NATIONAL REDRESS SCHEME FOR INSTITUTIONAL CHILD SEXUAL ABUSE (COMMONWEALTH POWERS) BILL 2018

Committee

Resumed from 22 November. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon SUE ELLERY: By way of assistance for members of the chamber, I advise that since we were last dealing with this matter, there have been discussions between the Attorney General, the Attorney General's office and various members of the chamber about a compromise, if I can describe it that way, in respect of the issues raised in the amendment on the notice paper from Hon Nick Goiran. I understand there is broad agreement to the elements, and supplementary notice paper 89, issue 3, reflects a series of amendments in my name that will give effect to that compromise.

Hon NICK GOIRAN: I rise briefly to indicate that since this bill was last before the chamber, there are additional amendments on the supplementary notice paper and they have my support. I take this opportunity now to explain the change. The change is simply that if we allow the bill to pass unamended, victims of child sexual abuse arising out of institutions will not be able to have a criminal injuries compensation claim determined if they receive any amount of money from the National Redress Scheme. My amendment to insert a new clause 14, which is still on the supplementary notice paper but which I do not propose to move, would have enabled a limited entitlement to proceed with a criminal injuries compensation claim determination in the event of having received some money from redress. Those circumstances were limited to only a claim for loss. Members may recall that last week I indicated that my personal preference was not, indeed, my own amendment, but an amendment to bring us in line with all the other states and allow people to have an unfettered application for criminal injuries compensation determined, while ensuring that, of course, there is no double up in payment. Indeed, that is now the amendment that has been put forward by the government, which has my support.

The only thing I really wish to clarify for the record at this time, through you, Mr Chairman, to the minister is the proposed changes that the government intends to make to the Criminal Injuries Compensation Act. Those amendments are very important amendments to ensure that there is not what is commonly described as double dipping. I know of no member who supports that and that is why these amendments proposed by the Leader of the House representing the Attorney General are important. However, I note, that many judicial decisions have been made in the District Court regarding the interpretation of section 42 of the Criminal Injuries Compensation Act and this is the section that the government proposes we amend. As I have indicated, the proposed amendment has my support, but it would assist if the government could indicate whether it proposes, in due course, to have any form of review of the amendments to section 42(3) and (4) of the Criminal Injuries Compensation Act. If there is to be a review, when will that review take place? To perhaps make things as efficient as possible this afternoon, maybe the minister could also update the chamber on the progress of the current review of the Criminal Injuries Compensation Act.

Hon SUE ELLERY: I thank the honourable member for his question. The government review of the Criminal Injuries Compensation Act is currently being finalised by the Department of Justice for provision to the Attorney General. I understand that the report of that review is being written now. Consultation has occurred and the matters raised in that consultation have been considered. I am advised that the final report is being written now, so it is not possible for the member's request to be considered as part of this review as it is nearing its conclusion, particularly given that the state's participation in the National Redress Scheme will not commence until 1 January and the review is being finalised now. Despite the fact it is being finalised now, even if we were to agree that it be included in this last bit, because this scheme does not start until early next year, we would not necessarily see any pattern of matters that the member might want to raise during the course of the review. However, the Attorney General has authorised me to commit on behalf of the government to provide a review of the operation and effectiveness of the amended sections with reference to the National Redress Scheme within 12 months.

Hon NICK GOIRAN: Just to tidy that up, is there an expected time frame for the report that is currently being written to be completed? Is there an expected time frame for that report to be tabled?

Hon SUE ELLERY: I am not in a position to advise the chamber when the report will finally be tabled. I am advised that the report is being written now. It will then work its way through the processes of the Department of Justice to the Attorney General and then the Attorney General will make a decision about when it is to be tabled.

Hon MICHAEL MISCHIN: With regard to the commitment the Attorney General has made, I am sorry, I did not catch the precise wording of it, can the minister run it by us again, please?

Hon SUE ELLERY: The precise words I used are: commit the government to providing a review of the operation and effectiveness of the amended sections with reference to the National Redress Scheme within 12 months.

Hon MICHAEL MISCHIN: Provide it to whom?

Hon SUE ELLERY: The question was raised about Parliament, so the advice I am given is that a review will be provided to the Parliament within 12 months.

Hon MICHAEL MISCHIN: I do not want to labour the point but I have a bit of a problem with some of the commitments that have been made to date for the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018. I want to make it quite clear that the commitment that the Attorney General is making on behalf of the government is a commitment to provide to this Parliament the outcome of the review of the operation and effectiveness of the amended sections with reference to the National Redress Scheme within 12 months. I do not want there to be any doubt that we will get to see it, that it will not be tabled in one house and not the other, and that it will not be provided in some vague form to some organisation. I want to make sure that in 12 months' time, if we do not see it, it is not through a misunderstanding of the precision and extent of the Attorney General's commitment. I would appreciate some clarity, specificity and certainty about what we can expect within 12 months.

Hon SUE ELLERY: I cannot say it another way. The words that I read out are the words I was authorised to provide to the chamber. I have clarified that it will be to the Parliament. I am not able to provide the honourable member with any greater specificity.

Hon MICHAEL MISCHIN: Given that the minister is making this commitment on behalf of the government, that is good. If she is making this commitment on behalf of the Attorney General, perhaps she can ask the Attorney General and find out what he means by providing it and what is the extent of that commitment, please. As I say, I have concerns about the Attorney General's commitments, particularly if they leave open a loophole. Will the minister do that, please?

Hon SUE ELLERY: I can give the member an undertaking that I will raise his concerns and bring the particular bit of *Hansard* that records what he has just said to the attention of the Attorney General. The Attorney General was given, I suppose, prior notice of a question around this matter, as I understand it from his discussions with Hon Nick Goiran. That is the wording that was provided in response. I can undertake to draw Hon Michael Mischin's concerns to the attention of the Attorney General and he will respond accordingly.

Hon MICHAEL MISCHIN: Perhaps I will defer to Hon Nick Goiran, as he was the subject of those conversations.

Hon NICK GOIRAN: Just to clarify and assist the chamber, discussions took place yesterday between me and the Attorney General. Subsequent to those discussions, I wrote to the Attorney General's office. The concluding paragraph of my email touches on this point and I am happy to read it verbatim. I said in the email —

> In addition, I would ask the Attorney to consider directing his Ministerial representative to provide an undertaking on behalf of the Government that the impact of amended sections 42(3) & (4) will be expressly reviewed in the government's current review of the CIC Act. This would ensure that an extra measure of comfort is provided to protect against any consequences not foreseen or intended by either the Attorney or myself in the re-drafting of this important section of the Act which has been judicially considered on several occasions.

I hasten to add that subsequent to that—I do not have the email in front of me—I was alerted by the Attorney General's office that it would not be possible to do that because of the fact that the current review was well advanced and was effectively at report writing stage, as has been indicated by the Leader of the House, but that a commitment could be given to do a separate review within a 12-month period.

Hon Michael Mischin: And to the Parliament, as in both houses of Parliament.

Hon Sue Ellery: That's not what was in the email.

The CHAIR: Hon Michael Mischin.

Hon MICHAEL MISCHIN: No, but that is what the Leader of the House is telling me is intended, is it not?

Hon SUE ELLERY: I will say it again: yes, that is what I understand is intended. I have read the email that the honourable member just referred to and I have given an undertaking that I will specifically draw to the attention of the Attorney General the *Hansard* that sets out the things that the member is specifically seeking assurance on, and I will do that.

Hon MICHAEL MISCHIN: Okay; thank you. I suppose that is about as far as we can go at this stage, but perhaps if debate on this bill continues on after a suitable break, I would appreciate the minister's advice as to what the Attorney General has to say about it. My concerns are based on bitter experience with the Attorney General, when

it suits him politically to do so, making all sorts of outrageous and factually wrong comments about the progress of legislation through this place. He makes those comments either dishonestly or negligently—I am not sure which—but I recall an undertaking on the part of the Leader of the House to raise with him concerns that I had expressed about his incorrect remarks; I think it was in respect of the so-called "no body, no parole" bill. I did not hear anything as to what the Attorney General had to say about that, but I am certain that he did not go to the trouble to correct his remarks. With regard to faith in the Attorney General about undertakings, I think it is pretty fair to say that my faith in him is approaching pretty close to zero.

