Western Australian jobs are no laughing matter, member for Perth and member for Mount Lawley. Western Australian jobs are no laughing matter at all. The public of Western Australia, like the public across the world, understand that jobs are fundamental to the living standards of families right across our state. There is not a member of Parliament, whether in this place or the other chamber, of any political party that does not support the creation of jobs for Western Australians. I make that clear at the outset. Nobody is against jobs. I am certainly not. I am in favour of creating jobs and in creating the environment in which as many jobs as possible can be created until we reach the stage that every single person who wants a job can get a job that they want to work in. That is what I am committed to, and it is one of the things that drove me into public life—to create an environment in which we have, firstly, a safe society and, secondly, a prosperous society in which everyone can aspire to get a job and to maximise their potential in life. When a bill comes before us that is called the Western Australian Jobs Bill, I look at it and I think, “Well, Western Australian jobs are a good idea”, but I then immediately think to myself, “When was the last time a piece of legislation created jobs? When was the last time a piece of paper”—as I think the member for Moore put it—“created a job?” It is the contents of that piece of paper that sometimes can create the situation in which jobs will either flourish or, at other times, perish. We have seen governments do that here in Western Australia and across the world many, many times.

Having looked at this bill, I do not think it is going to do much of either of those. I do not think this bill is catastrophic—certainly not. It does not do anything terrible. It creates a framework in which the government will create what is called the Western Australian industry participation strategy, which is not actually spelt out in the bill at all. We are just told in clause 5 of the bill that the criteria for what will be in the strategy will be prescribed—so it will be made by regulations. We do not even know at this stage what the criteria will be until we see those regulations, because they have not been tabled in this place and, as far as I know—correct me if I am wrong, Premier—they have not been made publicly available yet. I am sure in due course they will be and we will have a look at them. Based on that criteria, a strategy will be created under clause 5, and it will be called the Western Australian industry participation strategy. Strangely, clause 5(4) states —

The strategy is not subsidiary legislation for the purposes of the *Interpretation Act* ...

That means, of course, that as subordinate legislation—subsidiary legislation—it cannot be scrutinised by Parliament. It cannot be scrutinised by the Joint Standing Committee on Delegated Legislation. The criteria prescribed under clause 5(1) can be, because that will be prescribed—that will be subsidiary legislation—but the strategy itself will not be. Again, I think that is neither here nor there, because it will be made public. I am sure it will be published on a website. I am sure the Premier will come in here and by either ministerial statement or dorothy dixer in question time tell us about this wonderful, new, you-beaut Western Australian industry participation strategy when it is finally made available publicly. That in itself is not a problem.

This is really a skeletal bill that establishes a framework by which the government can then produce a Western Australian industry participation strategy. It is a strategy that other members of this place have pointed out the government could introduce today, or it could have introduced yesterday or it could have introduced on 12 March—perhaps not on 12 March because the government was not sworn in, but in those days immediately after the election. The government did not need legislation to introduce the strategy; it could have been done by directive or by Premier's circular. It could have been done simply by an agreement amongst all cabinet members that that is how the agencies under their control would operate. But the government has decided it will be done by legislation. That is fair and good and absolutely no harm is done, but this bill, in and of itself, creates not one job. It is what happens when the strategy is implemented; it is what this government does in totality. The actual strategy that will determine whether we get more jobs or fewer jobs in Western Australia will not be the Western Australian industry participation strategy; it will be the broad overall strategy of this government. It will be the landscape that this government creates in Western Australia to enable business to flourish and to enable entrepreneurs to make decisions to invest in this state so that they can create long-term, sustainable jobs for the people of Western Australia. What is needed to do that? A series of things are needed. It is not a secret; it has been done for hundreds and hundreds of years across the world and it has been proven that in free economies, under a capitalist system, the best thing government can do is set the framework and sit back and watch the private sector create long-term sustainable jobs. Part of that framework —

[Interruption.]

Mr P.A. KATSAMBANIS: Music is playing in the chamber; hopefully, we can enhance our thriving music industry, because we have a very good music industry here in Western Australia.

The ACTING SPEAKER (Mr R.S. Love): I do not know which member it was, but I hope they have turned off their phone now.

Mr P.A. KATSAMBANIS: I did not recognise it as a Western Australian song, albeit.

As long as the settings are in place, the government can be a participant. We know state governments in particular create infrastructure projects that drive growth, jobs, construction and all the industries that are based around construction. But all that is part of a growth strategy; it is part of the rest of the economy growing. We saw that in the last decade. As the mining construction boom took place, so did the infrastructure boom that was required to service the growth of the mining sector and ancillary industries and to service the growth of the population—the massive growth of the population in Western Australia that required over half a million people to move here, including myself, I point out. That was the size of the population of Tasmania moving to Western Australia in a decade. That drove not only the mining construction boom, but also, overall, an infrastructure boom and everything else that we saw happen. Things may not be as prosperous today, but the government still has the opportunity to set the framework under which an economy can grow.

One of the first things we need is confidence. Investors need to be confident that they are investing in a place that will continue to progress. To have confidence, investors need to know that the environment will be stable, that government will not make major policy changes—in particular, that government will not increase taxes and charges on business—and that government will not introduce more red tape. Unfortunately, this government has not done that in its first few months in government. Instead, it has flagged a series of tax increases that it promised before the election it would not introduce. It has increased payroll tax and it has attempted to increase the gold royalty. It has also increased household fees and charges and, along with that, fees and charges charged to businesses, because they pay the same fees and charges—whether it is motor vehicle registration charges; water charges; electricity supply charges, particularly for small businesses that are not in the contestable space for electricity; gas charges; and the like. The government has increased taxes. It has increased fees and charges. That indicates that it is not going to be a government that cuts taxes and fees and charges. It is also not a predictable government, because it said before the election that it would not increase fees and charges, would not increase taxes and would not introduce new taxes. All those promises are gone in its first budget. It has created uncertainty and instability.

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The other thing this government has done is continue to talk this economy down. It is actually quite shameful that the Treasurer in the past few weeks has been seen publicly to be almost barracking for a credit downgrade for our state—barracking for it—and casting blame on this downgrade that has not happened yet, sending signals to investors, Western Australian businesspeople and households in Western Australia that this government is going to be not only increasing taxes and charges and red tape, but also talking the economy down. The economy has slowed down from the heights of a few short years ago. Even today we saw the unemployment figures that the government is crowing about and in question time was jumping up and down about. The unemployment figures do not just drop overnight. Unemployment is still relatively high—higher than we want it to be—but lower than other states, and certainly lower than some of the bigger states that I will talk about in a minute. That is how jobs are created. It is not done by introducing a bill, and it is not done by introducing a Western Australian industry participation strategy that we have not yet seen. I do not think it will do harm or be a bad thing for the government to have that sort of strategy, but, again, the proof of the pudding will be in the eating. That is what I want to get to. In the substantive contribution of the member for Forrestfield and some interjections from the member for Cockburn, they pointed to Victoria as a good example of having one of these industry participation strategies that the government will bring in—how successful Victoria has been. The member for Cockburn, in an interjection earlier today, said, “Look at Victoria. It is doing fantastically well under its industry participation strategy.” So what did I do? I looked at the unemployment figures that came out today. Victoria has the highest unemployment rate in Australia at six per cent. That is much higher than the national average of 5.5 per cent and higher than South Australia and Tasmania. It is certainly higher than Western Australia. We will be emulating Victoria, which has an industry participation strategy that we are told makes it better and creates more jobs, yet it has a higher unemployment rate at a time when its property market is booming. Exhibit A from the member for Cockburn is that Victoria has one of these strategies so we should copy Victoria.

More scarily about the proof of the pudding being in the eating is the contribution the member for Forrestfield made when he used the Victorian Desalination Plant in Wonthaggi as a perfect example of how such an industry strategy would work. Members have to have been living under a rock if they have not heard of the absolute financial disaster—as well as ongoing comedy show for people who do not live in Victoria—that the Wonthaggi desalination plant has been. It has been an absolute horror show. It is a perfect example of how not to do things. It was held up as the only and shining example in all the contributions of all members of all sides of this chamber of a great project created under other industry participation strategies. The Wonthaggi desalination plant was announced by the Bracks government in 2007 when Victoria’s water storage was down to under 30 per cent of capacity. It was in the middle of a drought. People were saying, “These droughts! They never happen, these droughts. It was the greatest drought in history.” Of course, it was not as big as the drought of 1981 to 1983, but people have very short memories. It was the greatest drought of all time and Victoria needed to waterproof itself by building a desalination plant. We know that as a principle and concept desalination plants to help waterproof a city are not a bad thing. The proof of the pudding is here in Western Australia; we have two operating and they are serving our needs well. At the time the Victorian government thought it was a good idea to build a desalination plant and it did. It suggested it was going to cost \$2.9 billion to build—not to operate, just to build.

As the project went on—I will come to the reasons in a minute—the projected costs went up to \$3.1 billion, then \$3.5 billion, then the total build cost was projected to blow out to \$4 billion. By the time the project was completed in December 2012—more than one year after it was scheduled to be built—the total build cost had risen to \$5.4 billion, which was almost double the projected cost of this you-beaut project under the industry participation plan. Over the 30-year life of the project the contract amount to the company that built and is operating this plant—commissioned by a Labor government in Victoria—and the total cost to Victorian taxpayers and water consumers is estimated to be somewhere between \$18 billion and \$20 billion. In 2012 terms, it will add a cost of \$600 a year on every Victorian household as an additional charge on their water bills for this desalination plant.

[Member’s time extended.]

Mr P.A. KATSAMBANIS: It would have been great if the desalination plant had come in on time and on budget, but why did it not under the industry participation plan? When we look at the union agreements on that site, we see that they are the model example of how not to do things. I do not have time today to highlight the straight out-and-out rorts that the unions, the government and its preferred tenderer negotiated on this closed-shop site. There were insane travel allowances, ridiculous extra penalties and the ability for staff to take on a job and go on leave before they had actually started working at the plant! People can look it up for themselves; it is a classic example of how not to do things. That is what led to the blowout in costs from \$2.9 billion to \$5.4 billion. It is interesting to note that some of the union leaders who negotiated these agreements—particularly the Victorian secretary of the Electrical Trades Union, Dean Mighell—loved these agreements so much that they wanted to implement them across 850 agreements that Dean Mighell had on the go at the time. I have come across Dean Mighell, and he is a very shrewd, sharp operator. I rated his work as an ETU secretary —

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Dr A.D. Buti: Like you!

Mr P.A. KATSAMBANIS: I do not know about that. I have never been a union boss, and I do not intend to be so we will see how that goes.

But if this cost blowout was not enough, it is what happened after the plant was finished that is the biggest disgrace of all. Of course this big you-beaut plant had been built in the middle of a drought that had not been experienced for about 25 years, and people thought they would need the water forever. By the time the plant was available for use in December 2012, more than a year after it was scheduled to open, Victoria was awash with water; its dams were more than two-thirds full and they did not need any water from the desalination plant. It sat idle, but the bills were still being paid to the operator because it had an operating contract for 27 to 30 years—somewhere around there. The consumer was still paying the \$600 a year on their water bills.

Finally, because it became such an embarrassment to the government of the day to have that plant sitting there idle, in March this year it commissioned a water intake from that plant. It said to the operator, “Can you please go and turn it on and give us a bit of water?” At that stage the dams were still two-thirds full. The water was not needed but it had become such an embarrassment that the government had built a plant that was not operating that cost \$18 billion over a 30-year life that it said, “Turn the thing on.” It was just a stunt, but the stunt backfired on the Victorian government. Because the plant had been sitting idle for more than four years, when it was turned on, it did not provide the water the government had asked for. In a bizarre world, this plant, which the government commissioned as a stunt and which was built under the Victorian industry participation strategy—or scheme I think they call it; I stand to be corrected on that—could not produce the water that was not needed, so the company operating the plant had to pay a penalty to the government. It is just extraordinary. As I said, it is a fantastic comedy for people who do not live in Victoria. I am glad I left that state long ago and do not have to suffer that sort of indignity. But, unfortunately, Victorian taxpayers—the Victorian water consumers, who are every single living and breathing person in Victoria—have to keep paying \$600, indexed of course, in today’s terms for the next 25 years to keep this silly plant alive. Today I checked, because I thought I had better, where the water storage is, because the government has commissioned water for the next three or four years, I think, as part of this stunt. The government did not learn when the plant was turned on and commissioned water for the next few years. The dams in Victoria are roughly 70 per cent to 80 per cent full. If anyone knows the history of water storage in Victoria, the Thompson Dam was commissioned in the 1970s, but did not open until the 1980s. The Thompson Dam is this massive reservoir that, once close to full, can provide water for years and years—70 per cent to 80 per cent full means that Melbourne does not need to worry about water.

I have spent some time highlighting the example of this desalination plant because it is the one shining example provided in all the contributions in this house of how an industry participation strategy may work in practice in Western Australia. I am an optimist; I am an optimistic person. I always look on the bright side of things. I hope that the experience of the Victorian desalination plant is taken into account by this government and subsequent governments so that, as a state, we do not repeat these mistakes in projects commissioned by this government—whatever they are, whether they are strategic or non-strategic. The member for Forrestfield used that plant as an example of how industry participation strategies create jobs, but the proof is in the pudding. The reason that a supposedly thriving economy such as Victoria’s has such high unemployment—the highest unemployment rate in the country today—is that those union preference agreements negotiated on the site have filtered through Victoria’s economy and made things worse for employers to create jobs in that state. It has become a higher cost jurisdiction to do business in and people have walked away. That is one of the reasons. There are many other reasons; they have their own problems over there and I will let them sort it out. I am extremely conscious of the fact that both the member for Cockburn and the member Forrestfield used Victoria and the desalination plant as examples of the great things that could be achieved under legislation such as the bill before us today. It was incumbent upon me to highlight to the chamber and the people of Western Australia that that is a really big warning sign. I have said it before and I will continue to say it: I wish this government well in its quest to govern Western Australia and provide a strong and stable economy here. I do not see reds under the bed with this bill. I do not think it is going to destroy jobs, but it is not going to create jobs either.

Several members interjected.

The ACTING SPEAKER: Members!

Mr P.A. KATSAMBANIS: It is a bill that is simply a great press release. Good on the Labor Party; it is in government. This bill is a stunt. I hope that it does not backfire like the stunt of reopening the desalination plant backfired on the Victorian government. I hope that when the government starts implementing this strategy, the government uses it for good. We will be sitting on this side and scrutinising what happens.

Mr J.N. Carey interjected.

The ACTING SPEAKER: Member for Perth!

Mr A. Krsticevic interjected.

The ACTING SPEAKER: Member for Carine, you are on three calls now.

Mr P.A. KATSAMBANIS: I reiterate that it is not this bill that will determine whether we create more or fewer jobs in Western Australia. It is not the industry participation strategy; it is the overall strategy of this government. So far, what the government has shown has not filled the public of Western Australia, the business community of Western Australia or the potential investors in Western Australia with too much confidence, and I hope that in the next little while the government stops the tax increases, stops the increases in charges, stops talking this economy down, stops governing by press release and starts governing for the creation of jobs in Western Australia.

MR M. McGOWAN (Rockingham — Minister for State Development, Jobs and Trade) [4.46 pm] — in reply: I will respond to the commentary of members in relation to the Western Australian Jobs Bill 2017. Firstly, I thank members for their contributions and I also thank the house. This bill has occupied the time of the Legislative Assembly since Tuesday, basically, so I am pleased it has had a full airing and there have been many hours of debate and contributions from members. As I said in the second reading speech, the intention of the bill is to ensure that Western Australian businesses have the best opportunity possible to receive contracts issued by the Western Australian government. I think most of us would agree that making sure that Western Australian businesses get the best opportunity to receive those contracts across the state is a good thing. Obviously, there are certain parameters within which we need to work—essentially section 92 of the commonwealth Constitution and an agreement between the federal government and New Zealand. But within those parameters we have done our best to ensure that Western Australian businesses will be afforded every opportunity to obtain government work from both government contracts and government trading enterprises. There is currently a range of policies out there and the advice I have is that they are relatively haphazard and difficult to enforce. They have not applied to government trading enterprises and there has not been a requirement for transparency or reporting to Parliament about those policies. Some of them stretch back some years; some of them were brought in by the Gallop government in 2002. Clearly, it is time for some reform, expansion and enforceability of these arrangements. That is what this legislation does. It provides greater opportunities for enforceability; it extends the operation of policies to both the general government sector and government trading enterprises; it requires a reporting mechanism from the minister—me—to Parliament on these policies; and it allows a strategy and regulations to be put in place to set out the government's approach to these issues. I think the fact that the government is doing this is broadly welcome by the Western Australia business community and the public.

