FIRST HOME OWNER GRANT AMENDMENT BILL 2017

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon STEPHEN DAWSON: Before we adjourned for lunch, a question was asked about how many court actions have been taken to recover first home owner grants. Precise details are not available, but over the past five years, 878 first home owner grant recovery actions were finalised. It is estimated that the debt for 90 per of these was secured by memorial, and 50 per cent proceeded to court recovery actions. I will place on the record the figures I have. In 2012–13, the number of cases closed was 225, the number secured by memorial was 202, and court recovery action was taken in 112 cases. In 2013–14, 170 cases were closed, 153 of those were secured by memorial, and court recovery action was taken in 85 cases. In 2014–15, 191 cases were closed, 172 were secured by memorial, and court recovery action was taken in 95 cases. In 2015–16, 165 cases were closed, 149 were secured by memorial, and 82 involved court recovery action. In 2016–17, 127 cases were closed, 114 of which were covered by memorial, and court recovery action was taken in 63 cases.

Hon NICK GOIRAN: Those statistics are very helpful, and I place on record my thanks to the minister and his advisers for providing them. The minister has just indicated to the house that in the last financial year, as the most recent example, 63 matters went to court, when the commissioner felt that, as a last resort—I think that was the phrase the minister used before the luncheon interval—he needed to recover the money by court action. That has happened on 63 occasions in the past financial year. We have not yet passed this bill, but in the last financial year, the commissioner, on no less than 63 occasions, was able to recover funds owed to the state without the need for clauses 15 and 16. He has been able to go to court and recover the funds. This brings us back to the beginning again. Why, therefore, do we need to have clauses 15 and 16 when the commissioner has been quite capable in the last financial year of going to court on 63 occasions, on 82 occasions in the previous year, on 95 occasions the year before that, and on 85 occasions in 2013–14? In 2012–13 there were obviously a lot of bad debtors, because the commissioner went to court on 112 occasions.

Hon STEPHEN DAWSON: We do not know whether those court cases were actually successful. Recovery action was taken in those cases, as the member quite rightly pointed out, but we are not in a position to advise whether they were successful.

Mr Chair, I seek your guidance. Although we are considering clause 1, the debate we are having at the moment relates to clauses 15 and 16. With your guidance, Mr Chair, I seek to leave debate about clauses 15 and 16 to when those clauses come under consideration. I am happy to take other questions about clause 1 now, but I seek to progress through the bill. I am aware that other members of the chamber have questions about other clauses, and I am very keen to answer those questions at the clauses that they pertain to.

Hon NICK GOIRAN: In response to the remarks made by the minister, it is very important that we continue to get to the bottom of this matter now, and not at clauses 15 and 16, because it is my view at the present time that the government has not yet satisfied the chamber about why it needs the special powers it is asking for in clauses 15 and 16. If the government concedes that point in due course, there may be consequential effects on other clauses in the bill. That is why we need to get to the bottom of this now rather than waiting until clauses 15 and 16, and then finding out that there are other problems, whether or not the government concedes the point or I move that the clauses be deleted. Unless I am directed otherwise, I propose to continue my questions to the minister. The minister indicated in his last response that we do not know whether the various court actions were successful.

Is there no advice available on the success rate of the commissioner? My purely intuitive reaction is that the commissioner would have a very strong case. He has statutory powers and there is legislation in place. As the minister said, if a person does not comply with the residential requirements and citizenship, there might be some contest on the facts, but I would think that more often than not the commissioner would have very strong cases. It seems to me intuitively unlikely that the commissioner would be struggling in court actions. Is there any advice at all about the success rate of the commissioner?

The CHAIR: Before I give the call to any other member, the minister has asked me to make some comments. I have also noted the comments of Hon Nick Goiran and I will respond to those in just a moment. The practice of the Legislative Council, which has been the practice for over 20 years and probably a lot longer, was set out in a ruling of the then Chair of Committees, Hon Barry House, on 16 October 1996. I will read only part of that ruling, which I think is germane to the question before us. It states —

> The short title debate does no more than give members the opportunity to range over the clauses of the Bill, foreshadow amendments and indicate, consistent with the policy of the Bill, how its formal content may be improved. It is not a vehicle for continuing debate on policy; rather, if members do not wish the Bill to proceed, the action they should follow is to vote to defeat clause 1 of the Bill as it stands.

I think the general understanding of that point is shared amongst the members of the house. In relation to the specific bill before us, I have been in the chair for a short time in the course of the debate on clause 1, which admittedly has been fairly protracted perhaps in some people's view. A great deal of the debate continues to be focused on questions arising from clauses 15 and 16. The minister raises a legitimate question about whether perhaps this part of the debate might be reserved for our consideration of clauses 15 and 16, when we get to them in due course. Hon Nick Goiran, who has been drilling down quite deeply into the effects of these clauses, has indicated that, in his view, the impacts of the chamber either supporting or rejecting those two clauses is such that it may affect the construct of the entire bill. In my observation, if that is the case, the question of clause 1 being agreed to is not a foregone conclusion. If the committee decides to defeat clause 1, the whole bill is disposed of and, therefore, from what I have observed of the debate, the line of questioning being followed by Hon Nick Goiran at this time may well impact on the question that clause 1 be agreed to. I say to all members that consideration of clause 1 has indeed been protracted and I ask them all to contemplate that for this, or any other bill, there is a time when we have to cease our examination by overview of the clauses and any amendments in the context of clause 1 and leave that until we get to the specific clauses later in the process. For now, minister, I am going to allow this to continue in the context of a clause 1 debate for the reasons that I have given, although I remind members that there is a need to make progress.

Hon STEPHEN DAWSON: I thank you for your guidance, Mr Chair. We have not received a further breakdown, unfortunately, of those figures. By way of trying to answer, I will provide the following advice. Under the first home owner grant, the commissioner cannot require an applicant to pay these legal costs in the absence of a court order. The legal costs can only be recovered in the court proceedings in the event that the court makes a costs order in the commissioner's favour. When the matter does not proceed to court because the applicant pays the outstanding debt or enters into an instalment arrangement after a general procedure claim is issued, the legal cost of issuing the claim is not recoverable and is a cost to the state and the taxpayers.

Hon NICK GOIRAN: I have a number of questions arising out of what the minister just said. In light of what was said earlier, it might assist if the minister could advise the chamber whether he has obtained any advice about whether the deletion of clauses 15 or 16 from the bill will have any consequence or impact on any other clause?

Hon STEPHEN DAWSON: We have not had any advice on that, but I am advised that the provisions are totally unrelated to any other part of the bill.

Hon NICK GOIRAN: For clarity, minister, if the house decided to delete clauses 15 or 16, would it have no impact on the rest of the bill?

Hon STEPHEN DAWSON: My advisers tell me that it should not.