We will see what happens with these amendments. I must say that I am surprised that after having spent so much time—Hon Nick Goiran having raised the issue back in September—and having wasted hours over days trying to persuade the government that there is a problem, as we see it, the Attorney General has finally done something. The government has used every argument available to it, saying, "No, there's nothing to see here; no problem", or has said that the solutions suggested will create undesirable consequences or that it cannot be done for some reason. Now, after days, we come back and the Attorney General has finally got on the phone—someone has taught him how to dial—and spoken to Hon Nick Goiran and managed to come up with a solution. Interestingly, if my understanding from discussions with Hon Nick Goiran is correct, it is a solution that goes further than Hon Nick Goiran felt his modest proposal—which he produced without the benefit of legal advice from a department—could sensibly go. I am astonished at this outcome, in light of the Attorney General's writing to people—I made reference to this correspondence the other day—alleging that this legislation might be delayed in this place and that it would be all up to the opposition to see that it was passed in time. However, it is the government that has fiddled around, dissembled and argued against an attempt to make this legislation align with that in other jurisdictions. I wonder what has changed. Why is that, after all this time?

We have seen this with other legislation, such as the Court Jurisdiction Legislation Amendment Bill 2017, for which Hon Alison Xamon had some proposals. We have seen it time and again: the Attorney General just wanting to be stubborn and pigheaded, and so arrogant that he cannot speak to anyone else. He talks around everyone else and goes to every other party, but does not talk to the people concerned. He then comes up with a solution and tries to take credit for it.

Hon Alannah MacTiernan: We genuinely thought you'd be happy.

Hon MICHAEL MISCHIN: No, I am not happy, member. This has been a waste of parliamentary time, dealing with something that could have been addressed months ago. Hon Alannah MacTiernan might feel proud of that and might think it is very clever —

The CHAIR: Order! Please resume your seat, member. I want to see some progress on this clause. If we start having interjections from government frontbenchers to the member who is addressing clause 1, we are not going to get very far. I give the call back to Hon Michael Mischin on the question that clause 1 do stand as printed.

Hon MICHAEL MISCHIN: Thank you, Mr Chairman. I just hope that the attitude expressed by Hon Alannah MacTiernan is not one that she promotes during bills that she is managing that have serious questions around them.

Hon Sue Ellery: I hope you're not threatening anything.

Hon MICHAEL MISCHIN: No. I am just pointing out, as the Leader of the House did repeatedly when she was on this side of the chamber, that there are two ways of doing these things: the easy way and the hard way. If there is cooperation and goodwill on the part of the government, rather than pigheaded stubbornness and a refusal to take on advice, things could go a lot more smoothly and quickly. The government has delayed the passage of this bill for days. If it had come up with this solution last week, Hon Nick Goiran would not have been on his feet for hours. I note the minister ruefully nodding assent to that proposition, because there is no way around it. In any event, let us get on to other aspects of this scheme and see whether the minister can help us out.

Reference was made in the second reading speech and in the reply to the second reading debate—we touched on this subject last week—to the inclusion of people with a criminal history or who may be serving time in prison being within the scope of eligibility to claim redress under the act. The Attorney General said in his second reading speech—the Leader of the House framed it appropriately for this place —

> The Western Australian government did not immediately agree to participate in the national redress scheme for a very important reason —

Okay; that suggests that it could have been entered into significantly earlier than it actually was. The Attorney General continued —

> I was working hard to improve the scheme for all survivors, in not only Western Australia, but also throughout Australia. Constructive negotiations with the commonwealth Minister for Social Services have made the scheme fairer and more equitable, particularly for former child migrants, —

We can accept that on face value —

> survivors who are in prison and survivors with a serious criminal history.

I take it that the Attorney General is seeking to glory in the credit for having extended the operation of this scheme to those who are serving time in prison and have serious criminal records—is that correct, minister?

Hon SUE ELLERY: I will not respond to the pejorative language used in the honourable member's question. I thought that I did provide a response to this in my second reading response; but, in any event, originally, the then federal social services minister proposed that persons in prison or with a serious conviction would not be eligible for the National Redress Scheme. The Attorney General advocated throughout the inter-jurisdictional negotiations for a fair scheme that appropriately recognised the experience of survivors of institutional child sexual abuse. The National Redress Scheme's legislative and policy parameters were developed with specific consideration of institutional child sexual abuse and the need to recognise the events that occurred in the person's childhood. It has been established that the trauma of child sexual abuse can, in fact, lead to difficulties, including possible criminal behaviour later in life. What a child who has experienced abhorrent child sexual abuse has gone on to do as an adult—this is the bit that the honourable member asked me about last week and I did respond to this—should not diminish the National Redress Scheme payment they receive, hence, the protections of the National Redress Scheme payment provided in sections 49 and 50 of the National Redress Scheme for Institutional Child Sexual Abuse Act. The government is of the view that the scheme, as far as possible, seeks to strike an equitable balance in compensating victims of institutional child sexual abuse. The state's participation in the National Redress Scheme does not affect other victims of crime pursuing existing avenues for compensation, such as criminal injuries compensation or civil litigation.

Hon MICHAEL MISCHIN: It may not prevent other victims of crimes from pursuing other means of redress outside this scheme, or compensation, let us say, to be clear about it, but it does prevent other victims of crime from seeking compensation from those who have benefited from the redress scheme but who are otherwise impecunious; is that correct?

Hon Sue Ellery: Could you repeat the question? We are not sure whether you used a double negative in that and we just want to check it.

Hon MICHAEL MISCHIN: The minister has mentioned that the scheme does not prevent victims of crime from pursuing compensation—correct?

Hon Sue Ellery: That is correct.

Hon MICHAEL MISCHIN: However, in the case in which that victim of crime is a victim of a crime committed by someone who is eligible for and has obtained redress, that victim of crime cannot get any meaningful compensation from that offender if the offender's only asset is his redress payment—correct?

Hon SUE ELLERY: That is correct. We did have this discussion when we were debating the bill in the chamber last week. I am not sure that I can add anything further than what I have already said. I answered a series of questions along this very line last week.

Hon MICHAEL MISCHIN: Thank you for the reminder, minister. I am just trying to establish the groundwork for my line of questioning on this. The Leader of the House has said that this creates a fairer scheme—the Attorney General pushing to include for eligibility in the redress scheme someone who has committed an egregious serious offence against a person and who does harm to that person—we will call them the victim. However, that victim may be denied the same level of compensation that that redress recipient manages to achieve on the basis of a very low threshold of eligibility, thanks to our Attorney General.

Hon SUE ELLERY: Again, there was some pejorative language in that question that I do not necessarily accept. If I start at the end first. A deliberately considered low bar, if you like, of evidence is required—that is quite deliberate. In respect of the staging out, which the honourable member is trying to do for persons who receive a redress payment because they were abused, and who are then convicted of a serious crime and are now in prison, I answered all those questions last week; I have answered them again today. I do not see that I can take it any further today than the information that I have already provided to the chamber on this line of questioning.

Hon MICHAEL MISCHIN: The minister is saying, though, that originally the commonwealth social services minister was planning to exclude those in prison and those convicted of serious offences. The minister confirms that currently the reform for fairness that the Attorney General has achieved through his negotiations—the ones

that delayed our signing up to this scheme and the implementation of this scheme—includes eligibility for people who have been sentenced to imprisonment for less than five years; that would be right, would it not?

Hon Sue Ellery: I think you mean more than five years.

Hon MICHAEL MISCHIN: No. A person is automatically eligible if they have been sentenced to imprisonment for less than five years.

Hon Sue Ellery: Honourable member, are you reading from something in particular, because the advice I have is that you actually mean more?

Hon MICHAEL MISCHIN: Section 63 of the national act is under "Division 2—Special assessment of applicants with serious criminal convictions" and it reads —

> **63 Special assessment of applicants with serious criminal convictions**
>
> (1) This section applies if:
>
> (a) a person makes an application under section 19 for redress for abuse of the person; and
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> (b) before or after making the application, the person is sentenced to imprisonment for 5 years or longer for an offence against a law of the Commonwealth, a State, a Territory or a foreign country.

Then it goes on to provide certain restrictions. That means, does it not, that for anyone else who has been sentenced for less than five years, they are, without any restriction, entitled to apply on the basis of a likelihood—that is not remote or fanciful; just a likelihood—that they have suffered abuse; is that correct?

Hon SUE ELLERY: Yes, and all jurisdictions' Attorneys General agreed to these provisions and the rules that have been drafted accordingly.

Hon MICHAEL MISCHIN: That may be right, minister, but it is our Attorney General who is claiming credit that this was the reason that Western Australia did not sign up earlier because he—he!—was holding out for this particular provision; is that correct?

Hon SUE ELLERY: We have canvassed this already, but the Attorney General was advocating in respect of two issues—one was the child migrant issue, and the second was this.

Hon MICHAEL MISCHIN: Perhaps the minister can help us. Was the reason the scheme could not be brought into operation earlier, for the best benefit of all Australians, that the Attorney General was holding out to, amongst other things, get a better deal for those who have committed serious criminal offences?

Hon SUE ELLERY: I am advised that in terms of the priority of issues that were taking the longest time to resolve, the child migrant issue was taking longer to resolve than this second issue.

