

**HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT BILL 2017**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

**Clause 5: Application for convictions for historical homosexual offences to be expunged —**

Committee was interrupted after the amendment moved by Hon Michael Mischin had been partly considered.

**Hon MICHAEL MISCHIN:** I had posed a question to the minister.

**Hon SUE ELLERY:** The essence of the question, which I thank the honourable member for clarifying while we dealt with question time, was: is it fair to say that the question of whether the CEO as decision-maker was adequate or otherwise was not specifically put to any of the people consulted? My response is that it is not fair to say that. However, I can put it in reverse; none of the people consulted internally—the courts and the respective officeholders within government—nor any of the stakeholder groups that were consulted externally, raised an objection to the CEO being the decision-maker.

**Hon MICHAEL MISCHIN:** Was the question of whether a person other than the CEO be the decision-maker specifically raised with any of the people who were consulted?

**Hon SUE ELLERY:** That question was asked in several variations yesterday. I am not able to add anything further than what I have already said.

**Hon NICK GOIRAN:** Unfortunately, I was away on urgent parliamentary business yesterday during the second reading debate on this bill, but I was present during the consideration of clause 5 late yesterday and the consideration of clause 5 today. I have been listening with interest to the responses made by the Leader of the House to my learned friend Hon Michael Mischin. According to my notes, I believe that the Leader of the House has indicated that some people have been consulted on this bill. My notes include that the minister has mentioned the heads of jurisdiction, the Director of Public Prosecutions, the Solicitor-General, the Western Australia Police Force and the Commissioner for Victims of Crime. Was anybody else consulted?

**Hon SUE ELLERY:** There was internal and external consultation. I have listed both of them, both in my second reading reply and in the answers I gave during Committee of the Whole last night. Internally, if I can describe them that way, the Commissioner for Victims of Crime, the Western Australia Police Force, the heads of jurisdiction, the Director of Public Prosecutions and the Solicitor-General were consulted. In addition, internally, the Office of the Public Advocate, the Equal Opportunity Commission, the Public Trustee, the Department of Communities, and the Department for Child Protection and Family Support's working with children unit were consulted. I think I read out that list in my second reading response. In addition, externally, a range of community organisations were consulted, which I also listed in my second reading response.

**Hon NICK GOIRAN:** Who were the heads of jurisdiction?

**Hon SUE ELLERY:** They were the chiefs of the Supreme, District and Magistrates Courts and the presidents of the Children's Court and the State Administrative Tribunal.

**Hon NICK GOIRAN:** The head of the Supreme Court of Western Australia was consulted on this bill. Was that consultation in writing or done verbally?

**Hon SUE ELLERY:** It was done in the normal way that this consultation is done. I referred to part of that in my second reading response about drafts and final versions being circulated. Written versions of the various drafts and responses were exchanged. If it is helpful to the member, I can indicate, as I indicated to one of his colleagues last night, that I am not in a position to provide copies of the documents used in that consultation. If the honourable member was going to ask that question, I am not in a position to do that, as I answered last night.

**Hon NICK GOIRAN:** The normal process was followed for consultation with the head of jurisdiction for the Supreme Court, and that was done by way of written exchange. When did that happen?

**Hon SUE ELLERY:** It was in September 2017.

**Hon NICK GOIRAN:** In September last year, a written exchange took place with the head of the Supreme Court. Does the Leader of the House have a precise date in September?

**Hon SUE ELLERY:** No, I do not.

**Hon NICK GOIRAN:** Does the government have in its possession a copy of a letter from the head of the Supreme Court providing a response to that consultation process?

**Hon SUE ELLERY:** The normal process, which was followed at this time as well, is that the request for views—consultation—is done through the executive director of courts and tribunals, who then distributes it. The feedback comes back through her to the department.

**Hon NICK GOIRAN:** This is an interesting development. The response that comes back to government is collated by an individual. How do we know that a response was provided by the head of the Supreme Court, the head of the District Court, the head of the Magistrates Court, the head of the Children's Court and the head of the State Administrative Tribunal? I acknowledge that the minister indicated to the committee earlier that the government did correspond and seek feedback from those various heads, but how do we know that each of those five heads that the minister indicated earlier actually responded? Could it be that some responded and some did not respond? Is the minister in a position to inform us on that?