Hon NICK GOIRAN: In that case, I indicate to the minister that I will rely on that advice in his statement to the house. I reserve the rest of my questions for the debate on clauses 15 and 16, but I put on notice that if we find that there is a problem later, the minister can expect me to create quite an issue about it. However, I am quite happy to leave it for the time being.

Clause put and passed.

Clauses 2 to 8 put and passed.

Clause 9: Section 14B amended —

Hon Dr STEVE THOMAS: I move —

> Page 4, line 6 — To delete "30 June 2017" and substitute —
>
> 31 December 2017

We were saying a little earlier that we are working in a great degree of harmony in the chamber today.

Hon Stephen Dawson: Bipartisanship.

Hon Dr STEVE THOMAS: We are working in bipartisanship, so we are going to test that bipartisanship a little by attempting to thwart the intent of the government in its bill before the house. It is important that we test the will of the house to see whether members want to hold the government to account for its comments, because that is where we have left this debate today. I remind honourable members again of the comments by the Treasurer, who has now brought down his first budget, in December last year in PerthNow —

> "We'll support that announcement and don't have any intention of removing that in the event that we win government in March."

He was referring to the announcement about the $5 000 first home buyer boost. It is my intention to test the will of the house to see whether members want to hold the Treasurer to account for those comments.

During the second reading debate, Hon Martin Pritchard said that the government has looked at the situation before the election and after the election and has had to cut its cloth accordingly, so to speak. I take those comments on board. I suggest that a number of the projects that have been announced in the budget could be cut to cover the $20 million cost of keeping the promise to maintain the boost for the full calendar year. I will be having a conversation with the minister next week about whether some of those projects are just pork-barrelling in electorates in which the government has won seats. That is a shocking suggestion, is it not, minister! This is a good opportunity for this house to ask the government to remove some of the largesse that it has placed in those electorates. The government can cut its cloth in a number of different ways. One way in which it can cut its cloth is by keeping the promise that it made before the election. That would reflect well upon the government. It would also reflect well upon the Treasurer.

It has been put that governments sometimes need to change their agenda after an election. I understand that circumstances change. However, the precedent that is being set by the government in not keeping this election commitment is a bit more important than that. The argument has been put that the decision has been made and it will be too difficult to force the government to keep its commitment. I go back to the old days of *Yes, Minister*. This is an example of holding the government to account. The argument against it is along the lines of, if we make the government do the right thing this time, we might make the government do the right thing next time as well, and that starts a very dangerous trend. I think that is actually not a bad idea. I look forward to that. I do not think the government has justified, based on the set of budget papers it has just dropped on everybody's desk, that it cannot afford the $20 million required to fulfil this promise. Many of the election commitments within these budget papers could be shifted quite readily to enable the government to be honest about what it said to the Western Australian community in the lead-up to the election.

As I said during the second reading debate, I understand that government members have been presented with a budget, as we have, and they probably do not have a lot of choice. However, every other member in the chamber has a choice about whether to hold the government to account for the position that it took to the election. That is the critical point. People say that politicians do not tell the truth. People expect politicians to lie. We in this house are facing an acid test to find out whether that is true. I think that will be very interesting. I understand the position of the government and the position of ministers. During the second reading debate, we asked the government nicely to shift its position. I suspect that will not happen. The question now is whether everybody else in the house thinks it is reasonable for a government to say one thing before an election and do something else after an election. If that is the precedent we want to set, the question now is whether the Legislative Council of Western Australia will rubberstamp that. I intend to come back to that point numerous times over the next several years, because it is critical. I would like to think that the Legislative Council is a genuine house of review and will hold the government to account for the words that it says in the lead-up to an election.

Hon PETER COLLIER: I will try to kill two birds with one stone and make a few comments. Hon Dr Steve Thomas has effectively articulated the views of the opposition with regard to this amendment. We believe that this amendment is eminently sensible. The government has shown that it is willing to change its mind on policy, as we saw a few hours ago with Utah Point. In the same spirit of bipartisanship, we ask the government to consider this amendment. This amendment is very important, because it will create jobs. The government went to the election on a policy of creating jobs, and yesterday in the Legislative Assembly, the Premier and Minister for State Development, Jobs and Trade introduced a bill for the creation of jobs. This amendment will create jobs.

The Minister for Environment said in both his second reading speech on the bill and his ministerial statement that this is bad policy. I beg to differ, and so does the Treasurer. The Treasurer supported this policy. He saw it for what it was—creating jobs, and providing economic stimulus. Every industry group involved in the housing sector supported this policy. The minister, to his credit, tried to find some semblance of support in the sector for the government's position, and he found that in a comment by Dale Alcock. I know Dale very well. Yes, he did acknowledge that this state is facing significant pressure at the moment. However, I am sure he does support the first home buyer boost.

The government has used as its excuse for not continuing with the first home buyer boost the fact that it wants to redirect this money to other priorities. The Treasurer has said that this is being done to assist with budget repair. I asked that question of the minister and he could not answer it. I suggested that some of this money might go towards the $200 million that will be put into the education budget above and beyond the growth in indexation.

That is not assisting with budget repair. It would assist if this money was going into the consolidated account. However, that is not the case. Therefore, that argument is flawed.

The comment that the policy was not working is without foundation. I accept the minister's comments about the figures that were provided in the second reading speech. Those are not the figures I am talking about. The figures I am talking about are the figures that we got from the other place about the uptake of applications post the debate in the other place. In fact, last month, there was a spike in applications for the grant. I will add to that by drawing the attention of members to an article in today's online *The Courier Mail* titled "They're back! Big increase in first home buyers in June quarter." The article refers to the latest report from the Real Estate Institute of Australia and Adelaide Bank. The article states in part—I am not being selective; I could read the whole article but we would be here until after question time —

> Queensland welcomed more first-home buyers into the market than any time in the past year, with the number of loans increasing by nearly 12 per cent in the June quarter and almost 20 per cent compared to the same time last year.
>
> The average loan size for first home buyers in the state increased 1.5 per cent during the quarter to $296,033.
>
> Real Estate of Queensland spokesperson Felicity Moore said that confirmed the Queensland market's viability and good value proposition.
>
> "It's also a reflection of the impact of the Government's first-home buyer grant boost of an additional $5000 to a total of $20,000," she said.
>
> "Young Queenslanders have seized upon the opportunity to jump on the property ladder and take their first steps to personal wealth creation."

That is a perfect example in another jurisdiction that the first home buyer boost is working. As I have said, the figures that I presented during the second reading debate show that the first home buyer boost is also working in this state.

The article states also —

> Queensland, Western Australia, the Australian Capital Territory and the Northern Territory all experienced an increase in first home buyers during the June quarter, with the territories recording growth of 49.6 per cent and 40 per cent respectively.