Chair, with the greatest of respect, I seek your assistance. I have answered questions about this previously—in my second reading reply, and in the three sessions in which we dealt with this matter last week. I am happy to answer any questions about the content of the bill and about the amendments on the supplementary notice paper. However, as to whether the Attorney did or did not do something, was motivated by X or Y, or how long something took to achieve, I am not sure that I can add any further information. I also do not see how that progresses the debate on clause 1.

The CHAIR: Minister, I do not know whether you are asking me for a ruling, but I think you might be. It remains in your hands that you can respond to a question by indicating you have already answered it.

In relation to the second issue about matters that might or might not be included in a clause 1 debate, the minister quite correctly points out one or two matters that are not normally directly part of this debate. However, if Hon Michael Mischin in this case is able to draw questions of the type to which the minister has just referred into having a bearing on the clause 1 debate, then that is able to be received. So having just restated that for the benefit of the chamber, I will again put the question that clause 1 do stand as printed.

Hon MICHAEL MISCHIN: I just want to clarify, because this is important for victims who will not have access to the scheme but have been the subject of offences and harm by those who now will be automatically eligible for redress. What sorts of offences are we talking about? Perhaps I will assist the minister. We are talking not about people who have committed offences punishable by imprisonment for five years or less, but people who have actually been sentenced to imprisonment for five years or less. That would include sex offenders, would it not? Someone who had committed a sex offence against a child might automatically be eligible for redress, on the basis of a likelihood that is not fanciful or remote, that they have been the subject of abuse themselves in the past. Would that be correct? The minister has answered this one before.

Hon SUE ELLERY: Chair, there is a huge list of offences for which a person might be sentenced for less than five years. I do not propose to list all those because, were I to do so, I would be here for a very long time. There is a huge range of offences across the spectrum of offences for which a person might be sentenced for less than five years.

Hon MICHAEL MISCHIN: Thank you, minister. Yes, there is quite a number, but I will assist the minister so that victims of crime can get a surer sense of the sorts of things for which they will have to go through criminal injuries compensation. That can be compared with the situation in which the Attorney General, as a champion for victims, has been able to hold up the entry into this scheme so that people, whatever their background, who have committed offences against those victims, and who are subject to imprisonment for less than five years, may be able to get money in the bank as a result of redress, yet their victims may have to go without or seek some third party insurance cover. It may be a child sex offence or a sex offence against an adult. It may be dangerous driving causing grievous bodily harm or dangerous driving causing death. It may be inflicting grievous bodily harm against another person. The person may be a fraudster—they have benefited from committing crimes against another person, and their reliability and veracity is questionable at best. Those persons will be able to apply for redress on the basis of the deliberately low bar—as the minister has put it—of a likelihood that is not fanciful or remote, that they have been abused, yet the victims of those people may have to go without. The person may be a drug trafficker. We have heard a lot from the government about how evil drug traffickers are. A drug trafficker or trader in methamphetamine may be sentenced to imprisonment for less than five years. The person may not necessarily be serving time in prison but may have a history of offending for which they have been sentenced to imprisonment for less than five years. That would be right, would it not, minister?

Hon SUE ELLERY: Chair, I do not think I can provide any more than I already have.

Clause put and passed.

Clauses 2 to 12 put and passed.

Clause 13: Terms used —

Hon SUE ELLERY: Chair, I am in your hands, and I will see what is the view of the chamber. The first amendment standing in my name is to clause 13. That is the first of a series of amendments that will have the effect of resolving the issue which members of this chamber have been debating and which is the subject of the amendment that is on the supplementary notice paper in the name of Hon Nick Goiran. I am happy to move that amendment, and to put my argument for the whole package of amendments, and to then answer particular questions about the amendment.

The CHAIR: Members, I think the chamber would agree that that is a sensible approach. The question in the first instance is that clause 13 do stand as printed. In contemplating that, the Leader of the House has indicated that she wishes to move the amendment on the supplementary notice paper, so I give the call to her.

Hon SUE ELLERY: I will put my argument. I have a table that sets out the respective amendments, what they do and the effect of the amendments, which is essentially an explanation of all the components of the amendments. I table that and if copies could be made, that might assist people as we work our way through.

[See paper 2238.]

The CHAIR: The chamber staff will copy and distribute that document.

Hon SUE ELLERY: I move —

> Page 10, lines 16 to 19 — To delete the lines.

The government has listened to the issues raised in last week's debate and looked at how they might be addressed to the satisfaction of members. The provisions in part 4 of the bill were drafted to ensure that a person who may have an entitlement to redress through the National Redress Scheme is required to pursue redress before being considered by the state's criminal injuries compensation scheme. The government also wants to ensure that the principle of "the responsible entity pays" is adhered to and that the criminal injuries compensation scheme continues to be an avenue to be pursued when all others are exhausted. The government does not want survivors of institutional child sexual abuse to be worse off. Therefore, the amendments on the supplementary notice paper will do the following things: remove clause 14 of the bill; remove clause 16(3) of the bill; remove the definitions of "redress offer" and "redress payment" as they are no longer required; insert a new part 6, which amends section 42(3) and (4) of the Criminal Injuries Compensation Act to remove reference to compensation or damages in both subsections; and, as a consequence, amend the long title of the bill.

The package of amendments aligns with the government's position of "the responsible entity pays" and for a person not to be compensated twice for the same harm, but also addresses Hon Nick Goiran's concerns that a person could be worse off if they accept a redress payment as they could not subsequently pursue criminal

injuries compensation for the same abuse. Normally, when deciding on injury and loss, the criminal injuries compensation assessor can consider other payments a person has received relating to the offence, which could include insurance payments or payments from previous redress schemes. However, this will not be possible once Western Australia adopts the National Redress Scheme for Institutional Child Sexual Abuse Act due to section 49 of that act. If section 49 of the National Redress Scheme act did not exist, part 4 of the bill would not have been necessary and a criminal injuries assessor could apply their normal processes. The government's amendments address this problem by deleting clause 14 of the bill and by making consequential amendments to section 42(3) and (4) of the Criminal Injuries Compensation Act. They broaden the language used around compensation or damages so that the criminal injuries compensation assessor can take into account previous payments based on the same injury, as is the current practice. The policy intention is to ensure that persons are not compensated twice for the same harm and to enable them to receive a top-up—if I can use that expression—payment from the criminal injuries compensation scheme in circumstances in which they are entitled to such a top-up payment. This could include for out-of-pocket medical and psychotherapy expenses and loss of earnings.

Further, the government's amendment addresses the potential inequity that would have possibly been created under the amendment that was previously on the supplementary notice paper, providing an uneven playing field depending on the order in which a survivor of institutional child sexual abuse applied to the two schemes. For example, when a person has previously received criminal injuries compensation, and now that the National Redress Scheme is available to them, the scheme will deduct the previously received payment from the final redress offer. The policy intent is to increase the equity for survivors by enabling the criminal injuries compensation assessor to take into account the National Redress Scheme payment as appropriate in each case.

Lastly, the government's proposed package of amendments does not separate the elements of injury and loss in the criminal injuries compensation scheme. This will make the process simpler and consistent with current practices. It is intended that the package of amendments will allow the criminal injuries compensation assessors to do as they currently do when assessing a person's application for criminal injuries compensation and consider the applicant's injury and loss and any prior payments, and determine whether a criminal injuries compensation payment for injury and/or loss is required to be made.

In summary, the amendment package meets the principle of "the responsible entity pays", aligns with the current practice of the criminal injuries compensation scheme, addresses the concerns heard from members last week and provides equity and fairness to survivors of institutional child sexual abuse. I commend the amendment to the chamber.

Hon NICK GOIRAN: I have a few questions, but I will reserve them for when we get to the relevant clauses. At this point, we are on clause 13. I think it was helpful that the minister set out that introduction and tabled the document. The purpose of the amendment to clause 13 is to delete two definitions that will no longer be required because, in due course, it is the intention of the government as foreshadowed to delete clause 14, where the terms "redress offer" and "redress payment" are found. Those words are also found in clause 16(3), which I have previously foreshadowed should be deleted, and the government has also now indicated that it will do so. This is really a consequential amendment, funnily enough, before we even move to the substantive clauses.

Hon ALISON XAMON: I rise on behalf of the Greens to indicate that we will support both this amendment and the subsequent amendments that flow as a result. I acknowledge the hard work that has happened behind the Chair to reach this particular outcome. I acknowledge that it was very important that Hon Nick Goiran kept raising the issue, but I think that there has been a display of good faith by the government to try to ensure that this was resolved. I think the outcome we have arrived at is even better than what had been originally proposed by Hon Nick Goiran, although I recognise the limitation on the original amendment was due to advice that had been received at that point. A small number of people potentially will be positively affected by this amendment, but for those people the amendment is significant. I think it is good that we have arrived here.