**Hon SUE ELLERY:** The office holder, the executive director of courts and tribunals, indicated to the department that all the courts were happy and did not have issues to raise with the bill. I make the point again that I made at the end of responding to Hon Michael Mischin: no stakeholder, internal nor external, has indicated any objection to the CEO being the decision-maker in respect of this bill. No objection has been received from anybody.

**Hon NICK GOIRAN:** I am interested that the minister can say such things so categorically having seen none of the exchanges and is unable to provide any to Hon Michael Mischin despite his earlier request. Nevertheless, the minister has just indicated that the executive director of courts and tribunals has provided feedback to the department. When did the executive director provide that feedback to the department and in what form did that feedback come back to the department? Was it verbal or written?

**Hon SUE ELLERY:** It was by email between 4 and 7 September 2017.

**Hon NICK GOIRAN:** Can we have a copy of that email that was provided by the executive director of courts and tribunals sometime between 4 and 7 September 2017?

**Hon SUE ELLERY:** I think this is the fourth or perhaps the third time that I have indicated that the government will not be releasing the written documentation of the consultation.

**Hon NICK GOIRAN:** The committee is informed that the government is in possession of an email. The author of the email is the executive director of courts and tribunals. We know that the date is somewhere between 4 and 7 September 2017 and the government is not prepared to release that email. Will the minister indicate why she will not release that email?

**Hon Sue Ellery:** I have nothing further to add.

**Hon NICK GOIRAN:** The government is not prepared to release an email, even though the Leader of the House said to us categorically that nobody has given any feedback to the government contrary to what Hon Michael Mischin has put forward. But it cannot provide an email to confirm that.

**Hon Sue Ellery:** I have nothing further to add.

**Hon NICK GOIRAN:** When a minister decides to refuse to provide a document to Parliament, they then have to give notice to the Auditor General. It seems odd to me that the Leader of the House would say to this committee, "No-one has objected and we have received no feedback along those lines. We have consulted, we have emails to that effect, but I will not provide you with the emails." Firstly, she would rather delay the process of the chamber. Secondly, she would rather waste the time of the Auditor General by her or her counterpart having to write to the Auditor General in the next 14 days, under the act, to let them know that she has made the decision not to table the document or provide information to Parliament. The Leader of the House does not think so?

**Hon Sue Ellery:** No, I do not. It is in respect to questions.

**Hon NICK GOIRAN:** Okay. What am I doing? Am I not asking a question?

**Hon Sue Ellery:** The member needs to read the standing orders.

**Hon NICK GOIRAN:** It is the Financial Management Act; it has nothing to do with the standing orders. The Leader of the House would rather that that process take place than provide to Parliament an email that the Leader of the House says simply confirms what she has just verbally provided to the chamber. It is remarkable that a minister of the Crown would say to this chamber that she can categorically say that no-one has objected to this particular process. She has not seen the information herself. She tells us that there is an email somewhere between 4 and 7 September but she will not provide the email to the chamber. I guess that is the high standard of transparency that this government is so proud of. It makes it very difficult for a member then to make an assessment with regard to the amendment that is before the chamber. The question before the chamber is whether we should delete the words "CEO". The Leader of the House's view is that we should not delete the words "CEO". The reason, she says, is that she has not had any feedback from any internal or external stakeholders that suggest that that is necessary, yet the immediate past Attorney General of Western Australia, the most experienced legal person

in this chamber, tells us that this would be an improvement to the bill, and she says, “No, it is not necessary, because nobody has told us that that is required.”

But then when we asked the minister to provide written confirmation, she said, “No, we are going to put up our usual secret barriers”. That is just totally unsatisfactory and there really is no reason why she would not confirm something so basic. It makes we wonder whether there is something else in this email. If there was nothing secret in the email, the minister would provide it, unless she is trying to be unhelpful and frustrate the passage of the bill rather than facilitate it. It seems very strange. I thought it was strange last night when Hon Michael Mischin asked the minister about this and she said that she was not going to provide any information. It was not that difficult a question and it could have simply been answered.

