HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT BILL 2017

Second Reading

Resumed from 13 March.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [5.16 pm]: I rise to speak as the Liberal opposition's lead speaker on the Historical Homosexual Convictions Expungement Bill 2017, the purpose of which is to institute a regime to expunge so-called historical homosexual convictions in respect of consensual sexual activity of a homosexual nature that should never have been considered an offence in the first place, as the second reading speech provides.

The origins of this bill in the immediate past were an election commitment by the now government in the lead-up to the March 2017 state general election, but it had its origins significantly earlier than that. Over the past several years, work has been done on this subject and representations have been made to governments across the commonwealth and in other jurisdictions such as the United Kingdom. More recently, in May 2016, the Law Society of WA made a submission to me in my capacity as Attorney General to consider the implementation of such a scheme to expunge historical homosexual convictions. Various members of Parliament had made speeches in this regard. Work was initiated to obtain advice about how such a scheme might operate and the merits and perhaps undesirable consequences that might flow from it. Quite considerable work was done on those issues. In June 2016, I asked that the proposal be developed for the expungement of historical homosexual offences in WA and the announcement was made that the legislation would be introduced at some time in 2017, subject to cabinet approval. Advice was received from the State Solicitor's Office and analysis was also done by the Solicitor-General, on my request, to compare regimes in other jurisdictions. It had its culmination publicly at a Pride at Parliament event that was held on 10 November 2016, which I attended on behalf of the Liberal Party as the party's representative. On that occasion, the then opposition's representative, Hon Stephen Dawson, and I took the opportunity to announce that our respective sides of politics had a desire to develop legislation of this type. It all had to be subject to cabinet approval and the like and the election interfered in that process, but the features that were proposed at that stage are reflected, by and large, in the legislation that is before the house now.

The proposed scheme had several key points. It was intended to be a standalone act to implement an administrative regime, rather than a judicially based regime, for persons to apply to have specific so-called homosexual convictions expunged. I will say why I say "so-called homosexual convictions" very shortly, because it is important to understand what is being dealt with in this fashion.

The intention of an administrative scheme was several-fold. It would avoid adding complexity to the current Western Australian legislative scheme for spent convictions and would provide a clear acknowledgement of the discrimination that had been suffered by those who were convicted of these types of offences. It would also provide for, hopefully, a less protracted process through which these sorts of applications could be dealt with and overcome difficulties in having these sorts of applications brought by a court process that might engage public interest or involve the courts having to deal with the question of them being dealt with in a public environment, which would be the normal thing for a court adjudicating a matter.

Another principle by which we were to develop the legislation was that the principal act would have specified the relevant historical homosexual offences under the code that would be eligible for consideration and that regulations could specify additional offences. That would allow some flexibility to include non–gender specific and non-sexual offences related to same-sex persons—potentially, public morality–type offences and the like—to ensure that relevant offences were not overlooked. Of course, regulations would ultimately need to be gazetted and would be subject to disallowance in this place, which would have been a safeguard against the overextensive inclusion of offences, particularly those that had no particular bearing on the policy behind this bill.

The third principle was that the legislation would not extend to warnings, cautions or other processes that did not involve a conviction. Essentially, that was for practical reasons, because identifying those sorts of cautions, warnings and the like would be difficult and they did not involve a conviction or court order by way of either a plea of guilty recorded as a conviction or a finding of guilt after prosecution. In practical terms, there would have been no consequences to those sorts of things. It may be that if it was necessary, the legislation could have been extended to those in due course, but the idea was to try to achieve a practical solution to this issue.

A further principle on which the legislation was to be based was that the expungement scheme would operate on a case-by-case basis, and that each application would relate to only a single conviction to ensure that issues of lawfulness were appropriately considered prior to the historical conviction being expunged. This was necessitated because of an issue with what a "homosexual conviction" might be for. Homosexuality, as such, was not an offence under Western Australian law, but certain acts that might be engaged in by persons of the same sex were prohibited by law. Equally, some of those activities could be the subject of prosecution if they were between persons of

different sex. However, they tended to be prosecuted for "homosexual" activity. That made simply identifying particular sections of the Criminal Code and saying that anyone who was convicted of that sort of offence is relieved of that conviction and that it is expunged impossible in practical terms because certain types of activities that were offences under the Criminal Code could just as easily have been committed by different-sex partners or, indeed, children or other non-consenting adults. Each of those sorts of convictions would need to be dealt with on a case-by-case basis.

That presents the difficulty of trying to set up a process that would not reopen old wounds or create embarrassment for the persons who were subject to those convictions, but at the same time would address the importance of the integrity of those convictions, because they were recorded by a court of competent jurisdiction either as a result of a finding of guilt after trial or as a result of a plea of guilty by the offender. We needed to try to craft a regime that would achieve the ends of removing a conviction and the stigma associated with that conviction and to do so in a way that had respect for the fact that it was a conviction duly recorded according to the law of the time and not to embrace convictions for behaviour that would still be the subject of charge today. The administrative process that was foreshadowed in our approach to the problem was intended to achieve those ends with a case-by-case assessment of the conduct that resulted in the conviction sought to be expunged, but to do it in a way that would minimise any onerous elements of processes by which that examination would take place.

A further feature that drew on that was that to be eligible for expungement, the applicants would be required to satisfy mandatory tests to ensure that conduct that would be considered illegal today would be excluded from expungement, which is the point I just advanced.

A further feature, about which I will say more in due course, was that the decision-maker on expungement applications would have been the director general of the Department of the Attorney General, as it was then, or a delegate. I will have more to say about that in a moment. The proposal of the scheme at that stage was in its early form and no draft was produced before the election, hence the detail of how the process would work and an evaluation of and further mature consideration of that process was not done. I certainly had no opportunity to do it. This was a direction on the general scheme that would be adopted and developed by way of legislation. I will come to the question of who should make the decisions in due course.

Furthermore, the scheme was that the effect of expunging a conviction would be that any reference to a conviction is taken not to refer to the expunged conviction and a reference to the person's character would not allow or require anyone to take the expunged conviction into account. That is necessary to ensure that the expungement is a reality and that it is expunged as though that conduct—while acknowledging that it happened—was not a criminal offence, that no conviction ought to have been recorded for it, and that the stigma occasioned by having it regarded as a criminal offence would be removed to the extent possible.

An eighth feature would be that a decision to refuse expungement would be referrable to the State Administrative Tribunal to provide as much informality to the process and as much expedition in dealing with the process as possible. Lastly, if a conviction has been expunged based on misleading and/or false information, there would be an avenue to revive the expunged conviction.

