

**INFRASTRUCTURE WESTERN AUSTRALIA BILL 2019**

*Committee*

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

**Clause 10: Annual work programme —**

Committee was interrupted after the amendment moved by Hon Peter Collier had been partly considered.

**Hon PETER COLLIER:** I take the minister to clause 66(3), which states —

Infrastructure WA must not make sensitive information publicly available and, without limitation, must not include sensitive information in the following —

- (a) a State Infrastructure Strategy;
- (b) a summary of a report given to the Premier under section 19;
- (c) a report under section 24;

I refer in particular to —

- (d) advice or other reports or documents that are to be made publicly available.

Does that exclude the annual work program?

**Hon SUE ELLERY:** The member needs to read that in conjunction with subclause (1), which defines “sensitive information” as information that has been identified under section 22(3) and has come from another agency. I understand the point that the honourable member is making. However, under the way in which the act is structured, the provisions that prevent IWA from publicly releasing sensitive and commercially-in-confidence et cetera information are related specifically to information that is provided to IWA by other agencies. The bill does not contemplate and has not been structured in a way that captures it being required to release all of its information. The way the member’s amendment is drafted right now would have the effect, without any qualification or exemption, of requiring IWA to release all the information in the annual work program. It is IWA’s work; it is not sensitive information provided by another agency.

**Hon MICHAEL MISCHIN:** Picking up on that, I draw the minister’s attention to clause 66(5), which states —

This section does not prevent Infrastructure WA or the Premier from making a document from which sensitive information or private sensitive information has been removed publicly available.

**Hon Sue Ellery:** “Private sensitive information” and “sensitive information” are terms that are already defined. They refer to information provided to IWA.

**Hon MICHAEL MISCHIN:** All right. That is what I was driving at in my earlier questioning. I was trying to understand what could possibly be objectionable or sensitive about a document that says at the start, or before the start of each financial year, “Premier, this is what we’re planning to do this year.” I fail to understand what it could be that could be damaging. If there is a risk of something sensitive compromising state secrets or compromising someone, that would ordinarily be kept confidential, perhaps there needs to be an amendment to accommodate that. The minister mentioned that this annual work program is a document of Infrastructure WA. If IWA knows that it is going to be publicly available, surely it will craft it in a way that will eliminate any difficulties. If it is a document that is required to be submitted to the Premier, and if it were called upon in Parliament that the Premier table that document, the protections ordinarily surrounding such a document would apply. I fail to understand what could possibly be a problem with obligating the publication of that document with appropriate excisions or qualifications if there is something that turns out to be sensitive about it.

I go back to some of the purpose of this body. This body is supposed to be an advisory body. It is not supposed to be doing any infrastructure of its own. The second reading speech told us that part of the rationale for this bill is —

The lack of coordinated strategic planning and agreed infrastructure priorities has also meant that WA has at times missed out on its fair share of commonwealth infrastructure funding. With a more strategic evidence-based and bipartisan approach, we will continue to turn this around and secure a greater share of the funding from Canberra, which we so rightly deserve.

I would have thought part of bipartisanship is that we at least know what Infrastructure WA is planning to do in the next 12 months, given the amount of money that is being invested in it. Unless the minister can provide me with something concrete, I am inclined to support Hon Peter Collier’s proposed amendment. If consequential

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amendments need to be made as a result of that in order to meet the government's concerns about disclosure, I am sure that Hon Peter Collier would also be prepared to entertain those in due course.

**Hon SUE ELLERY:** I understand that the honourable member does not understand the reasons for the government's opposition—that is perfectly clear—but I do not have another way of expressing it other than what I have already expressed. If the honourable member would like to listen to what I am saying right now, though —

**Hon Michael Mischin:** I am all ears.

**Hon SUE ELLERY:** If the member is determined to pursue this, we can draft it, if that is what is necessary. A consequential amendment will need to be drafted to carve out that confidential and commercially sensitive material can be excluded from the “must” publish because otherwise the amendment as it stands creates a set of circumstances in which there is no protection for that material.