We are looking and have looked at the example of other states, in particular Queensland and Victoria, which have put in place these sorts of policies before. Our legislation is more comprehensive than that put in place in Victoria and Queensland. Their policies are more sparse; ours is more comprehensive. The idea is to provide the opportunity for local businesses to receive those contracts as much as possible within the constraints we have. I have heard for many years that it is a concern when local businesses that have the skills and capabilities to carry out work that the government might have on offer do not receive those contracts. Obviously, there is a whole range of issues involved, such as value for money and the like, but certainly local participation will be an enhanced factor in determining which business wins a contract under the new legislation that the government has put in place, and that is a good thing. There are some celebrated examples, which I will not go into, in which major contracts were issued elsewhere by the Western Australian government and the performance of the elsewhere contractors was not up to scratch and Western Australians suffered as a consequence. The idea behind the Western Australian Jobs Bill is to ensure that Western Australian businesses and contractors have a better opportunity. I think most of us would welcome that.

I will go through some of the issues raised, bearing in mind that I have 40 minutes remaining and we need to do the consideration in detail stage this afternoon. I will go through the issues raised and hopefully that will answer some of the questions asked by members of the opposition.

Members raised concern about the title of the bill. The title of the bill is the Western Australian Jobs Bill. Obviously, every piece of legislation needs a name. We decided on that name because we wanted to be clear about the purpose of the legislation. The purpose of the legislation is to ensure that the procurement of goods and services by the Western Australian government is done for the benefit of Western Australians. It is called the jobs bill because it applies obligations on Western Australian agencies and government trading enterprises to ensure that Western Australians are the contract beneficiaries. Some members have described the title as misleading and as window-dressing. To be honest, I think members are just looking for something to criticise. That is the purpose of the bill and it is very, very clear. I do not think there can be any confusion about the purpose of the bill in the minds of government agencies, contractors and/or government trading enterprises because the name is very clear.

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The second criticism from members opposite is that the bill is not required. Essentially, the bill will improve government procurement practices and outcomes. It will work in conjunction with the industry participation advisory service that the government funded in the budget. It has made a \$4.2 million commitment to fund an advisory service to provide advice in particular to small and medium enterprises in Western Australia. Members who say that it is not required should talk to a range of businesses that have missed government work and that would like a bit of assistance and would like a policy like this, which is all about ensuring best opportunities for Western Australian businesses in our state.

The bill includes obligations, which I broadly mentioned but I will go through them. It requires that commitments made by suppliers in participation plans be included in the supply contracts. When I talk about enforcement, I mean that the enforcement mechanism is to document and manage the commitments made. Provisions must be included in contracts for suppliers to report on whether those commitments are being or have been met. As the Minister for State Development, Jobs and Trade, I must report to Parliament each year on the implementation of the legislation and its strategy. Agencies across government must report to me, as the minister for jobs, on how the legislation is working and I am then required to report to Parliament. These provisions, which are not included in current arrangements and will be an improvement, require legislation. When members say that they do not require legislation, each of those things, in particular the requirement to report to Parliament, requires legislation.

I will make a few points about the definition of “local industry”. The jobs bill, together with complementary measures and initiatives—I mentioned before the new local participation service and I mentioned in question time the arrangements of the development commissions as local content offices and opportunities on the website to identify contracts that are available in local areas and, in my view, that is what regional development commissions should be doing—will provide new opportunities for Western Australians in a number of ways. First of all, they will open up government trading enterprise markets for the first time. They will be required to adhere to these processes. The bill will require prospective suppliers to provide to a procurement agency the details of how they will contract further work, including the kind of work, the value of the work and the process by which they intend to contract that work. This does not mandate the use of WA suppliers or subcontractors, but it does require prospective suppliers to provide details, which is likely to increase consciousness of these issues and potentially influence their commitments and actions. This process will allow us to ensure that local suppliers get the best opportunities, and it is consistent with the Constitution and, in particular, the trade agreement with New Zealand. We, as a nation and a state, are, of course, required to adhere to the commonwealth Constitution. That is one restriction that none of us can avoid, no matter what we do. That is one way to comply with that.

Another question was: how will participation plans be included in procurement assessments? The jobs bill requires that value for money be the primary consideration in procurement decisions. That does not always mean the lowest cost. Existing policy includes non-cost factors, which may be included as part of the policy. It is not an exhaustive list, but they include fit for purpose, technical and financial issues, supplier capability, sustainability, risk exposures, compliance with specification et cetera. These non-cost factors will be compared with price and a value-for-money decision will be made. This will be an informed judgement, not a mathematical formula. The assessment of participation plans will be considered as part of the assessment of all the non-cost factors in the procurement assessment process. The participation plan will be considered along with value for money and all those other issues, in particular supplier capability, in determining who wins a contract. It is in the mix as to who will win a contract. We do not always—I am very firm on this—go for the lowest price because the lowest price is not always the best. When we buy a car, we do not always look at the car with the lowest price; rather, we look at a range of issues when considering which car to buy. In contractual matters, we take into account not just the lowest cost but also other matters, including participation plans, and that will be one of the considerations along with value for money. We all know that the lowest cost is not always the best.

Mr J.E. McGrath: It happens now. I have been in situations where tenders have come in and the government has not given it to the lowest price because in some cases they do not believe that that company can deliver for the price they put forward. There are a lot of factors that are already looked at in these considerations.

Mr M. McGOWAN: I am in furious agreement with the member for South Perth, as I often am; or more likely it is the other way around.

A whole range of non-cost factors are already considered. What we are saying is that the participation plan that is put in place by a contractor will be one of the non-cost factors that is considered, and it will have significant weighting.

Another of the opposition’s questions was: will participation plans lock in outcomes? The lock-in is essentially writing the participation plan into contracts. The lock-in is a contractual matter. I think some members think it should be penalty based or whatever, but it is a contractual matter. It is about writing participation plans into

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contracts so that if a business says that it is going to do something, it is written into the contract and is enforceable. That is the way enforcement will be ensured under this new legislation.

Members queried how public the participation plans will be. Obviously, there is commercial sensitivity in these matters. Whilst we think that that has some merit, there is commercial sensitivity, but there are some ways to ensure that participation plans have some transparency or public airing. The commonwealth government makes summaries of participation plans available under its programs. That is perhaps a more across-the-board summary of participation plans than individual participation plans. That is one way the commonwealth government deals with these issues and it is one thing we would consider in the drafting of regulations around this legislation.

Questions were asked on how the legislation and strategy will be enforced on government trading enterprises. As we know, government trading enterprises are the creation of statute. The enforcement will be that this is in applicable legislation. In the hierarchy of the rules of our society, legislation is the highest, regulations are second and after that comes government policies and the like that are not contained within regulation. By elevating this to legislation, it provides a greater enforcement mechanism on government trading enterprises—they will be required to comply with the legislation. That has apparently also been included in the legislation that applies to GTEs in Queensland. Of course, the boards, chief executive officers and the like are always very aware that they must not break the law. By not complying with the legislation, they would be breaking the law, so I would be very confident that GTEs will be following the requirements of the government under this legislation.

The next question was about the expertise that would be available to assess participation plans. Agencies will obviously be required to do that. There are various contracting officers and the like within agencies. If there is a requirement for training or anything of that nature, or a requirement for guidance, that will be provided to officers to make sure that the participation plans are adhered to.

Questions were apparently asked about how an agency would seek an exemption. There is a capacity under the law for agencies to be exempted from the obligation to require a participation plan for some types of supplies. The categories of such supplies would be included in regulations. In addition, agencies will be able to seek exemptions from the Minister for State Development, Jobs and Trade for specific supply examples. There will be guidelines on how to do that. Once an exemption is provided by the minister, the agency must publish the notice on its website. Exemptions might be in relation to very small matters or the like, or if there is an excess of red tape for the benefit that might be acquired. As I just said, if they are smallish matters and if the red tape is greater than the benefit acquired by government, that would obviously be a case for exemptions or for categories of supplies to be exempted from the rules.

Questions were raised about how the legislation and strategy will be monitored and how the government will ensure compliance. The commitment that suppliers make in participation plans will be required to be included in supplier contracts. Agencies must require contracts to include a clause obligating suppliers to report on their performance against the commitments made, and agencies will be responsible for determining the appropriate course of action if commitments are not met. This would be expected to occur through normal contract management activities. Obviously, there is the capacity to take legal action and to work with the contractor to make sure they comply. Also, if they do not comply, that will obviously be taken into account in future contracts. That is normal commercial practice. If a supplier does not comply with the contractual arrangement, obviously they may not get another contract. There are various ways in which these things can be enforced, but obviously it is different from the existing arrangements, which do not allow these matters to be written into contracts.

Questions were raised about how reporting will occur to Parliament. I will be required to report annually to Parliament on the implementation of the bill and the strategy. Agencies will be required to provide information to me for that purpose. In Victoria, an annual report is produced on legislation of this nature. That provides a good example of how reporting can take place.

Other members raised concerns that the bill is not accompanied by the draft regulations and a draft strategy. The regulations and strategy are currently under development. This is an involved process that involves a number of agencies, which are working on the strategy and the regulations. It involves revising and updating existing policies, and both internal and external consultation will be required before the documents are finalised. Our bill contains more detail than the legislation in Victoria and Queensland, which only require that a policy be developed. Ours involves regulations and a strategy, so ours is more comprehensive in many ways than that of Victoria and Queensland. The regulations will set the thresholds and provide exemptions, if required. They will be subject to disallowance, so there will be the opportunity for Parliament to deal with those in the future. The strategy will be developed and obviously will be released in due course. These things are not yet drafted, but they are being worked on. Members have been advised of that. Some members indicated that it was a ridiculous or silly process to not have the regulations and strategy ready. I have a range of examples of legislation in which that has occurred in exactly this way in the last few years, which I can take members through if they like. The Biodiversity Conservation Bill 2015,

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the Electricity Corporations Amendment Bill 2013, the Misuse of Drugs Amendment (Search Powers) Bill 2016, the Mining Legislation Amendment Bill 2015 and the Workforce Reform Bill 2013 all had regulations that had to be drafted prior to the act coming into effect. It is not unusual for this to occur. For hundreds of years, Parliaments have drafted the head legislation with a regulation-making capacity. The act itself receives royal assent and a day on which it comes into operation, and the regulations come into operation at the same time. That is the ordinary practice of government and that is occurring here, even if some members were not aware of that.

Some members asked whether this legislation will add too much to red tape. It will replace a range of policies and the like across government, so our view is that it will actually reduce red tape—it will straighten out, simplify and provide a consistent approach across government on these issues. Thresholds will be set, below which participation plans will not be required. There will be lower thresholds for regional areas, where procurement opportunities or contracts are often less, so the threshold may be less in regional areas to ensure that regional businesses get a better opportunity for the contracts on offer. More basic or simpler participation plans will be required for lower-value procurement processes, which will reduce compliance efforts for those lower-valued processes. The industry participation advisory service will be established to accompany this bill and will provide assistance to companies preparing participation plans. There have been suggestions that the funding is inadequate. The government has made available \$4.2 million to establish the industry participation advisory service to provide a free service to assist businesses in Western Australia on these issues.

Members asked how long have these policies been in place in other states and territories. In the case of Victoria, the legislation came into effect in 2003 and it has been in place through governments of both persuasions that have set various thresholds and the like. In Queensland, it came into effect in 2011 and has been in place under governments of both persuasions, as it has in Victoria, and it has not been repealed. In both Victoria and Queensland this approach has been used. I suspect that consequent to the passing of this legislation, which will hopefully be shortly supported by the Western Australian Parliament, that other states will follow suit.

Questions were raised about the expected outcomes. We expect that the introduction of the legislation will provide several benefits, including a signal to agencies and suppliers about the government's expectation of the use of local industry in government procurement, particularly for small to medium-sized enterprises. It is a strong signal to agencies to be far more aware and supportive of local businesses and local contractors. It establishes legislative obligations for agencies in government reporting. Each year we will get the opportunity to scrutinise the report that is put forward about local content. This is, again, another signal to government of any persuasion in office in Western Australia about the importance of local contractors—this has not been done before. This legislation extends the obligations to government trading enterprises. Again, this has not been done before. These are three important signals to government and business in Western Australia. I note that the Chamber of Commerce and Industry of Western Australia in particular has been very supportive of this legislation. I appreciate its concern for small to medium-sized enterprises and I support them in that concern. The CCI is very supportive of this legislation.

The Western Australian Jobs Bill 2017 provides a simplified and streamlined policy and process for agencies and businesses. It will provide a one-stop-shop approach through the Western Australian jobs portal, which will be launched as part of this legislation, and greater support for industry and small to medium-sized enterprises through the industry participation advisory service, which has already been funded in the government's budget that was handed down a couple of months ago. The advice I have is that government expenditure on goods and services and works was over \$24 billion in the financial year ending 2015. As I said before, this does not guarantee—I do not think anyone can—or mandate that every bit of work sought by the Western Australian government will go to a local business. However, any improvement, and we expect a significant improvement, will be welcome when it comes to more local business as a consequence of this legislation.

I turn to the legislation's relationship with industrial relations issues. The bill has been developed to focus on local participation and government procurement; therefore, it requires the development of a strategy and agencies to take participation plans into account in the assessment of offers to supply. It is not focused on or related to industrial relations matters. I have not really understood that line of argument. I did not understand the line of argument I was listening to before about the Wonthaggi desalination plant in Victoria. The difference between Victoria and here is that when they built the desalination plant in Victoria, it rained; therefore, they did not need it—it rained and it rained and it rained.

Mr J.E. McGrath: For 40 days and 40 nights.

Mr M. McGOWAN: Yes, it was like the Great Flood. They built the desalination plant and it rained like cats and dogs for months so the requirement for the desalination plant did not exist. In Western Australia's case, we built two desalination plants and they were very much required. But for those very wise decisions of Geoff Gallop and Alan Carpenter, our state would have been in serious trouble. I note those decisions to build the desalination plants

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were opposed by some people in political life in Western Australia who now form the state opposition. Had those decisions not been made, our state would have been in serious trouble.

Mr J.E. McGrath: Those people are not here anymore.

Mr M. McGOWAN: One of them is. He looks happy in here every day.

Several members interjected.

The ACTING SPEAKER: Members! Can we just move on.

Mr M. McGOWAN: I am not sure that we are talking about the same person.

Dr M.D. Nahan: I know who I am talking about.

Mr M. McGOWAN: Who are you talking about?

Dr M.D. Nahan: You.

Mr M. McGOWAN: Me!

Dr M.D. Nahan: Yes.

The ACTING SPEAKER: Okay members. It is getting quite late. I think we will just let the Premier finish his reply, thank you.

Mr M. McGOWAN: I am looking miserable, apparently, Mr Acting Speaker—looking miserable! Yes, that is a good one. There are a range of other issues. If I have time I will try to address them before we get to the consideration in detail stage of this legislation. Members have raised concerns about the status of regulations and the strategy, which are currently being prepared and not available for Parliament at present. The draft strategy covers information on coverage, implementation guidelines, procurement-related policies and principles, participation plans, strategic projects, regional procurement, value for money, a reporting compliance review of the strategy, assistance to business, governance, and relationship with the Constitution and free-trade agreements. The contents of the regulations are also being considered as part of this process. The regulations will include thresholds for Western Australian industry procurement participation strategy suppliers, thresholds for strategic projects and criteria for suppliers for which agencies may be exempted. As I indicated earlier, there might be exemptions. The thresholds will be included in the regulations and developed as part of those considerations. That has not been finalised yet but it will be finalised as part of the regulations, which will be provided to the Parliament and members can scrutinise it at that point in time. The agencies are working on what is the most appropriate level of thresholds to be put in place.

Members opposite asked about the concept of a strategic project. The bill provides for the concept of a strategic project, which is supplied by a contractor and meets two requirements. Firstly, that it meets the criteria prescribed in regulation, which will likely include monetary value thresholds that will be larger in scale than normal supply. Secondly, that I, as the Minister for State Development, Jobs and Trade, must consider the project to be of strategic significance to the Western Australian economy. If I make that determination, I will give that to the procurement agency responsible for the supply. After determining that something is a strategic project, I am then able to specify particular matters that the procurement agency must require prospective suppliers to address in participation plans. These matters may be additional to or different from those contained in a normal participation plan and they may relate to specific aspects of local participation. The project could potentially put additional obligations on local participation suppliers. Metronet projects are likely to be determined as strategic projects. In Melbourne, Victoria, the rail carriage construction project has been allocated the status of strategic project to ensure more local content. The Victorians are manufacturing magnificent rail carriages and have made sure that there are huge amounts of local content when it comes to that particular form of manufacturing. Obviously, the Western Australian government wants to ensure that that occurs to a greater degree here. That is why we took a policy on that issue to the state election, which we will implement.

Other issues were raised by members; I think I have dealt with most of the issues raised by members. I am sure members will raise issues during consideration in detail. I am a little perplexed by the hostility to the bill I have heard some members express; I would have thought this was one of those bills that members would agree with. I suppose it is a philosophical argument: do you support local content or enhanced levels of —

Dr M.D. Nahan: No, it isn't.