That was the broad schema of the legislation that we had in mind before we lost government in March 2017. It is the sort of scheme, by and large, of course, with far more refinement in detail and in the form of a bill, that seems to have been adopted by the government. I indicate that we as a Liberal opposition support the legislation with two qualifications, which I will come to. They are not so much an attack on the legislation or its purpose but simply refinements of the manner in which it ought to operate, in our view. We agree to the bill; we consider that it reflects the work that had been done by the previous government, but all credit to this government for having pursued the matter and brought it to this place. Our support of the legislation was manifested in the other place when it came up for debate and it passed there with no amendments.

We have a few questions about the operation of the bill and that is by no means to suggest that we cavil with its objectives or consider that it is unsound in the manner that it is intended to operate. As far as I can ascertain, as a consequence of the evaluation that had been conducted on my and the previous government's behalf in 2016, the scheme is consistent with best practice, having compared the manner with which it has been done in other jurisdictions, including the United Kingdom. But I have two concerns with it and I will come to those in a moment.

Some elements of the second reading speech and the explanatory memorandum have intrigued me, and I hope that the minister will be able to assist in the provision of information in this regard. The first is more a matter of presentation rather than substance, but I am curious about the apology that was delivered by both the minister and the Premier of regret to the lesbian, gay, bisexual, transgender, intersex, queer community. I make two points about that. I am not sure why the Labor Party finds the need to lump individuals, who have been the subject of an injustice, into a community, rather than apologise for the injustice caused to people whose convictions are going to be expunged because they would not be charged under those offences in the current environment. I am also at

a loss to understand what lesbians have to do with this legislation, because it has nothing to do with them. No convictions, as far as I am aware, have ever been recorded in respect of lesbians. I can only assume that it has been lumped together simply for the sake of finding a community to apologise to, and perhaps the minister might be able to assist with that. But it seems to me that the point of this bill is to relieve injustice to individuals, not to communities as such. I do not know whether the accumulation of people into communities is a trend that we ought to be pursuing.

Nevertheless, there are a few features of the legislation that I would like to have explained. One of them is the comment in the course of the second reading speech that says —

> The bill affords procedural fairness to applicants in that all decisions are reviewable to the State Administrative Tribunal. When it is found that a conviction was expunged on the basis of false or misleading information, the bill provides an avenue for the revival of that conviction.

As I understand the scheme under the legislation, it is certainly true that if there is a refusal of an application to expunge a conviction, that refusal can be taken up on review to the State Administrative Tribunal; however, the granting of an application is not reviewable. This brings me to the first point of concern about the manner in which this is being done. I concede entirely that the scheme we had in mind at the end of 2016 is reflected in the scheme within the bill, but, as I said, we had not seen even a draft of the legislation at that stage, let alone had the opportunity to think through some of the finer points of it to see whether it was the best way of doing it or could be improved upon. My concern is about who has the final responsibility for making decisions to expunge convictions and indeed oversight of those decisions. Currently, the bill provides that an application for the expungement of a conviction is to be determined by the chief executive officer of the department assisting the minister administering the act. That is set out in clause 11(1) and read with the definitions in clause 3(1). The CEO is to determine an application by way of either approving it or refusing it, in accordance with clause 11(2). A conviction is expunged upon the CEO's approval, pursuant to clause 11(3). The refusal of an application to expunge or a decision under clause 12(1) to reverse a decision to expunge a conviction is a reviewable decision, by operation of clause 18(1). However, as I have foreshadowed, a decision to approve an application is that of the CEO alone, or indeed the CEO's delegate, under clause 27. That is not subject to any further consideration, to any endorsement by a person of greater responsibility in the system and to any oversight or review.

The expungement of a conviction that has been duly recorded in a court of competent jurisdiction is a major step. Whatever one thinks of the law at the time, the point is that in a case brought before that court, a particular charge arising out of a set of circumstances that may not be apparent or readily apparent on the charge sheet or the record of proceedings of that court has been recorded on the basis of either a plea of guilty or after trial. Ordinarily, to relieve someone of a conviction so recorded, one would pursue an avenue of redress provided for by the law, either by way of an appeal to the Court of Appeal or, if that could not be achieved, in certain circumstances, by way of a petition to the Attorney General and the exercise of the royal prerogative of mercy. As the bill is presently drafted, the expungement is or can be affected by the chief executive officer or that officer's delegate, whoever that might be. It may be someone of the next tier down in the Department of Justice's hierarchy, or it may be someone at a very low level who is responsible for investigating not only that matter, determining that it is an offence that falls within the scope of the operation of the act and hence is liable to being expunged, but also that the circumstances in which that offence was committed are circumstances in which that person would not be charged now. It seems to me that there ought to be someone at a greater level than a civil servant, albeit the director general of the department, or that civil servant's delegate, being another bureaucrat within that department, who makes that decision on behalf of the executive government.

The expungement of convictions could range from simple offences—if there were any that were relevant at the time—through to indictable offences that carry a minimum number of years of imprisonment, potentially 14 or more, or arguably even life imprisonment. I am not sure what the penalties were for some of these offences at the time. However, many of them could potentially carry penalties of seven or 14 years' imprisonment.

Hon Sue Ellery: If we have made the threshold decision that would allow for those offences as a group to be expunged, does the length of time matter? If we have made the threshold decision that in 2018 we recognise that society's values have changed in that sense, does it make a difference whether the offence attracted a 14-year term or a two-month term?

Hon MICHAEL MISCHIN: Yes, for this reason, minister, and I appreciate the interjection: the point is that we are not simply saying that a particular offence recorded against a person is to be expunged. It is not a simple mechanical process of saying that this is an offence recorded against section 187 of the Criminal Code; that is no longer an offence, and the person will not be charged. We are making a value judgement or assessment about whether that would have been a charge nowadays. Just looking at the bald section itself, and maybe even the available court records, would require the making of an assessment and investigation, and a value judgement.