**Hon PETER COLLIER:** I appreciate the minister's comments. I have to say that that was not provided in my initial commentary. I did not get a valid response from the minister about why my proposed amendment —

**Hon Sue Ellery:** With respect, that is the member's judgement.

**Hon PETER COLLIER:** I will go back and look at *Hansard*. The response I got was not satisfactory. I am not here to be —

**Hon Sue Ellery** interjected.

**Hon PETER COLLIER:** Do you mind; I have the call.

I then decided to pursue it. It is only now, as a result of being more forensic in the assessment, that this issue about sensitive information has emerged. I do not want to move an amendment that will compromise sensitive information; that is not my intent. My intent has always been to provide openness and transparency, which the government has promised to provide. That is all I am asking. I am not being difficult with all this. I did not get what I regarded as a satisfactory response to my initial amendment, which was to include the word “must”. Nothing at all was provided by the minister to show me that this was going to inhibit Infrastructure WA in any way. What has emerged over the last 10 minutes is that perhaps there is an issue with regard to sensitive information. I am more than willing to countenance the notion of a subsequent amendment if that would satisfy the minister and the government. If the government is prepared to countenance that, go for it; otherwise, I will do it myself. I would prefer that it was watertight. I do not want to be difficult; I just want it to be watertight.

**Hon SUE ELLERY:** The point I was trying to make was that I indicated that, not just in the last 10 minutes, but before we went to question time. Because I want the amendment to be drafted properly, the appropriate way forward would be to isolate clause 10(5) and move on. I will get staff, during the dinner break, to get Parliamentary Counsel's Office to draft an appropriate amendment, but we will move on now to deal with the rest of the bill.

**Hon Peter Collier:** I am comfortable with that.

**Hon SUE ELLERY:** I do not know what motion I need to move to give effect to that.

**The DEPUTY CHAIR:** The minister needs to move to postpone debate on clause 10.

**Hon SUE ELLERY:** I so move.

**Hon MICHAEL MISCHIN:** I appreciate the minister's assistance in that regard. I support the motion that has been moved, but might I also suggest that when looking at it, the spirit of what is being sought is that Infrastructure WA make its annual work program publicly available. I note that clause 10(4) states that Infrastructure WA has an obligation to inform the Premier in writing of any key activity, which would ordinarily, presumably, be part of the work program —

**Hon Sue Ellery:** No, it is not. That is not covered by the work program.

**Hon MICHAEL MISCHIN:** Okay. It is stated under clause 10 —

- (3) Each programme must cover the key activities that Infrastructure WA proposes to undertake in the year to which it relates.
- (4) Infrastructure WA must inform the Premier, in writing, of any key activity that it proposes to undertake in a year that is not covered by the work programme for the year.

The point I was about to make, and suggest, is that the publication of the annual work program also include, with appropriate wording and hedged about with the appropriate protections and the like, the key activities that it is going to do that are not in the work program.

**Hon Sue Ellery:** That is going beyond the original amendment.

**Hon MICHAEL MISCHIN:** Not really. It is the spirit of it, because the whole point here is that certain key activities that one might ordinarily expect to be part of IWA's work program or business plan for the year will not

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be simply communicated to the Premier in writing and the public remain ignorant of it. Again, I entirely accept that the government needs to be satisfied that potential confidentiality issues are met. However, I ask the minister that in the drafting of the amendments, an appropriate amendment to give effect to what Hon Peter Collier is seeking to achieve also be taken into consideration.

**Hon SUE ELLERY:** I will not give any commitment about that. That goes beyond the amendment Hon Peter Collier moved. I will seek advice on it, but I give no commitment. I am happy to get an amendment drafted to take account of the issues that go to the exchange between Hon Peter Collier and me.

**Further consideration of the clause postponed, on motion by Hon Sue Ellery (Leader of the House).**

[Continued on page 3847.]