Hon AARON STONEHOUSE: I quickly indicate my support for this amendment and the subsequent amendments that will flow after. I am glad to see a more equitable outcome and a compromise reached between this side of the chamber and the government. I think we could have reached this position last week at some point. As a member of the crossbench, I know there is a great deal of confusion when the government digs in its heels and opposes amendments. It is very unclear to me and, I am sure, many other members of the chamber when the government opposes an amendment because it believes that it will undermine the policy intent of the bill and when it is merely digging in its heels because it is embarrassed to have amendments to its own bills. It is very hard to see the distinction between those two. I am glad that we were able to reach a compromise in this case. Victims of institutional child sexual abuse will be better for the amendments. I commend Hon Nick Goiran for the hard work he has done in bringing about these amendments to the bill.

The CHAIR: Members, as was agreed implicitly by the chamber, I have allowed some debate above and beyond the simple motion that is before us now. The reason for that is that the amendment encompasses several further actions that will take place, and hopefully that will expedite proceedings. That is the reason I have permitted some

comments and perhaps some that should have been reserved for a third reading debate rather than debate on little old clause 13.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 14: No entitlement to compensation under the *Criminal Injuries Compensation Act 2003* if redress payment accepted —

Hon NICK GOIRAN: Members will see on the supplementary notice paper that I had previously indicated an enthusiasm to delete the entirety of clause 14 and insert a new clause 14. The government has indicated that it agrees that clause 14 should be deleted. It is not my intention, should that occur, to insert the new clause 14. For the record, I clarify for members that I do not intend to move the insertion of a new clause 14.

The CHAIR: That dispenses with the amendment standing in the honourable member's name on the supplementary notice paper. We now go to amendment 5/14 on the supplementary notice paper, which deals with clause 14. This is a device by which I will now give the call to the minister, not to move an amendment but to say something else.

Hon SUE ELLERY: I propose to oppose the clause. This gives effect to the changes that I outlined in my comments and in the table that was circulated to the chamber. I do not know whether the table has come back to me. I am asking the chamber, if it agrees with the proposed package of changes, to delete clause 14 in its entirety. Clause 14 is no longer required because there are now consequential amendments that this amendment makes to section 42(3) and (4) of the Criminal Injuries Compensation Act 2003.

Hon NICK GOIRAN: I will also be opposing this clause. Members will note that the heading of clause 14, "No entitlement to compensation under the *Criminal Injuries Compensation Act 2003* if redress payment accepted", which is on page 10 of the bill, is very instructive. That is the very principle that we had a lengthy debate about last week. The opposing of this clause will ensure that victims in Western Australia are once again able to proceed with a determination of their criminal injuries compensation claim as is the case in other states.

Clause put and negatived.

Clause 15: Deferral of compensation application if redress application not made in relation to abuse —

Hon NICK GOIRAN: Throughout the chamber all last week, there was always unanimous consent for this clause, and indeed nothing has changed. This clause should be supported. The reason this clause was always to be supported is that it goes to the heart of ensuring that institutions pay for any compensation that they owe specifically with respect to the redress scheme. Clause 15 in effect forces victims of child sexual abuse arising out of institutions to go to the National Redress Scheme first to seek what they can from that scheme, and then of course afterwards they will now be able to proceed with a criminal injuries compensation claim, should they wish to do so and should it be appropriate. Clause 15 should be supported.

Clause put and passed.

Clause 16: Effect on compensation application if redress application made —

The CHAIR: Members, there are two identical amendments on the supplementary notice paper. The first of those stands in the name of Hon Nick Goiran. Hon Nick Goiran, do you wish to move your amendment?

Hon NICK GOIRAN: I may as well, Mr Chairman. My proposed amendment is identical to the government's. I move —

Page 12, lines 6 to 8 — To delete the lines.

The reason this is very important is that it will ensure that the provision currently in the bill, which would see a criminal injuries compensation application deemed as refused because somebody has accepted a redress payment, will no longer be part of this legislation. That is something that the government has now agreed to and, again, really falls hot on the heels of the discussions around clause 14. I seek members' support in the deletion of these lines. It will simply leave the bill with clause 16(1) and (2) after subclause (3) is deleted.

Hon SUE ELLERY: It is indeed the case that the two amendments—the one in the name of Hon Nick Goiran that is before the chamber now and the one that appears on the supplementary notice paper immediately below it—are exactly the same. We will be supporting them. Once the National Redress Scheme application is determined, the criminal injuries compensation will no longer be deferred; it will be dealt with in accordance with the Criminal Injuries Compensation Act.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 17: Regulations —

Hon MICHAEL MISCHIN: I neglected to pick up that we were moving rather rapidly. I have a couple of questions regarding the proposed regulations. Can the minister explain what those are likely to embrace?

Hon SUE ELLERY: I take the member back to clauses 11 and 12 of the bill, which the chamber has already dealt with. Those clauses go to the sorts of things that regulations may be provided for. Clause 11 sets out that regulations might be about how the agreement of the state is to be given or withdrawn, and may authorise a person to give agreement on behalf of the state. Clause 12—we suspect this is in fact where most of the regulations will be—is about information sharing. We expect that most of those regs will be in fact about that.

Clause put and passed.

The CHAIR: We have some further items on the supplementary notice paper that we will now turn our attention to. The first of those is a proposed new part 6, an amendment at 3/NP6 standing in the name of Hon Michael Mischin, whom I call on to move his amendment.

New part 6 —

Hon MICHAEL MISCHIN: I move —

Page 13, after line 6 — To insert —

Part 6 — Tabling particular documents

18. Tabling documents relating to scheme reviews

(1) In this section —

intergovernmental agreement means the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse between the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia as in force from time to time;

scheme review means —

(a) a review under the National Redress Act section 192(1) or (3); or

(b) a review of the operation and objectives of the intergovernmental agreement carried out under clause 36 of that agreement.

(2) If a scheme review is carried out, the Minister must —

(a) if a report or other document is prepared as a result of the scheme review — cause the document to be laid before each House of Parliament as soon as practicable after the Minister receives the document, but not later than 6 sitting days of the House after the day the Minister received it; or

(b) if there is no report or other document to which paragraph (a) applies — prepare a report about the scheme review and cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 6 sitting days of the House after the day on which the scheme review is finalised.

(3) If a report or other document to which subsection (2)(a) applies contains sensitive, confidential or personal information, the Minister may comply with subsection (2)(a) by removing the sensitive, confidential or personal information from the document before causing the document to be laid before each House.

I will make a few remarks about the intent of my proposed amendment. Members will recall reference to the Standing Committee on Uniform Legislation and Statutes Review report on this legislation and some of the findings in that regarding the question of accountability to Parliament, given that the whole scheme the government has signed the state up to is predicated for its operation upon a referral of powers to the commonwealth to give effect to that scheme. In addition, there is a broad set of powers under the commonwealth legislation for the making of regulations and for the creation of guidelines, frameworks and the like at ministerial discretion. None of those is accessible or, rather, accountable to this Parliament. They could be made by the minister. If I step back a stage, they could be made by the commonwealth government by way of regulations, which may be the subject of disallowance by the commonwealth Parliament in accordance with processes that I would presume are parallel to the sort we enjoy here. Otherwise, a number of discretionary matters can be the subject of subordinate instruments proclaimed by the minister and put into action. There is no way that this Parliament can formally know about those. I do not propose to get into trying to craft means by which that could happen. Plainly, as the committee

found, one of the prices one pays for entering into uniform schemes of legislation that will be for the greater good of the public of all jurisdictions is that there will have to be a bit of give and take. In this case, by operation of approving this legislation, the commonwealth will obtain a considerable amount of power to change the law applicable in this jurisdiction.

The committee's other observation is that there is, however, a certain amount of executive action that can be the subject of further consideration by this Parliament and is not. Underpinning this scheme is an intergovernmental agreement that was entered into formally by the signature of the Premier. There is an opportunity under the IGA for a review of that intergovernmental agreement changing its parameters. It is not a mandatory requirement, but it can occur. Given that the original intergovernmental agreement is not something that appears to be confidential—it was provided to our committee by the minister—it presumably is readily available, quite apart from information being able to be obtained through access to communiqués published by the commonwealth government and the state and territory governments from time to time about the IGA. However, it has not been suggested that it is a document that is confidential or that this will somehow be detrimental to the operation of the scheme. Given that the state government has signed Western Australia up to that scheme through the intergovernmental agreement, it would seem proper that it be available. This particular intergovernmental agreement, as I recall, has not been published in another forum and I am not seeking for that to be done on this occasion. However, it does not seem unreasonable that the Parliament know if there is any renegotiation of its terms or any review of it, and a decision or finding made that it is not operating adequately in some respect and recommending some changes take place to the intergovernmental agreement. It is, after all, the Parliament of Western Australia—both houses—that has acquiesced and supported the government's referral of its sovereignty, its law-making power and its ability to oversee the laws that are effective in this jurisdiction. It seems not unreasonable that any review of that intergovernmental agreement, identifying its strengths or perhaps deficiencies and scope for improvement, ought to be provided to this Parliament by way of accountability and disclosure.