Someone should be required to take responsibility for making the decision that, notwithstanding that the charge carried up to 14 years' imprisonment at the time—so it was regarded as very serious, in fact, by the law of the day—and notwithstanding that the charge would carry 14 years' imprisonment now, it should now not be the subject of a charge. The quality of that assessment may vary depending on whether the clerk, the director general or whoever is assigned to or delegated that exercise or responsibility does their job properly. That assessment may be done in an unsound or cursory fashion. The bill makes provision for consulting other people who may have been involved in that offence somehow. There needs to be an assessment of a variety of factors. We believe that in a matter as significant as expunging convictions duly recorded by a court, a minister ought to take responsibility for and be responsible for that decision. That is not to say that the investigation would not be carried out in the manner that is contemplated by the bill; I would expect that it would be carried out in that way. The Attorney General is currently responsible for making final decisions on the release of persons sentenced to life or indefinite terms of imprisonment, based on recommendations from duly empowered boards and the like. The Attorney General assesses and decides whether he or she has enough information, whether further investigation needs to be done, whether further people need to be consulted or whether there needs to be further analysis of the circumstances of the offence. We believe that in the same way someone ought to take responsibility for and make decisions about expungement. That decision is currently made by the director general or chief executive officer of the department. I am sure that person has a lot of things to do and does not make that decision personally but relies on others. That person may indeed delegate that responsibility to another person. As far as I can tell, there is no restraint on who that person may be.

It seems to the opposition as a matter of principle that convictions in the Supreme Court, the District Court and the Magistrates Courts should be expunged not on the assessment of a civil servant, but rather by the minister responsible for the operation of this legislation. In our view, if expungements are to take place by way of executive action rather than court action, that ought to be a decision of a responsible and accountable member of the executive government—namely, the Attorney General or the minister for justice if there is no Attorney General at the time. Under the bill as drafted, although it does provide criteria that must be considered by the chief executive officer or a delegate, there is a possibility that because of the lack of any review process or oversight by anyone else, no-will ever know whether the CEO or delegate has acted conscientiously or properly. It seems to me that vesting that ultimate responsibility in the minister responsible for the legislation should be the principal way in which we go about this.

Accordingly, I have asked that some amendments be drafted to alter the scheme of the bill to deal with the matter that I have raised. I have provided to the leaders of the several parties in this place a marked-up copy of the bill incorporating my proposed amendments. I am awaiting those amendments in a form that can be included in a supplementary notice paper, and I propose to move those amendments in due course in Committee of the Whole. Those amendments will not extensively change the scheme of the bill, but their intent is that the ultimate decision-maker will be the responsible minister. The decision to expunge a conviction, or to reverse an expungement, should be a decision of the responsible minister, not the CEO or a delegate of the CEO. One reason this is being done in that fashion is to also ensure that one person is responsible for that decision-making.

One area in which I would like the minister's assistance in due course is the anticipated number of these applications each year. My sense is that it would not be a great number, and certainly many applications would fall away over the course of time, which brings me to another proposed amendment that I will deal with in a moment. It seems to me that the alteration of the scheme of the bill in that fashion should not make any difference to the manner in which the legislation operates. The ultimate decision-maker would be the minister, rather than a public servant, but otherwise the legislation would operate in the same manner.

If I can speak from my experience on this, it is not a remarkable proposal. Currently, persons who make an application to be a justice of the peace are required to fulfil certain criteria. When those applications arrive at the Attorney General's office, they are sent to the department for evaluation, investigation and appropriate assessment, and a recommendation comes to the Attorney General to either approve the application or reject the application for some reason. I do not know what the current practice is—I would be surprised if it was any different—but from time to time the Attorney General would get a recommendation that an application be approved and he or she would look at it, and if something about it suggested that it needed some further inquiry, the department would be sent off to investigate the matter further, provide a further report and make some further inquiries. Sometimes the recommendation would change as a result of that and sometimes it would stay the same, and the Attorney General would be satisfied that everything had been looked at properly and that someone who was appropriate to wear the mantle of the office of justice of the peace was being appointed to assume its responsibilities. It is a similar principle in this case; the ultimate decision-maker is the Attorney General. The Attorney General can receive the report from the CEO or the CEO's delegate, assess that report and decide whether he or she is satisfied that, in the circumstances, the conviction should be expunged. In case the objection is advanced that somehow this politicises

the process, I should add that that is not the case at all. If there are politics at play, it could be done at any level of the system. There is no reason to suppose that a director general might not simply have a bias one way or the other and approve applications without full diligent investigation. This bill will provide that a minister of the Crown will take on the responsibility of making the decision and the responsibility for the decision if a conviction is expunged and the inquiry was not diligent, conscientious and proper.

That brings me to another element that I would propose be introduced into the legislation. Currently, the bill does not provide for reporting on its operation or for a review of its operation. We may never know how effective this scheme is or whether it is even used. One might hope that in the annual reports of the Department of Justice, there would be some mention of the legislation and how it is operating. I hope that we would not have to ask questions in question time to try to squeeze out the information. It seems to me that capricious, wrong or questionable decisions by a chief executive officer may never come to light, except if some kind of scandal arises. Because of the confidentiality that is built into the process, that might take many years. Indeed, we might never know that certain people have not been consulted, which, again, is a reason why someone further up the hierarchy is needed to cast their eye over it and endorse the recommendations. The operation of the bill needs to be monitored and it is my intention to move amendments that will introduce a reporting clause and also a review clause. One of the features of this legislation, and I understand from the honourable leader's body language a moment ago that she, too, would think that there would not be a vast number of applications under this —

Hon Sue Ellery: I think about 100 are anticipated.

Hon MICHAEL MISCHIN: Is that in total or per annum? I would think in total.

Hon Sue Ellery: If you keep talking, I will find it.

Hon MICHAEL MISCHIN: At any rate, if one of these bills, in due course, in the fullness of time and at the appropriate juncture —

Hon Simon O'Brien: When all is said and done.

Hon MICHAEL MISCHIN: Indeed, when all is said and done and at the end of the day —

The ACTING PRESIDENT: Order, members!

Hon MICHAEL MISCHIN: If it became otiose and was not used, could it very easily be removed from the statute book? We will never know that unless we know how it is operating, how many people apply, how many applications are refused, how many applications are granted and at least some bald idea of the sorts of offences that are being looked at. It would be most unfortunate if, because of the confidentiality provisions, which are understandable, there were no transparency of the operation of the legislation and whether it was effective, whether it was achieving its ends or whether it was going too far or not far enough. So I seek to introduce provisions for annual reporting and also a review of the legislation.

Hon Sue Ellery: I am advised that it is estimated that 100 to 200 will be eligible to apply. Some of those might be posthumous as well. But how many of those will actually proceed to apply is the unknown.