I take it then, minister, that the executive director for courts and tribunals in this now famous email, which is dated some time between 4 and 7 September 2017, has summarised the feedback on behalf of all the heads of jurisdiction. Can the minister confirm that that is the case and does the executive director for courts and tribunals in their email provide any confirmation on behalf of the other internal stakeholders or is it just the heads of jurisdiction?

**Hon SUE ELLERY:** The honourable member made a series of assertions in his most recent contribution, most of which I reject. I have nothing further to add in respect of the consultation. I answered the question last night. I have answered it again in several variations today. I have nothing further to add.

**The DEPUTY CHAIR (Hon Adele Farina):** Members, I might bring your attention to the fact that we are dealing with the amendment in the name of Hon Michael Mischin —

Page 5, line 6 — to delete “CEO” and substitute —

Minister

Members should be speaking to that amendment.

**Hon NICK GOIRAN:** At this point in time, I am inclined to support Hon Michael Mischin in his amendment, which would see the deletion of “CEO” and the insertion of “Minister”. Part of the reason that I would be inclined to do that is because the Committee of the Whole has been provided with nothing of substance by the government to suggest that the amendment should not be passed. All we have been provided with are some words from the mouth of the Leader of the House, but words without a willingness to be supported by documentary evidence. If it were the case that there were no documents, one could possibly —

Several members interjected.

**The DEPUTY CHAIR:** Order, members! Only one person has the call. There are too many audible conversations happening in the chamber. I am having difficulty hearing and I do not know about Hansard.

**Hon NICK GOIRAN:** It is probably because the members are outraged by what is happening here with the Leader of the House once again obstructing the processes of the Committee of the Whole House. I can understand why members are outraged. I share their outrage. It is quite incredible that the Leader of the House is unwilling to provide an email that she tells us is dated some time between 4 and 7 September last year. It is quite remarkable that we cannot actually get the precise date of the email. It is quite odd that she can provide a range of dates. It is dated somewhere between 4 and 7 September. We know it is in that range but we do not know the precise date of the email. The Leader of the House has not even seen the email but she can provide a range of dates. How can she be so precise about a range of dates but not the actual date, and having never seen the email, how can she then say, “By the way, I’m not going to show it to you anyway”? Better still—Hon Martin Aldridge will like this—the Leader of the House says that she does not even have to comply with section 82 of the Financial Management Act because according to her that applies only to questions. It is quite an interesting thing. Maybe we need to table a copy of the Financial Management Act for the benefit of the Leader of the House, the most experienced member opposite.

As I said, I support Hon Michael Mischin in his quest to see “CEO” deleted from clause 5 and subsequently to see “Minister” inserted, because the Leader of the House has been unable today to provide any documentary evidence to suggest that this is not an appropriate amendment, despite the fact that she says that such documents exist. No cogent explanation has been provided for why that document will not be tabled by the government. What is disturbing is that the minister representing is the same minister, who, I might add, when I asked a question recently, could not turn and ask the gentlemen to her right: “No; I need to take that on notice.” In this particular instance, this minister is not prepared to actually ask the minister whom she represents if he will table these documents.

**The DEPUTY CHAIR:** Order, members! At this point, I might just draw the member’s attention to standing order 48 in relation to relevancy and also repetitious debate.

**Hon NICK GOIRAN:** Madam Deputy Chair, it is difficult for a member to make an informed decision on this amendment when the government is unwilling to table documents. I am simply making the point that according to the minister who has the carriage of this bill, there is a difference when a minister is a representative minister or

the actual minister. I am simply applying the standard that this minister has said applies when she is in a representative capacity. When a minister is in a representative capacity, supposedly they need to check with the minister whom they represent to see what information they are willing to provide. That was the explanation that was provided last Thursday during members' statements by this member, and that is the standard that is apparently applied. If that is going to be the new standard, why has this minister not asked the Attorney General whether he is willing to provide this famous email of the executive director of courts and tribunals? She cannot have it both ways. She either makes a decision herself and, in my case, turns her chair to the right and asks that person, or she has to take the question on notice and check with the minister whom she represents. It has to be one or the other. According to Hon Sue Ellery, the standard is that she is required to check with the other minister. That has not happened in this instance, has it, minister? The minister has not had a conversation with Hon John Quigley and asked him, "Will you table the email from the executive director of courts and tribunals?" She has not asked him that because if she was going to ask him that, she would actually need to know the date of the email. She could not say to him, "Attorney General, there is an email dated somewhere between 4 and 7 September 2017. Will you agree to that being tabled?" The minister would provide something much more precise; otherwise, the Attorney General would laugh at her when she asked him that question.