There is also a requirement under section 192(1) and (3) of the national redress act that reviews take place periodically—after two years and after eight years of operation. I remind members that the scheme is meant to expire after 10 years of operation. But it is plain from the issues we have been discussing about the scheme not only in terms of how the government has crafted this bill to operate in Western Australia but also more generally, and given that it has involved a commitment of potentially an enormous sum of money—the figure was in the order of $640 million, from memory, over the period of the scheme—and the sacrifice of parliamentary sovereignty and parliamentary oversight, that it is not unreasonable that the outcome of that review, after two years and after eight years, be disclosed to this Parliament. Our committee's understanding is that there is no requirement under the national act to have the review disclosed to the commonwealth Parliament or to any state or territory Parliament. That is by the by, in my view. Presumably, the results of that review will become available in one form or another to the participating jurisdictions—that is, the states and the territories as well as the commonwealth. Presumably, as well as the outcome of that review and any recommendations about the operation of the national legislation and the scheme generally being made available to the jurisdictions, some action or hope for some action will be required; it will either say the scheme is working just as intended and there are no problems with it, or, more likely, it will pick up on a number of problems, unforeseen developments and the like that will need to be addressed in some fashion. Given that, to a large extent, the operation of the scheme will be entirely in the hands of the commonwealth government without any requirement to consult the Parliaments of the participating jurisdictions, it again seems not unreasonable to me that the results of that review also be disclosed to the Parliaments that have sacrificed their power of oversight and their sovereignty.

The amendment that is standing in my name proposes just that sort of a scheme. It refers to the intergovernmental agreement, which is the one that was agreed by the various jurisdictions as in force from time to time. It also refers to the review of the scheme under section 192(1) or (3) of the national redress act, or the review of the operation and objectives of the intergovernmental agreement carried out under clause 36 of that agreement. It is predicated by the "if", because we do not know if it may take place or it may not, for some reason. But if a scheme review of either of those characters is carried out, the minister responsible for this bill that will become an act will cause the document to be laid before each house of Parliament as soon as practicable after the minister receives it. It sets a time limit of not later than six sitting days of the house after the day the minister received it, and if there is no report or other document, for the minister to prepare a report about the scheme review and to cause that report to be laid before each house of Parliament. I fully accept that information from those reviews —

The CHAIR: Hon Michael Mischin.

Hon MICHAEL MISCHIN: Thank you, Mr Chairman. I fully accept that we do not know the form in which these reports and the outcomes of these reviews will be expressed and communicated. It may very well be that it contains sensitive, confidential or personal information. It may be that the commonwealth will put certain restrictions on the manner in which state and territory ministers can deal with the information that the

commonwealth provides. I would not want to stand in the way of there being disclosure and proper discussion between the commonwealth and the participating jurisdictions on the operation of the scheme. New clause 18(3) makes specific provision for that to allow for the redacting from any report or other document of such sensitive confidential or personal information before it is laid before each house. In her reply to the second reading debate, the Leader of the House made a number of comments about this. I have to say that I did not find them particularly convincing. I do understand why they stand in the way of disclosure of material to houses of Parliament. Perhaps she can expand on them. Again, I am disappointed that we have to leave it to this stage of the proceedings before the question can be agitated in detail and that if there are problems with what I have proposed, they were not addressed earlier. I recall that after the committee's report was tabled, I suggested behind the Chair that the government look at these issues of accountability and disclosure to Parliament, and I never heard anything more about that. Wednesday a week ago, I responded to an inquiry from the Attorney General's office about issues arising out of the legislation. The office said that should there be any matters that I wish to raise or discuss ahead of the debate—which was supposed to take place last week, as it did—do not hesitate to get in touch. I responded —

> As the Attorney General knows, Hon Nick Goiran has raised what he sees to be injustice arising out of the proposed interaction between the *Criminal Injuries Compensation Act 2003* and the National Redress Scheme.

I should add that this email is dated Thursday, 15 November. I went on to say —

> Further, the Standing Committee on Uniform Legislation & Statutes Review Report 118, tabled on Thursday 8 November, made several findings concerning the operation of the Bill, its impact on Parliamentary sovereignty, and shortcomings in accountability to the Parliament (and, so, the public). Some of the concerns raised by the Committee could be readily addressed by amendments that would improve accountability to Parliament on the public's behalf, without affecting the operation of the National Scheme—for example, a requirement to table any review of the Intergovernmental Agreement (Findings 1, 2 & 3), and etcetera.

Referring to the other findings —

> Following the tabling of the Report, I invited the Leader of the House, Hon Sue Ellery, to draw these to the Attorney General's attention, with a view to the Government considering suitable amendments it could move when the Bill was being considered.
>
> I expect that the Minister responsible for the management of the Bill in the Legislative Council will be able to respond comprehensively to the Hon Nick Goiran's concerns and the Committee's findings, but it also would be helpful to know if the Government is preparing any amendments to improve the Bill by addressing these issues. It would assist the expeditious consideration of the Bill if the Government were to take the initiative in drafting suitable amendments, and hopefully avoid the unfortunate process that delayed the passage of the Courts Legislation Amendment Bill 2017.

That suggestion was never taken up, and I heard no more about the matter until last Monday, when I asked one of the Attorney General's advisers whether any thought was being given to my email. I was told by the adviser that she would try to talk to the Attorney General about it that afternoon. The next response was by way of an email I received last Tuesday at 2.15 pm, when I was just rising to my feet to start dealing with the consideration of the legislation and so I was not able to consider it. It laid out a number of objections and why the government would not support this amendment. I will not descend into those at the moment, because the minister may have had the opportunity to refine the government's thinking on this point.

The government's response in that email of 20 November seems to have ignored that there are two elements to this disclosure and accountability. One is with respect to any review of the intergovernmental agreement and the other one relates to the review of the legislation conducted by the commonwealth under section 192(1) and (3) of the national act. This amendment proposes simply to require the government within a certain time limit to disclose to this Parliament, which has endorsed the government's decision to enter into the intergovernmental agreement in broad terms, the results of any review of the terms of the intergovernmental agreement so we know whether it affects our parliamentary sovereignty, whether it imposes a financial burden on the state and its citizens, and the results of any statutory review that may be conducted by the commonwealth and provided to the government of Western Australia, so, once again, something that this state has been committed to can be brought to the attention and knowledge of the Parliament that has sacrificed some sovereignty and oversight in order to allow this national scheme to function. That would not seem to be unreasonable, to my mind, if that happened. I know a lot has been said by those in government previously about the importance of accountability and disclosure. We have a government that has prided itself on alleged high standards of transparency and accountability, so here is the opportunity for the government to endorse this modest amendment of accountability. I should add that because it is in relation to our bill it ought not to affect in any way the national scheme or its operations.

Hon SUE ELLERY: There are a number of reasons that the government will not support this amendment and I referred to some of them in my reply to the second reading debate. The first relates to some drafting and technical issues. New clause 18(1) contains a proposed definition of an intergovernmental agreement. That IGA has been provided to the Standing Committee on Uniform Legislation and Statutes Review and it is a public document. Members will notice that the definition of the IGA in the honourable member's new clause 18(1) refers to all the states and territories, but there is no reference to the commonwealth. Therefore, the definition as proposed does not correspond to the IGA.

A second matter with new clause 18 is that 18(2)(a) and (b) use the term "other document". New clause 18(2)(a) uses that term to indicate a document that is not a report but is prepared as a result of the scheme review that is a review under the commonwealth act or a review of the IGA's operation and objectives. This requirement of tabling a document prepared as a result of such a review could in fact encompass a very large range of documents—for example, cabinet submissions, legal advice and a whole range of matters. The government cannot support the tabling of those sorts of documents. Further, new clause 18(3) expressly provides some exemptions in relation to sensitive, confidential or personal information that may need to be provided in a report or other document required to be tabled under new clause 18(2)(a). However, the exemption does not apply to the requirement in new clause 18(2)(b), which is a requirement that if there is no report or other document to which paragraph (a) applies, the minister must prepare a report about the reviews and table that report. It is appreciated that a government would not endeavour to include sensitive, confidential or personal information in a report prepared under new clause 18(2)(b). However, it might be that without an exemption such as that contained in new clause 18(3), a future Parliament might take the view that such a report was not comprehensive and seek further information that was in the government's view sensitive, confidential or personal information. But the government could not in those circumstances rely on an express exemption. The contrast between the two situations in which new clause 18(3) applies and where it does not apply might occasion adverse inferences to be drawn.