WA has seen an increase in the uptake. I am not being precious here. I am saying that it is working. The crux of my argument is that the government stopped the program before it had the opportunity to see its real worth. The government stopped the program in May when evidently the applications were going to flow through as the year wore on. What about those young new home owners who decided that as a result of this policy, they would work towards establishing capital savings over the first six or seven months of the year and then make an application in August? They have had the rug pulled out from under them. They will now reconsider because the boost is no longer available to them. To blindly say that it is not working based on some figures that, quite frankly, do not add up, is flawed logic.

I presented figures in the second reading debate and I will not go through the whole lot again. Suffice to say, when the minister talked about 4 500 applications, it was not 4 500; it was 4 660. That does not include applications that would have come on board had this policy been allowed to extend to its maturity—that is, the 12 months. I just gave evidence of it. This article was a little pearler today; I could not believe this. We have seen what happened in Queensland when it gave first home owners an additional $5 000. It works; it stimulates the market. The government decided to stop the policy without any consultation with industry groups, the Housing Industry Association, the Master Builders Association or any of the major building groups in the state.

We are talking about not only the growth of homes. As I said, we are talking about literally thousands of workers, because if we are talking about 60 tradies per house, as I have said, or four full-time tradies, that is employment. If we are willing to give $40 million or $50 million for 300 education assistants, surely the government is willing to give $22 million for a couple of thousand tradies. How are they less significant than the EAs? The stimulus it provides to the economy cannot be put in words. The housing market is the engine room of the nation and the economy. The housing market saw a stimulus opportunity and, as I said, the rug has been pulled from under it. I am disappointed that the government has gone down this path for what is effectively, quite frankly, a rounding error as far as the big picture is concerned. We are talking about debt levels of the government, which are not flash. As I have said before, welcome to government, guys. But this initiative really does work. This is not a philosophical thing; we are talking about something that works. The Labor government's own Treasurer supported it. All I am saying to members opposite and to members on the crossbench is: please, for the sake of the

housing industry and those tradies, have some commonsense and say that we support the housing industry and the stimulus package that was provided. Minimalist as it might be, it is working; it will continue to work and it will continue to ensure that thousands of workers and tradies will be employed in Western Australia.

Hon AARON STONEHOUSE: I agree with the sentiment of keeping the Labor Party honest; this resonates with me. However, the use of a grant is rather misguided in the first place. Pulling levers and turning dials to try to jump-start the property market is the sort of approach we usually see from the left side of politics, which often considers individuals as pieces on a chessboard to move around. My view is that the economy is organic. It is made up of individuals pursuing their own interests, each with their own hopes and dreams and desires with their individual financial decisions being made up of hundreds, if not thousands, of factors. I agree that to dangle a grant in front of first home buyers only to take that away again and to pull the rug from under them, is cruel. As I laid out in my second reading debate contribution, the government could be doing much more to stimulate the property market, such as reducing red tape, regulations and taxes. Extending the $5 000 boost for a few months will not really have a lasting impact on the housing market.

We may see some people who are already saving for a deposit make their home purchases within that time, but we are really only bringing forward economic activity that would have happened in maybe six or 12 months anyway. We are not really creating new activity, but only moving it forward slightly. This is the same kind of approach again of pulling levers and turning dials that we see from the left; the right side of politics objected to that approach when we had a stimulus back in 2008 and 2009, using very much the same arguments that I am using now. To try to control or micromanage the economy is the kind of activity that really only creates the bubbles and exacerbates the bust, which, as an economically literate man, Hon Dr Steve Thomas understands. Therefore, for that reason, I cannot support this amendment.

Hon Dr STEVE THOMAS: I want to make a couple of quick responses. I appreciate the honesty of the answer of Hon Aaron Stonehouse, but the simple reality is that even based on the government's own figures, Treasury expected 650 people to be involved in changing the outcome. Let us not take the full 650 and look instead at the 380 people who, based on the Treasurer's own figures and the expectation of Treasury, changed their behaviour to invest in and develop construction. As I said, we do not have anyone here who needs to take their shoes and socks off to do this calculation. Those 380 people buying $100 000 houses creates $38 million worth of added activity; for $200 000 houses, that is $76 million worth. Just those 380 people, as reflected in the government figures, would create $100 million of activity from a $20 million investment. There is some response to this. I am not necessarily going to argue whether it is the best response. I would love us to have a much deeper debate about the global financial crisis and the economic stimulus that was put in place and the realities of quantitative easing, which I also had some issues with, but that is a debate for another day.

The government's $20 million investment has a demonstrable effect in the order of at least $100 million, based on the most minimalist of proposals from Treasury. I do not disagree that the long-term effect may not be there, but the short-term effect of the stimulus would deliver a relative result. We need to keep that in mind when we say that we are going to pull the rug out, which is exactly what has happened. I agree with Hon Aaron Stonehouse that other economic tools can be used to stimulate the housing sector and I agree on the issues of speeding up approval processes, reducing red tape and putting time frames in place, but the reality is that this stimulus package has to have had some effect, because if it had not, taking it away would not do a lot in the way of savings. But Treasury said it had an effect.

At some point I am happy to debate whether we think the $100 million of economic stimulation from a $20 million investment is meaningless. But right now, the effect is going to be taken away. A large number of people have made their economic plans based on this boost being available. It suddenly not being available has an impact. Even if it is only 650 people in total, that is still a significant number of people who have been impacted upon. The government could still provide this boost within its budget constraints by simply prioritising this over some of the other things that it has prioritised today. I simply point out in response that there is an effect. We can debate about whether a $100 million response is worth a $20 million investment. There is an effect; it has an impact on people, and that is why I think it is important that this house holds the government to account on its commitments.

Hon STEPHEN DAWSON: I want to indicate that the government does not support the proposed amendment. I am sure that is not a surprise to the previous speaker. I remind members of the speech I gave less than 45 minutes ago about how the economy has changed in Western Australia over the last little while, particularly how things have changed since the *2016–17 Pre-election Financial Projections Statement* issued earlier in the year. General government revenue estimates have been revised down by a massive $5 billion since then. I remind members that $1.8 million resulted from lower iron ore prices and a higher US–Australian exchange rate. That is $1.8 billion that we all thought we had in February this year that we do not have anymore.

Since that time we have also been advised by the Feds we have lower goods and services tax grants. That is down $1.7 billion since earlier in the year. There is weaker taxation, so that is down $777 million. That relates to the lower collection of tax from land tax, payroll tax and insurance duty, and we have also had a lower amount from the commonwealth from tied grants; that was about $572 million. We have had to find that $5 billion since earlier this year. Members are talking about a drop in the ocean—it is $5 billion. I have just delivered the budget speech. This government has made its decision and laid out its plan for the next few years. We have been given advice that this boost has not been worth it, so a decision has been made.