Mr M. McGOWAN: Do you support enhanced levels of local content or do you not? That is the philosophical argument. There is actually a philosophical argument that it should just be completely open. Just to extrapolate a little, there is a philosophical argument that all our air routes in Australia should be completely open, and that any airline in the world that wants to come and fly domestic routes should be able to come and fly them. That is

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a philosophical economic argument. The proponents of that would argue that there might be advantages in terms of cheaper airfares. Of course, those against it—of whom I am one—would argue that it would cost us local jobs and would be a significant potential safety issue for our nation, so we have decided, as has virtually every country in the world, that we will not open up our domestic air routes to any operator that wants to operate here.

When it comes to local content, we hold the view that when government contracts we should, as far as we can within the law, ensure that we preference local suppliers; that is our view. It is certainly our view that it not only provides jobs and opportunities for our citizens, but also acts as a bit of an incubator for local business. In that regard, I am particularly looking at manufacturing and fabrication. If those industries, of which there are many of high quality in Western Australia, are employing Western Australians and receiving contracts from government, and if they are able to build things, whether they are bridges, rail carriages, rail lines, housing or whatever else it might be, they will provide skilled tradespeople and skilled and prosperous businesses that can then take advantage of private sector contracts that might be out there. It is actually an opportunity for other businesses in Western Australia in other areas of the economy to have skilled people and skilled businesses. Of course, there is a financial advantage to the state. If local businesses are employing local people, there is a payroll tax benefit to the state government. If work is done elsewhere, that significant payroll tax benefit is lost to our state.

The contrary philosophical argument, which some people might agree with, is that we just open the doors and windows and let anyone compete, and whoever wins it should be the winner based largely on the lowest price. Some countries around the world practice that, although I am not aware of many. Most countries around the world are very careful about government work. Even the open trading economies, like China, are very careful about government work. Local businesses get the lion's share. In an open trading economy like Japan, government work goes to local businesses. That is the way they work. In the United States, government work goes to local business. That is the way it works. I always remember when I was advocating for the construction of Armidale-class patrol boats in Western Australian shipyards, I went to the United States on a delegation along those lines in 2002 or 2003. The Jones Act was always quoted to me. In America, if a warship is built, it is built in America. That is the way they work. That is why we have to be aware that other countries look at things that way and we need to be aware that we need to defend our state and our national interests in the same way that other countries do. That is the view of this side of the political debate and the view of most Australians, I would think.

That is why we are proceeding down this route. This is our legislation. We hope members opposite agree with it and we hope it has rapid carriage through the Parliament. We are currently working feverishly on the regulations and the strategy. We want to put it into operation as soon as possible—hopefully early in the new year. We want to get it into operation; that is what we are aiming for. I request that it does not get stymied in the Legislative Council, because this legislation will be good for employment and good for jobs for Western Australians.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Dr M.D. NAHAN: Premier, we would like to explore this a bit, with your leniency, because this is an introduction; we just want to get some information about the bill. There are a couple of things. One of the biggest issues, as the Premier knows, is that elsewhere under “Terms used”, “local industry” is defined as suppliers of goods produced, or services provided, in Western Australia, another state, a territory or New Zealand. The title of this bill is the Western Australian Jobs Bill 2017. The Premier made certain statements in his second reading speech that he intends to apply this legislation literally to Western Australian-based firms, whereas local industry is defined as including other states and New Zealand. How is the Premier, in actuality, going to hone the focus of this bill on Western Australian-based firms? I do not necessarily mean firms whose headquarters are based in, for example, Queensland, and who maybe have an office here; I mean Western Australian-based employment and activity. That is the essence of the Premier's argument for this bill. Could he explain how he can peer through the various types of international agreements and national agreements that inhibit him from doing that?

Mr M. McGOWAN: As the member knows, we are required to comply with section 92 of the Constitution, and we are particularly required to comply with the Australia and New Zealand government procurement agreement and various free trade agreements between Australia and other countries around the world. This is not new; it has been around since 1901. That is what we are required to comply with. I get the feeling that the opposition is railing against the Constitution —

Dr M.D. Nahan: We're not. I'm asking you a legitimate question; please answer it.

Mr M. McGOWAN: In our view, this has positive outcomes for Western Australian-based suppliers because based on the existing value-for-money policy, it is sound practice to consider whole-of-life contract costs as part of the evaluation award process. These costs include ease of inspection, ease of delivery, ease of communication and ease of response to operational maintenance requests. These would favour Western Australian suppliers. The use of Western Australian-based subcontractors can provide advantages through minimisation of risk in contract delivery, and this can be taken into account. Participation plans will place an emphasis on those sorts of subcontracting arrangements. There will be greater focus on establishing a uniform process across all forms of procurement and all types of agencies. A consequence of that, if there is uniformity, will, I think, be of benefit to Western Australian businesses. They can work more closely with government agencies in providing that uniformity. The bill will also allow government agencies in particular, through the Department of Jobs, Tourism, Science and Innovation, to provide local businesses with assistance in upgrading their capabilities and through the new organisation with setting up the industry participation advisory service. When a government agency issues a contract, of course it can take into account a range of things. This will enhance the opportunity for local businesses to put in place participation plans that an agency can take account of and local suppliers will be engaged in providing those participation plans.

Dr M.D. NAHAN: I fully understand why Western Australian domiciled firms, contractors and goods and services are competitive. Local content, as defined by goods and services originating in WA, make up most of the purchase by government activity. We are very competitive. I understand, as the Premier highlighted, that there has always been an issue. Can he, and will he, in this bill discriminate in favour of Western Australian domiciled employers, employees and providers of goods and services over those in other states or, indeed, New Zealand. If so, how will he do it?

Mr W.J. Johnston interjected.

Mr M. McGOWAN: I am happy to deal with this issue. The Leader of the Opposition will no doubt go on about section 92 of the Constitution throughout this debate. The jobs bill, together with complementary measures and initiatives that the government puts in place will provide new opportunities for Western Australian industry in a number of ways. It will open up a government enterprise trading market for the first time and GTEs will now be required to consider participation plans as part of the procurement process by requiring prospective suppliers to provide to the procurement agency details of how they will subcontract further work. That will include the kind of work, the value of the work and the process for how they intend to contract that work. Although this does not mandate the use of WA suppliers or subcontractors, it requires prospective suppliers to provide these details, and that is likely to increase the awareness of these issues and influence their commitments and actions. This is not dissimilar to mandatory reporting requirements for matters such as Indigenous participation, greenhouse gas emissions, women on boards and the like.

So that the Leader of the Opposition understands, putting in place legislation requiring local participation plans, of course, means government agencies will take account of the government's desire for local business to win contracts. That is what it means. The Leader of the Opposition might not quite get that but that is what that means. It means local businesses will be first and foremost when contracts are being issued by government agencies. That is what the whole tenor of this is. That is what the intention of the participation plan is and it is the intention of the strategy. That is how it works in Victoria and Queensland. Obviously, the opposition leader does not support that. That is exactly what this legislation is. That is the government's clear intention with this legislation.

Dr M.D. NAHAN: I go back to the question. As the Premier said, this has been one of the biggest issues facing local content for decades. He is coming out with a new approach. Various approaches have sailed close to the wind on the issue. Just because I am questioning it, does not mean, as he is trying to imply, that I am against local content. That is a complete myth.

Mr W.J. Johnston: You are.

Dr M.D. NAHAN: No, I am not. That is completely ridiculous. By that accusation the Premier is treating this important issue very shallowly. As I said, the Premier stated just a minute ago that the whole intent of this legislation is to ensure participants defined as domiciled in Western Australia that provide goods and services, including labour, have preference for government contracts. I accept that. I welcome that. There have been a whole range of other intentions. The problem I have is implicit in the short title "Western Australian Jobs Bill". Under "Terms used" in the bill, local industry, the target of this bill, is defined as "... suppliers of goods produced, or services provided, in Western Australia, another State, a Territory or New Zealand;". I am asking the Premier a practical question: how will he make sure that this bill, or his strategy, which we do not have, actually targets "local", which is defined as domiciled in Western Australia? This is a big challenge. I am not being flippant here; the Premier is. How will he go about doing this? That is the question.

Mr M. McGOWAN: The whole intention of the legislation is to ensure that local business —

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Dr M.D. Nahan: How?

Mr M. McGOWAN: The Leader of the Opposition might not like local content. He swallowed Milton Friedman's text book back in the 1970s and opposes local content. That is the truth of it. He is an academic who does not support local content. His anger comes through every single day in this place—his anger at the fact he cannot do the job he has been given and at being promoted above his ability. That is the truth of the matter about him. That is why he sits there looking down, snarling and being nasty every single day. He was promoted above his ability.

Dr M.D. Nahan: Answer the question.

Mr M. McGOWAN: He only got the job because the two characters next to him are waiting for next year to knock him off. That is the reason. Those two characters are waiting to knock him off. He knows it, we know it and she knows it.

Point of Order

Mrs L.M. HARVEY: This is a valid question about the short title of the bill and we are asking the Premier to articulate —

The SPEAKER: What is the point of order?

Mrs L.M. HARVEY: The point of order is that the Premier is not in any way, shape or form discussing anything to do with the short title of the bill.

A member interjected.

The SPEAKER: I will not take any interjections from you. There are injections from both sides. Let us just get on with the bill. Premier, can you get to the point that the Leader of the Opposition asked, please.

Debate Resumed

Mr M. McGOWAN: Obviously, as I indicated earlier, the intent of the bill is to ensure that local businesses get the best opportunity. It will ensure that there is greater focus by procurement agencies on contract design, scale and technical complexity to ensure that Western Australian contractors are able to compete to a far greater degree to win work in Western Australia. They will not be excluded because the scale is too great, as they were under the former government, or that something cannot be built here for technical reasons. This bill is not intended to exclude participation by businesses based elsewhere but to ensure there are more opportunities for Western Australian industries to compete. The intention of the bill, the strategy and the regulations under it are all about making sure that there are requirements for Western Australian businesses to be considered first and foremost. That is what it is. The Leader of the Opposition does not like it and he is trying to undermine that. That is what happens in other states. There are examples in other states such as Victoria and Queensland where businesses have done particularly well in winning work as a consequence of local jobs bills in those states. He is shaking his head, but he would not know what happens in other states.

Dr M.D. Nahan: I think I do.

Mr M. McGOWAN: No, you do not.

Dr M.D. Nahan: I do. I think I understand a lot more than you do.

The SPEAKER: Leader of the Opposition, you have asked a question.

Mr M. McGOWAN: If we look at other states, they report to the Parliament on all the jobs created by local procurement. The minimum local content requirements in Victoria are reported to the Parliament. The range of projects and the amount of money that is delivered for local content is reported to the Parliament. Agencies are required to take that into account in issuing contracts. If a contract is issued in Western Australia, an agency must understand that the minister and the Premier will be reporting to Parliament on these issues. Does the Leader of the Opposition think that that means they are going to ignore the government's desire and intention for local contracts to be issued to Western Australian companies? He does. He thinks they are going to ignore that?

Dr M.D. Nahan: I am listening to you.

Mr M. McGOWAN: He actually thinks they are going to ignore that! It is bizarre!

The SPEAKER: The question is that the short title —

Dr M.D. NAHAN: I will answer the question for the Premier if he wants. There are many ways to do this.

The SPEAKER: Excuse me!

Dr M.D. NAHAN: There are many ways you can do this.

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The SPEAKER: Member, I have not even called you. I was just saying, “It is the short title, Leader of the Opposition”, and you started talking.

Dr M.D. NAHAN: I do not think we are going to get anywhere here because he does not want to answer it. I understand the intent of the bill—that it is to ensure greater local participation. I understand that and I accept that. I am not arguing against it. We are supporting the bill. What we are trying to do is understand how the government is going to do it. There are many ways it can do it. We are stumbling here because I think it is going to be outlined in the Western Australian local jobs strategy that will come, I understand, next year. That is being worked on now, which I accept, and I think we have been told that it will come next year or before. But what I expected was some kind of illustration of some of the issues and mechanisms that will be used to make sure that “local” means WA. Decades of work has been done in Western Australia to try to overcome that if a domicile firm or groups of firms are uncompetitive, that they can get up to scratch and beat, in the tendering process, firms from other states. I am looking for some of those. Many of them exist now. Are some of those being incorporated into the strategy?

Mr M. McGowan: Incorporating some of what?

Dr M.D. NAHAN: Some of the policies that exist now to try to —

The SPEAKER: Leader of the Opposition, I think we are getting off the —

Dr M.D. Nahan: No, I’m not.

The SPEAKER: If you just let me finish. A lot of the things you are talking about now will come up in clause 7. This is the short title of the bill.

Dr M.D. NAHAN: Yes. I am trying to explain; this is a simple point. The short title of the bill is the Western Australian Jobs Act. The intent is to give local content to domiciled people in Western Australia. That is the title. A stumbling block is local content. “Local industry” is defined as national, including New Zealand. How are we going to go from that definition to the intent of the bill to provide locals defined as domiciled in Western Australia given preference. How do you bias Western Australian? What is the mechanism? Yes, the Premier is right. He said it is the intent of the bill. We accept that. The Premier and the ministers are going to focus on that. We accept that. But how? It is a legitimate question—one that governments have dealt with and, by the way, have a range of mechanism under which they can do it. I am just asking.

Mr M. McGowan: Maybe we should deal with this when we get to the clause. We are dealing with the short title.

Dr M.D. Nahan: That is right. It is the Western Australian Jobs Bill.

Mr M. McGOWAN: I will explain it. Western Australian jobs are about ensuring that Western Australian businesses are given the best opportunity to win contracts in Western Australia. That is why it is called the Western Australian Jobs Bill.

Dr M.D. NAHAN: A raft of other policies exist right now in legislation about local content. A lot of departments have different ones. Housing has a pretty comprehensive one—local policies—and it implements it through a price scheme in the tendering process, whereby it gives preferences to local firms and explicitly gives them a price discount or price increase. There are preferences in the selection process. It also has local content targets for the Department of Housing, for instance. Will those existing policies and preferences be built into this policy or strategy?

Mr M. McGowan: No doubt we will get to that when we get to that clause.

Dr M.D. Nahan: What clause?

Clause put and passed.

Clause 2: Commencement —

Mrs L.M. HARVEY: With respect to clause 2, “Commencement”, when does the Premier expect the bill to receive royal assent?

Mr M. McGOWAN: My expectation is that it has to get through the Parliament. Once it gets through the Parliament, the expectation is that the act will come into effect next year. Obviously, it can get royal assent with a date of it coming into effect at a future date, but my expectation is that sometime in February and March we will go live with the jobs portal, the regulations and the strategy, all underpinned by this legislation.

Mrs L.M. HARVEY: Obviously, some regulations will need to be drafted. To what extent have the regulations been considered at this stage of the legislation?

Mr M. McGOWAN: The regulations are currently being drafted by the agencies across government. They are working on the regulations and the strategies across government. Work is going on between the Department of Jobs, Tourism, Science and Innovation with other government agencies to work on the regulations and the strategy. That

is an ongoing process. I think the member has been advised of that. It would all need to be concluded before such time as the act comes into effect.

Mrs L.M. HARVEY: Obviously, this clause has an option for part of the act to be proclaimed separately from other parts of the act. Does the Premier expect that the entire piece of legislation will come into effect at the same time or does he expect it to be proclaimed in stages?

Mr M. McGOWAN: The expectation, on the advice I have, is that all the legislation will come into effect at the same time. The drafting allows for that, but that is not what we are going to do.

Dr M.D. NAHAN: We will get to this later, but this is relevant for the commencement because it really cannot do much. When does the Premier expect to have the Western Australian industry participation strategy that provides the body to the implementation of the act?

Mr M. McGOWAN: As I said, we expect that the strategy, along with the regulations and the portal, will all go live at the same time in February or March.

Clause put and passed.

Clause 3: Terms used —

Mr S.K. L'ESTRANGE: Clause 3 is “Terms used”. It states on page 3, line 9 —

Local industry means suppliers of goods produced, or services provided, in Western Australia, another State, a Territory or New Zealand;

How does this definition impact on the intent of the bill?

Mr M. McGOWAN: That definition is as required by various agreements reached by the commonwealth government with other countries, so as to make the bill consistent with section 92 of the commonwealth Constitution. Under the bill, we cannot actually have a mandated clause for Western Australian suppliers or individuals, but the bill provides for a process to require local industry participation to be taken into account in a structured and consistent way across government when agencies evaluate offers to supply—so where it gives an advantage to local business. Obviously, value for money and closeness of the source is an advantage.