In respect of the general matter, my response on Tuesday, 20 November, was that I could give a commitment on the Attorney General's behalf that the government would commit to tabling these reports in the Western Australian Parliament. That referred to the reports prepared by the National Redress Scheme operator and the reports prepared under section 92 of the commonwealth act. In addition, intergovernmental agreements are entered into at an executive government level and do not purport to bind the state Parliament. They are non-judiciable documents and it would not only be inappropriate to give legislative effect to any review that may occur but such legislation may jeopardise the IGA's non-judiciable status. There is no precedent for requiring a review of an IGA to be laid before the Parliament. No other jurisdictions through the course of introducing their own legislation to give effect to the national scheme have included such a provision in their legislation. Each jurisdiction has recognised and accepted the nature of the adoption and referral required to implement the National Redress Scheme. For those reasons, the government will not support the amendment before the house currently.

Hon NICK GOIRAN: This amendment moved by Hon Michael Mischin essentially arises out of the work of the Standing Committee on Uniform Legislation and Statutes Review, which identified this problem. My question to the minister is: did the government take advice and prepare an amendment that might give effect to the problem that was identified by that committee?

Hon SUE ELLERY: In its commentary, that committee addressed the issue. It did not take the step of making a recommendation to that effect, so the answer is no.

Hon NICK GOIRAN: Although the government did not take any advice on that aspect from the committee because no recommendation was put forward, the government has been aware of Hon Michael Mischin's proposed amendment for some time. Did the government take any advice about an alternative form of words to the ones before us?

Hon SUE ELLERY: No. There is no alternative version. The government does not support the amendment before us and does not propose an alternative version with different wording to have the same effect. It is the effect that the government is opposing.

Hon NICK GOIRAN: What troubles me with the government's response about this is that it is seeking to frustrate what Hon Michael Mischin is trying to do rather than trying to facilitate what he is trying to do. He is simply seeking for some documents to be tabled in the house of Parliament at some point in time. He is not asking for anything particularly outlandish. Indeed, I note that the government has indicated a commitment to do so in any event. This seeks to enshrine what the government says it will do anyway. It seems peculiar to me that the government is unable to find a form of words to facilitate this, but instead seems to want to frustrate it. Regarding the first of the three points made by the minister, it seems that it is just a case of an additional few words so that the definition includes the commonwealth. I imagine that my learned friend will be able to address that shortly.

Regarding the third of the proposals put forward by the government, to be frank, the advice given to the government is just plain wrong. It is plainly the case that under new clause 18(2)(b) the content of the document would be entirely at the discretion of the government of the day. I draw to members' attention that Hon Michael Mischin's

new clause 18(2)(b) would have us agree to a form of words that would require the minister, if there is no report or other document to which paragraph (a) applies, to prepare a report about the scheme review and cause the report to be laid before each house of Parliament as soon as practicable. The content of that report to be prepared by the minister would be entirely at the discretion of the minister, so to somehow object to this on the basis that there might be some sensitive, confidential or other material in there can only suggest mischief, because, how could the government of the day object to confidential information being in a report that it is drafting itself in the full knowledge that the document it is drafting will be tabled before Parliament? It makes no sense whatsoever. I therefore encourage members to give zero weight to the third objection. I think the first objection is an easy amendment. With respect to the second one on the types of documents that might result from a scheme review, I simply ask the minister to indicate whether the government has a list of such documents that it says would ordinarily be prepared as a result of the scheme review?

Hon SUE ELLERY: The fact that we have a disagreement and that the government does not agree to support an amendment does not constitute the government trying to frustrate the process. We have a different point of view. In the answer I gave earlier, I referred to a range of documents, including cabinet documents, legal advice and the like. Those are the examples I have given. The government is of the view that it would be inappropriate to give legislative effect to any review that may occur and such legislation might actually jeopardise the status of the IGA. For those reasons and the ones I have outlined, the government will not be supporting the amendment.

Hon NICK GOIRAN: But minister, the third limb in the amendment allows the government of the day to redact information. Even if the government is genuinely concerned that it would have to provide documentation that it says is not appropriate, it has the option of tabling a whole set of black pieces of paper if it wants to. It could do that and still comply with the scheme here. I restate what I said earlier. I do not think it is fair and reasonable for the government to object to this on the basis of concern around confidential documentation, specifically because the third limb exists. In the absence of that, perhaps it is fair enough, although I still think it is implied, that the government could redact the document. In any event, if that is the best explanation the government has, I have to say that subject to a short amendment by adding the word "commonwealth" into the first limb, I would like to support this amendment.

Hon SUE ELLERY: I can add that new clause 18(2) states —

> If a scheme review is carried out, the Minister must —

It then goes on to state —

> if a report or other document is prepared as a result of the scheme review — cause the document to be laid before each House …

There is no discretion there. According to this amendment, those documents "must" be laid before the house. For the reasons that I have already outlined, the government will not be supporting the amendment.

Hon MICHAEL MISCHIN: I am getting more confused about this as the debate goes on. We are told that the amendment is too broad and that it may include cabinet documents and other sensitive information, yet new clause 18(3) specifically provides that that may be redacted from the document. If that is not illogical enough, we also have as a panacea or substitute for this—as a comfort for not passing this amendment—an undertaking from the government to do precisely what the amendment seeks to have the government do. What is that undertaking worth? An undertaking has been given to provide all this information, yet we are told that provision of this information may involve the provision of cabinet documents, legal advice and other sensitive, confidential, legally and professionally privileged or public interest immunity privileged documentation, so what is the undertaking worth, minister?

Hon Sue Ellery: Mr Deputy Chair, we have had a debate about whether the honourable member accepts undertakings from me or not. I'm not going to enter into that debate again.

Hon MICHAEL MISCHIN: Let me ask the minister about the undertakings, because this is what we were told last week. I admit that I am quoting from the uncorrected *Hansard*, but no doubt the minister will be able to fix it if there is a problem. I refer to page 40 of the uncorrected *Hansard* of 20 November 2018. It states —

> … two amendments have been proposed and are reflected on the supplementary notice paper. The first one goes to whether we can build into the legislation a requirement to table certain information. Although I am not in a position to support on behalf of the government that it be included in the legislation, I can give a commitment on behalf of the government that the information can be tabled in Parliament.

Not that it "would" be, but "can" be. Can the minister tell us what that commitment actually is? Is it a commitment to actually table, or that it can be tabled but will not be, or might not be, or that there is a qualification on that? What does the minister mean? She is asking us to rely on undertakings. What is a commitment that the information "can" be tabled in Parliament?

Hon SUE ELLERY: When I stood to give my reasons that the government would not be supporting the amendment, I set out and referred to the commitment I had already given. The honourable member has already several times in the course of the debate on this bill expressed his personal misgivings about and, I suppose, mistrust of—I do not want to put words in his mouth—undertakings given by me and, indeed, the Attorney General. I do not think I will ever be able to satisfy him with regard to my—or, indeed, the Attorney General's—personal integrity in undertakings, so I am not sure—in fact, I know—that there is anything further I can add about those elements. For the reasons I outlined at the outset, when it was put to the chamber, the government will not be supporting this amendment.

Hon MICHAEL MISCHIN: So the undertaking—the commitment—the minister gave on behalf of the government that the information "can" be tabled in Parliament is not to be relied upon because the minister is telling us that some of it may not actually be able to be tabled for reasons of confidentiality and other reasons, so it is worthless? Would the minister agree with that?

Hon Sue Ellery: Chair, I have said all I am going to say about personal undertakings.

Hon MICHAEL MISCHIN: Yes, the minister has said all she is going to say, and we are supposed to rely on that.

All right. We will get another idea of a commitment, then. Quoting again from the same uncorrected *Hansard*, the minister stated —

> Administratively, the government can undertake—I can give the undertaking—to table these reviews and/or provide information to the Parliament, as it is expected that these reviews will in fact be made publicly available.

Now the minister is telling us that some of these things cannot be tabled in Parliament if it is enshrined in legislation. How does that work, minister? What do we rely on?

Hon Sue Ellery: I have nothing further to add.

Hon MICHAEL MISCHIN: Here is another beauty —

> Section 92 —

Section 192, I think it should be —

> of the federal act requires the scheme to be reviewed after two and eight years.