People talked about jobs. I earlier reminded members—also, in fact, two days ago—that we are focused on creating jobs in Western Australia. We will deliver Metronet. Members heard in the budget speech that we are starting to do it. We have a deal with the federal government. Money that was to be spent on the ill-fated Perth Freight Link will now go to Metronet. That will create jobs and more liveable and sustainable communities in Western Australia. In today's budget we announced new construction projects around the state. Again, they will deliver jobs for Western Australia. As I laid out on Tuesday, we have also removed occupations from the Western Australian skilled migration occupation list. People were coming to this state from around the world to do jobs that should have been done by Western Australians. We have changed that. We have also removed Perth from the regional sponsored migration scheme. That, too, will mean more jobs will be created in the metropolitan area. We are focused on jobs. We are doing that. I remind the house that we do not support this amendment and will not be voting for it.

Hon Dr STEVE THOMAS: As a final comment, there is a great movie that members might have seen that I am reminded of by the speech from the minister. It is called *Dave*. It is a very simple movie —

Hon Stephen Dawson: Are you calling me a simple person? Is that what you are saying?

Hon Dr STEVE THOMAS: No! I said it is a simple movie. The President of the United States has a stroke and is replaced by a very sensible fellow —

Hon Stephen Dawson: I've seen it.

Hon Dr STEVE THOMAS: It is not a bad movie. Anyway, he says, "The budget's in a mess", and he invites his accountant friend in to see whether he can just make a few savings to save the First Lady's program.

Minister, we have had a great day of cooperation between both sides of the house. It has been very cordial. In the interests of trying to find the government the savings it could redirect towards this program, it has three renewable energy programs and it does not know how much energy they will generate or what they will cost. They will have zero impact for the fossil fuel generation process. Here is a thought: the government could defer some of that for the first year and fulfil the commitment for the next six months. Like in *Dave*, we could find the minister a few savings and he might be able to push this through. I think that was just worth throwing into the debate.

Hon PETER COLLIER: The minister stimulated me to respond to his response, and I was not going to. I appreciate the minister's impassioned plea on the state of the budget. I have said that the government knew that before it came to government.

Hon Stephen Dawson: We didn't know about the $5 billion. We did not.

Hon PETER COLLIER: This is what we had to deal with every single year.

Hon Stephen Dawson: You did not —

Hon PETER COLLIER: We did. Every single time we tried to have any restraint or cutbacks of any calibre in any area, we were criticised by you guys.

Hon Stephen Dawson: No, no.

Hon PETER COLLIER: Lets us not rewrite history. If the minister wants to have a look at this $20 million, I could drive a Mack truck through it. I would get the government $20 million like that without any problems at all. They are called election promises. The government should look at the election promises and ask whether they are really worth it or are a couple of thousand workers in the trades industry worth it. Is the government saying—excuse me, I have this shrill noise from over —

Several members interjected.

The CHAIR: Order! The Leader of the House and Leader of the Opposition can argue the budget next sitting week. We are considering the motion that the words proposed to be deleted be deleted, so let us get back to that.

Hon PETER COLLIER: I am sorry, but I just could not allow my good friend Hon Stephen Dawson to get away with that little one.

I am very disappointed that the government will not support these trades workers and the housing industry, but having said that, I stand by the fact that I think the policy was working. I do not think you guys gave it nearly enough time for it to work to its maturity. From what we have seen in Queensland and from the latest figures that have come in here, it was actually working. Having said that, I do not need a calculator but I am just sorry that we will not see this amendment get up.

Division

Amendment put and a division taken, the Chair (Hon Simon O'Brien) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Martin Aldridge	Hon Peter Collier	Hon Colin Holt	Hon Tjorn Sibma
Hon Jacqui Boydell	Hon Donna Faragher	Hon Michael Mischin	Hon Dr Steve Thomas
Hon Jim Chown	Hon Nick Goiran	Hon Simon O'Brien	Hon Ken Baston *(Teller)*

Noes (21)

Hon Robin Chapple	Hon Laurie Graham	Hon Charles Smith	Hon Alison Xamon
Hon Tim Clifford	Hon Alannah MacTiernan	Hon Aaron Stonehouse	Hon Pierre Yang
Hon Alanna Clohesy	Hon Rick Mazza	Hon Matthew Swinbourn	Hon Martin Pritchard *(Teller)*
Hon Stephen Dawson	Hon Kyle McGinn	Hon Dr Sally Talbot	
Hon Sue Ellery	Hon Samantha Rowe	Hon Colin Tincknell	
Hon Diane Evers	Hon Robin Scott	Hon Darren West	

Pair

Hon Colin de Grussa	Hon Adele Farina

Amendment thus negatived.

Hon RICK MAZZA: In clause 9, I refer to proposed section 14B(4C)(a), which states —

> a contract for the purchase of a new home or a substantially renovated home;

Can the minister explain to me what a substantially renovated home is or the definition of it? The definition in the act indicates that it is a residential home that has not been lived in previously. I am a little unsure how a renovated home could not have been lived in previously. Can the minister tell me what circumstances this definition would apply to?

Hon STEPHEN DAWSON: Thank you, member, for the question. The First Home Owner Grant Act 2000 contains the definition of a substantially renovated home, which reads —

> ***substantially renovated home*** means a renovated home that is the subject of a contract for purchase where —
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> (a) the sale of the home under that contract is, under the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth), a taxable supply as a sale of new residential premises within the meaning of section 40–75(1)(b) of that Act; and
>
> (b) the home, as so renovated, has not been previously occupied or sold as a place of residence.

We will see what else we can find if the member needs that to be padded out further.

Hon RICK MAZZA: I quite understand what that section means, but if it has been substantially renovated, how can it not have been previously lived in? In what circumstances would this apply?

Hon STEPHEN DAWSON: I am advised that it refers to a home that has been substantially renovated and has not been lived in since the renovation has taken place.

Hon RICK MAZZA: What is the definition of "substantially renovated"?

Hon STEPHEN DAWSON: I need to refer to the federal act; however, my advisors tell me that the Commissioner of State Revenue has some information available, so we will gladly get that and provide it to the member at a later stage. We do not have it in front of us now.

Clause put and passed.

Clauses 10 to 13 put and passed.

Clause 14: Section 52 amended —

Hon NICK GOIRAN: Can the minister look at clause 14, and would he agree with me that if the chamber deletes clause 15 or 16, it will have a consequential impact on clause 14?

Hon STEPHEN DAWSON: I am advised that it would impact on that, which is different from the advice that I gave the chamber earlier, and I sincerely apologise for that.