There is the assistance to local industry by the industry capability advisory service and the opening up of the government trading enterprises to this approach. It is a signal to both bidders and government agencies of the government’s preference for local suppliers. There is increased security of reporting because the Minister for State Development, Jobs and Trade, and other ministers, potentially, would be required report to Parliament on the operation of the plan. Of course, when we develop the strategy and the regulations, our intention is to be very clear that we expect Western Australian businesses to be the beneficiaries of the legislation. That is what we can do. Supporting Western Australian business is the intention behind the legislation and they are to be the beneficiaries of the legislation. That is what underpins this legislation. Obviously, the strategy and the regulations are not ready, but they will be seen when they go live. They will be similar to what has occurred in other states whereby a strong signal is given to both government and business that the contracts or business provided by government show preference to businesses in that state. That is the intention behind it. I cannot undo section 92 of the commonwealth Constitution.

Dr M.D. Nahan: We are not asking you to.

Mr M. McGOWAN: The opposition seems to be doing that. It seems to be asking me to undo section 92 of the commonwealth Constitution. I cannot do that. Under this legislation, which is more than is currently in place, we will be doing everything we can to ensure that preference is given to local suppliers. We are doing everything we can do. I could have put in a clause that was inconsistent with section 92 of the commonwealth Constitution, but then the whole act would have been found invalid, so I cannot do that. The clauses are there and the strategy will be very clear about Western Australian business being the intended beneficiary of the legislation. The regulations will be very clear and very much attuned to Western Australian businesses being the beneficiaries, but obviously section 92 of the commonwealth Constitution is there and I cannot undo it.

Mr S.K. L'ESTRANGE: The minister has acknowledged that he cannot undo section 92 of the Constitution and we as an opposition fully understand that. The concern we have about this bill is that, as the Premier has outlined, section 92 of the Constitution allows the definition of “local content” to include suppliers of goods produced or services provided in states other than Western Australia, the territories and New Zealand, but the whole intent and premise of the bill that the minister has communicated both in his second reading speech and the community is that section 92 can be ignored. We are concerned that the minister is saying that his bill will be able to provide preferences to local suppliers over those of other states, the territories and New Zealand, but on the other hand he

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is acknowledging that section 92 precludes him from being able to achieve that. The question remains that the minister's definition of "local industry" contradicts the intent of the bill.

Mr M. McGOWAN: Our bill is consistent with what the other states are doing in this area. I will run the member through that again. The legislation applies to government trading enterprises, to which it has not applied before. There is a requirement to report to Parliament on how much local content is being provided by government, which, of course, sends a very strong signal to government agencies and GTEs and also provides a great deal of transparency around these issues. It revises and improves existing policies by putting in place a strategy, and the strategy will be very clear about the fact that we are of the view that Western Australian businesses should be given opportunities to provide their services in the provision of contracts to government. By incorporating in this legislation these directions, or this advice, to government, combined with the strategy, local businesses will get better opportunities to win government work. I also outlined to the member earlier the role of the development commissions, the industry participation advisory service and those sorts of bodies to ensure that Western Australian businesses have better opportunities to win government work. We are consistent with other states; our expectation is that WA business will be the beneficiaries of the legislation. We have to draft the legislation consistent with the commonwealth Constitution. As we know, by sending very clear messages to the public sector, government trading enterprises and local business, we expect greater amounts of local business will be generated as a consequence.

Mr S.K. L'ESTRANGE: Following on from the Premier's answer, and sticking with clause 3, he mentioned that the Western Australian industry participation strategy, which he terms "the strategy", will answer how this definition of local industry is going to favour Western Australian suppliers on government contracts. From the answer given, the Western Australian industry participation strategy, as shown on page 4, which is still under clause 3, is a key aspect of how this definition will be approached, yet we have not seen the Western Australian industry participation strategy. Can the Premier give us a clear indication of when we, as an opposition, will be able to critique the Western Australian industry participation strategy, so that at the very least we can assess and investigate how the government is going to, firstly, get around its own definition of "local industry" to include all states and territories outside Western Australia plus New Zealand, and, secondly, how it is going to favour local Western Australian businesses and suppliers without going against section 92 of the Constitution?

Mr M. McGOWAN: It is interesting that the member said he wants to critique the strategy. He wants to criticise the strategy.

Mr S.K. L'ESTRANGE: Critique is different from criticise.

Mr M. McGOWAN: I think the member will find that the word critique is generated by the word criticism. The intention is to bring down the strategy next year. As the member knows, government bodies bring down policies all the time; they are released virtually every day. The strategy will come down next year when the legislation comes into effect, which we expect will be in February or March. The opposition will see the strategy at that time. I can tell the member that the strategy will be very much focused on ensuring that we send as many directions or as much information and/or signals to government agencies and to GTEs as possible. We expect Western Australian businesses to get full and fair consideration and better consideration than they are currently receiving.

Mr S.K. L'ESTRANGE: The Premier was concerned about the use of the word "critique" in my last question. We quickly looked it up and got a definition of "critique" for *Hansard*.

The SPEAKER: We are talking about the clause.

Mr S.K. L'ESTRANGE: We are, but it is an important aspect, because I was relating to a critique of the Western Australian industry participation strategy. The Premier thought critique meant to criticise and I said, "No, it doesn't". The definition of critique states —

a detailed analysis and assessment of something, especially a literary, philosophical, or political theory.

In actual fact, the term critique is very apt for the line of questioning that has been taken on what the Western Australian industry participation strategy is going to be. Will we be given the opportunity to critique it?

Mr M. McGOWAN: Good for you, member for Churchlands, on your googling.

The bill requires the development and implementation of a written strategy about the participation of local industry. The strategy will include different provisions for different classes of suppliers, which will allow, for example, different provisions depending on the monetary value and the type of supply and guidelines as to its application and procedures to be followed in complying with it. The bill also provides that the strategy will provide further detail about participation plans and a procurement agency's assessment and consideration of a participation plan submitted by a prospective supplier when evaluating the offer to supply; incorporate commitments outlined in the participation plan of the prospective supplier in the supply contract; and include the requirement in the supply

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contract for reports to be given to the procurement agency on the extent to which incorporating commitments are being or have been met. The Department of Jobs, Tourism, Science and Innovation is currently in the process of developing a framework for the strategy document. This will also include considering the broad outline of participation plan templates and, in doing so, this will include the deliberation on key concepts and consultation, and that is occurring with various agencies to ensure that they minimise red-tape burden on industry and business.

Dr M.D. NAHAN: We are trying to accept the Premier's point that there is no strategy yet, but some local content policies that exist do what we have been trying to address. For instance, there is a Buy Local policy for housing that requires the consideration of local content in the tendering process, which this bill proposes to do, and explicitly builds into the tendering process that tenders get explicit discounts or preferences in the tendering process for local content that is defined as Western Australian in the form of regional locations. It also deals with things such as local discounts for imported goods if those discounts are not banned by free trade arrangements. There are existing policies that get around the issues that we are addressing. We are trying to explore whether the government will go further and adopt what is already there, because the Premier has argued that the existing policy is failing. I might add that the Premier has not provided evidence of that yet. There are Buy Local policies for a range of areas, including housing, that go down to contracts of \$200 000 that explicitly require tenderers to build local content domiciled in Western Australia, as defined, and get explicit monetary preferences in the tendering process. Is the government going to do things such as this? Is it going to adopt the processes that are already in place?

Mr M. McGOWAN: There are processes in place. The current Buy Local and Building Local Industry Policies—there are a few; I think there might be others—are government policies without legislative backing. They are not consistently applied by government trading enterprises—entities that are agents of the Crown—which is a big point of difference that the legislation deals with, and they apply differing requirements to different agencies and suppliers. There are different policies for different agencies. The Buy Local policy is dated July 2002. It has operated in a modified fashion since around 2008 and is outdated in the agency's view. It does not provide a rigorous process for capturing claims under the local content criteria and it does not ensure that successful suppliers outline the reported benefits. Those are all very important points. The design and implementation of existing policies, therefore, has meant that they are not being achieved across all forms of government procurement and are not resulting in outcomes desired by government. The existence of multiple and convoluted policies has also caused confusion for both agencies and suppliers. I hear that a lot. Indeed, Mr Speaker, I have heard it said in Albany on a number of occasions that the local content provisions are not working effectively and are confusing. I have met with contractors in the office of the Speaker who have been unhappy with the way that they have worked. Based on some justifiable personal experiences, they do not feel that the policies have been implemented properly. We are bringing together the best of these policies. We are redrafting them. We are making them more rigorous, giving them legislative backing and applying them to government trading enterprises. Those are all good things, I would have thought. Geoff Gallop put in place the Buy Local policy back in July 2002, which is 15 years ago. Therefore, it is time for a rebuild and some consistency. It is time to bring the policies together and update them. I think it is time for it to apply to government trading enterprises.

Mrs L.M. HARVEY: My question relates to this definition of "local industry". Obviously, section 92 of the Constitution is set up precisely to prevent states from prohibiting trade with other states and other businesses across state borders. I am concerned about the ramifications for our agencies, for example, in forcing contractors to go specifically to only Western Australian businesses when that is at odds with section 92 of the Constitution. Is there a possibility, for example, that businesses from other states could be tendering for projects and an agency might say, "No, we have been directed by the government to consider Western Australian contractors ahead of you?" What could then transpire? Is the state at risk, for example, of legal action on behalf of those businesses from other states?

Mr M. McGOWAN: So that the member understands, we are not directing that businesses go to local suppliers. We are not mandating. We are putting in place very strong signals and a strategy to ensure that local contractors get better consideration than they currently do. It is not a direction for local business. That is consistent with what other states do. That is what is behind it. I expect that if anyone wanted to challenge these matters, they would have to take legal action in the High Court.

Mrs L.M. HARVEY: Premier, further —

Several members interjected.

The SPEAKER: Members! I was just telling people not to talk.

Mrs L.M. HARVEY: Further, the Premier said that a strong signal is being sent to the sector. Obviously, if people in the public service involved in these contracting processes are being advised or strongly pushed by government to consider Western Australian businesses over other businesses—that is the intent of the bill and I suspect everybody in this chamber would like to see more Western Australian businesses participating in these government contracts—and a contractor from another state felt that they had been unfairly treated in that tendering process and

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that it was ultra vires section 92 of the commonwealth Constitution, where would the state legally stand with that behaviour?

Mr M. McGOWAN: The legislation is consistent with legislation put in place in Victoria and Queensland, which has not been challenged or, if it has been challenged, has not been struck down by the High Court. I will read out the advice in the explanatory memorandum —

The use of ‘small or medium enterprise’ is consistent with existing meanings used in procurement policies of other Australian jurisdictions, which are based on businesses with less than 200 full-time equivalent employees. Various international free trade agreements to which the Commonwealth is a party and which apply to Western Australian government procurement preserve capacity for government measures to support local small or medium enterprises in the context of government procurement.

Therefore, the strategy would reflect that provision to ensure that SMEs are given that preference and free trade agreements are not infringed. In relation to section 92 of the commonwealth Constitution, the member will find that every state—or certainly Victoria and Queensland—has constructed its strategy to ensure that the guidelines put in place for contracts reflect the government’s desire for local businesses to win those contracts. As I said before, there are a range of ways in which that can be done—the closeness of the source of the contractor will be an advantage; assistance to local industry will be provided by the industry capability fund; government agencies and GTEs will understand that they will be under increased scrutiny should they contract elsewhere; and it will be scrutinised in the Parliament, as members will no doubt scrutinise the reports that I present. The degree of local involvement will be one of the factors assessed in the strategy. The wording of the strategy itself will also send a strong signal to both government and bidders that the view of the Western Australian government is that we have high quality contractors and businesses in Western Australia that deserve to be properly considered in winning contracts.

Mrs L.M. HARVEY: I have a question on clause 3(1) and the definition of “agency”. One of the definitions of “agency” that is provided in that clause is “a government trading entity”, but in paragraph (c) it is defined as —

a person or body, or a person or body of a class, prescribed for the purposes of this paragraph;

What does the Premier anticipate would otherwise be prescribed with respect to the definition of “agency”?

Mr M. McGOWAN: Let us imagine that a government in the future creates a new government trading enterprise. That paragraph would allow for that trading enterprise to be prescribed.

Mrs L.M. HARVEY: This obviously provides for other institutions to be included by way of regulation. Is it envisaged, for example, that local government could be prescribed to comply with this legislation through this definition?

Mr M. McGowan: No.

Mrs L.M. HARVEY: Why would a requirement for local content and local jobs not include local government?

Point of Order

Mr W.J. JOHNSTON: The member cannot talk twice.

The SPEAKER: I thought it was a continuation of the question.

Mr W.J. JOHNSTON: The member sat down, you put the question, and she stood up again.

The SPEAKER: That is not a point of order at this time of the day. Premier, did you get the question?

Debate Resumed

Mr M. McGOWAN: Yes, I did. The intention of the government is in relation to the state, because that is what we control. If it is successful, subject to consultations with local government, we might extend it to local government. It is not the intention at this point in time, but that might be the intention in the future. I signed a partnership agreement with local government a few months ago. Obviously, within the terms of that partnership agreement, we could look at extending it, subject to that consultation.

Dr M.D. NAHAN: There are a few cases now in which public trading enterprises enter into joint ventures. I think this will be particularly the case with renewable energy in the future. Landgate has a joint venture with Property Exchange Australia Ltd—it is an asset holder in PEXA. Some of those deal nationally as well as mostly in Western Australia. Will this be applied to joint ventures with government agencies; that is, joint ventures that are probably mixtures with private enterprise?

Mr M. McGOWAN: Yes, if it is a supply to the state and meets the thresholds.

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Dr M.D. NAHAN: Let us say that Landgate provides information about land, not so much to the state, but to the people of the state, and, as I understand it, it has been reported in the press that the government is considering privatising it. The government has also mandated electronic conveyancing as a necessity in the future—I am not sure about that detail—which is going to be provided by a firm, partly owned by Landgate, called PEXA. That does not provide services to the state; it is a service provided right now by the state, in part in joint venture with a private entity.

Point of Order

Mr W.J. JOHNSTON: I know this is an important issue and the member has every right to raise it, but he is raising it in the wrong place. This is part of the definitions and he has not asked about the definitions in the clause. He is asking about how the bill operates. It is a very important question, but he is not asking it in the right place.

The SPEAKER: Member, will you get onto the proper question?

Debate Resumed

Dr M.D. NAHAN: Yes; my question relates to clause 3(1)(c) which states —

a person or body, or a person or body of a class, prescribed for the purposes of this paragraph;

It is a clause put there by the government to, quite rightly, address expansions in coverage of the bill, as the member knows. I am just trying to explore—in fact, I support doing so—whether, as time goes by and the government morphs into different types of associations, businesses and agencies and it gets into increasing joint ventures with the private sector, the government will apply this procurement policy, particularly to joint ventures with the private sector?

[Quorum formed.]

Mr M. McGOWAN: The intention is that if an entity is owned by a government trading enterprise or a government agency, the bill would apply to that entity.

Mrs L.M. HARVEY: To further clarify, is the Premier saying that the procurement strategy would apply only should that entity be prescribed by a regulation through clause 3(1)(c)?

Mr M. McGOWAN: It is intended to capture the situation that the member is referring to.

Mrs L.M. HARVEY: If one of those public–private partnerships falls under the remit of this bill, does it need to be prescribed by regulation through this part of the bill?

Mr M. McGOWAN: Yes, it already captures it by the existing operation of the bill.

Mr R.S. LOVE: I want to ask a question that is more about what is not in clause 3 than what is there. Fundamental to the whole structure of this system is the idea of value for money. There is no definition in the bill of “value for money”. I know that the State Supply Commission has a definition of “value for money”, which is printed on its website, but there is not one in the legislation. I am wondering if that is an oversight. The commonly held belief of what defines value for money may be different from the intent of this legislation.

Mr M. McGOWAN: There is a definition of “value for money” in the State Supply Commission’s supply policy, which was gazetted on 28 December 2007. I will read it out for the member, if he likes. It is about eight paragraphs long.

Mr R.S. LOVE: That policy is subject to change. I am wondering whether there should not be at least a reference in the legislation to where someone can find a definition of “value for money”. That policy may disappear tomorrow. It might fall off the website or it could change. This legislation will still be intact. Where would one then find “value for money” defined?

Mr M. McGOWAN: The legislation does not reference a policy; it provides a regulation-making power. The State Supply Commission policy that was issued 10 years ago defines “value for money”. I am not exactly sure what the member is asking us to do, but it already exists. If it requires updating or some changes as a consequence of the strategy or the regulations of this legislation, that is what will happen.

Mr R.S. LOVE: Where do I find the reference to that policy in the bill?

Mr M. McGOWAN: As I said, the legislation does not reference policies.

Mr D.C. NALDER: Just a minute ago the Premier said that he was willing to read the definition into the record. I would appreciate that definition of “value for money” being read into *Hansard*.

Mr M. McGOWAN: It is a bit farcical if the member wants me to read in policy. I can read in every policy of the government. I think the member is making a mockery of the consideration in detail stage and being silly during this debate. Clause 9 states that the Western Australian industry participation strategy must be consistent with the State Supply Commission Act 1991. That is how the two interact. As I said, the value-for-money policy is about eight paragraphs long. It is long and involved. If the member goes to the State Supply Commission website, I am sure he will find it.