Hon Michael Mischin has my full support for this amendment. I find it appalling that the minister with the carriage of this bill can provide such a double standard within only a week. It was only last Thursday that a new standard was apparently going to be provided when a minister is a representative minister, and now suddenly it is a different standard all together. It seems to me that the standards just change and apply whenever it suits Hon Sue Ellery. At this point in time, we simply have the choice of either supporting Hon Michael Mischin's amendment or, if we want to apply the standard of the Leader of the House, oppose it. We know that numerous individuals have been consulted, including the head of the Supreme Court, the head of the District Court, the head of the Magistrates Court, the head of the Children's Court and the head of the State Administrative Tribunal. We also know that the Director of Public Prosecutions has been consulted, as have the WA Solicitor-General, the Western Australia Police Force, the Commissioner for Victims of Crime, the Public Advocate and the Public Trustee. They are the ones I was able to write down. I note that the minister was referring to a document that had a large list of internal and external stakeholders. Could that document be tabled?

**Hon SUE ELLERY:** No; they were notes that were prepared for my use.

**Hon NICK GOIRAN:** Does the minister have a list of the internal stakeholders?

**Hon SUE ELLERY:** No, other than what I have already said to the chamber about who was consulted.

**Hon NICK GOIRAN:** So the minister does not have a list? The minister read them out very quickly earlier. Just so I can conclude my remarks on this clause, my list has the heads of jurisdictions, which the minister told us are the Supreme Court, the District Court, the Magistrates Court, the Children's Court, the State Administrative Tribunal, the Director of Public Prosecutions, the Solicitor-General, WA Police Force, the Commissioner for Victims of Crime; the Public Advocate and the Public Trustee. Which other ones did the minister mention?

**Hon SUE ELLERY:** In addition to those read out by the honourable member, there was the Equal Opportunity Commission, and the working with children unit in the Department of Communities.

**Hon NICK GOIRAN:** I thank the minister for the further information. During the course of this discussion on the amendment of Hon Michael Mischin, I asked for that email to be tabled and the minister refused. I draw members' attention to section 82 of the Financial Management Act 2006. I think the Leader of the House will really appreciate this section of the statute in Western Australia. It is entitled "Ministerial decisions not to give Parliament certain information about agency to be reported to Parliament etc.", and reads —

- (1) If the Minister decides that it is reasonable and appropriate not to provide to Parliament certain information concerning any conduct or operation of an agency, then within 14 days after making the decision the Minister is to cause written notice of the decision —
  - (a) to be laid before each House of Parliament or dealt with under section 83; and
  - (b) to be given to the Auditor General.

It was put to me by the Leader of the House that that section does not apply in these circumstances; it applies only in respect of questions. Well, that is not what section 82 says.

**Hon Sue Ellery:** It's not what the amendment is about either.

**Hon NICK GOIRAN:** We are trying to get to the amendment, but the honourable member is trying to hide the information that would help us get to the bottom of this matter. If the minister just provided us with this famous email, we would be able to move on, but she has decided not to provide it. I can only assume —

**The DEPUTY CHAIR (Hon Adele Farina):** May I just interrupt the member at this point in time. As interesting as the point is that you are making, it is not relevant to the question before us. The question before us is in relation to the Historical Homosexual Convictions Expungement Bill 2017, not the Financial Management Act. The question before the chamber is that the words to be deleted be deleted. So, any requirements under the Financial Management Act in relation to reporting to the Auditor General or not are completely irrelevant to the question before the chamber.