Hon NICK GOIRAN: I think this identifies the problem. I was very reluctant to move from clause 1 at the beginning because I feared that this might be the case. As members, like the minister, we have plenty of work on our plates and at some point we have to rely on the advice we are given. I appreciate that the minister is relying on the advice that he is given. I rely on the advice that he gives the chamber and trust it to be complete and correct so that we can proceed with goodwill. Thanks to the contribution of my colleague Hon Dr Steve Thomas, I had enough time to quickly look at the rest of the First Home Owner Grant Act 2000 and, lo and behold, I found that clause 14 would be impacted. I guess the lesson here is that if the answer to the chamber has to be, "I don't know", that is okay, because then we would have stayed on clause 1. It is probably also a lesson for me for the future. Be that as it may, I will ask a series of questions on clauses 14, 15 and 16 grouped together, so the minister might understand why I might not move speedily to clause 15 in these circumstances. We left this matter earlier to consider what success the commissioner has had in pursuing these matters in court. We were advised in earlier proceedings that a debt recovery process with four stages is implemented by the commissioner. The first stage is that a debt is due; the second stage is that a negotiation takes place; and the third stage is a securing of the debt by a memorial. From what we have been told, including in the minister's opening statement earlier today, no legal costs are associated with those three phases.

We are focusing here on just the fourth stage of the recovery process. As has been indicated to the chamber previously, the fourth stage is that, as a last resort, the commissioner instigates court recovery action. If someone says that it is a last resort, we might think that this happens rarely but, as we now know, in the last financial year alone there were 63 of them; in the previous financial year, 82; and in the previous financial year, 95. In 2013–14, there were 85; and in 2012–13, 112. I have already asked the minister this question and he indicated to the chamber that we do not know the answer. We do not know what the success rate is but we do know that the commissioner has, shall we say, extensive experience in going to court to recover these grants and moneys owed to the government. It is not as though it has happened once or twice. As I said, in the last financial year alone, it has happened 63 times. It is very unhelpful at this point to progress the matter if we are not able to identify the success rate of the Commissioner of State Revenue. The reason is this, minister: let us imagine for a moment that the commissioner has had a poor success rate; that is a possibility. We were told that the commissioner went to court 63 times in the last financial year. Let us imagine that he has had a poor success rate, however we want to define poor; let us leave that at a subjective level. The commissioner has gone to court with 63 cases and he has had a poor outcome. If we proceed with this amendment, we are authorising the commissioner to lay on top of the bill of the debt due by the applicant the legal costs for a failed legal action. Consequently, it is very important for us to know whether the commissioner generally has good success when he goes to court. It is not the intention of members in this place to say, "Commissioner, you do an appalling job in court. You should outsource the work to a lawyer"—which, incidentally, we identified earlier that the government does not even employ external lawyers—"and then we are going to add it to the bill and debt due and secure it as a memorial." We need to have clarity around the competence of these court actions taken by the commissioner. Are we going to be in any position today to get some indication of the success rate of these court actions before we authorise the commissioner to lob on court or legal costs for failed actions?

Hon STEPHEN DAWSON: I thank the member for his comment and his questions. We are authorising what he suggested. My adviser has told me that if the court action fails, we are unable to recover those legal costs because the applicant is entitled to the grant.

Hon NICK GOIRAN: In that case, why do we need this clause? Let us run with the scenario that the minister has just given us: the commissioner goes to the court, he fails and he is not entitled to cost recovery. Why is he not entitled? The minister has told the house that it is because the applicant is entitled to the grant. If the commissioner is successful in his court action, it then follows that he will be granted his costs. If he wins, he gets his costs, but if he loses, he is not entitled to his costs—so why do we need clauses 15 and 16?

Hon STEPHEN DAWSON: Can I draw the member's attention back to the comment I made sometime over the last couple of days when I mentioned that under the First Home Owner Grant Act 2000, the commissioner cannot require an applicant to pay these legal costs in the absence of a court order. The legal costs can be recovered in the court proceedings only in the event that the court makes a costs order in the commissioner's favour. Where the matter does not proceed to court because the applicant pays the outstanding debt or enters into an instalment arrangement after a general procedure claim is issued, the legal cost of issuing the claim is not recoverable and is a cost to the state and to taxpayers.

Hon NICK GOIRAN: It sounds like we are really narrowing down the circumstances in which this provision is needed. If I hear what the minister has just indicated, the only circumstance under which the commissioner actually wants this new power is when the commissioner says to the applicant, "You owe this amount of money and I am going to issue you with a claim", and the person pays after the claim has been issued. The minister has indicated to the house, on advice from his advisers, that we cannot then recover the legal costs associated with this matter. The minister has received incorrect advice because it is well known that when a claim is issued in the Magistrates Court, the defendant, which will be the applicant, can sign what is called a confession of debt. Admittedly, I have been out of practice for 10 years, so the terminology for a "confession of debt" might not be the same, but it will be the equivalent of that. When a person does that, they are obliged to pay the costs listed on the claim. There are effectively three scenarios here. Firstly, the commissioner issues a claim and the person confesses the debt and has to pay the costs. There is no argument about that; they have to pay it as a matter of law. Secondly, they dispute the claim and they lose, and the commissioner is awarded costs. Thirdly, they dispute the claim and they win, in which case the commissioner is not entitled to costs because the person is entitled to the grant, and we still come back to the fact that clauses 15 and 16 are not required.

Hon STEPHEN DAWSON: I thank the member for the questions. My advisers tell me that we have advice from the State Solicitor's Office that confirms that the commissioner does not currently have the power under the First Home Owner Grant Act to recover the legal costs of issuing a general procedure claim in these circumstances.

Hon NICK GOIRAN: Will the minister table the advice?

Hon STEPHEN DAWSON: It is not common practice for ministers to table State Solicitor's advice in Parliament. It was not done under the previous government and it will not be done under this government. The advice from the State Solicitor is always given to ministers and agencies to help them work through policy issues, but it is never tabled in Parliament.

Hon NICK GOIRAN: I now have to—we have already been through this exercise a couple of times so far today—rely on the hearsay of the minister communicating to me what he thinks is the advice that he has been given. Earlier, I asked whether there would be any consequential effects if we deleted clauses 15 and 16. The answer was no. As it happens, the answer is now yes. I relied on the advice, which was wrong, and thankfully nothing has been lost. Now I am being asked to rely on advice that the minister tells me he has from the State Solicitor. He says he has the advice, and no doubt he has that on a piece of paper in front of him. However, could it be that the minister is wrongly interpreting the advice that he has read? I do not know because I do not have the benefit of reading that advice. It remains the case that the minister has not explained to the house a scenario in which this provision will be needed. We have already agreed that there are three different scenarios of going to court, and the minister indicated to the house that if the commissioner's claim is unsuccessful, he is not entitled to costs, yet this provision will still entitle the commissioner to issue a notice asking for legal costs. If the commissioner is successful, he will be able to recover his costs. It would help the house if the minister were able to advise of a case in which the commissioner has been involved and he or she wanted to recover costs and was unable to do so.