Hon MICHAEL MISCHIN: Yes. It would be very difficult to tell. Many of the criminal histories may be electronically recorded by way of microfiche or PDFs or some kind of method other than paper. Actually locating them and going through them all would be a vast task. I make no criticism of the government or the Leader of the House. I do not think that an accurate estimate could be made, but I do not think it would be much different from that one. I think that is a worst-case scenario. I say that for a number of reasons. Firstly, many people may not go to the trouble of trying to get rid of a historical conviction that is beyond their ken—that they may know nothing about—especially if it is a posthumous one. People might have looked at great-uncle Bob as being a bit odd and thought that he had a dark secret et cetera, but whether they would be interested in seeing whether the crime of which he was convicted in the 1920s was one that he would be charged with now may be beyond their interest, let alone their means. Certainly, notwithstanding the fact that these sorts of offences were addressed only in about the 1980s, I think, before then, in my understanding and experience, no charges were laid as a matter of practicality. The police were not interested in this sort of stuff, unless there was non-consensual behaviour involved or it involved children, who were incapable of giving reasoned and informed consent under the legislation. That is why, in reality, I think there would be a relatively small number of people who are living who would take advantage of this legislation. I may be wrong about that. I hope that the number of convictions is small, but we will see. That highlights in my mind the need to have a proper annual report and, ultimately, a periodic review of the legislation to see whether it is being availed of or whether in 10, 20, 30 or 40 years it is unnecessary and can be confidently removed from the statute book, having exhausted its original purpose.

I have already asked about the number of potential cases involved, and I thank the Leader of the House for her advice in that regard. I would like some advice on the extent of the consultation that has been conducted and with

whom. I would also like some assistance with a circumstance that does not arise very often; in fact, I cannot think of one off the top of my head. Frequently, police will lay one or more charges arising out of a course of conduct that may be criminal for a variety of reasons and may involve behaviour that has attracted the attention of police. It may be that one of the charges arising out of that course of conduct would, in isolation, not be charged now but simply supplemented that particular incident. I would like to know how it is meant to be dealt with if the conviction or convictions that are sought to be expunged would arguably not be the subject of a charge now, but were integral to, or part of, a broader criminal activity or, indeed, a broader criminal history.

Sitting suspended from 6.00 to 7.30 pm

Hon MICHAEL MISCHIN: There were a few other observations I was going to make about the manner in which this debate was handled in the other place, but I will forgo those, only to comment at this point about the readiness of the responsible minister, the Attorney General, to consistently complain that his legislation was being held up by the Legislative Council generally, and more specifically by the Liberal Party—all nine of us. It should be pointed out that this particular bill was introduced by that minister in the other place on 1 November 2017. It was first debated on 23 November 2017. The debate resumed on 29 November for a brief time and then continued on 22 February this year when the Attorney General wound up on it. This is the first opportunity we have had to deal with this legislation. That is not a criticism of the government; it is still less a criticism of the opposition or of any other parties in this place. I should also point out that although what I have had to say on this bill has taken about one hour, the Liberals in the other place occupied 30 minutes of that house's time commenting on this legislation, while the government spent something like two and a half hours supporting its own bill over a period of three days. So, if anyone has been holding up this legislation, the Attorney General might look to his own benches. I can understand people saying something in support of the bill, but to spend two and a half hours on what is regarded as the remedying of a terrible series of injustices simply for the Labor Party to pat itself on the back for how wonderful it has been seems rather an indulgence. On that note, short of doing our job, analysing legislation and asking a few questions about how it operates, I will complete my remarks and look forward to dealing with the matter in Committee of the Whole and hearing the response to the rather, I might say, sensible and modest amendments I propose.

HON ALISON XAMON (North Metropolitan) [7.34 pm]: I rise as the lead speaker on behalf of the Greens on the Historical Homosexual Convictions Expungement Bill 2017. I indicate from the outset that the Greens will absolutely support this legislation. I am very pleased to be able to speak on this bill tonight. It is a very important bill and one that I think will make a tangible difference to the lives of quite a number of people. The Greens have always stood for equal rights for lesbian, gay, bisexual, transgender, intersex people. We believe that freedom of sexuality is a fundamental human right. Acceptance and celebration of people of diverse sexuality are essential for genuine social justice and equality. We know that laws against homosexuality in WA first changed in the Law Reform (Decriminalization of Sodomy) Act 1989. Then, in 2002, discrimination against homosexuality was finally removed from the Criminal Code with the equalising of the age of consent. Although I wholeheartedly support and welcome this bill, I cannot help but note that it really is long overdue for many members of our community. Making homosexuality illegal was state-based discrimination, which undoubtedly resulted in deep distress and harm. In some cases it cost people their lives. Let us hope that this bill and the recent passage of marriage equality legislation are precursors to finally removing all other legal discrimination against same-sex couples, and I will make some more comments about that later.

I would specifically like to talk about the features of this bill. It seeks to establish an administrative scheme for the expungement of convictions for a select number of historical offences under now repealed sections of the Criminal Code involving homosexual activity. Eligible persons or guardians can apply to the CEO of the Department of Justice to have a historical conviction expunged. It finally makes discrimination on the grounds of an expunged conviction unlawful. I have to say that I am really pleased with the way that the legislation has been drafted. I think it has been deliberately designed to make the application process as accessible as possible. It is good to see that the bill has provisions to include the period between the decriminalisation of homosexuality and the equalising of the age of consent. I note that currently seven offences are listed as eligible, but the bill has been set up to allow for more to be added through regulation if necessary. In the absence of easily accessible data, the best guess seems to be that about 200 Western Australians will be eligible to apply to have their convictions expunged and that a wide range of people, including relatives, partners and appointed guardians, will be able to make those applications. I note that the experience in other states where expungement legislation has been passed is that relatively small numbers of people have made applications. In the briefing, I was advised that the expectation was that this would also be the case in Western Australia, which means that it is anticipated that the department will be well able to support applicants throughout this process. The impact of these historical laws on those who were convicted has undoubtedly been incredibly harmful for them and their loved ones. A criminal conviction affects people's job prospects and their capacity to travel to certain countries. It can serve as

a fundamental attack on people's sense of self-worth and where they sit within the community. It is especially problematic because people are expected to have to disclose convictions in a number of scenarios over and over again. I think it is devastating that gay people were labelled as criminals merely for being who they were; merely for expressing their true selves. But to look at these numbers in isolation also denies the far-reaching social impacts that the presence of these laws had, not just on the people who were convicted, but indeed on all members of the lesbian, gay, bisexual, transgender, intersex community.

In preparation for my contribution, I met with members of GLBTI Rights in Ageing Inc—many members here will know that organisation as GRAI—and with members of another organisation, Prime Timers Western Australia. I was privileged to sit down with members of these groups and hear, at length, about the impacts that past discriminatory legislation had on their lives. I think it is a privilege to be able to share some of their stories and perspectives with members tonight.