Clause put and passed.

Clause 4 put and passed.

Clause 5: Western Australian Industry Participation Strategy —

Mr S.K. L'ESTRANGE: Clause 5(1) on page 5 of the bill states —

The Minister must develop and implement a written strategy about the participation by local industry in activities for or in connection with a supply that meets the criteria prescribed for the purposes of this subsection.

When will both government agencies and local industry suppliers be provided with this strategy?

Mr M. McGOWAN: It is intended that the strategy itself will be finalised in February or March, as I have indicated on a few occasions now, and so the act itself, the regulations and the portal will come into operation at the same time. In the meantime, between now—October—and that date, there will be consultation across government and with industry on the development of the strategy. The Chamber of Commerce and Industry of Western Australia and other business organisations will be consulted in the development of the strategy.

Mr S.K. L'ESTRANGE: We understand from the Premier's answer that he will have the strategy by March 2018. Can the Premier indicate what he thinks his transition plan will be from when the strategy is implemented in March 2018 to when industries will be able to write their plans to show the Premier how they can seek tenders for government supply?

Mr M. McGOWAN: It will come into effect immediately, with the exception, if you like, of a grace period for tenders that are already underway. It will commence in February or March, assuming passage through the Parliament, and we will indicate when it will come into operation, with a grace period for any tenders that are already in operation.

Mrs L.M. HARVEY: Subclause (4) states —

The strategy is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

I would have thought that the government would want something as important as the Western Australian industry participation strategy to be presented for parliamentary oversight. Will the strategy be presented to the Parliament?

Mr M. McGOWAN: Clause 10 states —

The Minister must cause the WAIPS to be published on a website maintained by or on behalf of the Department.

In other words, it will be totally public. It will not be regulatory; it will be a strategy. The government has all sorts of strategies. The existing Buy Local policies are strategies. This one will be an enhanced strategy on those. It will have legislative backing, as I said before, and will be applied more broadly, as I said before. It will be reported on in Parliament, as I said before. It will be a strong signal to government agencies and contractors of the government's expectations. It will be a strategy, so it will be public. The opposition, the government, or anyone else who wants to see it will see it when it goes live on the website. It will be consulted on before then with industry and government agencies.

Mr S.K. L'ESTRANGE: We understand the government will have the strategy ready by March 2018, and that it will take effect immediately. I will link clause 5 with the opening sentence of the Premier's second reading speech, where he said that it fulfils a key commitment of the McGowan Labor government under the plan for jobs; that is, to ensure that money spent by the Western Australian government on goods and services is used wherever possible to support local industry and create local jobs. For all contracts from when this bill passes through this Parliament, up until the date at which the Western Australian industry participation strategy is put on the website, how can the government ensure that local suppliers will, in fact, get the contracts?

Mr M. McGOWAN: The existing policies that are already in effect will apply. The strategy that we are putting forward will become live when the legislation comes into effect, in addition to the regulations and the portal or the website—all those things. In the meantime, the existing policies will apply. I urge members to allow this bill through the house so that we can get on with achieving the outcomes we are trying to achieve.

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Mr S.K. L'ESTRANGE: Further to that, the question is not that we allow this bill to move through this house; we are going to allow this bill to get through this house. The concern we have is: how is this bill, without the government's strategy, going to enable the government to award more contracts to Western Australians than the Premier purports have been awarded in the past?

Mr M. McGOWAN: I am a bit confused by the question, but in any event, we have sent a strong signal to government that, in the current environment—particularly the environment we have been through over the last couple of years—we would prefer government contracts to, as much as possible, be issued to local tenderers. There are existing policies in effect and they will continue to be in effect for the next four months or so. Once we have consulted on the strategy with the Chamber of Commerce and Industry of Western Australia and government agencies, the policy will come into effect when the bill comes into effect. We cannot work miracles in terms of getting it all done before it is ready to be put into effect. I am not quite sure what the member is saying, but it will come into effect, we hope, early in the new year, once all that work is done.

Mr S.K. L'ESTRANGE: I think the Premier would agree, then, that this bill, without the Western Australian industry participation strategy, will not fulfil a key commitment of the McGowan Labor government.

Mr M. McGOWAN: The member will note that within the bill there is a strategy; he has to read it in totality.

Mr S.K. L'ESTRANGE: Where is the strategy?

Mr M. McGOWAN: It is being drafted currently.

Mr S.K. L'ESTRANGE: Then it's not in the bill.

Mr M. McGOWAN: I think, once again, the points the member is making are a little bit of a mockery and a bit flippant.

Dr M.D. Nahan interjected.

Mr M. McGOWAN: I think they are. I have demonstrated to the member—I read this out earlier; the member probably was not listening—a whole range of pieces of legislation that were put through during the term of the last government that had strategies and regulations that had to be drafted after the legislation was passed and prior to the legislation receiving royal assent and coming into effect. That is the intention. The legislation is underpinned by a whole range of regulations, a strategy, a portal, and a requirement to apply to government trading enterprises and the like. All of that will come into effect, we hope—assuming passage through both houses of this Parliament—in March next year.

Clause put and passed.

Clause 6: WAIPS provisions —

Mrs L.M. HARVEY: Clause 6(a) states that the Western Australian industry participation strategy can include —
different provisions for different classes of supply, participation plan or supply contract;

Could the Premier give us some examples of where he perceives that different classes of supply or participation plans might apply?

Mr M. McGOWAN: They are the sorts of issues to be consulted on. I will read out something. The bill allows for different types of participation plans based on different classes of supply. It also allows for flexibility in the form of participation plans. It is intended that the prospective suppliers will be required to prepare either a core or full participation plan depending on the estimated procurement value and functional type of supply—for example, goods and services as opposed to housing, works and construction. Depending on the category, there might be higher expectations in the participation plans, depending on the type of contract. I think that currently happens because there is the Buy Local and the Building Local Industry policies. This will bring it into the one policy. It will rationalise it and make very clear what the expectations are. As I said in my second reading speech and in my response to the opposition, for strategic projects—that is, major rail projects and the like—additional or varied commitments may be sought from prospective suppliers consistent with the minister's determination for the particular project. The determination is likely to be based on the government's economic and social expectations for the project.

Mrs L.M. HARVEY: For example, obviously, this has been modelled on legislation from Victoria, as I understand it.

Mr M. McGOWAN: Yes.

Mrs L.M. HARVEY: Does the minister have any examples of where those thresholds exist and where we might expect them to be put in place in Western Australia? What I am trying to get to is that obviously the smaller SMEs might apply for supply contracts. They would probably have less capacity to put together a comprehensive Buy Local strategy as opposed to a larger company with a footprint right across Australia and New Zealand. I am wondering where those thresholds might fit.

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Mr M. McGOWAN: Consideration has been given to a number of matters about threshold values, including categories to distinguish the functional categories of goods and services and housing works and construction; a distinction between metropolitan and regional contracts across forms of supply, which I mentioned earlier; the creation of categories of participation plans to vary the scale of what is requested of prospective suppliers, depending on the estimated contract value or the class of supply; the interaction with State Supply Commission policies, such as the public tender threshold; the thresholds used in other jurisdictions; and the use of practical experience and, of course, red tape impacts. At this stage, preliminary consideration has been given to the following: for goods and services metropolitan area contracts, for the core participation plan, it is \$500 000 to \$5 million; for the full participation plan for bigger projects, it is \$5 million and above; for goods and services regional contracts, it is \$250 000 to \$5 million, so a different threshold for core participation plans; and for the full participation plan, it is \$5 million and above. For housing and works in the metropolitan area, it is \$1 million to \$10 million for the core participation plan; for the full participation plan, it is \$10 million and above. For housing and works regional contracts, it is \$250 000 to \$2 million for the core participation plan; and for the full participation plan, it is \$2 million or above.

Clause put and passed.

Clause 7: WAIPS objectives —

Mr S.K. L'ESTRANGE: Clause 7 states that one of the objectives for the Western Australian industry participation strategy is to encourage local industry to adopt, where appropriate, world's best practice in workplace innovation and the use of new technologies and materials. How will the government achieve that?

Mr M. McGOWAN: The clause states —

In developing, amending or replacing the WAIPS, the Minister must have regard to the following objectives —

- (a) promoting the diversification and growth of the Western Australian economy by targeting supply opportunities for local industry;
- (b) providing suppliers of goods and services with increased access to, and raised awareness of, local industry capability;
- (c) encouraging local industry to adopt, where appropriate, world's best practice in workplace innovation and the use of new technologies and materials;

That is as the member identified.

The intention is, at some point in the future, to develop a local capability fund to assist small or medium enterprises improve their capacity, capability and competitiveness to access major domestic and international market opportunities. This includes meeting essential prequalification requirements for supply chain entry, such as remote access systems; the purchase and upgrade of essential equipment; occupational health and safety; and marketing and finance. The intention is to allow individually tailored rounds to be launched in response to the needs of the government supply market, other market opportunities that arise and the specific needs of SMEs.

Mr S.K. L'ESTRANGE: I have a further question about clause 7. Paragraph (e) states —

promoting increased opportunities for local industry to develop import replacement capacity by giving local industry, in particular small or medium enterprises, a full, fair and reasonable opportunity to compete against foreign suppliers of goods or services.

How will the government do that?

Mr M. McGOWAN: There will be a question in the participation plans as to whether a head contractor will investigate potential for import replacement to allow local businesses to receive work—to substitute for imported products or goods or services. So that will be one of the questions in the participation plan that is required. This has been discussed with tier 1 contractors, so it would be, in particular, construction contractors, I understand. We have had that conversation with them, and they are receptive.

Mr S.K. L'ESTRANGE: Further to the Premier's answer, given that there will be this way of developing import replacement capacity, will that relate to New Zealand?

Dr A.D. Buti: There's a Labour government there now—it's great, isn't it? I wonder how Julie Bishop is going to build up relationships with that hostile Labour government.

The SPEAKER: Member for Armadale, you have your Premier —

Dr A.D. Buti: The member said New Zealand has a Labour government.

Mrs L.M. Harvey: That's upset us immensely.

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The SPEAKER: Stop being happy, member for Geraldton.

Mr I.C. Blayney: I'm sorry.

Mr M. McGOWAN: The support by the industry participation advisory service will only assist local companies—as in Western Australian—in import replacement.

Mr S.K. L'ESTRANGE: Further to that, the Premier would be aware of the Australia and New Zealand Government Procurement Agreement that Western Australia is a signatory to. It reads that signatories must ensure —

... the absence of inter-state and trans-Tasman application of preference schemes and other forms of discrimination in government procurement, based on the place of origin of goods and services;

Given that Western Australia is signatory to the Australia and New Zealand Government Procurement Agreement, I would like to know how paragraph (e), line 6 on page 6 is going to work.

Mr M. McGOWAN: The way it will work is it is a support to Western Australian businesses over businesses elsewhere. The member said it is a preference: that is not the intended way it will work. It is a support to Western Australian businesses, as opposed to that. I suppose there is more than one way to skin a cat, and that is what this is doing.

Dr M.D. NAHAN: I have just one issue that the Premier will probably answer quickly. In terms of objectives, will they also include investment in R&D for small and medium firms to assist them to develop? I know this is focused on a procurement policy—supply—and tied to provision of supply of goods and services, but will the response also seek to develop R&D skills in Western Australia as part of the strategy?

Mr M. McGOWAN: The participation plans will include questions on research and development. I think that is fair and reasonable, so they will include that.

Clause put and passed.

Clause 8: WAIPS principles —

Mr D.C. NALDER: The Premier mentioned earlier the definition of “value for money”. Can he enlighten us how he intends to apply “value for money” to any tenders moving forward, particularly as it is a primary principle in the Western Australian industry participation strategy?

Mr M. McGOWAN: The jobs bill, as the member will see, requires that value for money is the primary consideration in procurement decisions. This is consistent with sound procurement practice and is essential in ensuring the best outcomes for the public and the state's budget. The State Supply Commission has a longstanding value-for-money policy, which provides good guidance. I referred to that earlier. There has been some confusion about what the policy means. It does not mean the lowest cost in all circumstances. The existing policy includes non-cost factors, which may be included as part of that policy. It is not an exhaustive list, but includes such matters as fitness for purpose; technical and financial issues; supplier capabilities; sustainability risks and exposures; availability of maintenance, service and support; compliance with specifications; ease of inspection; communication; and delivery. They are all compared with price and a value-for-money decision is made. It is an informed judgement; it is not a mathematical formula. The assessment of the participation plans will be considered as part of the assessment of the other non-cost factors in the procurement assessment process. The participation plans will be considered alongside those and alongside value for money. There is no mathematical formula; a decision will be made by the decision-maker based upon all those issues. The participation plan will be considered as part of that. A weighting of 20 per cent could be considered, but it is my inclination that it may be higher than 20 per cent.

Mr D.C. NALDER: To clarify, the principle is that a weighting will be applied, but the interpretation will be on each tender—it will be assessed independently—to determine what that level of weighting will be and what trade-off there will be on cost versus participation for WA jobs?

Mr M. McGOWAN: No. There will be a standardised approach on the weighting of the participation plan. That has not been settled as yet—it might be 20 or 25 per cent. But there will be a standardised approach; it will not be on every single contract. We want to remove unnecessary burdens and red tape. There are existing policies—I do not know what their percentages are—but the intention is that this will be considered alongside those other factors I mentioned earlier and value for money.

Mr D.C. NALDER: I think I understand the intention of what the Premier is trying to do. I fear that a lot of this bill is more about optics than real delivery. There will obviously be trade-offs between value for money on the project and the participation of jobs, and we are just trying to get a sense of that. My interpretation of what the

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Premier is saying is that it could be 20 to 25 per cent—in that ballpark. That will be set, but it will not be a stringent guideline because individual contracts will be assessed as they come through.

Mr M. McGOWAN: The way it works is that I expect the industry participation plan will have a weighting of, as I said before, between 20 per cent and 25 per cent. That weighting is part of the scoring process. The scores are looked at and compared against price, and a decision is made then.

Mr S.K. L'ESTRANGE: Further to that answer, the minister has indicated that a weighting is given in the assessment of which company to choose as a supplier to government, so I understand the weighting procedure. Can the minister give us an indication of the percentage of price above what might be the market price in, for example, South Australia, Queensland or New Zealand, that would be accepted from a local tenderer?

Mr M. McGOWAN: There is none and there has never been one. The existing state supply guidelines do not have things as formulaic as that. There is currently flexibility and there will be flexibility in the future. As I have said, there is 20 per cent to 25 per cent weighting when it is scored, and the scores are looked at and compared with price.

Mr S.K. L'ESTRANGE: I understand how we weight in favour of our local suppliers—I get that—but sometimes the weighting means the taking on of a local supplier that is supplying at a higher than market price. All I am asking for is the benchmark of how high the government is prepared to go to keep the supplier local.

Mr M. McGOWAN: There is no benchmark. We accept there are other things that come along with a higher price and the lowest price, and all those matters are considered. There is currently flexibility and there will be flexibility in the future, except to say that the industry participation plan will be one of those factors in consideration along with the existing list, but it will have a weighting of between 20 per cent and 25 per cent.

Mr S.K. L'ESTRANGE: This clause specifically states “the need to achieve value for money, as the primary consideration”. That is a quote from the minister’s bill. Given that a 20 per cent to 25 per cent weighting away from a value-for-money proposition will be accepted, how can the government ensure that the taxpayers of Western Australia will get value for money in the tenderers selected?

Mr M. McGOWAN: Currently, value for money is a broad concept. When someone buys a house, what they get as value for money is a broad concept. It is the same with any contract. There are a range of considerations included within the concept of value for money and an industry participation plan will be one.

Dr M.D. NAHAN: This is the most difficult aspect of the procurement policy and we accept that. The government does not have a strategy worked out and we accept that. The Member for Churchlands asked a question about a weighting within the local procurement policy of about 20 per cent to 25 per cent, which I think is consistent with what is done now, against value for money. As the minister said, value for money is not just about price; it involves a lot of other things such as deliverability and quality. But if, for example, there were two bidders and they were nearly identical in terms of value for money, however that was measured, but one had 20 per cent to 25 per cent higher local content and costed 20 per cent to 25 per cent more, would the government go with that bidder? How will these choices be made? Are there any guidelines or will what is done now be followed? Will there be a change?

Mr M. McGOWAN: Our whole intent is that if a participation plan is better, there is a prospect we will pay more; I think that is understood. If we want to live in a world in which we just pay the cheapest price, as I said before, we should introduce foreign airlines to do our domestic airline routes. Participation plans may mean that we pay more, but what comes with that is more local employment, jobs, skills, apprenticeships and the like. That is the prospect when we do this.