Hon STEPHEN DAWSON: The answer is, yes, there has been a case, and Parliament got advice on a matter related to such an issue. Can I again apologise in relation to clause 14; that was the advice I received from my advisers. I have written advice in front of me that indicates that the State Solicitor has provided advice and confirms that the commissioner does not currently have the power under the First Home Owner Grant Act to recover the legal costs of issuing a general procedure claim in these circumstances. I have written advice in front of me that states that it cannot happen. I am very apologetic about clauses 14, 15 and 16 and how they are interrelated; however, I am not sure we are going to get to a happy landing this afternoon. I am not really sure what the member wants. The indication from the government is that we need clauses 15 and 16. They are integral to the bill and we intend to keep them in there. I am happy for the member or any other member of this place to move an amendment to withdraw them. Equally, I am happy to hear whether there is anything else I can assist the member with on this bill.

Hon NICK GOIRAN: I note that on another matter I cannot detail—I have to be a little secretive, as the minister has been just recently—because it may not yet have reached this place, the Attorney General released the State Solicitor to verbally brief the opposition on those matters. Might it be an opportunity for this matter that if the government, understandably—do not get me wrong, I would do the same—does not want to release the written advice, it is at least willing to organise for the State Solicitor to brief the opposition on this matter, which has not been satisfied at this stage?

Hon SUE ELLERY: I might respond, on behalf of the government—I am sure that my colleague was about to provide an answer as well—that I do not think it is reasonable to ask the representative minister that question. He can give an undertaking that he can seek an answer from the Attorney General, but I do not know that it is reasonable to ask the representative minister to make a decision about whether State Solicitors would be released to provide the opposition with advice that has been provided to the government. I do not know the circumstances to which the member alludes, but I do not think it is reasonable to ask the representative minister to do that. He

can give the member an undertaking that he can seek to do that at a later date, but he is not in a position to give that undertaking.

Hon STEPHEN DAWSON: I thank the Leader of the Government in this place for her comment on this issue. As I said, I am not at liberty to provide advice for the member today. I am happy to give him an undertaking that I will ask the responsible minister and the Attorney General whether they have any issues with releasing the advice to the member or can provide a briefing to him at a later stage about the State Solicitor's advice that was given on this bill.

Hon NICK GOIRAN: Can we defer consideration of clauses 14, 15 and 16 until that is done?

Hon STEPHEN DAWSON: No; unfortunately, we cannot. I am happy to ask for that information and get it to the member. The advice I have been given is that, as I have said already, we are not willing to delay the passage of clauses 14, 15 and 16.

Hon NICK GOIRAN: The house is being told that the government has secret advice about this matter. No sense has been made so far, but we cannot see the advice. The government is not prepared to defer consideration of the clause. It might, in the fullness of time, come back to us and let us know whether we can talk to the State Solicitor and or see his advice. This is the only time that the house gets to consider this matter. We will not get the opportunity to consider this matter next week if this bill passes today and suddenly I look at the advice and say to the minister, "Guess what? What you read was not what you thought you read, it was something different." We do not get to come back and deal with this matter. This is the only opportunity, but the government has indicated it does not want to delay the passage of clauses 14, 15 and 16. It has been unable to explain to the house why it is necessary, other than to refer to some secret advice. The minister says that he has advice on a case in which the government was unable to recover costs. What were the circumstances of that case?

Hon STEPHEN DAWSON: With great respect to the member, I believe we have provided information to the house that points to the clauses being needed. We can go back and forward. I believe we have supplied the information. Its common practice, and has been for a very long time in this state, not to provide State Solicitor's advice. I have indicated to the house that that is the case. I have not got further information about that case so I cannot provide it to the member today. I have given an undertaking that I will raise the issue with the Attorney General and the responsible minister about the advice, but that is all I can do today. I cannot give him any more information about the case or the circumstances and I am not sure we are going to get anywhere. We really need to start focusing of the clause in front of us.

Hon NICK GOIRAN: We are focusing very clearly on clause 14, which will make no sense if clause 15 is deleted from the bill. Does the minister have the State Solicitor's advice in front of him?

Hon STEPHEN DAWSON: I do not have it in front of me.

Hon NICK GOIRAN: The minister said to the house that he has State Solicitor advice, but the minister does not have it in front of him.

Hon Stephen Dawson: That is not unusual.

Hon NICK GOIRAN: Has the minister read the advice from the State Solicitor?

Hon STEPHEN DAWSON: I have not. The responsible minister has, hence the advice I have been given is that as a result, the points I have made stand.

Hon SUE ELLERY: I do not like to do this, but I wonder about the genuineness of the member's query because it is standard practice for State Solicitor's advice to be provided to the minister who has asked for it and who has carriage of whatever that matter is. It is not standard practice for that State Solicitor's advice to be made available to a representative minister to have on them physically when they are in the house. From time to time it may have happened, but it is not standard practice. It is also the case that this house is frequently asked to make decisions in the absence of the house being provided with a copy of State Solicitor's advice. In fact, I might go so far to say that the general convention that has been adopted is that the house is regularly asked to make a decision in the absence of being provided with State Solicitor's advice that has been provided to the government. I have been a member for 16 years and it is standard practice for State Solicitor's advice not to be provided to the house. On occasion, in particular circumstances, it has, but the standard practice is that it is not. It is not some great outrage or breach of the normal pattern of the house for the house to be asked to consider a matter without being provided with a particular piece of State Solicitor's advice that was provided to the minister who has responsibility for whatever bill we are dealing with.

Hon PETER COLLIER: I take on board the comments from the Leader of the House and she is quite accurate in that frequently, State Solicitor's advice is not provided. However, I can assure the Leader of the House that when I sat there for eight years I was frequently asked to provide State Solicitor's advice. When members opposite

were on this side of the chamber, they were equally relentless as we are in pursuing that advice. Usually, when there was valid reason that State Solicitor's advice would not be provided, some issue would be associated with the advice, whether it be in confidence or commercial-in-confidence or whatever it might be. Sorry, I have been out of the chamber on urgent parliamentary business and I am not sure whether it has been indicated that there is an issue about why that advice cannot be provided. If that is the case, I am sure Hon Nick Goiran will take that on board. As I said, members opposite were very insistent on providing State Solicitor's advice wherever possible, and we always did.

Hon NICK GOIRAN: I take on board the general remarks made by the Leader of the House. The issue here is that this chamber is being told by the minister that a piece of legal advice exists, which he has not seen. The reason I asked whether it was in front of him is that I thought at least if it was in front of him, it would be something. The minister has not got it in front of him and he has not read it, so how do we know that this piece of legal advice even exists?

Hon STEPHEN DAWSON: Is the member insinuating that I am making stuff up? I have told the member that advice has been received. I have told him that the advice is there and that it has been seen. The advice was given to the commissioner and the minister with responsibility has seen it.

Hon Nick Goiran: Have you seen it?

Hon STEPHEN DAWSON: I have not seen it. The advice exists. I have written advice to say that it exists. It is outrageous if the member is suggesting that we are making this stuff up. I have given an undertaking to the member in front of us that I will raise a question with the appropriate minister and the Attorney General to see whether it might be possible to provide access to the advice at a later stage, whether in writing or as a briefing. I have given that undertaking today.