Actually, it starts a little earlier than that. Here we go. It states —

> I can advise the house that the national redress act contains the provision that as soon as practicable after the end of each financial year, the National Redress Scheme operator must prepare and give an annual report on the operation of the scheme during the year to the Minister for Families and Social Services for presentation to the federal Parliament. The commonwealth Department of Social Services has confirmed that the annual reports will be tabled in the Australian Parliament. Section 92 —

I think it should be section 192 —

> of the federal act requires the scheme to be reviewed after two and eight years. The arrangements for how those reviews will be conducted are still being finalised and are going to be discussed at future scheme governance meetings. There is a scheme governance meeting in December and I am advised that I can give a commitment on the Attorney General's behalf that the government could commit to tabling these reports in the Western Australian Parliament.

Is that one of the undertakings we are meant to rely on, minister, in lieu of legislation?

Hon Sue Ellery: Chair, on the question of my personal undertakings, I've got nothing further to add.

Hon MICHAEL MISCHIN: In short, the minister may give undertakings—that is fine—but when it gets down to the detail of what those undertakings are to say that they have not been complied with, they are so vague as to be meaningless. That is what I suggest to the minister.

Here is another one —

> On behalf of the Attorney General, I can give that commitment. He will raise that issue with other jurisdictions as well at the December meeting.

There is no commitment to tell us what the outcome of raising it will be. How does that help with accountability to Parliament, minister, in the absence of a legislative requirement?

Hon Sue Ellery: I've got nothing further to add.

Hon MICHAEL MISCHIN: No, I did not think so.

Getting back to the merits of the amendment, perhaps I can solve the first objection, which has not been raised until now. It is something like a week since the government had it and it certainly has not been the subject of any advice that might assist that had been drafted by parliamentary counsel. I indicate that I will move an amendment to the definition of "intergovernmental agreement" in new clause 18(1) by inserting the words "the Commonwealth of Australia," after the word "between" in line 2 of the definition as it appears on the supplementary notice paper. Mr Deputy Chair, do you or the Clerk require that to be in writing under my hand?

The DEPUTY CHAIR (Hon Martin Aldridge): Yes, we do.

Hon MICHAEL MISCHIN: That should solve that problem. I move —

> New clause 18(1), after "between" — To insert —
>
> the Commonwealth of Australia,

If I understand the minister's advice to this place, it is that my suggestion—in the interests of cooperation, of improving this legislation, and of the expedition of its consideration and passage—that the government give some thought as to whether a finding in the committee report could be the subject of action, should simply be ignored. Did the minister in fact raise that with the Attorney General after I spoke to her?

Hon SUE ELLERY: I thank the member for correcting it. Obviously, I have not seen that version with his amendment to the amendment. I thank him for attempting to fix what I described in my responses as "technical issues" with the amendment, but the government will still not support the amendment for the reasons that have I outlined already. I recall raising the question with the Attorney General. I did not get a response on that day because I said, "Will you think about this?" I raised it with him in that context, but for the reasons that I have already outlined, the government will not be supporting the amendment.

Hon MICHAEL MISCHIN: In fact, it appears that the Attorney General did not bother to take any advice on it, other than to find reasons why it ought to be opposed, rather than how it could be effected—would that be right?

Hon Sue Ellery: I have nothing further to add on that.

Hon MICHAEL MISCHIN: No, I am not surprised, minister. The decision has been made not to support it, as a matter of policy. One of the reasons is that it was not the subject of a recommendation by the committee. That is an extraordinary proposition. I have never understood that because a committee does not make a recommendation, there ought not to be some observation in a committee's report on the potential deficiencies that may not affect the integrity of the legislation, but may actually improve it, that ought not to be the subject of a properly worded amendment in due course. But that is the objection the government has put up: it was not the subject of a recommendation so it does not care. It did not take advice on it about whether it had merit. The Attorney General did not take advice on it to see whether it had merit. A decision somehow has been made late in the piece to oppose it and a series of objections, now supplemented with some technical observations, but not earlier, have been revealed.

I will deal with some of those objections. I was advised —

- IGAs are entered into as an exercise of executive power, not legislative power, at Executive government level and cannot and do not purport to bind the State Parliament.

That is pretty obvious, but in this case the government has not only entered into an intergovernmental agreement to which it has committed the resources of the state, but also committed a referral of power and a sacrifice of oversight by this Parliament towards a national scheme, so it might be an act of executive government that does not bind the Parliament but the government is seeking the Parliament's cooperation to give effect to it. The agreement is worthless if the government cannot persuade Parliament to do its bit. All the amendment seeks is that the government play fair and provide the information so that the Parliament knows what it is entering into from time to time, as it changes. That is a hopeless objection. We were also told —

- IGAs are non-justiciable and therefore it would be inappropriate to give legislative effect to the IGA,

Well, we are not; we are not giving legislative effect to anything. There is a recognition of the fact that there is an intergovernmental agreement that is recognised throughout the legislation, the commonwealth scheme, and the intergovernmental agreement itself, that underpins the metes and bounds of the legislation and the scheme we are entering into. Then there is speculation —

> … the possibility (albeit indirect), that a tabling provision might indicate in some way that the intention of the WA Government in entering into the agreement was that the agreement should not be non-justiciable.

I do not know how that works out. Presumably, there is legal advice on that, minister. Is she prepared to present us with the tenor of that legal advice if it, in fact, supports that proposition?

Hon Sue Ellery: I have nothing further to add to this debate.

Hon MICHAEL MISCHIN: There is a great bit of accountability to Parliament! Well done! She is not prepared to add. This proposition has been put up as an objection, this speculative risk has been raised and she cannot even tell us whether there is legal advice that supports it. She will not, rather, tell us whether there is legal advice to support it, but we have an undertaking of some sort.

The advice I received from the minister's office was —

> … it would be more appropriate not to jeopardise this IGA's non-justiciable status.

That is an assertion, a risk and a speculative risk, and the minister is not even prepared to say whether legal advice exists to support it. Thank you very much for accountability to Parliament.

Hon Tjorn Sibma: That's all we're going to get.

Hon MICHAEL MISCHIN: It is indeed what we have always got. But, we should rely, we are told, on vague undertakings. The other objection states —

- Governments can, as an aspect of normal Parliamentary procedures, table a review of the IGA and/or provide information to the Parliament. It is expected that these reviews will be made.

We have seen the commitment there. I asked whether there was any legal advice to support these propositions, and the minister has refused to say; yet, we are told glibly, "Governments can"—yes, they can, but in this case, will not—"as an aspect of normal parliamentary procedure table a review of the IGA and/or provide information to the Parliament." It goes on —

> It is expected that these reviews will be made publicly available.

There is a great guarantee in light of what we have just heard! The minister will not even say whether there is legal advice to support the speculation about the legal effect on an IGA of mentioning it in the statute, suddenly making it justiciable in some fashion. The advice that I received on 20 November goes on —

> In this context, it is noted that such reviews of the IGA, if necessary, may occur following the statutory reviews of the *Redress Act 2018* (Cth) at 2 and 8 years.

So what! It continues —

> The reviews of the IGA (in contrast to statutory reviews of the Commonwealth Act) are not mandatory.

I know that. I am not making them mandatory, just saying that if there happens to be one that changes the scope of the intergovernmental agreement that this state has signed up to, and it may lead to a renegotiation of that agreement on behalf of the state of Western Australia, that Parliament be told about it. What is the harm in that? The minister will no doubt say, "I'm not going to say anymore on it. I've said my piece about why we are opposing the amendment. If that excuse, that reasoning, is flimsy, if it is unsubstantiated, don't worry about it; I'm not going to say anymore. We're just going to oppose it. We're not going to take advice on it; we're not going to see how it can be improved. We are just going to say, 'Talk to the hand.'" The advice goes on, and this is a beauty—members will love this one in the context of what we have just heard —

- The Parliament retains its usual mechanisms, including Parliamentary questions and the Budget Estimates process, through which to seek information about the IGA and any reviews that may occur.

I suppose we will get the same answer from the minister—"I have said my piece. I am not going to say any more. I'm not going to give you the justification for it or try to rationalise the reasons that I am putting up or explain them. I've said my bit." I think we have all had experience of questions being answered in this place. I just cannot believe the chutzpah involved!

- The Parliament retains its usual mechanisms, including Parliamentary questions and the Budget Estimates process, through which to seek information about the IGA and any reviews that may occur.

Hon Tjorn Sibma: Seek, but not find.

Hon MICHAEL MISCHIN: That is right—you can ask! I cannot believe it! Do you have any response to that one, minister? No. It continues —

- No other jurisdictions, through the course of enacting their legislation, raised this issue or have a provision (such as tabling reviews of the IGA) in their legislation. Therefore, such a tabling provision in WA would be inconsistent with other jurisdictions.