One of the key points that the people I met with wanted to impart is that they recognise that recently there have been big strides in the broader community's attitudes towards LGBTI people. They were concerned that, within this context, it may be very hard for people to remember or even truly appreciate what life was like for older people who grew up in a time of what was, effectively, compulsory heterosexuality. When we consider that Australians of diverse sexual orientation, sex or gender identity are estimated to account for up to 11 per cent of the Australian population—that figure comes from the federal Department of Health's "National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy", so it is a government document—we are talking about laws that were fundamentally at odds with the human rights of the largest minority group in our country. Although it is heartening that, as a whole, our society is becoming aware of the legacy of discriminatory legislation, unfortunately that does not automatically reverse or change the impact of a lifetime of stigma.

The community of the time effectively felt legitimised in its homophobia because our laws actively facilitated it. I would like members to remember that we are talking about a time when a Perth newspaper, *The Truth*, used to openly report on people who had been prosecuted for homosexual offences, publicly humiliating them. The impact was cumulative; people made day-by-day compromises in the ways in which they lived their lives, people lived in fear, and people were held back from paths that were not chosen because of the risk of potential exposure. Minimising these impacts became a common coping mechanism.

One of the Prime Timers who spoke to me captured the impacts of the shame and stigma by saying, according to my notes —

> "everybody has a right to live but I can't get back my compromised life"

Another man said, according to my notes —

> … "It's corrosive—who knows what sort of lives we would have led if we had not been told from an early age that we were illegal"

These stories must not be lost, and we need to honour the extreme hardships experienced by older LGBTI people. We must also acknowledge the ongoing impact of intergenerational bereavement, because the effects will be felt for years to come. We need to remember that these people grew up in a culture of fear. One man told me that he knew he was same-sex attracted from the time he was four; this was decades and decades ago, but he did not dare tell a soul. There was no avenue for him to discuss his feelings, no way of having conversations to feel part of a bigger community. He talked about what an isolating experience this was for him. According to my notes, he said that this meant —

> "We knew nothing, we were told nothing, we didn't understand ourselves".

It is particularly difficult because most people do not share these experiences in common with their families, because the rest of the family is often straight or identifies as straight. At a very vulnerable time of life these young people had nowhere to turn—not to their families or to anyone else—and it completely shaped their way of experiencing the world and their capacity to live life, and the laws reinforced this. The laws criminalised them for being who they were. It meant that relationships were frowned upon because it was difficult to live in a house with another man. For many, it closed off the idea of ever being able to even have a long-term relationship. Another person I spoke to said, according to my notes, that he felt that the culture of shame —

> "prevents love, you have love beaten out of you".

Because of the secrecy, the most common way to meet other gay men was at beats, which were known to be dangerous, with men regularly being bashed. Police officers would often attend the beats and charge people with disorderly conduct. Depending upon the police at the time, there would also be campaigns to purge the beats. The stigma was so great that many people felt they had to live a secret and compromised life. A large number of the

men I spoke to had married women. One man said that because he was married, he at least was not discriminated against at work, even though he was never able to be honest with his wife, his children, his friends or anyone else about who he actually was.

Some had some quite terrible stories to tell of being fired because they were discovered to be gay, while others were constantly afraid of being found out at work. These experiences had obvious ramifications in hindering career pathways, and had enormous impacts on people's confidence and sense of who they were.

One man gave a poignant insight into the impact that being gay had had on his partner's career. He talked about what had happened to his partner, who lost three different positions simply because he was gay. His first job was in the Army. He progressed quickly, he trained people and he was well regarded, but when it was discovered he was gay, he was imprisoned and shipped out of the barracks. He lost pay and he tried to take his own life. He then worked for a mining company, but when it was discovered that he was gay, he was sent to the managing director and forced to resign. He later tried the Army Reserve. At first, no-one checked up on his history when he applied to once again be an officer. It was then discovered that he was gay and he was discharged. For that man, these experiences resulted in a lifetime of entrenched depression.

We need to remember also that not only careers were impacted. The shame of being gay and not being able to express who they fundamentally were meant that people often were forced to move away from their families, homes and communities. Many people are now geographically dislocated because they did not feel they could ever come out in their home town. This has resulted in an ongoing impact that is often not considered when people are young. Family connections are weakened and there is reduced capacity to care for ageing parents or, indeed, to receive support from family members.

One of the things I think it was really important to give voice to was the experience of lesbian women at this time. The reality is that the legislation that discriminated against people was solely towards gay men. However, I think it is absolutely critical to recognise the impact this had on the lesbian, gay, bisexual, transgender, intersex community as a whole. It was not just gay men who were subject to arrest and conviction who suffered; gay men around them lived with the constant fear that this could potentially happen to them. Women—lesbians—who were part of the LGBTI community also lived with the stigma and shame of knowing that there were broader laws against people based on their homosexuality. When we talk about the impact of this legislation on people, it is really critical that we recognise that we are talking about the impact on an entire community of people. The reality is that many gay people found that they had to create their own families, particularly in the environment of the times that we are talking about—although, unfortunately, I think it still occurs for far too many people—in which homosexuality was illegal. It meant that those self-created families of lesbian friends were also deeply impacted by the stigmatising and painful laws at the time, and it impacted on an entire community. But I will say that the men and women who I met were at pains to say that although their experiences were marred by growing up in a society that did not accept them for who they are, they also acknowledged the extremely tight-knit culture that emerged. I am extremely grateful to those people for taking the time to meet with me and to share some of their very painful experiences and, importantly, to put a human face on the impacts of discrimination that was legitimised by the state.

Unsurprisingly, these personal experiences paint a picture consistent with research documenting the effects of discrimination on LGBTI people. At the population level, the evidence tells us that LGBTI Australians continue to experience rates of depression, anxiety and psychological distress that are much higher than the national averages. In fact, that is why, at a state level, LGBTI people are identified as a priority population in Suicide Prevention 2020. Solutions for improving the mental health of LGBTI people must range from better supporting individuals right through to creating communities that foster wellbeing, including through measures such as this—through legislative reform. We all need to take responsibility for achieving this. A 2015 report published by the Australian Research Centre in Sex, Health and Society on addressing the mental health and wellbeing of LGBTI Australia found —

> In the absence of overt and public affirmation of LGBT Australians lives and relationships, many will struggle to achieve that sense of personal and collective worth on which good mental health and wellbeing depend.