Hon Peter Collier: Do you know why you were not able to provide it? Is there a reason stated?

Hon STEPHEN DAWSON: I am just saying now that I have given an undertaking that I will ask the responsible minister and the Treasurer.

Hon Peter Collier interjected.

Hon STEPHEN DAWSON: Hang on; I am on my feet. The Leader of the Opposition can get up in a second.

Hon Peter Collier: It is just an interjection.

Hon STEPHEN DAWSON: It is getting a bit messy now.

Hon Peter Collier interjected.

Hon STEPHEN DAWSON: It is. I have given an undertaking. The member would realise that if I give an undertaking in this place, I follow up on my actions, whether it be a question or whatever else. I have given that undertaking today. I will ask the Treasurer and the responsible minister about the advice that has been received by government about this issue. If possible at a later stage, whether the advice is given to the member via a briefing or a written copy, we will follow the issue up.

Hon PETER COLLIER: I could have quite easily done this by interjection, but we did not. All I want clarified is this: is the minister actually saying that he has not denied the existence of the State Solicitor's advice; he is going to seek advice from the Attorney General?

Hon Stephen Dawson: That's it.

Hon PETER COLLIER: Did the minister say that if the Attorney General is forthcoming, he will table the State Solicitor's advice?

Hon Stephen Dawson: No, that is not what I said.

Hon PETER COLLIER: The minister did not say that?

Hon Stephen Dawson: No.

Hon Sue Ellery: Honourable member, would you take my interjection?

Hon PETER COLLIER: Yes, absolutely.

Hon Sue Ellery: The minister said that we cannot provide the State Solicitor's advice. The question was then: could a member get a briefing from the State Solicitor on the particularities of the advice? That is the bit where the minister said he said seek an undertaking from the relevant minister.

Hon Nick Goiran: At which point I asked whether we could defer clauses 14, 15 and 16 until the briefing has happened and the answer is known.

Hon Sue Ellery: Yes, which is not unusual.

Hon Nick Goiran: How can we proceed?

Hon PETER COLLIER: It is Hon Nick Goiran's call.

Hon NICK GOIRAN: If I take the minister to another aspect of this bill, it might further exemplify why we cannot proceed at this stage without getting this issue sorted. Section 289(1) of the Legal Profession Act 2008 states the following —

> A law practice must not commence legal proceedings to recover legal costs from a person until at least 30 days after the law practice has given a bill to the person in accordance with sections 290 and 291.

Minister, that is a 30-day stay before a law firm can commence legal proceedings to recover legal costs. In the minister's bill before the chamber, proposed section 52A(2) states —

> Subject to any arrangement made under section 52, a payment required under subsection (1) must be paid by the applicant within 28 days after the date on which notice of the requirement is given to the applicant.

There will be one law in Western Australia that states that law firms that issue legal bills cannot recover costs for 30 days, but the commissioner is able to ask a person to pay within 28 days. Plainly, there will be an inconsistency between the two pieces of legislation. Has the government sought advice on this inconsistency?

Hon STEPHEN DAWSON: I am advised that that is the Legal Profession Act. The commissioner is not a legal professional and he has different rights under law.

Hon NICK GOIRAN: That is right, minister. The point here is that in both circumstances a person is going to have to pay for legal costs that arise out of the work of a legal practitioner; that is why there is a link between the two pieces of legislation. An inconsistency between the two pieces of legislation is now being created here, with one stating that the commissioner can require a person to pay within 28 days and the other stating that a law practice cannot commence legal proceedings until at least 30 days. I am not for a moment suggesting that the commissioner is a member of the legal profession, although he or she might be; that is not the point here. The point is that the applicant is required to pay something under law within 28 days, but under another law it is very clear that costs for legal proceedings cannot be recovered until after at least 30 days.

Hon STEPHEN DAWSON: I draw the member's attention to section 60 of the First Home Owner Grant Act 2000, "Commissioner may require fees to be reimbursed". It states —

> (1) The Commissioner may, by written notice, require an applicant for a first home owner grant, who holds a relevant interest in relation to which a memorial is lodged under section 55, to pay the amount of any fees paid by the Commissioner for the registration, or the cancellation of the registration, of the memorial.
>
> (2) An amount required to be paid under subsection (1) must be paid by the applicant within 28 days after the date on which notice of the requirement is given to the applicant.

So, yes, the existing act states that, and yes, the member is quite right in pointing out that the Legal Profession Act has a 30-day stay. There is a difference between the two; that difference exists. The period of 28 days is specified in the existing act.

Hon NICK GOIRAN: The minister does not understand. The reason that the First Home Owner Grant Act 2000 at the moment states 28 days and that it is not an issue with respect to the 30-day period is that, as the minister knows, the current act does not refer to legal costs. There is no provision to recover legal costs. It is the minister's bill before the house, which we have been discussing for the last couple of days, that seeks for the first time to insert a capacity for the commissioner to recover legal costs. I have said from the outset that I fully support the government's capacity to be able to recover grants that have been wrongly issued or for which requirements have not been complied with, and that remains the case. But our agreement with the policy of that does not mean that we can sit by and allow an inconsistency to happen within the legislation. The minister referring me to section 60(2) of the existing act is of no point. It only tells me that the drafters of the bill noted that a period of 28 days was specified elsewhere in the act and decided to use the period of 28 days in the bill for the sake of consistency. It also tells me that no-one has looked at the Legal Profession Act 2008 and realised that it immediately creates a dilemma with regard to the 30-day period. We have been going for quite a while on this and I anticipate that the minister will get advice that this is not really relevant. Before we go down that path and draw things out a little further, I draw to the minister's attention section 295 of the Legal Profession Act, which, in a sense, has absolutely nothing to do with lawyers. It has to do with what is called a third party payer, which is the terminology used in that act. Section 295(3) states —

> A third party may apply to a taxing officer for an assessment of the whole or any part of a bill for legal costs payable by the third party payer.

It goes on in subsection (6) to state that an application by a third party payer under this section must be made within 12 months after the request for payment was made to the third party payer.

The point I am making is that the applicant, or the person from whom the commissioner is trying to recover money, is a third party payer. We have been told that last financial year, the government took 63 cases to court for legal recovery. We have also been told consistently over the last couple of days that the government does not use external lawyers but does everything in-house. That means that all this is actually unnecessary. The minister has told the chamber that the reason for this amendment is that the government would like the capacity to futureproof this bill in case it wants to use lawyers in the future. That is fine. The government is entitled to do that. At one level, I support that. If the commissioner were to say that he no longer wants to do these recovery cases himself but wants to brief a law firm, under this amendment he would be entitled to do that. However, under section 295(3) of the Legal Profession Act, the applicant—the person from whom the commissioner is trying to recover the funds—would be a third party payer. That is the law in Western Australia at the moment. We will have the lawyer, the client, and the third party payer. The client is the government—the commissioner. The third party payer is the applicant. Under the law of Western Australia, that third party payer may apply to a taxing officer for an assessment of the whole or any part of the bill for legal costs. My concern is that the government has not given consideration to this and has not sought advice on this inconsistency. This needs to be cleared up before we proceed with this clause of the bill.