Dr M.D. NAHAN: We have a raft of local content and policies implemented right now through the system that the government is going to adopt through the supplier. The Premier is saying that he intends to get greater local content and therefore the government gives greater weight to local content, defined broadly, and therefore he will give a greater weight to local content. Indeed, it might lead to, in general, higher costs or lower value for money. I just want to get that clear.

Mr M. McGowan: Sorry, what is the Leader of the Opposition trying to get clear?

Dr M.D. NAHAN: I will repeat it. The whole intent of this bill is to get greater local content. As the Premier just indicated, sometimes, and generally, he wants to increase local content but that comes at the cost of trading off something else—not necessarily, but the Premier indicated it often does. One of the intents of this bill is to increase local content at the potential cost of lower value for money; in other words, a higher cost. The intent of the bill is willing to trade-off the cost of supply for local content.

Mr M. McGOWAN: It will not always produce higher costs —

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Dr M.D. Nahan: Yes, I accept that.

Mr M. McGOWAN: — but sometimes it may. The judgement call would be made that there are benefits in doing so. That is what it is. As I indicated earlier, the policies behind this are a significant improvement on what exists now.

Dr M.D. NAHAN: Clause 8(b), “WAIPS principles”, states —

The need to ensure probity and accountability for procurement processes and procurement decisions.

Is the government going to enhance the transparency of these trade-offs, since it is going to make it more systematic, wider-ranging and comprehensive with greater weight given to local content? That is what the Premier stated, and that is fair enough—we support that—but is the government going to enhance the transparency of this trade-off and report to cabinet through whatever mechanism, such as the Auditor General?

Mr M. McGOWAN: The answer to the question is yes. There will be enhanced probity and accountability; that is, there will be annual reporting to Parliament. Suppliers will report to agencies that will report to me.

Dr M.D. NAHAN: Let us take a specific project—railcars. Let us put railcar purchases through this. We have a large number of potential bidders and we choose the one that has a higher local content but it costs more.

Mr W.J. Johnston: It will cost less.

Dr M.D. NAHAN: No, I said it costs more. This is a hypothetical.

Mr W.J. Johnston: It will cost less, though.

Dr M.D. NAHAN: Is the minister participating in this?

Mr W.J. Johnston: I was just making a point.

The SPEAKER: Minister, do not make a point.

Dr M.D. NAHAN: Let us use another example. The government purchases a high school and wants to enhance local content. On that basis, it chooses to take a higher cost for the provision of that high school. Will the government make transparent the trade-off between value capture and local content on a project-by-project basis?

Mr M. McGowan: Yes, through the reporting mechanism.

Dr M.D. NAHAN: So the reporting mechanism will come down on a project-by-project basis?

Mr M. McGowan: Yes.

Clause put and passed.

Clause 9: WAIPS to be consistent with other requirements —

Mr S.K. L'ESTRANGE: Clause 9 outlines that the Western Australian participation strategy, when it is written, must be consistent with three things —

- (a) the State Supply Commission Act ...
- (b) any other written law ...
- (c) section 92 of the Constitution of the Commonwealth.

I seek some guidance or clarification from the Premier on whether the Australia and New Zealand Government Procurement Agreement is captured by the three things in clause 9.

Mr M. McGOWAN: Apparently, it does not need to be included in the act because it comes under the supply policies that are already in existence.

Mrs L.M. HARVEY: With respect to the WA industry participation strategy being consistent with section 92 of the Constitution of the commonwealth, can it be specific in requiring Western Australian companies to be prioritised over any other state?

Mr M. McGOWAN: We canvassed these issues widely earlier and discussed the range of ways that the state can ensure greater opportunities for local businesses, in particular encouraging and supporting local businesses. As I indicated before, the entire tenor of the strategy will be around making sure that Western Australian businesses and enterprises operating in Western Australia will be the priorities of the Western Australian government.

Mrs L.M. HARVEY: Could the WA industry participation strategy, for example, have the words “Western Australian companies need to be considered as a priority”?

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Mr M. McGOWAN: It does not mandate. It sends a strong signal to agencies to provide details of procurement, value of work, kind of work and the like and it will potentially influence their commitments and actions. Merely by putting in place this legislation, we are sending a very strong signal to agencies about our intentions in that regard.

Mrs L.M. HARVEY: Once more on this, I take it that the Premier's answer is no and that a Western Australian industry participation strategy cannot have the words "Western Australian-based and owned companies and businesses must be given a priority under the strategy".

Mr M. McGOWAN: We will release the strategy in due course. It will be very focused on ensuring that Western Australian suppliers are given full and fair opportunity to win government contracts.

Mrs L.M. HARVEY: To be clear, obviously the Western Australian industry participation strategy could not have the words "Western Australian businesses and companies need to be prioritised" because that would be ultra vires to section 92 of the commonwealth Constitution. I understand that it can have lots of wording around geographical location and local people being employed—all of these sorts of things—but it cannot, through this instrument, as part of the strategy, have the words anywhere on a webpage that say "Western Australian-based businesses and companies must be given priority under this strategy."

Mr M. McGOWAN: They may be treated as a priority based on sound business practices. It will no doubt ensure that issues like the closeness of the source to supply are taken into account in making a decision. It will have words in there that are a signal to both agencies and bidders of the Western Australian government valuing Western Australian providers. It will have increased scrutiny via reporting in this Parliament, so we will report in this Parliament and that will send a message to agencies and bidders about the priorities of the Western Australian Parliament and the Western Australian government. Any industry participation plan will include all these things and will also apply to government trading enterprises.

Mrs L.M. HARVEY: From what the Premier is saying, the strategy could contain broad motherhood statements about the intention of the government in introducing this legislation and having the strategy there. Can it have broad statements and commitments about the government's intention but can it not include the words "our intention is to prioritise Western Australian-based businesses and companies" because that would be contrary to clause 9?

Mr M. McGOWAN: No; it will have very specific statements about the advantages of sourcing goods and suppliers from Western Australia.

Dr M.D. NAHAN: Again on clause 9(c), is the Premier aware of any complaints, legal action or otherwise being brought about against either the Queensland or Victorian procurement legislation, upon which the government is modelling its legislation?

Mr M. McGowan: No.

Dr M.D. NAHAN: Is the Premier aware that the New Zealand government has issued a major complaint about Queensland's policy?

Mr M. McGowan: No. It was about a different policy.

Dr M.D. NAHAN: Is the Premier aware that complaints have been issued in New Zealand about policies that were derived under Queensland's similar act?

Mr M. McGowan: The advice I have is that it was about a different policy.

Dr M.D. NAHAN: Just to get —

Point of Order

Mr W.J. JOHNSTON: The member cannot get the call twice. The Premier never sought the call, so the Leader of the Opposition cannot seek the call again.

Mr S.K. L'ESTRANGE: Further to the point of order, Mr Speaker —

Dr M.D. Nahan: He didn't answer it.

Mr S.K. L'ESTRANGE: I believe the Premier did answer the question but he answered while sitting down so the member might not have recognised that an answer was being given.

Mr W.J. JOHNSTON: No; you have to seek the call!

The SPEAKER: Excuse me!

Mr W.J. JOHNSTON: I am just explaining to him.

The SPEAKER: It is getting late; let us just get on with it.

Debate Resumed

Dr M.D. NAHAN: I just want to confirm this. This legislation is based, according to the government, on Victoria and Queensland. It goes to a really delicate issue—a constitutional matter.

Mr M. McGowan: I'll answer your question.

Dr M.D. NAHAN: Okay; I will reiterate! I have been told to ask the question again, so I am doing that. I have read in literature that New Zealand has made a formal complaint against the procurement policies of the Queensland government. I asked the Premier to confirm this, but he did not bother to stand up and answer last time, so it probably was not even recorded in *Hansard*. Is the Premier aware of any legal action or official complaints from New Zealand about Queensland's procurement policy; and has the Premier taken them into consideration in the development of this legislation?

Mr M. McGOWAN: I am advised that the New Zealand complaint relates to a separate policy. The Queensland legislation was introduced in 2011.

Dr M.D. NAHAN: I would like to make a statement. I think they will find out that there is a real risk that the Queensland procurement policy legislation, and therefore potentially others, depending on how this one is implemented, will be the subject of a formal complaint that potentially puts this legislation at risk, and that should be taken into consideration, particularly when not only developing the local content policy, but also implementing the participation strategies.

Mr M. McGOWAN: The risks have been taken into account in the development of the legislation. They will be taken into account in the development of the strategy.

Clause put and passed.

Clause 10 put and passed.

Clause 11: Participation plan —

Mrs L.M. HARVEY: I understand that this clause relates to the participation plans that will form part of the contractual arrangements that businesses will have with government. I want to understand how this will work. Obviously, thresholds will be built into the strategy. The way construction happens in Western Australia, for example, is that there is always a head contractor, which tends to be a larger company. It then pushes work out to subcontractors, who will have smaller chunks of the large contract. Obviously, a head contractor will require a participation plan that we would expect would be very comprehensive and would have certain requirements. How will that head contractor's participation plan then be pushed down through to the subcontractors, because if the subbies, being small and medium businesses, for example, were procuring work from government in their own right, there would be a much less onerous requirement on them as part of the participation plan. What will be the nexus between those head contractors' requirements for participation plans and the impact, if any, and how will that impact be measured on the subbies who will be performing work on behalf of those larger head contractors?

Mr M. McGOWAN: The obligations under the bill are placed on the relevant agency. The obligation to comply with the commitments made in the participation plan flows through to the head contractor through a contract. Any subcontractors will have a relationship with the head contractor through respective contracts, but subcontractors are not themselves referenced or obliged by the bill. The head contractor has the responsibility of implementing the participation plan. It is the intention to encourage larger providers to use local small to medium-sized enterprises, as well as encouraging SMEs to have full and fair opportunity to compete as potential suppliers.

[Quorum formed.]

Mrs L.M. HARVEY: Further to this, there have obviously been some quite controversial incidents in Western Australia, with head contractors acting in a somewhat unconscionable way towards the smaller subcontractors who perform the work for them. I am concerned that the head contractors will have participation plans that, due to the size of the contracts they will have, will be quite comprehensive. How will the government ensure that the participation plans that have been put in place as part of a contractual arrangement with a head contractor are not going to have onerous consequences for the smaller subcontractors, who will then be employed by the head contractor to perform the work?

Mr M. McGOWAN: The whole intent is designed to help local contractors win. The expectation is that small and medium-sized enterprises will be the beneficiaries.

Mrs L.M. HARVEY: Further to that, for example, there is one project that I am aware of, a primary school that was being constructed, where the head contractor had the work for the primary school and a subcontractor had

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imported all of the Colorbond roofing for the school. He did not get paid for that. It was actually imported from China. If the head contractor has a requirement for local content, for example, will that have ramifications for the subcontractors then having to source their products locally, or will those subcontractors be exempted, if you like, through supply chain requirements as part of that participation strategy?

Mr M. McGOWAN: Head contractors are responsible for the performance of subcontractors, so if there is an agreement, and then the subcontractor wants to change that agreement, the head contractor will have to seek to renegotiate the contract if there is some exigency that requires that. The intention of the participation plans is about processes to give opportunities to local small and medium-sized enterprises.

Mrs L.M. HARVEY: I understand that, Premier. What I am trying to get to is, if the head contractors are the larger operators in the industry, will there be an expectation that their participation plans will also have a requirement for the subcontractors that perform the work to also have, if you like, participation plans that would be consistent with the head contractor achieving those, or will the subcontractors always be exempted, and the head contractor will just be covered by the partition plan?

Mr M. McGOWAN: The head contractors make the commitments in the participation plans, not the subcontractors. The head contractors, obviously, when they subcontract with the subcontractors, have to be cognisant of the agreements they make. That is the way it works. I think that is self-evident.

Mrs L.M. HARVEY: Further to this, with some of the construction work or specialised work that might need to be performed on behalf of one of the energy retailers, for example, the head contractor might have a participation plan but as part of that the employment workforce might, for example, need to come in on 457 visas for specialist work. Is that going to be an inhibitor to the head contractors and the subcontractors getting the work?

Mr M. McGOWAN: It would be a consideration. Obviously, in a participation plan, if one party was bringing in overseas workers, that would be a major consideration.

Dr M.D. NAHAN: There are just a couple of things. As the participation plans will be part of the tender process and agreed to, is the government going to put on people to monitor and measure the implementation as time goes by?

Mr M. McGOWAN: Yes.

Dr M.D. NAHAN: How will the government deal with things such as design, build and operate components in this participation plan when there will be different local content considerations at each phase of the development? Sometimes, until the design is agreed to, it is not known what the build and maintenance will be. Will they be treated as special projects and taken off to the side to be dealt with? Does the government have a single participation plan that will win a complex contract with a design, build and operate component right up-front, or will it have multiple plans?

Mr M. McGOWAN: It may well be that the agency decides that on that particular project, it will require three participation plans.

Dr M.D. NAHAN: How do we get around issues when we have a participation plan for, let us say, a large construction project? A large construction firm often has its preferred suppliers; that is how it operates. It is not so much that those preferred suppliers are local. If a participation plan specifies those preferred suppliers, it could inhibit competition from other subbies, if you wish. One of the issues is: how do we make sure that the participation plan does not have the perverse outcome of inhibiting competition between subbies and, therefore, increasing costs over time?

Mr M. McGOWAN: When we are putting together our participation plan, we will detail how we will go about our subcontracting and we may well detail where our subcontractors will come from, and that will be part of the scoring process.

Dr M.D. NAHAN: Just to understand it, it is more about process rather than detail. Another issue is that often, particularly in our economy, which tends to go boom and bust, particularly during very hot periods, the objective is to bring activity to the state to locate here. Not too many years ago we encouraged a lot of engineering firms to locate here from overseas. Will the participation plan differentiate between existing firms or will they allow “local” to be defined as firms coming from overseas and locating here, or new firms attracted to WA if they decide to be local?

Mr M. McGOWAN: If an overseas or interstate business wants to come here and establish and employ local people, that would be considered local.

Clause put and passed.

Clause 12: Procurement agency to require participation plan —

Mrs L.M. HARVEY: Clause 12(2) states —

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The regulations may provide that the obligation in subsection (1) does not apply to a procurement agency —

- (a) in relation to a WAIPS supply of a prescribed class; or
- (b) in prescribed circumstances.

This sounds as though a procurement agency, by way of regulation, can be exempted from this requirement. In what circumstances does the Premier expect a regulation might be tabled that exempts an agency from the WAIPS?

Mr M. McGOWAN: Consideration is being given to broad categories for classes of suppliers where participation plans will not be required. This includes consideration of, for example, services that must be performed overseas, such as maintenance of an overseas office, and procurement that is classified as sensitive, such as something in relation to counter-terrorism efforts. Consultation would occur before any such regulations are finalised. I think those two examples are quite sensible.

Dr M.D. NAHAN: We can deal with this in this or other clauses. It is an issue that the Premier has dealt with a bit. The requirement in the process is that every bidder provide a participation plan, and that could lead to thousands of participation plans across the state. What processes does the Premier plan to put in place to limit the red tape associated with this?

Mr M. McGOWAN: It will be done by the thresholds, which I read out earlier, and the jobs portal will allow the electronic transfer of documentation—the new jobs portal. On the Tenders WA website there was an analysis of an expectation of five to 10 participation plans a week, based on the last six months.

Dr M.D. NAHAN: Will the department also provide guidance to prospective bidders, particularly in the early days, as to what is looked for, the criteria and the weighting of all this—some guidance to minimise red tape?

Mr M. McGOWAN: Yes, in a template.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Participation plan commitments to be incorporated in supply contract —

Mrs L.M. HARVEY: As I understand it, this clause will require a procurement agency to have a participation plan form part of the contract. Will there be a pro forma participation plan? Will they be individual? Will every contract have the same template added to it to ensure consistency?

Mr M. McGOWAN: There will be two thresholds of templates for core and full.

Mrs L.M. HARVEY: Will those templates be tabled in Parliament as part of the regulation-making process?

Mr M. McGOWAN: They will be publicly available because they will be attached to each tender. They will not be tabled in Parliament because they are not regulations.

Clause put and passed.

Clause 15: Exemption from s. 12(1) —

Mr S.K. L'ESTRANGE: Clause 15 states —

- (1) The Minister may, in writing given to the procurement agency for a WAIPS supply, exempt the procurement agency from the obligation in section 12(1).

Clause 12(1) is the requirement for the procurement agency to submit a participation plan that would have to align with the industry participation strategy. Clause 15 is about exempting somebody from complying with the plan. Can the Premier explain when this would occur?

Mr M. McGOWAN: An example of a circumstance in which this power could be used is if the minister considered that, in the context of a particular supplier, there would not be an overall benefit if the participation plan requirements were applied. The example that I have been given is of something absolutely urgent that had to be dealt with immediately and the requirement was considered unnecessary, onerous or would not be of benefit to the state.

Clause put and passed.

Clause 16: Delegation —

Mr S.K. L'ESTRANGE: Clause 16 relates very much to clause 15. It states —

- (1) The Minister may delegate the powers in section 15(1) and (2) to the chief executive officer of the Department.