**Clause 11 put and passed.**

**Clause 12: Delegation —**

**Hon MICHAEL MISCHIN:** Clause 12 seems to provide a very broad delegatory power in that any power or duty can be delegated to a board member, a staff member or any government employee. Are delegations from any other independent statutory authority that broad? There seems to be the ability to delegate the very, very broad powers that Infrastructure WA needs to perform its functions, which are detailed in clause 11 and which I was unfortunately not quick enough to deal with. We are told that Infrastructure Western Australia is an advisory body, but it seems that it also has the ability to enter into contracts, sell off its information and technology and other intellectual property, and acquire not only personal but also real property. Would that be delegated to any member of the board? I would like to get some idea of whether this is beyond what is ordinarily the case with statutory authorities, whether it is reflected in the delegatory powers in other legislation in other states, and why such a broad delegation and broad set of powers are necessary.

**Hon SUE ELLERY:** Powers to delegate to board members, the CEO and staff exist in the commonwealth and Queensland jurisdictions. The delegation is to a particular person, body or person occupying a particular office or position in South Australia. In New South Wales, functions may be delegated to a staff member, or to a person, a committee of persons, or a person of a particular class approved by the Premier or prescribed by the regulations. In Victoria, the delegation can be to any person engaged by Infrastructure Victoria.

**Clause put and passed.**

**Clause 13 put and passed.**

**Clause 14: Content and preparation —**

**Hon MICHAEL MISCHIN:** This goes back to some of the points I made during my contribution to the second reading debate. Clause 14(1) proposes that Infrastructure WA must include certain matters in the state infrastructure strategy, which in accordance with clause 13 must be prepared and submitted to the Premier. One of those matters is —

- (a) the identification of Western Australia's significant infrastructure needs and priorities over at least the next 20 years;

Twenty years is something like a generation. How will Infrastructure Western Australia go about the exercise of looking at what Western Australia might need over not just the next 20 years but at least the next 20 years, and to prioritise that? How will it go about that exercise in light of the experience in other states? We want to understand whether this is a practical proposition or, indeed, a desirable one. It involves a fair bit of crystal-ball gazing. For example, if a decision were made to commit to manufacturing lithium batteries over the next 20 years and we started counting our entire infrastructure investment and priorities around that, is that a practical or sensible way of going about infrastructure planning? One can understand the transport plan done by the Department of Transport that looked 10 or 15 years into the future, but Infrastructure Western Australia will be looking over the next 20 years at least. We may not be using cars in 20 years.

**Hon SUE ELLERY:** I will make the point in respect of other jurisdictions. Infrastructure Australia has 15 years and every other jurisdiction has at least 20 years, except for Victoria, which has a minimum of 30 years. The words "at least" are understood to mean "minimum". We are not talking about a capital works program, which might be set out in the forward estimates; we are talking about a much bigger picture than that.

**Hon MICHAEL MISCHIN:** Does Infrastructure Australia actually plan Australia's infrastructure needs for the next 15 years or is it looking at infrastructure plans and vetting them to see whether they fit in with the broad scope of what may be desirable? For example, it approved Roe 8, but that is of no account anymore. I am interested in how Infrastructure WA will go about its task of looking at not just 15 years but at least 20 years. As far as Victoria is concerned, yes, it may be looking at 30 years, but has it produced any such plans? Can the minister give us an example of what an infrastructure plan looks like under Victoria's prognostications and crystal-ball gazing?

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**Hon SUE ELLERY:** Ignoring the gratuitous comment at the end, if the honourable member wants a detailed understanding of Infrastructure Australia, I suggest that he ask Infrastructure Australia or the federal minister. I can advise that the Infrastructure Australia board determines an infrastructure plan to specify priorities for nationally significant infrastructure for commonwealth, state, territory and local governments for the period covered by the plan. Victoria has done its first strategy and is working on a second.

**Hon MICHAEL MISCHIN:** Does the minister have an example of Victoria's strategy so that we can see how it goes about that exercise? As for saying that I will have to ask the federal minister, the government is using the models in other jurisdictions as the basis for saying that this is viable. The onus is on the government to show what it has in mind and whether this is going to function, rather than us having to go about the exercise of finding out.