The report goes on to recommend that in order to address the high rates of mental health problems amongst LGBTI people, we must consider population-based interventions that address the causes and effects of systemic discrimination against LGBTI people, while at the same time looking for new models based on wellness that value LGBTI people and their lives. I hope that the WA LGBTI health strategy that is currently under development will ultimately reflect this understanding.

We also need to look at removing the remaining legal discriminations, because although this expungement bill and the government's apology are incredibly important steps in acknowledging the distress and harm caused by past discriminatory legislation, they are just one part of what needs to be done to remove remaining legal discrimination in this state. Criminalising homosexuality was only one expression of state-based discrimination in Western Australia. I think many members of the public would be shocked to know that there are still gaps—legal gaps—in our protections for LGBTI members of our community that are still able to deny people access to basic rights such as the freedom to choose which school their children can attend. The laws in WA still allow private religious schools to discriminate against employees, students and their families on the basis of their sexual orientation and/or their gender history. Specifically, the Equal Opportunity Act still grants exemptions from other sections of the act for religious bodies, including educational institutions. Therefore, without question, matters of equal opportunity should be designed to protect all members of our community, and it is unthinkable that young people who do not have a choice about their sexuality, or in most instances which school they attend, should be able to be discriminated against like this. Not only are private schools allowed to discriminate against LGBTI-plus people, but government funding of them suggests tacit approval. Therefore, it is really important that when we talk about removing legal discrimination and righting the wrongs of the past, we do not ignore those wrongs which still sit on our statute book and which we still allow to exist.

As I have said, the Greens wholeheartedly support this bill. The Greens will also be supporting the provision of a review clause in this bill. It is really important to be able to track the success of this legislation and to see how many people have availed themselves of these important expungement provisions. As a Parliament we need to show leadership and to act to end all state-based discrimination against LGBTI people in Western Australia once and for all, because rights are either rights or they are not. Once again, I thank the members of GRAI and Prime Timers who met with me and shared their deeply personal stories. I was particularly struck by the grace they all showed when they were reflecting on a time in their lives when the state legitimised their persecution for nothing other than expressing a core part of themselves. There was a level of courage and dignity that I think absolutely resonated. I want this legislation passed as soon as possible. It has been a long time coming. With those words, I look forward to seeing the passage of this bill.

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [7.57 pm]: I rise to also support the Historical Homosexual Convictions Expungement Bill 2017 because it is an important step in the Parliament's will to address wrongs committed against the lesbian, gay, bisexual, transgender, intersex community—the community. For me, this is another piece in the jigsaw that is equality; we are slowly putting that jigsaw puzzle together to achieve equality. The bill also rights injustices experienced by homosexual men over decades—a long, long time—and finally ends one part of the systemic and institutionalised discrimination that homosexual men have experienced. We know that that discrimination existed for a really long time. It was not until December 1989 that Western Australia finally made a first step by decriminalising sex between two people of the same gender through the passage of the Law Reform (Decriminalisation of Sodomy) Bill. Unfortunately, that bill, although it was an important step in decriminalisation and ending discrimination, set the age of consent at 21 and also made it a criminal offence to promote or encourage homosexual behaviour. In one sense we had a step forward in removing discrimination and in another sense it entrenched that discrimination. Those amendments were part of a negotiation to ensure the passage of the bill. Western Australia did not take its first step towards equality until then, but it still had a long way to go. South Australia was the first state to decriminalise homosexuality. That was in 1975. Western Australia was not the last state to decriminalise homosexuality—that honour went to Tasmania in 1997. The lesbian, gay, bisexual, transgender, intersex community in Western Australia finally achieved the equal age of consent in 2002. Again, that was an important step towards removing discrimination. Through those 2002 amendments, LGBTI people also gained protection from discrimination based on sexuality, access to reproductive technology, and permission to adopt children. That was a significant step forward. I want to acknowledge all those people involved in all those reforms from 1989 to 2002. They were certainly very significant.

I also want to acknowledge the work that has been undertaken by a range of community members including those in my own party. It has allowed us to get to this historic and important point. I would particularly like to acknowledge Hon Stephen Dawson, Matt Keogh, Mark Cuomo and past and present members of Rainbow Labor WA. All of them worked very hard over a number of years to remove the systemic discrimination, the direct and indirect discrimination, and particularly to get this bill to where it is now.

As I said, it is an important bill. We estimate that between 200 and 300 people were affected by these unjust laws and this systemic discrimination—they are the people that we know about. Because of the nature of this discrimination, there is a sense that there are likely to be more. These are people who were charged with offences such as sodomy, gross indecency and carnal knowledge. Listening to the people who were affected by these charges and living under this regime, we know that it had significant effects on their lives. That systemic

discrimination worked its way through every institution. One Chief Justice was reported as saying, "It is hard to know what to do with people like you."

Many men in Western Australia are still living with those convictions recorded against their names. Those convictions have had lasting and devastating effects on their lives. As we know, some men were incarcerated and their lives inside prison were a living hell because of their sexuality. No, not because of their sexuality—because of the systemic injustice that was meted out to them. For others, it has limited their potential employment opportunities. People were unable to apply for jobs because they would have to disclose their conviction. It has limited whether they could travel overseas to certain countries. It has even limited where they could volunteer and what organisations they might be able to volunteer for. For most, if not all, of these people they have had to carry the shame of these convictions all their lives. That shame and humiliation has affected every aspect of their lives. It has affected their capacity to develop personal, intimate or close relationships and relationships with their families and friends; it has affected their earning capacities; it has affected their whole lives. For some dear friends of mine it changed the course of their lives. They were on a particular trajectory to do particular types of work and, following being charged and convicted, could not continue in that particular direction.

I am just so pleased and relieved that these convictions for homosexual activities will soon no longer be offences. At the time the Premier gave the apology when the legislation was introduced in the other place, the LGBTI community acknowledged widely the importance of this legislation for the whole community, not just for homosexual men. June Lowe, the chair of GLBTI Rights in Ageing, was quoted as saying —

> "Laws which criminalised homosexual acts effectively criminalised whole generations of gay men. These discriminatory laws therefore had a deleterious effect on all gay men, not just those who were convicted and charged.
>
> "State sanctioned discrimination affected all aspects of gay men's lives: having to be secretive for fear of losing work or housing, or potentially being rejected by ones friends or families, and many lived (and some still do live) in fear of reprisals and endure/d the stress of internalised shame.
>
> "Sadly, these discriminatory laws also negatively affected the heterosexual society, in that they reinforced uncompromising attitudes which marginalised gay men. Our society is still grappling with the residual effects of this mind-set: we are all made poorer by prejudice.