**Hon NICK GOIRAN:** Thanks, Madam Deputy Chair.

In respect to clause 5, the question before the chamber is whether to delete “CEO” and insert “minister”. The position of the opposition is obviously to support the amendment moved by Hon Michael Mischin; the position of the government is to oppose that. The government opposes it because it says that in all its consultation with internal and external stakeholders, nobody raised this as an issue. That is the government’s position. It is quite appropriate for the opposition to interrogate the veracity of the government’s position. The government has said that is confirmed in an email that is dated sometime between 4 and 7 September last year. If we were provided that information, we would be able to, as the opposition and members of this chamber and the house of review, verify whether what the government says is true. We are unable to do that. Why are we unable to do that? Because this minister has decided not to provide information to Parliament, notwithstanding that there are provisions in a statute of Western Australia dealing with the non-provision of information to Parliament. I find that whole situation unsatisfactory. It impedes me from doing my job properly in this place if a minister is unwilling to provide basic information.

I indicate that Hon Michael Mischin has my full support for this amendment. I find the approach taken by the government incredibly unhelpful, and I think it is wrong that the representative minister has not asked the Attorney General whether this email can be provided.

**Hon MICHAEL MISCHIN:** I thank Hon Nick Goiran for his contribution and attempting to drill further into these issues. I appreciate his indications of support. I will wind up this line of inquiry, but can I have an answer to the following questions. In drafting the bill, was having anyone other than the CEO as decision-maker considered by government?

**Hon SUE ELLERY:** Government did consider a range of options and determined, on the basis of all the reasons I have given already, that the best option was to use the model enshrined the bill before us—that is, the CEO–DG.

**Hon MICHAEL MISCHIN:** Does the minister know whether the question of having someone other than the CEO as decision-maker was specifically raised with any of those consulted?

**Hon SUE ELLERY:** We are back where we started about specifically what was put before those consulted. I have answered that question in as many ways as I possibly could. I am not able to add anything further.

**Hon MICHAEL MISCHIN:** Was the extent to which those consulted considered whether anyone other than the CEO should be decision-maker limited to being provided with a copy of the draft bill; is that right?

**Hon Sue Ellery:** I have nothing further to add.

**Hon MICHAEL MISCHIN:** Nothing further to add? The minister cannot confirm or reject that proposition.

**Hon Sue Ellery:** I have nothing further to add.

**Hon MICHAEL MISCHIN:** She will not. Does the minister have nothing further to add or will she not add anything further?

**Hon Sue Ellery:** I do not know how many times I can say that I have nothing further to add.

**Hon MICHAEL MISCHIN:** Is it a case that the minister cannot help, or she will not help?

**Hon Sue Ellery:** I do not know how many times I can say that I have nothing further to add.

**Hon MICHAEL MISCHIN:** The minister has nothing further to add; all right. Is the minister able to provide copies of the consultation documents?

**Hon Sue Ellery:** I have nothing further to add.

**Hon SIMON O'BRIEN:** Perhaps I could help. I have been listening to this debate now over a couple of days, and with increasing bemusement. It seems to me to boil down to one thing. I will try to put this in a positive tone. I not only accept, and have no trouble in accepting, that advice was sought at various stages from some of the office holders who have been mentioned. Who have we had? The Director of Public Prosecutions, the State Solicitor, Mr Quigley’s mother-in-law—I do not know who else of great eminence was consulted in the preparation of this bill, which, incidentally, my associates and I support. I have no trouble at all in accepting that there was consultation on this bill and that the consultation and advice sought would have perhaps included the mechanics of involving the CEO of the department or the CEO’s delegate in the way that is contemplated in the bill. I have no hesitation in accepting what appears to be the government’s view that the people who provided that advice or

others who responded as part of the consultation process said, “Yes, that all seems fine. We’ll support that. Let’s go ahead with it.” Therefore, the government has proceeded to go through the other steps—cabinet and the like—with confidence in its product. It is happy with it. Indeed, the government does not want this amendment to go ahead because it is happy with what it has got.