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That means that the chief executive officer, once delegated, could make a decision about what is a priority or of importance and to exempt somebody from having to comply with the industry participation strategy. Given the importance of this bill that the Premier outlined in this place, why would a minister delegate such an important role?

Mr M. McGOWAN: The example given to me is that there might be a piece of high-tech medical equipment or something of that nature that had to be acquired from Germany, Japan, Switzerland or somewhere. It might be a pharmaceutical product or something of that nature. A decision might have to be made quickly and the minister may not be here or may not have the expertise. The decision could be delegated but it will still have to be published. Therefore, there will be transparency and accountability around it. I imagine it would be an odd occasion.

Mr S.K. L'ESTRANGE: Further to that, so if it is not going to be some urgent medical equipment, how will the Premier be able to assure the people of Western Australia that under the Western Australian industry participation strategy and the requirement for participation plans to be adhered to by agencies, this delegated authority is not able to extend its decision-making beyond emergency medical equipment?

Mr M. McGOWAN: As I said, I cannot envisage all circumstances at all times, and that is what legislation does—it gives some flexibility and opportunity for people having faith in them. But as to the accountability measure, there is no secrecy about an exemption being provided because the agencies are required to publish the notice of the exemption.

Mr S.K. L'ESTRANGE: Further picking up on the Premier's answer, does the Premier have absolute faith and trust in the chief executive officer of the department to execute that delegation and hold to the Premier's plan?

Mr M. McGOWAN: The current chief executive is Stephen Wood. I have faith in him.

Mr S.K. L'ESTRANGE: Thank you. So the Premier has faith in the chief executive officer. I alert the Premier to clause 16(3), which states —

A delegation may authorise the chief executive officer of the Department to further delegate the powers to another officer of the Department in accordance with any conditions specified in the delegation.

How far down the public sector chain of command will this delegation go?

Mr M. McGOWAN: This clause is quite regular in legislation. There are numerous examples, I am advised, of this clause being used to ensure that there is swift and efficient decision-making. If we have faith in our agencies and the directors general of our agencies have faith in a senior officer who might have expertise in a particular area, this can be done regularly. We can debate this particular clause all night, but I think it is quite standard.

Mr S.K. L'ESTRANGE: Although I understand the mechanics of how ministerial officers and government agencies and departments work with regard to delegation, I think in this instance we are dealing with quite a complex bill. The requirements of the Western Australian industry participation strategy, which the Premier will provide to this place or put on the website in March 2018, and what underpins the success of that strategy are things like section 92 of the Constitution or, as I outlined earlier, certain arrangements and agreements between Australia and New Zealand, such as the Australia and New Zealand Government Procurement Agreement, and other such arrangements between the states of the commonwealth and free trade agreements. It is complex. Given that this bill is so important to the Premier giving jobs locally to Western Australians, if the authority under which these very important supply participation plans can be exempted, the fact that not only can the minister delegate to his chief executive officer, but also the chief executive officer can delegate even further down his or her chain of command will move the decision-making so far from the minister's office that he may not be aware if, for example, a supply contract ends up going to New Zealand. How will the minister know whether that is going to happen if he does not have oversight of the decision-making linked to supply?

Mr M. McGOWAN: It is a little bit of conspiracy theory stuff. Although the delegation is not public, agencies are required to publish the notice of exemption. There is no secrecy about an exemption being provided. This is more transparent than what currently happens.

Mr S.K. L'ESTRANGE: How is this more transparent?

Mr M. McGOWAN: Any current exemptions are not published.

Mr S.K. L'ESTRANGE: Bringing it back to the delegated authority, once they have made the decision and the decision has been published, what happens if the minister does not agree with it?

Mr M. McGOWAN: I imagine that if anything was controversial a chief executive officer or his or her delegate would consult a minister before making such a decision. If an urgent decision had to be made to acquire particular equipment for the Tactical Response Group in a security situation, or a hospital had an outbreak of a particular disease and required specialised equipment that was manufactured in Germany and an exemption was required

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quickly and the minister was away on holiday in New York and could not be contacted, I assume that the chief executive officer and/or his or her delegate would be able to make that decision. If the minister came back and disagreed but a contract had been signed, there would probably be not much that the minister could do. However, as I said, this clause is very common in other pieces of legislation. Maybe we can give some examples. The delegation clause is very common in legislation. If the opposition wants to explore all the options, I can keep coming up with examples and the member can keep on saying that someone may do something nefarious in the course of their duties. I expect that would not happen, but I imagine that if it did happen and someone did do something inappropriate, or whatever, there would be severe consequences for that person.

Mr S.K. L'ESTRANGE: In his answer, the Premier referred to a medical situation and also the Tactical Response Group requiring a piece of equipment. I think we are actually dealing with the supply of goods and services for big projects. That is what we are focussing on. I think the Premier would no doubt have regard to the Commissioner of Police for the TRG—I stand to be corrected—and I would be surprised if under his authority he did not have the authority in an emergency to buy a piece of equipment up to, say, \$10 million or less, if he so needed, within the parameters of doing his job as the commissioner. Likewise, I expect that a CEO of a hospital who needed to procure a very significant and important piece of equipment for the emergency department would have within their mandate and authority the capacity to make sure that that emergency department had all the resources it needed to function without needing to come to the agency, let alone the minister.

This is clearly about the Western Australian industry participation strategy. A key component of the strategy is that agencies and suppliers must present plans to the government that indicate how they will ensure local employment and local content is given maximum priority. Clause 16 links to clause 15, which is about the exemption from having to provide these plans. We are not dealing with a piece of equipment for an emergency department or for the Tactical Response Group within the police force; we are talking about an exemption from providing a supply plan for projects here, Premier. Using those types of examples to be flippant is inappropriate. We want to know how the Premier is going to ensure that his bill under his own Western Australian participation strategy will not be delegated to somebody down the public sector chain of command so that the intent of his bill is unable to be achieved. We want to know what assurances he can give that he will maintain oversight of the responsibilities that he has placed on himself in this bill, and that he does not delegate them away.

Mr M. McGOWAN: The instrument of delegation is “may”—as the bill says—and in specific circumstances that the minister agrees to. Major projects obviously would not be one of those. Obviously, there would be long tender processes and the like. The advice I have been given by the advisers is that it would be more about emergency circumstances like the ones I outlined.

Mrs L.M. HARVEY: Part of the reason we are labouring this point is that the way most agencies work with these delegations, as the minister is aware, is that the minister will often have a delegation to the CEO and the CEO will often have a standing delegation around certain areas to the chief financial officer, chief procurement officer or whoever it might be. Those delegations tend to just sit in perpetuity when they occur. The Auditor General found in his report of 2011 that these delegations were in existence and out of those delegations the purchasing officers responsible for procurement were able to exempt themselves from the government procurement guidelines and did so routinely and frequently. We are concerned with this delegation that there will be an opportunity for these purchasing officers to exempt themselves, and who, perhaps in the interests of wanting an easy life, will want to do so. We need to understand whether the delegation will be an exception or stand in perpetuity as happens in the current arrangements. Will the officer who sits at the level that the purchasing and procurement occurs have a requirement every time they exempt the department from the participation plan to feed that up the chain to the minister to ensure we are notified of every individual contract that an agency has exempted itself from the requirement of a participation plan?

[Quorum formed.]

Mr M. McGOWAN: Regarding the question the member for Scarborough raised, as I said before, currently the exemptions are not public and now they will be made public and published. That is a big difference. Secondly, the member asked whether they go into perpetuity. That is at the discretion of the minister, so the minister may do and then he can withdraw that. As I said, the minister is the accountable person on this. If the minister does this, they are held to account. That is a much more accountable system than what goes on now.

Mrs L.M. HARVEY: Just to clarify, can we expect publication on every departmental website with respect of every contract that has received an exemption from the participation plan—every single contract?

Mr M. McGOWAN: It will be a ministerial exemption under clause 15, yes.

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Mrs L.M. HARVEY: Just to be clear, can we expect information to be published about any supply contract that has been entered into by an agency with a contractor under which the contractor has received ministerial exemption from a participation plan?

Mr M. McGowan: Yes.

Mrs L.M. HARVEY: Great. Thank you.

Clause put and passed.

Clause 17: Determination of strategic project —

Mr D.C. NALDER: Clause 17 states —

- (1) If the Minister considers that a WAIPS supply is of strategic significance to the Western Australian economy, the Minister may, in writing given to the procurement agency for the WAIPS supply, determine —
 - (a) that the WAIPS supply is a strategic project; and
 - (b) that the participation plans required by the procurement agency in respect of the WAIPS supply are to outline commitments addressing matters specified in the determination.

What does this mean?

Mr M. McGOWAN: The bill provides for the concept of a strategic project, which is a supply that meets the criteria prescribed in regulations. That will likely include monetary value thresholds as criteria, which will be larger in scale than normal Western Australian industry participation strategy supplies, that the minister considers is of strategic significance to the Western Australian economy. The minister must make a determination in writing to give that to the procurement agency responsible for the supply. The purpose of identifying a strategic project is to allow the minister to then specify particular matters that the procurement agency must require prospective suppliers to address in participation plans. This will allow the minister to identify matters that are additional to or different from those contained in a normal participation plan and may relate to specific aspects of local participation. It will therefore allow the minister to invoke commitments in relation to those matters, rather than allowing the minister to impose requirements with regard to local industry participation or any other matter, on Strategic Projects or the supplier. It will still be the responsibility of the procurement agency to assess and consider the participation plan when evaluating an offer to supply. Again, the minister must provide to the procurement agency the determination on the particular matters to be specified in participation plans. The matters will then need to be incorporated into the participation plan templates and any commitments made by prospective suppliers will then need to be taken account of in the assessment of the plan. It is intended that this process will allow the government to signal to responsible agencies and prospective proponents the government's aspirations for larger and more significant projects. Metronet projects have been identified as likely to be determined as a strategic project.

Mr D.C. NALDER: I am not trying to over-labour the questions on this, but I am trying to understand how it will apply practically. The Premier has mentioned Metronet. Can the Premier step through a hypothetical on Metronet so that we can understand the practicality of it and how it is going to apply?

Mr M. McGOWAN: I would write to the agency at the start setting out these things, we would identify it as a strategic project and the areas where the supplier should make commitments—for example, railcars—and the agency would include that in the participation templates.

Mr D.C. NALDER: Coming back a step to clarify, will a large project be determined to be strategic or will a WAIPS process come through whereby it will be seen as a strategic project and then that will determine that it is a strategic project for the determination? Does the Premier know what I mean by that? Will it be because it is a very large project and we are applying that as a determination for a strategic project or will it be because the WAIPS has some element that means it is considered as a strategic project?

Mr M. McGOWAN: It will be more the former; it will be a large project determined to be a strategic project. We will look at its economic impact, its jobs impact, the complexity associated with it, the scale and its public recognition. All those issues would determine it.

Mr S.K. L'ESTRANGE: Further to that answer about the determination of a strategic project, from reading clause 17(1) to (4), I am still unclear about how that is different from part 3. Can the Premier explain to me how a strategic project will be handled differently from other procurements because of the Western Australian industry participation strategy?

Mr M. McGOWAN: It allows the government to take the initiative and to identify matters that are additional to or different from those contained in a normal participation plan. It may relate to specific aspects of local participation. It is a larger project. As I said, I gave the member the rail carriage example. That is not a bad example and I think that is what occurred in Melbourne. That is not a bad example; it is as good an example as I can give members.

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Mr S.K. L'ESTRANGE: The Premier gave railcars as an example. I understand that a strategic project is a significant project for government and the Premier is using railcars as an example. Can the Premier step through how the Western Australian industry participation strategy might ensure that the railcar project the Premier mentioned, once it is determined to be a strategic project, would increase local participation?

Mr M. McGOWAN: We may well ask for more detailed information on selected subcontractors and complex projects. We may well ask for participation in the design, build and operate aspect. For long-term contracts, we may well require extra details about the long-term operation of the contract.

Dr M.D. NAHAN: The Premier mentioned the size, scale and strategic importance of, let us say, the railcars, but one of the issues in the past has been to try to develop diversification of the economy and new technologies and material, which is one of the government's objectives. Would the government not consider a strategic project for a level of activity that is not for a specific or single project? Let us say that the government decided to put in specialty ICT of some sort. Instead of having a single project, the government would focus on an area for which it has special participation plans.

Mr M. McGOWAN: My advice is that yes, it could be done in that sort of circumstance.

Dr M.D. NAHAN: Is the government considering doing that in some areas?

Mr M. McGOWAN: We do not have any in mind at the moment but the idea the Leader of the Opposition has come up with is a reasonable one.

Clause put and passed.

Clauses 18 and 19 put and passed.

Clause 20: Agencies to provide information to Minister —

Dr M.D. NAHAN: Can I get some clarity on this issue? Clause 20(2) states that when giving information to the minister under subclause (1), which is about providing information to the minister, the agency needs to —

- (a) identify information that the agency considers should not be included in the report because of its confidential or commercially sensitive nature;

Given that the participation plans are part of the tender, in many, many cases there will necessarily be confidential information in the tender documents. I suggest that there are sections of the tender, in terms of value for money, that are clearly going to be commercially confidential but that the participation plans themselves might be much less so. Would the government consider excising or having a policy of delivering information on the tender to the public that is not commercially confidential? In other words, the tender document could be split up into that which is commercially confidential and that which is not.

Mr M. McGOWAN: I am advised that that is a potential in certain circumstances but it has not really been given consideration.

Mrs L.M. HARVEY: Further to this clause, as an example, if the government is bidding for events and things like that through the tourism portfolio, often information is commercially sensitive because the government is competing for projects along with other states. Is it the government's intention that as part of the bids for those events, and when the nature of our bid might be commercially confidential, there would still be a requirement for the event organisers to have a local participation plan for sourcing local suppliers in order for the event to occur? For example, could the participation plans be made available and separated from the commerciality and competitiveness of a contract such as that?

Mr M. McGOWAN: I think the member is asking whether the participation plans are going to be made public—correct?

Mrs L.M. Harvey: Yes.

Mr M. McGOWAN: There are concerns about that because of the need to take into account commercially sensitive matters, as I think I mentioned earlier. We are aware that when the commonwealth government does this—I think it has a similar process—it makes summaries of participation plans available under its program, which are written by the companies. This seems to have been generally regarded as a positive thing but it applies only to large projects.

Mrs L.M. HARVEY: Further to this, as an example, there was some criticism of the Margaret River Gourmet Escape because international sponsors were involved. Can we now expect that, with the requirement of these industry participation plans, the viability of these events will come into question? That event has now gone to Victoria. As part of the procurement process, would the industry participation plan require a certain percentage of local content? Our concern is that it might affect the viability of procuring some of these events in Western Australia.

Mr M. McGOWAN: I am not sure that I fully understand the question. I think this gives the minister discretion to release the information depending on whether it is commercial-in-confidence or commercially sensitive. It is a judgement call in each case. I do not understand the role of the Margaret River Gourmet Escape in this, but that is the intention.

Nationally, on major projects, the commonwealth government makes some regional participation plans available. In Victoria, they report annually. Queensland's legislation states that they report annually.

Dr M.D. NAHAN: The Auditor General would be able to assess whatever he wants to do about these also. Is that right?

Mr M. McGOWAN: There is nothing stopping the Auditor General from doing that.

Clause put and passed.

Clauses 21 and 22 put and passed.

Clause 23: Obligation imposed under Act overrides other obligations —

Mr S.K. L'ESTRANGE: Clause 23 states —

If an obligation imposed on an agency under this Act conflicts or is inconsistent with an obligation imposed on the agency under the Act that establishes or continues the agency, the obligation imposed under this Act prevails to the extent to which the obligations conflict or are inconsistent.

Can the Premier please provide an example of where that would happen?

Mr M. McGOWAN: An obligation under this act would override the obligations of GTEs under their act of Parliament establishing them, so therefore they are required to comply with the strategy in the participation plans, which would override whatever clause might be in those numerous GTEs the government has—established ports, electricity utilities, water utilities and the like. The participation plan and the local content obligations override those.

Clause put and passed.

Clause 24: Effect of contravention of Act or WAIPS —

Mr D.C. NALDER: Clause 24 relates to contravention. Am I reading this right? Are there no consequences for those actions if any of the departments decide to contravene this act or not fulfil the obligations under this act?

Mr M. McGOWAN: Under the Financial Management Act and the Public Sector Management Act, agencies are required to adhere to government policy and the like. That is a requirement on agencies currently; on anything that they do. The existing requirement for agencies to comply would be applied to this legislation.

Mr D.C. NALDER: What are the consequences for a public servant who does not meet the obligations of this act?