Thank you, June, for those words. I could not have said it better. It encapsulates the real effect of those laws.

When the legislation was introduced in the other place, I had the pleasure of hosting an afternoon tea for members of the community who came to witness the historic occasion. What struck me the most was the sense of relief that almost everyone in that room—everyone in that room—was exhibiting. The impact of this small but mighty piece of legislation will be felt for the better by many people throughout Western Australia and, as important as that is, throughout the country and internationally. I commend the bill to the house.

HON PIERRE YANG (South Metropolitan) [8.07 pm]: I rise tonight to say a few words in support of the Historical Homosexual Convictions Expungement Bill 2017. I believe in equality, fairness and justice. I believe that everyone is created equal, irrespective of one's ethnicity, colour of skin or sexual orientation. Equality is a universal value. If we believe in equality, we should believe in equality at all times and in all circumstances. If our belief in equality is selective, it is in itself discriminatory. Arguably, we live in one of the best times in human history in terms of equality. It is a blessing that we live in a strong, vibrant, representative parliamentary democracy. We need to actively address and redress past injustices and wrongs.

As in many countries around the world, Australians of different sexual orientation were targeted and treated differently, and to some extent they are still treated differently today. Homosexual men were targeted very harshly in the past. In some Australian jurisdictions, same-sex activity between men was punishable by death or by life imprisonment. As the community moved on, so did the laws. In 1975, South Australia became the first jurisdiction to decriminalise male homosexual activity. It was followed by the ACT in 1976, Victoria in 1980, the Northern Territory in 1983, New South Wales in 1984, Western Australia in 1989, Queensland in 1991, and Tasmania in 1997. In Western Australia, it took four failed attempts to decriminalise homosexual activity even though the Law Reform (Decriminalization of Sodomy) Act meant homosexual activity between men was no longer a criminal offence. As we have heard from previous speakers, the age of consent for homosexuals was different from the age of consent for heterosexual people. The age of 18 years was required for heterosexuals but, for homosexual people, it was 21 years. This was clearly discriminatory and was ultimately removed in 2002.

Although decriminalising homosexual activity between men was a milestone for equality, people had been prosecuted and convicted prior to its decriminalisation. We have heard from many speakers before me today of the devastating effects of prosecutions and the lifelong effects that convictions have on people. They still have to endure such effects to this very day. On 1 November 2017, Premier Mark McGowan delivered a historical apology

on behalf of the state of Western Australia to people who were targeted by old, unjust laws. That became the legislative process of expunging historical convictions that should not have been considered an offence in the first place. In fact, all Australian jurisdictions except Western Australia have passed expungement legislation. The Northern Territory introduced its bill in March this year, and the legislation was passed in May. The Chief Minister delivered an apology on behalf of the Northern Territory's government.

Homosexual males have not been treated fairly in the past. They were treated very differently from heterosexual people. Last year, Australia achieved another milestone in social justice and equality by voting overwhelmingly in support of marriage equality. Marriage equality was finally achieved with overwhelming support from the community. It has been 28 years since decriminalisation. As Martin Luther King once said, the arc of the moral universe is long, but it bends towards justice. People have been waiting long enough. Let us pass the bill as soon as we can. I commend the bill to the house.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [8.14 pm]: It is a pleasure to rise tonight to make a short contribution to debate on the Historical Homosexual Convictions Expungement Bill 2017. As a member of the Labor Party, I was very proud when the government introduced this bill to Parliament last year, as I am proud we are sitting here tonight debating this legislation in the Legislative Council. There is no doubt that gay men were forced to live in fear and in secrecy over the years. The laws forced many gay men underground and into the proverbial closet. It pains me greatly to know that careers were ended, that people were disowned, that families were broken up and, in some cases, lives were lost because gay men were convicted for consensual sexual activity—activity that should never have been considered an offence in the first place.

I very much appreciated the Premier's apology to the lesbian, gay, bisexual, transgender, intersex and queer community, because that is what we are—a community. As Hon Alison Xamon quite rightly pointed out earlier, we had to make up our own communities because, for many of us, our families disowned us as a result of the discriminatory laws at the time. As a community, we have shared many injustices over the years. We have shared discrimination, we have shared hurt and we have shared trauma both together and separately. We were told that we could not have sex with those we loved. We could not adopt or have children. Until recently, we were told that we could not express our love for our partners in the same way as other couples in our society could. It is a great stain on the state that, until 1989, gay men who were found guilty of a misdemeanour were liable to imprisonment with hard labour for three years, with or without whipping. Tonight, we learnt that 100 or 200 people could be directly affected by this bill, some of whom are probably now long dead. However, the number of people who were truly affected by the previous laws would have been many, many more than those 100 or 200 people. Brothers and sisters were affected as families were torn apart by laws when they were told they could not speak to or see their brothers or loved ones again.

Although this is a symbolic piece of legislation for many people, it goes a long way to righting many wrongs. I, too, want to apologise on behalf of the Parliament and those who came before us in this place. I am sorry that the laws of the state ruined lives. I am sorry that they criminalised men who should not have been found guilty of a crime. I hope that the passing of this bill will allow members of our community the opportunity to finally live their lives knowing that society has righted this wrong. Over the past few months, a range of activities have happened across this country. For example, in New South Wales, the police force recently released the "Strike Force Parrabell" report that outlines historical anti-gay hate crimes. The report found that, systemically, the police force over the years did not properly investigate when a gay male died or was found dead. The system was against us. The system did not treat LGBTI people fairly. I hope this legislation before us will keep us going in the right direction. Over the past few years, as a community, we have had many wins, but a lot more change needs to take place. We still treat members of the transgender community extremely poorly, and this place needs to consider a lot more legislation. This legislation before us is definitely a step in the right direction and I urge members to support it.

HON SUE ELLERY (South Metropolitan — Leader of the House) [8.18 pm] — in reply: I thank members for their contributions to the debate on the Historical Homosexual Convictions Expungement Bill 2017. I appreciate all the comments that have been made. Regarding the content of the bill, Hon Michael Mischin raised a couple of questions that need to be addressed. I think a supplementary notice paper is being edited as we speak.

The first issue raised by Hon Michael Mischin was why the government felt the need to make an apology to the whole lesbian, gay, bisexual, transgender, intersex, queer community, as opposed to limiting it to the homosexual men who had been subject to the laws we are talking about tonight. I think my good friend and deputy, Hon Stephen Dawson, just made that clear. In 2015, when in opposition, we made this commitment at the Pride Parade, and we went through a process of consulting with people in the LGBTIQ community. As a community they all felt that these laws were important and that they affected them all. Hon Stephen Dawson just made the point that for many of them that community became family because they had been either excluded or

pushed out, I guess, by members of their families and had to make the community their own. I guess it was a bit of graciousness. We felt it was appropriate to extend the apology to the whole community.