What Hon Michael Mischin has done in basically putting forward an amendment that puts the minister in the stead of the CEO or the CEO’s delegate wherever that appears in the bill is to raise a very specific and narrow proposition. I do not know whether this proposition has been specifically examined by the government. The minister at the table seems to indicate that, yes, it was contemplated and advice was sought, but it appears to me that that could only have been in a general way, as I have just described. What I think we are trying to get at, and perhaps the minister might be able to respond to this to try to make some progress in this matter—I am just about fed up with it—is: did anyone in government, on seeing the supplementary notice paper, go to the Attorney General or his advisers and say, “Mischin’s put up this amendment. What do we think about it?” Did the proposed amendment get put under the nose of the State Solicitor, the DPP or whomever else it might be, and were they then asked, “This is the amendment. What do you reckon we ought to do about it? Is it going to fly? What’s your advice?” That is the simple question that is being asked! We are being told almost glibly that the government had the benefit of the advice of the State Solicitor, the DPP and all these other people, and that is why it is rejecting the amendment. I do not believe that any of those people were asked about this amendment. In response, the government can say to us, “Yes, these people—or any of them—were asked for advice about this amendment,” or, “No, we actually did not specifically go and ask them about Hon Michael Mischin’s amendment because we were comfortable with the bill as it is currently drafted.” That is not too hard a question to answer. Either advice was sought and obtained from any or all of those expert people, or it was not. If it was not, okay; that is the answer. Can we please stop going round and round in circles on this matter and avoiding that central and very simple question.

**Hon SUE ELLERY:** I think that was a little disingenuous, because the original proposition was not whether those people had considered the amendment, but whether advice about the model of decision-maker had been sought in drafting the bill. The proposition of the amendment being considered by those —

**Hon Simon O’Brien:** I recognised that in my remarks.

**Hon SUE ELLERY:** Once more: the government considered which was the best model for the decision-maker.

**Hon Michael Mischin:** It did! That’s news.

**Hon SUE ELLERY:** The government considered which was the best model and settled on this model.

**Hon Nick Goiran:** This is the first time you have said that.

**Hon SUE ELLERY:** No, it is not. You should read *Hansard*, my friend.

Several members interjected.

**The DEPUTY CHAIR:** Order, members! The minister has the call.

**Hon SUE ELLERY:** Read the *Hansard*. A whole range of matters was considered, including what other jurisdictions do. I have no further information to provide to the house, other than to say this: none of the stakeholders, either internally or externally, raised any objection to the CEO being the decision-maker in respect of this process.

**Hon Simon O’Brien:** Why can’t you just answer the question?

**Hon MICHAEL MISCHIN:** I cannot believe—maybe I am forced to—that the minister is so obtuse as to not understand what is being driven at here and cannot give a simple answer.

**Hon Sue Ellery:** It is not obtuse.

**Hon MICHAEL MISCHIN:** All right. Let us get back to the way in which Hon Simon O’Brien posed the question: did the government seek advice on the amendment that I put before the house to change the decision-maker from the CEO to the minister?

**Hon SUE ELLERY:** Members will be aware that Hon Michael Mischin circulated a marked-up bill by way of email; I cannot remember on which date that was. That was circulated to people, including to the Attorney General’s office. The advisers at the table with me consulted with the Attorney General’s office on the amendments. The Attorney General confirmed the government’s position that the preferred model of decision-maker is the CEO. On that basis, and for the reasons I have outlined to the house in my second reading reply and while sitting at the table dealing with the question before the house, the government determined not to support the amendments. For all the reasons that have been outlined, the preferred model is that the CEO be the decision-maker.

**Hon SIMON O’BRIEN:** Madam Deputy Chair.

**The DEPUTY CHAIR:** I remind members of standing order 48 in relation to repetitious argument.

**Hon SIMON O'BRIEN:** What a marvellous demonstration of how things are expedited and made smoother when I dip my oar into the debate! We have finally made progress. Hon Michael Mischin moved an amendment to get rid of "CEO" and put in "minister" for all the reasons he outlined. When that proposition was put to the Attorney General, whom the minister at the table is representing, he said, "No, we won't do it." That is it. Any argument about, "We're going to reject your amendment because we've sought the advice of the DPP and we've sought the advice of the State Solicitor and we've sought the advice of Uncle Tom Cobley and all" is actually not the reason. The Attorney General declines to accept the amendment simply because he can, and because he prefers his bill over the former Attorney General's very considered amendment, so nah-nah-nah. That is where we are up to.