Mr M. McGOWAN: There are disciplinary procedures under existing acts of Parliament if a principal does not comply with the relevant rules relating to the expenditure of public money or the like, or if a public servant does something contrary to any act. Section 53(1)(b) of the Financial Management Act and section 9(a)(i) of the Public Sector Management Act impose obligations on public servants, CEOs and boards of government bodies to comply with government policy. I think the member is asking what, across the board, are the obligations on public servants to comply with what they are told to do. They are contained within those pieces of legislation, as they have been for 20 years.

Mrs L.M. HARVEY: Given that this is a high priority for the government, will the government be setting key performance indicators for agencies for compliance with procurement and participation plans, and compliance with the industry participation strategy?

Mr M. McGOWAN: They are required by law to comply with these processes, so I suppose that, in effect, they are stronger than KPIs. They are required by law. That is part of the reason we have done this, so that it is not just a policy; it is legislation. It is further up the hierarchy in terms of what everyone should take account of.

Mrs L.M. HARVEY: Government agencies are required by law to perform all sorts of functions in service delivery and the like. Those functions that are deemed to be the most important for the agency, notwithstanding that they are required by law to comply, have a KPI with an expectation that they will achieve 100 per cent of participation plans for every contract they are engaged in, or 90 per cent as a KPI for compliance with the strategy. No-one ever expects 100 per cent compliance, because there will always be variations and exceptions, but if it is a key strategy for the government, it would be expected that there would be a KPI that would then have consequences for a CEO, for example, in the renewal of their contract, should they not be ensuring that their agency complies with such an important engagement strategy.

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Mr M. McGOWAN: They are required to report to me every year—I suppose that is a KPI—on the outcomes of the strategy in the bill and the local content. Obviously a CEO would be impacted if they were not complying with government policy. If a CEO ignores government policy, there may well be consequences for that CEO down the track, or prior to the renewal of their contract.

Mrs L.M. HARVEY: There are two parties to a contract, and it states here that no civil or criminal liability will attach to an agency or any other person only because the agency or other person has contravened this act or the WAIPS. Will there be consequences or penalties written into contractors for government, should they enter into a contract that they basically achieve successfully as a result of their participation strategy, if at the end of that contract it is determined that they have not complied with the participation strategy? Will the contracts now have penalty clauses written into them to ensure that there is a financial or other penalty should the contractor pretty much be only paying lip service to the participation strategy in order to achieve a successful outcome?

Mr M. McGOWAN: I have said before that the current remedies under the legislation, which is different to the existing situation, are that the participation plans will be written into contracts. Therefore, they can be enforced as a term of the contract. There are contractual remedies for breach of contract if they are not complied with. The other remedy is that if a contractor does not comply with the participation plans they put in, it will be taken into account with regard to whether they receive any further contracts.

Mrs L.M. HARVEY: So the consequence will be that if contractors are not complying with their participation schemes, they will not be awarded further contracts?

Mr M. McGowan: Potentially.

Mrs L.M. HARVEY: Potentially. It says here that there is no civil remedy, though. If the Premier is saying that they could be prosecuted for breaches of contract, that is a civil remedy, so I am not quite sure how that would work. Can the Premier explain how the government will be able to hold these contractors to account for implementing their participation strategies?

Mr M. McGOWAN: Failure by a government body to observe a statutory process or requirement when making a decision or entering into a contract may, in some circumstances, be held by a court to result in the invalidity of that decision or contract. The obligations in the bill imposed on agencies must be observed by agencies, but agency noncompliance in respect of a particular supply must not result in invalidity of procurement decisions or contracts entered into for that supply. Commercial certainty for suppliers dealing with agencies and, in turn, for their subcontractors, should not be put at risk, and they should also not be put at risk of suffering what might be great inconvenience in the event of contractual invalidity. Agency noncompliance should also not render the state liable to civil actions that may result in damages claims against the state. The bill clarifies Parliament's intent as to the effect of agency noncompliance in this regard.

Mrs L.M. HARVEY: So we cannot expect to see penalty clauses written into the contracts of contractors who do not comply with their participation strategy?

Mr M. McGOWAN: It is about not invalidating a contract because of an agency incorrectly applying the policy.

Mr S.K. L'ESTRANGE: I am still trying to understand a comment the Premier made earlier while the member for Scarborough was asking a question. She said a government agency has to comply by law. If a government agency has to comply with this law, how can that be the case when clause 24 states, in part —

- (1) No civil or criminal liability attaches ...

And then —

- (2) A procurement decision made, or supply contract entered into, in respect of a WAIPS supply is not invalid only because an agency or any other person has contravened this Act ...

Mr M. McGOWAN: There are still consequences for an agency that might not comply with the policy. If the agency does not comply with the policy, or a public servant does not comply with the policy—it sometimes happens—there are still consequences under the Public Sector Management Act or the Financial Management Act and the like. It is just saying that it does not invalidate any such contract entered into just because the agency failed to do exactly what is required under the law.

Clause put and passed.

Clauses 25 and 26 put and passed.

Title put and passed.

Leave granted to proceed forthwith to the third reading.

Third Reading

MR M. McGOWAN (Rockingham — Minister for State Development, Jobs and Trade) [8.05 pm]: I move —

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That the bill be now read a third time.

DR M.D. NAHAN (Riverton — Leader of the Opposition) [8.05 pm]: I will keep my comments short, as everyone would prefer. This is an important issue in seeking to enhance local content. It has been one of the more difficult policies over the years pursued by governments of both sides of the aisle. It faces some challenges, particularly national and international agreements that preclude defining “local” as local. A range of policies are pursued to get around it. It is more difficult when it is embedded in law. Policies make it much easier to get around the issue of defining “local” as local rather than meaning national and including New Zealand. That could potentially be one of the weaknesses of the Western Australian Jobs Bill in front of us. Indeed, a stoush is going on currently between the New Zealand and the Queensland governments over the Queensland government’s new Buy Queensland policies, which has taken the step of defining “local” by geographic location. We have included that in policies before. We could not assess whether that is a risk here because this bill relies on a strategy that has not been written or defined yet. It relies also on regulations that define the implementation of the process, and they have not been written yet.

This bill does a few things. It prepares for a strategy, which will not be part of the bill and for regulations, which will come later. It broadens procurement policies, if you wish, to include government trading enterprises. It probably unifies the procurement policies in one bill, both of which are good ideas. Hopefully, it makes the process more rigorous and, maybe, transparent. We will wait and see. It also has the benefit, perhaps, of trying to articulate procurement policy between strategic projects, of which there are many, big projects in areas and small ones. We have some concerns about it in that, if every bidder for every tender in Western Australia, of which the government says there are 24 million a year, there has to be a participation strategy, and that could add huge amounts of red tape. They can be mitigated by processes, papers and guidelines and the departments advising people how to do it. I hope they can, but that has yet to be done.

Another issue is that because they will be part of the tender process, procurement decisions could be hidden under commercial-in-confidence clauses and that is a concern.

Finally, one of the benefits, perhaps, of this—we will have to wait and see—is that the whole of government, including government trading enterprises, will report on local content.

One of the issues that was never mentioned throughout this was regional procurement. The Premier mentioned it once but it was not during this debate. It was during question time that he said something about regional procurement. Understandably, given the large nature of our state, one issue that we have focused on for a long time in Western Australia is giving preference to regional areas. That was not mentioned during the debate on the bill. Another thing the debate did not deal with is that the government criticised the status quo for having a number of different approaches for different sectors. That is true. But the government did not say how it would adopt the existing policies and adapt and integrate them into the new scheme. I guess that will be the strategy somewhat. We have an extensive set of policies for local procurement and buying local that people understand and have been implemented over time. They get around the constitutional barriers to having local be local. I hope the government takes those into consideration and keeps them in place. I know that the officers who advised the Premier today have been in the game a long time and understand those thoroughly. I trust that they will integrate them.

Another issue is that we have a number of private sector and public sector areas that facilitate this. The industry capability network and ProjectConnect at the Chamber of Commerce and Industry of Western Australia do a lot of work to help local firms get contracts. They are contracts for not only resource projects, but also major government projects. They are currently working on the Museum, Forrestfield–Airport Link and most of what is now called Metronet, which are part of the ICN. It does a pretty good job. When major contracts are let, it sets a broad gross target for local content and the ICN works with local firms to get them in a position with quality control, registration and various certifications to qualify and apply for projects. That is much more important than the overall local content target that I think this strategy will deliver.

We support the bill and our support has been shown by the detail into which we went when discussing it. We look forward to the regulations and strategies coming down. I trust the government will release the strategy in Parliament and, no doubt, we will ensure we have a rigorous debate about its quality when we see it. One thing we can take away from today is that the Premier was not across the detail of this bill. To some extent, that is because the strategy has not been written but he also was not as across the detail of the bill and the range of issues as he should have been, in my view. Nonetheless, we are here after eight o’clock on a Thursday night so I will keep my comments to a minimum. I reinforce that we will support the government and encourage an expansion of local content in the procurement of government supplies and services.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [8.13 pm]: I know that everyone is tired so I will not take too long with my closing remarks in this third reading debate on the Western Australian Jobs Bill 2017. It is important to get on the record what we have uncovered in this chamber as a result of the consideration in detail stage of this bill. We discovered that the Western Australian Jobs Bill 2017 is likely to fall well short of the mark and what the Premier has told the community it can expect from this legislation. First of all, we know that the Western Australian industry participation strategy will take quite some time to be developed, and we cannot expect to see that until February or March 2018. That is a long time to wait, and certainly a long time to wait to implement a very important program of government to ensure that there is a high proportion of local content included in these contracts. The Premier has not articulated what he or the government is doing between now and February or March, when the strategy is handed down, to try to improve local participation in contracts that will be awarded between now and then. Looking at the projects the government has announced as part of the budget, significant tenders will be awarded between now and February and March 2018, and none will be subject to the Western Australian industry participation strategy because that has not yet been developed.

Through this process we also found out that the Western Australian industry participation strategy cannot state anywhere within it that it is the intention of this government that Western Australian-based businesses and Western Australian-owned businesses will be given priority under this strategy above any other jurisdiction. We know that that would contravene section 92 of the commonwealth Constitution, and that was confirmed by the Premier as part of the consideration in detail stage. In fact, the Western Australian industry participation strategy can have some broad motherhood statements in it and can make reference to the location of the business being close to the project being developed and the geographical location of where the contract will be delivered, but it cannot state anywhere in that strategy that Western Australian businesses must be given priority; indeed, we have laboured at length that the definition in this legislation of “local industry” incorporates Western Australia, the Northern Territory, Queensland, New South Wales, Victoria, Tasmania, South Australia and New Zealand. Therein lies a problem with respect to trying to get Western Australian companies prioritised, because we cannot overtly do that because we would be contravening section 92 of the commonwealth Constitution.

Another thing we discovered through this process is that not only do we need to wait until February or March next year before the strategy will be developed and made available, but also there will be a transition stage from when that strategy is developed and implemented to when businesses and agencies will need to be compliant with the strategy. Although we will wait until February or March next year, it could well be somewhere towards the end of 2018 before agencies, businesses and contractors to government will be required to be 100 per cent compliant with this strategy. We have also found that the expectation is that we would not get 100 per cent compliance with the strategy because there is an ability for agencies to exempt themselves from it. That is a flaw and there is certainly a very long lead-time for Western Australian companies to receive the relief the Premier says they will get for consideration for government tenders being awarded to them as a result of this legislation.

Another disturbing thing we found out during the consideration in detail stage is that there will be no consequences for noncompliance with the participation plans. There will be no real consequences for agencies, except perhaps some consequences for a chief executive officer who may receive some disciplinary action for noncompliance with the strategy. Indeed, it will be very difficult to monitor whether businesses put together an industry participation strategy so that they can have a tender awarded to them, with no intention of ever complying with the strategy and the participation plan. In fact, government generally is not terribly good at managing contracts. It does not matter which flavour of government it is, it is one of the very difficult areas of government to get across. The ability of government to monitor these contracts when they are implemented to ensure the industry participation plans are being adhered to will be very problematic and difficult, and we know that even if companies do not comply with it there will be no consequences. There will be no penalty clauses written into contracts for noncompliance with industry participation plans; there will be potentially only a prohibition on being awarded further government tenders. We know from history that government agencies do not necessarily talk to each other. We could have, for example, a company that fudges through the process of its participation plans, does not comply with them, and, in fact, has half a dozen tenders at different agencies and the agencies could have no idea that those individual companies have multiple contracts with government because the system is not centralised to the point that we could measure that easily. That is going to be a difficulty for the government to manage, and we certainly hope that the reporting mechanism uncovers the flaws in the management of this strategy and, indeed, compliance with the legislation.

In closing, with this process, I said in my contribution to the second reading debate that legislation is often not the best way to go about trying to get an outcome. Clearly, that is the case with this legislation. It is going to leave the Assembly and move to the Legislative Council. The Legislative Council is a fickle beast these days. It may get sent to a committee. We are not always in control of these things, unfortunately. Once it is passed through the two houses of Parliament, regulations will need to be tabled. Hopefully, none of the crossbenchers in the Legislative Council will see fit to disallow any of those regulations. We cannot necessarily count on that. Then we will have the strategy implementation in February or March, with full compliance in a best-case framework at the

Extract from Hansard

[ASSEMBLY — Thursday, 19 October 2017]

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Mrs Liza Harvey; Mr Shane Love; Ms Jessica Shaw; Mr Peter Katsambanis; Mr Mark McGowan; Dr Mike Nahan; Mr Sean L'Estrange; Mr Bill Johnston; Mr Dean Nalder

end of 2018. What the government could have done is written into the government procurement policy the requirement for industry participation plans to be put in place, to have contracts effective immediately that demonstrate the proportion of the work that will be awarded to local businesses and the number of employees locally who will be employed on those jobs. That could have been done in April this year and this strategy could have been well underway and we could have seen the benefit of a decision like that right now when these big contracts for government transport and public transport projects are being awarded.

It is unfortunate that the government has chosen to take this course. I know it gives the government lots of airplay in the Parliament and the media, because the theatre of Parliament and all those sorts of things help governments look like they are achieving their agendas. But a simple change to the government procurement guidelines could have achieved an outcome and we could already have been requiring all government tenderers for government works to have in place industry participation plans that transparently outline how much local content they are required to include as part of their obligations to the government to carry out services or construction contracts that are tendered for. It is an unfortunate process.

Hopefully, everything will go smoothly through the Legislative Council and we can get the industry participation strategy up and running and start to see more work from the government flowing to Western Australian businesses, but we cannot, obviously, be overt in trying to achieve that, lest we get a challenge under section 92 of the commonwealth Constitution. As an opposition, we have enjoyed very much the process of interrogating this legislation and uncovering the flaws. The potential pitfalls are on the record. We will be watching and ensuring that every report of compliance with the Western Australian industry participation strategy and the Western Australian Jobs Bill 2017 is scrutinised, so that we can see transparently whether the legislation in fact is achieving what the Premier told the community and all those Western Australian businesses who are hungry for work it would achieve.

MR R.S. LOVE (Moore) [8.24 pm]: I will not be very long at all to speak on the third reading of the Western Australian Jobs Bill 2017. I do not really want to be here much longer than I have to! However, it is important to outline a few things. There are four things I really want to outline on this bill in closing. Firstly, I still remain very concerned about the red tape that this bill could introduce, especially when cascading through a supply line and there are participation programs intersecting with each other—different industries and agencies intersecting with each other. It could become a real spider web of different plans, and myriad confusing plans, which would be a barrier and not a help for a small or medium business. That remains a great concern. Secondly, I refer to the discussion about clause 8 and the definition of “value for money”. I think a lack of definition of “value for money” in the bill remains a problem. It is not good enough to refer to a policy that exists on a website for the State Supply Commission, even though it is fairly extensive and well explained, because that policy could change, and that would change the whole intent of the legislation. I think that needs to be looked at and I hope that if anything happens in the other place, they look at that. Thirdly, when we were speaking throughout the process, in my mind clause 15 was somewhat glossed over and we then went on to clause 16. Clause 15 refers to exemptions and the reporting of exemptions. Clause 16 then went on to highlight some of the delegations. Maybe the reporting mechanisms under clause 15 need to be tightened up a bit so that exemptions do not just appear on some obscure website somewhere, but perhaps are even tabled in Parliament when they occur so there is a very clear record of the exemptions given, especially given the wideranging number of people who could potentially be giving these exemptions. The policy could well fall down simply because nobody is using it due to far too many supplies having been exempted.

The last point is that throughout all the discussion one of the consistent themes was concern about section 92 of the Constitution, the trade agreement with New Zealand and the opening up of the definition of “local” to include our six states and the foreign country of New Zealand. From a regional point of view it seems pretty doubtful that this legislation will do very much to advance the cause of developing industry in regional areas. Anyway, I am sure there will be lots more discussion in the other place on some of those issues and we will see what happens.

MR M. McGOWAN (Rockingham — Minister for State Development, Jobs and Trade) [8.27 pm] — in reply: I thank members for their contributions.

Question put and passed.

Bill read a third time and transmitted to the Council.