In the drafting of the Historical Homosexual Convictions Expungement Bill 2017, consultation occurred with a number of peak bodies. The people affected by this legislation, who should never have been criminalised in the first place, are represented by the peak bodies we consulted with, and identify as members of that community generally. Acknowledging that community as a whole does not detract from anything in this legislation. I think it was genuinely a bit of graciousness; I do not understand why the question was asked, I have to say.

The government consulted with Rainbow Labor, GLBTI Rights in Ageing Inc, the WA AIDS Council, Pride Western Australia, Rainbow Rights, and Living Proud. As a longstanding advocate for the introduction of an expungement scheme, my friend Lisa Baker, member for Maylands, was also involved in the consultation and provided feedback on the list of LGBTIQ sector stakeholders, to ensure that all appropriate peak bodies were contacted. The Attorney General also met with the Human Rights Law Centre to discuss the bill. Once in government, during the drafting there was consultation with the Solicitor-General, the Commissioner for Victims of Crime, the Director of Public Prosecutions, the WA Police Force, the Supreme Court, the District Court, the Magistrates Court, the Children's Court, the State Administrative Tribunal, the Public Advocate, the Public Trustee, the Equal Opportunity Commission and the working with children unit at the Department of Communities, including on the proposed structure, the decision-maker and the administrative nature of the scheme. I am advised that all supported the bill as drafted.

Two issues raised by Hon Michael Mischin are, I think, reflected in the amendments we will see very soon: who will make the decision, and oversight and responsibility for the decisions. There will be a limit on the level of delegation power provided by clause 27. The honourable member asked about "how far down" the decision-making role could be delegated. In fact, the limit on that is set out in the provisions of the bill. They expressly state that under the Public Sector Management Act the delegation is to be limited to a member of the senior executive service, and that such delegation cannot be delegated further. So the notion that somehow this will be delegated to some low-level public servant is not the case.

What we do agree between us is that the scheme should be administrative. A question was raised about whether the decision-maker should be the CEO of the Department of Justice or the minister. Government policy in this respect is that the CEO is the appropriate level; it needs to be made at that highest departmental level. That is consistent with regimes in place in other jurisdictions, with the exception of one in which it does not rest with a member of the executive but rather a magistrate. Hon Michael Mischin referred to other areas of decision-making in which the minister is the decision-maker—for example, around parole. But that is not a policy setting that the government has chosen or wants to put in place. The scheme is not intended to reach the level of complexity of parole arrangements.

The honourable member also suggested that perhaps mechanisms should be in place to avoid members having to source information through parliamentary questions alone. The supplementary notice paper, which I hope will be circulated soon, has an amendment in my name in similar terms to that proposed by Hon Michael Mischin, relating to an annual report. Effectively, we have proposed a variation of new clause 29A. We will not accept new clause 29B, if the honourable member recalls the draft marked-up bill that he sent around. When the supplementary notice paper appears, members will see that government's preferred version of the review provisions is a variation to new clause 29A.

Hon Michael Mischin: The clause 29A that I proposed is an annual report. So you're not accepting the annual report part, or you are —

Hon SUE ELLERY: No, we are. The version I had is with the Clerk.

Hon Michael Mischin: We are waiting for my version.

Hon Alison Xamon: I am waiting on both of them.

Hon SUE ELLERY: We all are. It will get here when it gets here.

Hon Michael Mischin: Parliamentary Counsel sent through a PDF version, but not a Word version of my amendments, so it has taken some time to inscribe it with a pen and that sort of thing.

Hon SUE ELLERY: Okay.

I will move an amendment to introduce a one-off statutory review to be conducted five years after the commencement of the scheme. We are satisfied that these amendments, together with the Attorney General's overall responsibility for the portfolio, is sufficient to ensure the integrity of the scheme.

The honourable member also raised a question about whether the manner in which a single conviction that meets the eligibility criteria but which was based on a factual situation from which multiple charges had been laid would

be dealt with. The scheme provides for a set of compulsory tests that must be applied by the decision-maker. In investigating the information the applicant makes available to the CEO, the CEO will interact with data controllers, which are defined in the bill. The data controllers—they sound like some kind of creature from *Dr Who*—are of course the courts, the DPP and the WA Police Force. Those agencies would hold relevant criminal records and therefore would be well placed to advise the decision-maker on the matters to be considered. When there is an issue regarding consent, clause 10(3) provides that the CEO may be satisfied only on written evidence from the available official criminal records or from a person other than the eligible person or applicant, as the case may be, or another person with knowledge of the circumstances.

I provided information by way of interjection, so I will go to that one in a minute, but I will just outline to the house the jurisdictional differences in who the decision-maker is. The proposition from Hon Michael Mischin was that it should be the minister. That would put us at odds with every jurisdiction in Australia. In the ACT, it is the director general; in New South Wales, it is the secretary of justice; in the Northern Territory, it is the chief executive officer; in New Zealand, which is actually not a state of Australia, it is the secretary of justice; in Queensland, it is the chief executive; in South Australia, as I indicated, it is a qualified magistrate; in Tasmania, it is the secretary of the department; and in Victoria, it is the secretary to the Department of Justice. I just wanted to touch on the question about numbers and to put that on the record properly.

Hon Michael Mischin: Minister, you did say that there is one jurisdiction where it was —

Hon SUE ELLERY: No, I meant that there is one jurisdiction in which it is a magistrate and not a chief executive officer.

The honourable member asked for an estimate of how many people we anticipate this legislation will apply to. It is anticipated that there will be about 100 to 200 people who will be eligible, but some of those people will have already passed away. However, it is a bit difficult to tell how many of those people who are eligible will actually apply, so it is not possible to be more precise than that. What we know has happened already in those jurisdictions in which similar legislation is already in place is that in New South Wales of 19 applications, 11 had been approved, five were under assessment at the time that these statistics were gathered, two had been withdrawn—they were not related to eligible offences—and one had been refused. Those are the only numbers that we have, because Victoria does not release the numbers. I think that covers all the issues that the honourable member raised.

I thank everyone else for their contribution, but they did not raise technical questions about the bill. With that, Madam Acting President, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Debate adjourned until a later stage of the sitting, on motion by **Hon Sue Ellery (Leader of the House)**.

[Continued on page 4861.]