I reckon the former Attorney General, Hon Michael Mischin, has raised a very good point, and it is reflected in his amendment, and that adds to the reason why we as a chamber should support the proposition now before the Chair. Why? Not because it is "his versus theirs", but because of its merits and the fact that it would make the people in charge of this legislation in future accountable to this place, amongst a number of other very good reasons. That is why we should support it.

**Hon NICK GOIRAN:** The minister indicated that the Attorney General considered Hon Michael Mischin's amendment sometime after Monday this week. Did he receive any advice this week in respect of the amendment?

**Hon SUE ELLERY:** As I have just said, from the advisers sitting at the table with me.

**Hon NICK GOIRAN:** Right. Thanks, minister. So the advisers sitting here, assisting the minister, provided some advice to the Attorney General at some point this week. Was that in documentary form?

**Hon SUE ELLERY:** No, it was not in documentation form.

**Hon NICK GOIRAN:** Did the advisers create a memo to confirm the verbal advice they gave to the Attorney General this week?

**Hon SUE ELLERY:** As I just said, it was not in documentation form. No memo was created.

**Hon NICK GOIRAN:** So that the minister understands the difference, if I advise somebody and I provide that advice in documentary form, it is me drafting a document and giving it to that person. That is advice provided in documentary form. It is a different thing altogether when I give somebody verbal advice and I make a memorandum of that. That is not providing advice in documentary form, so let us make sure that we are both talking about the same thing here and that we are not comparing apples with oranges. Did either of the advisers create a memo this week, after Monday, confirming that they gave verbal advice to the Attorney General?

**Hon Sue Ellery:** I've answered the question.

**The DEPUTY CHAIR (Hon Adele Farina):** Can I just ask members to consider the fact that the question before the house is that the words to be deleted, be deleted. There has been a lot of leniency for a lot of repetitious debate and questioning, and the same question being put more than once, and the minister has answered. You may not like the answer, but the minister has provided an answer. I think if we are ever going to progress beyond this amendment, we need to look at it from a different perspective or we need to move on.

**Hon MICHAEL MISCHIN:** I am obliged to Hon Nick Goiran and Hon Simon O'Brien for their contributions, which I think succinctly stated the level to which the government has considered this issue. It has essentially drafted a bill, circulated it, and everyone was "happy". It made no comment on the detail I am addressing at the moment, which appears to have never been seriously considered by the government as an option, let alone evaluated on its merits. The first it was thought about was when I introduced the amendment with my explanation in email form to support it, as a courtesy to the leaders of the various parties in this place, setting out my reasoning for it. That was put before the Attorney General, who sought advice of some sort from the advisers involved with the bill and, for reasons known best to himself, chose to reject the proposition in favour of what had been drafted. I can understand his motive there; he is an Attorney General who has made a practice of trying to get things off his desk so he does not have to consider them. It is not as if he has many portfolios to think about; he only has to do one thing, and he tries to do that with as little personal involvement as possible. But I maintain the merit of the proposition I have put. I do not see any point in trying to drag information out of this government any further on this point. It would not be a fruitful use of the Parliament's time and would hold up the bill so I ask that the question be put.

#### **Amendment put and negated.**

**The DEPUTY CHAIR:** Members, in view of that amendment not having passed, I note the same amendment appears a number of times on the notice paper right through to clause 27. I would just like to check with Hon Michael Mischin whether all those proposed amendments now fall away, with the exception of 8/6.

**Hon MICHAEL MISCHIN:** Thank you, Madam Deputy Chair. I was going to say that if the amendment proposed in 3/5 had passed, it would have resulted in a series of consequential amendments. I think the Deputy Chair is quite right; it makes redundant moving all the others up to and including 62/25.

**The DEPUTY CHAIR:** Member, on page 2, 8/6—do you still want to move that amendment?

**Hon MICHAEL MISCHIN:** No, I do not think so.

**Hon Sue Ellery:** I think it is related.

**Hon MICHAEL MISCHIN:** It is related. I think it has some merit in itself anyway, but I will not pursue it for that sake alone, so it is all up to and including 70/27 on page 10.