Until a few minutes ago the government was quite happy to have a different scheme in our legislation for criminal injuries compensation from other jurisdictions. That is inconsistent. It took us days for Hon Nick Goiran to persuade the government that something ought to be done about it. That inconsistency was not a problem. I do not

care whether other jurisdictions value their governments' accountability to Parliament for schemes that they sign their states up to, schemes which necessarily involve a sacrifice of parliamentary sovereignty and oversight. I do not care whether Victoria does it or not. The question is why it should not happen here. It does not affect the scheme. The fact is that this government, the state of Western Australia, has an obligation to this Parliament. So that is a worthless argument. It states also —

- Executives enter into IGAs on a range of matters across a range of Ministerial portfolios.

Yes. We know that. It continues —

> IGAs related to a State referral of powers to the Commonwealth and State adoptions of Commonwealth legislation that have been reviewed by the Uniform Legislation and Statutes Review Committee (or its predecessors) have not made a finding about or recommended tabling (or in some other way) giving legislative effect to a review of an IGA.

I cannot speak for other committees in the past. This committee did not make such a recommendation. However, it did point out the fact that in this particular bill, there is no such accountability. I have not looked at and do not know what the circumstances were in other legislation and whether it is practicable or necessary. However, this is a commitment for 10 years to enable the commonwealth to change the legislation within the parameters of the referral that we are giving, with no accountability to this Parliament. It would seem to me to be a good idea, if this government had respect for this Parliament, that it would keep us informed from time to time, even though we may not be able to do much about it. So that is also a worthless argument. It goes on to state —

- Apart from any possible legal consequences, to do so in relation to this bill and national scheme, would depart from past practice and may set a precedent.

I hope it does set a precedent. I do not have a problem with setting a precedent if that will require greater accountability to Parliament. It would be of assistance if the government would turn its expertise and resources towards making it effective so that it would not create an unfortunate precedent. However, the government is not even attempting to do that. It continues —

> One consequence might be —

It "might be" —

> a reluctance on the part of the current and future WA Governments to enter into IGAs.

I find that difficult to believe. I would have thought these things would be done on a case-by-case basis. Suddenly, just because the government now has to tell us some information, will it take its bat and ball and walk off the field of entering into national schemes? I do not think so.

The government has now raised a number of technical objections. This is a week after the government has seen this advice. There has been no communication with me. The Attorney General has not had the courtesy of contacting me to discuss it. I note that Hon Nick Goiran was given that courtesy. I understand that members of other parties have been contacted by the Attorney General. However, I have not had the benefit of his input. We are being urged to accept the Attorney General's undertakings, through this minister. Those undertakings are unenforceable against the Attorney General. I can see us coming back in a couple of years and saying to the Attorney General, "Hey! You did not table this", and the Attorney General says, "Hang on. Talk to the Leader of the House." So we say to the Leader of the House, "You gave us a commitment way back when that the government can table these documents", and the Leader of the House says, "Yes, I said that we can. I did not say that we would. Talk to the Attorney General." That is the level of these undertakings, which the minister is not prepared to even confirm. It may be the case that improvements can be made to the principle that I am struggling to put in place. I do not know, and the government does know, what those improvements may be. It seems to me, with respect, that the only way in which the government will turn its mind to being accountable to this Parliament is if we —

The DEPUTY CHAIR: Hon Michael Mischin, we are dealing with an amendment on the amendment that consists of four words and a comma.

Hon MICHAEL MISCHIN: I was about to say, Mr Deputy Chair, that the only way in which we will make any progress is if we pass this amendment on the amendment that I have proposed, and we can then focus the government's attention on its responsibility to the Parliament.

Division

Amendment on new part 6 put and a division taken, the Deputy Chair of Committees (Hon Martin Aldridge) casting his vote with the ayes, with the following result —

Ayes (21)

Hon Martin Aldridge	Hon Diane Evers	Hon Simon O'Brien	Hon Colin Tincknell
Hon Jacqui Boydell	Hon Donna Faragher	Hon Robin Scott	Hon Alison Xamon
Hon Robin Chapple	Hon Nick Goiran	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Tim Clifford	Hon Colin Holt	Hon Charles Smith	
Hon Peter Collier	Hon Rick Mazza	Hon Aaron Stonehouse	
Hon Colin de Grussa	Hon Michael Mischin	Hon Dr Steve Thomas	

Noes (12)

Hon Alanna Clohesy	Hon Laurie Graham	Hon Martin Pritchard	Hon Dr Sally Talbot
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Samantha Rowe	Hon Darren West
Hon Sue Ellery	Hon Kyle McGinn	Hon Matthew Swinbourn	Hon Pierre Yang *(Teller)*

Pair

Hon Jim Chown	Hon Adele Farina

Amendment thus passed.

The DEPUTY CHAIR: We return to the amendment that has been amended. The question is that the amendment, as amended, be agreed to.

Hon ALISON XAMON: I rise because I want to make some comments about the substantive amendment in front of us. We have just supported the amendment on the amendment, but that does not necessarily mean that the Greens are supportive of the substantive amendment in its current form. By way of explanation to members, the reason that the Greens supported the amendment on the amendment is that, in the event that the amendment gets up, with or without the Greens' support, it is the best possible one that this chamber can contemplate. I know that the concern that was raised was raised by the government itself. I am a little perplexed, quite frankly, that the government would vote against anything that would address any of its concerns.

Getting back to the substantive amendment in front of us, the Greens have some sympathy for the intent behind the amendment but we are not necessarily persuaded that, as currently worded, it will have the desired effect. I note that a number of concerns have been raised by the government about the amendment and it is concerned that the matter is not justiciable. Quite simply, I need some persuading that this is a problem. I would like to hear the government's concerns around that. I certainly share the concerns of the government that the amendment as currently drafted is probably too broad. I note, for example, that subclause (2) of the amendment refers to the scheme review and provides that a minister must look at producing a report or other document that is prepared as a result of the scheme review. I am concerned that the current wording is too broad. I do not think it is desirable to try to capture all the material, because we are potentially talking about briefing notes and minutes, not just the report. I wonder whether that could potentially be addressed by narrowing the scope of the amendment and ensuring that it refers only to the report.

I note that the review is not mandatory, so it may not happen. I do not necessarily think this is a problem and I do not think that is a reason that the amendment should fail, because the amendment clearly states "if a scheme review is carried out". I fail to see why that would be fatal for the amendment.

Concerns have been raised about the intergovernmental agreement. The government is concerned that it does not want to set precedents and it is of the view that IGAs are a legitimate executive function. I want to be very clear that that does not cut much ice with the Greens. The Greens think it is reasonable for Parliament to want to see a review, particularly in the context of a uniform scheme for which we have been asked to give up our sovereignty. As ministers know, the Greens are very supportive of transparency within government and I am not sure that this argument is particularly persuasive.

I am interested in hearing the government's response to the issues that I have raised. As I said, I have supported the amendment on the amendment because, if the amendment is going to go through, I want it to be the best it can be. I am still of the view that, in its current form, it would need further finessing for the Greens to be supportive of it. However, I am not unsupportive of the intent behind it.

Hon SUE ELLERY: Essentially—this is why I was able to give undertakings—there is a difference between giving an undertaking and actually legislating for the tabling of the review of an IGA. It is that component—the legislating of the tabling—that leads to the argument that it could be a justiciable document. That is the issue. Not providing information, which I have given an undertaking to do, but legislating for that purpose gives a different standing to that issue. That is the essential issue—making it justiciable or not—about whether it is included in the legislation.

Hon MICHAEL MISCHIN: Minister, with respect, this gets back to my question about whether any advice has been sought on that supposition. To say that legislating leads to an argument that it could be justiciable sounds pretty vague to me. I asked whether any legal advice had been taken on that subject and the minister refused to answer. We are supposed to take it on the basis of a speculation against a background of "we do not support the policy" that there is some legal, constitutional or technical problem with what is being proposed. I invite the minister to tell us, if she can, whether legal advice has been taken on whether legislating for and mentioning an IGA in this bill will elevate it to the point of being a justiciable instrument in some fashion.

Hon SUE ELLERY: The advice that I provided to the chamber in my second reading reply last Tuesday and in several answers during the course of the debate since then was provided to me through the State Solicitor's Office. It was not a case of seeking specific legal advice and getting specific legal advice back. The wording about that matter that I was provided with to provide to the chamber was provided through the State Solicitor' Office.

Hon MICHAEL MISCHIN: Were any particular questions posed to the State Solicitor's Office so we can get an idea of whether the advice that had been received, which we are not privy to, was about the possibility of an argument that an IGA could be justiciable? Can the minister help us out with whether that was the subject of any specific advice about the effects of an IGA or whether it was just volunteered as one of a number of reasons that it might not be desirable to do this? Do we know the questions? Can the minister tell us?

Hon SUE ELLERY: No, I am not going to provide the questions, through you, Chair, but I make this point: the answers that I have provided on this matter to the chamber have come through the State Solicitor's Office.

Committee interrupted, pursuant to standing orders.

[Continued on page 8647.]