I think members would agree that a first home owner applicant who receives a notice from the commissioner to pay the legal costs that have been charged to their account would not have the slightest idea that under the Legal Profession Act 2008 they are entitled to an assessment of costs. This is where the unfairness kicks in, minister. A law firm is obliged by law to let a person who receives a bill for costs know that they have the right to apply for an assessment of those costs. The commissioner may decide that he wants a law firm to do the recovery cases for him—which he did not need last year when he had 63 court cases—and that law firm may issue a notice to the applicant to tell him or her, or them, in the case of joint owners, that they are obliged to pay the legal costs. The applicant has no idea that they are entitled to an assessment of costs. The government should agree to a short deferral of the debate on this clause so that we can sort this out with the State Solicitor. I suspect that the State Solicitor will agree that what I am saying is right and that we need to build into this act a provision by which the commissioner is required under Western Australian law to advise the third party payer that they have the right to have their costs assessed. I suspect the minister will also get advice from the State Solicitor, if he asks him, that it is very unwise to leave in the act the period of 28 days, and that we should build into the act a safety mechanism that provides that the commissioner cannot proceed to take action for 30 days, otherwise he will fall foul of section 289(1) of the Legal Profession Act 2008. Has the government sought advice on any of these issues?

Hon STEPHEN DAWSON: The answer, member, is no.

Hon NICK GOIRAN: Will the government now take advice on these issues?

Hon STEPHEN DAWSON: It is not our intention to take advice on it. My advisers say, as the member rightly pointed out, that 28 days was chosen because it is consistent with the number of days that is used throughout the act. The member raised a valid point about whether people will have an understanding of the Legal Profession Act and the safety measure that the member talked about. The member talked about the commissioner advising people that they can question—what was the word the member used? I will have to look at *Hansard*. It was about the commissioner providing advice to third parties, I think. The member raised a valid point, and I am happy to raise that with the minister and ask him to consider that moving forward. However, it is not our intention to seek further legal advice on the inclusion of 28 days in this provision.

Hon NICK GOIRAN: Section 53 of the First Home Owner Grant Act 2000 is entitled "Recovery of certain amounts". I am sure the member has that in front of him. It is in the blue bill. It states —

> (1) This section applies to —
>
> (a) an amount that is required to be repaid under the conditions of a first home owner grant or by a requirement of the Commissioner under this Act;
>
> (b) the amount of a penalty imposed by the Commissioner under this Act;
>
> (c) an amount, together with interest, that is due and payable under a repayment arrangement; and
>
> (d) an amount that is required to be paid under section 60.

That is the law at the moment. The commissioner has been doing this since 1 July 2000. We worked out earlier that for the past 17 years, the commissioner has been handing out first home owner grants; and, when necessary, has from time to time had to recover certain amounts, including those under the four paragraphs that I have read out. This is not something new. It has been happening for 17 years. The commissioner is now saying to the

Legislative Council, 17 years later, that he would like us to add a fifth ingredient to his cake. By way of analogy, the commissioner is saying, "I have four layers on my cake, and I would like you to add some legal costs icing so that it will have five layers." The fifth layer is proposed paragraph (e), which will allow the commissioner to recover —

> the amount of legal costs referred to in a notice given by the Commissioner under section 52A(1).

The problem is that the Legislative Council is being asked to add a fifth layer to the cake in circumstances in which for the last 17 years the commissioner has not needed that fifth layer. Remember that it has all been done in-house. That is the advice that the house has been given consistently. We are being told that we are not using external lawyers. It is all done in-house, including the 63 cases that went to court last year. Nevertheless, we just want to add this icing on the cake even though we never use it. As I said the other day, my view is that when the government can indicate to the house that it is going to use this, it can bring in a bill to the house and say, "Look, this is the situation. These are the circumstances we find ourselves in. Can you please authorise us to do this?" It is important that it is done with clarity because no-one else in Western Australia gets these special rights. When the small business down the road—let us imagine it is a plumber—does some work for somebody, they do not have the luxury of saying, "Well, here's the bill. I've issued the bill to the customer. Now we're going to negotiate. Maybe there will be an instalment arrangement." They certainly do not have the luxury of being able to secure their debt with a memorial. They do not get to say to the person, "By the way, here's another notice for some legal costs that I have incurred." It would be wonderful if we could all do that. The government is creating for itself some special recovery provisions when it has never used them in the past. Secondly, it is saying that advice was given to the State Solicitor's Office that there were circumstances in which the commission could not recover the cost. Interestingly, that flies in the face of earlier advice to the house that we never use lawyers. The minister can understand why I am curious to know about the State Solicitor's advice, because we were told that we do not use lawyers.

Hon Stephen Dawson: External lawyers, member.

Hon NICK GOIRAN: We do not use external lawyers so at the moment we do not need this provision, but in the future we might use external lawyers and then we might need this provision. Why the government would say that in the past we have not been able to recover the costs really does not make any sense, because external lawyers have not been used. But I cannot ask the minister about that because, as we have discussed earlier, the advice is unavailable. The member was going to consult the relevant minister—I think it is the Treasurer or the Minister for Finance; it is the same minister in any event—on whether we might be able to receive a briefing from the State Solicitor's Office to understand the circumstances of this mystery case. It makes no sense to me and I am sure other members that the minister can tell the house that we do not use external lawyers and therefore we do not need this provision, but we might need it in the future, but there was a case when we were not able to recover the legal costs. It is one or the other. The government has used an external lawyer or it has not. I am relying on the advice given to the house and working on the basis that the commissioner has not used external lawyers in the past and the proposal is not needed.

Apart from the fact that we have that inconsistency about whether the commissioner has been using external lawyers, worse we now have the inconsistency between the First Home Owner Grant Act 2000 as it is sought to be amended by this bill and the Legal Profession Act 2008. It is one thing for there to be an inconsistency. It is another thing for it to be brought to the government's attention and the government to say, "We hear you. We're not listening. We're not going to take advice on it. We're going to bury our head in the sand and pretend the last few days did not happen and we know nothing. We would rather not know about these inconsistencies between the First Home Owner Grant Act and the Legal Profession Act. We would rather not know that it exists and we will not even take advice on it." Minister, I am personally dismayed that we are unable to defer consideration of this bill until we can get advice from either the State Solicitor or a personal briefing.

Committee interrupted, pursuant to standing orders.

Sitting suspended from 4.15 to 4.30 pm