**The DEPUTY CHAIR:** You will not move any of the amendments up to and including that one?

**Hon MICHAEL MISCHIN:** Hopefully I do not have it wrong, but I think all those are consequential upon the question of who is the decision-maker.

**The DEPUTY CHAIR:** I thank you for that clarification.

**Clause put and passed.**

**Clauses 6 to 10 put and passed.**

**Clause 11: Determination of application —**

**Hon MICHAEL MISCHIN:** Clause 11 is the culmination of the expungement process after the CEO, or the CEO's delegate, has considered the matters provided for in clause 10 following on from the investigation mandated by clause 9. Clause 11 provides, in part —

- (1) The CEO must determine an application as soon as practicable after it is received.
- (2) The CEO is to determine an application by —
  - (a) approving the application; or
  - (b) refusing the application.
- (3) If the application is approved, the conviction for the historical homosexual offence is expunged.

I should add that whether it is a historical homosexual offence within the meaning of the act is left to the CEO, or the CEO's delegate, to determine in his or her judgement. In the event that the option in clause 11(2)(b), refusing the application, is availed of, a review process is available to an applicant under the bill. However, if the decision of the CEO is to approve the application, there appears to be no-one with oversight of that decision to see that it has been made in accordance with the legislation. Is that correct, minister?

**Hon SUE ELLERY:** That is correct.

**Hon MICHAEL MISCHIN:** So we get back to the point that the decision of the CEO, or the CEO's delegate, is inscrutable. If the CEO, or the CEO's delegate, has chosen to expunge a conviction that properly ought not to be considered a historical homosexual offence conviction, no-one will know that that has been done. Is that correct?

**Hon SUE ELLERY:** From the way the honourable member phrased the question, my answer is yes, there is a possibility that no-one would know.

**Hon MICHAEL MISCHIN:** For reasons of lack of diligence, incompetence, political bias or poor judgement, convictions that ought not to be expunged might be expunged, and there is no way of anyone else knowing. Is that correct?

**Hon SUE ELLERY:** It is not accurate to say that there is no way, because we cannot say categorically that in the process of reaching that decision, the CEO or the CEO's delegate did not seek information from other sources to make their decision, whereby others would have found out. I do not think we could categorically say that no-one would ever know. The answer that I gave was that it is possible. I do not think we can categorically say that that would happen.

**Hon MICHAEL MISCHIN:** How would they know and what would they be able to do about it?

**Hon SUE ELLERY:** When we go to the question of consent, for example, we see that clause 10(3) states —

... the CEO may only be satisfied on written evidence on that issue —

- (a) from the available official criminal records; or

If that does not give them what they need —

- (b) from a person, other than the eligible person, who was involved in the conduct ...

Or if that person is not available, the CEO can make reasonable inquiries of —

... a person (other than the applicant) with knowledge of the circumstances in which that conduct occurred.

**Hon MICHAEL MISCHIN:** Let us assume for a moment that I am the CEO's delegate and I have before me an application to expunge certain convictions of a historical nature. One of the decisions I have to make is, firstly, whether they are historical homosexual convictions within the meaning of the act. I gather and consider certain amounts of material from various agencies. There is probably more I can look for in the transcript of the proceedings, which we are told would be available to me to determine matters of consent, but I cannot be bothered. I think, "Well, why not? It will be expunged anyway", and I expunge the conviction. How does anyone find out that I have not consulted anyone about it nor complied with any of the processes under the act that I am meant to comply with? Does the Attorney General look at it to say, "Yes, CEO's delegate, you've done your job properly"? Does the CEO look at it and say, "Yes, CEO's delegate, you have not done your job properly"? How is that to be discovered given that I, as the CEO's delegate, then advise the various agencies and they routinely and mechanically expunge those convictions and the confidentiality provisions hedged around that prevent any revelation of what is happening, particularly —

**The DEPUTY CHAIR:** I apologise for interrupting the member mid-sentence. I had hoped that he might have brought that to a close before I had to do that, but noting the time, I am required to report progress to the house.

**Progress reported and leave granted to sit again, pursuant to standing orders.**