**Hon SUE ELLERY:** I made the point earlier that I appreciate that the honourable member was out of the chamber on urgent parliamentary business last Thursday when we canvassed some of these issues. I do not have the detail of the Victorian plan available to me now. I suspect I might be able to get a copy because it is publicly available, and if the honourable member is not able to do that himself, I am happy to provide it to him.

**The DEPUTY CHAIR:** Just before we go ahead, some members are having a little trouble hearing. I think the speakers are functioning, but if members can make sure that they are silent outside the process of seeking the minister's advice, it would be greatly appreciated.

**Hon COLIN TINCKNELL:** That is exactly what I was going to request, so thank you, Deputy Chair.

**The DEPUTY CHAIR:** My psychic skills stand as read!

**Hon SUE ELLERY:** I might draw your attention to the fact that I do not think the light is coming on here.

**The DEPUTY CHAIR:** We will have the microphones checked. They will be coming on. Your speakers should deliver the dulcet tones of the minister.

**Clause put and passed.**

**Clause 15: Acceptance, tabling and publication —**

**Hon AARON STONEHOUSE:** I apologise if the minister addressed this question in her second reading response, but I was away on urgent parliamentary business. Under clause 15, Infrastructure WA will submit the state infrastructure strategy to the Premier, and the Premier then must consider it and within 60 days of receipt of the strategy either accept it or return it to Infrastructure WA for further consideration and re-submission. Could the minister explain to me what the purpose of that is and under what circumstances a strategy might be returned to Infrastructure WA?

**Hon SUE ELLERY:** I am advised that it is a one-off opportunity for the Premier to seek clarification, to ask questions and to seek feedback. The Premier cannot direct Infrastructure WA about the content of the strategy; he can ask questions and seek clarification.

**Hon MICHAEL MISCHIN:** Getting back to the second reading speech and talk of a bipartisan approach, can the minister point out anything in clause 15 or any other elements of division 1, part 3 of the bill that reflects a desire for a bipartisan strategy in determining how our infrastructure is to be planned for the next 20 years?

**Hon SUE ELLERY:** I am happy to answer questions about clause 15; however, the question asked by the honourable member just then was a classic clause 1 question, so I do not think it is appropriate.

**Hon MICHAEL MISCHIN:** Is there anything in clause 15 that requires or accommodates a bipartisan approach to the acceptance, tabling or publication of the infrastructure strategy?

**Hon SUE ELLERY:** Clause 15 also sets out the provisions by which it will be laid before each house of the Parliament, which arguably goes to that point. Clause 15 was not designed to address the purpose that the honourable member refers to.

**Hon MICHAEL MISCHIN:** Basically the bipartisan strategy is that the Premier tables a strategy in Parliament—is that the idea, that we get to see it?

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

**Hon MICHAEL MISCHIN:** Why is the time frame that a Premier must lay before each house of Parliament and make publicly available the strategy 28 days rather than a shorter period?

**Hon SUE ELLERY:** There is no specific reason that 28 days was chosen above any other period. That is a month. Many ministerial offices, including my own, have a 28-day turnaround policy for correspondence that we try to adhere to when possible. I think it is a fairly standard government operating time.

**Hon MICHAEL MISCHIN:** What happens if Parliament is in recess or has been prorogued?

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**Hon SUE ELLERY:** The member has been around long enough to know that it is entirely possible, and regularly done, for reports and other documents to be tabled when the house is not sitting. I forget the expression for it.

**The DEPUTY CHAIR:** It is “out of session”.

**Hon SUE ELLERY:** It is “out of session”, thank you Deputy Chair. It escaped me. Unless the honourable member is suggesting that we never prorogue, I am sure this process captures every other document required to be tabled in the Parliament if prorogation happens. There are provisions for when Parliament is not sitting set out in clause 70. It says that the Premier may give the document to the Clerk, and the document given to the Clerk is taken to have been laid before the house. The laying of the document is taken to have occurred and must be recorded in the minutes or votes of proceedings of the house on the first sitting of the house after the Clerk receives the document.

**Hon AARON STONEHOUSE:** I thank the minister for the answer to my previous question. If a strategy is submitted to the Premier, the Premier must give written feedback on the strategy. Presumably, that is when he would say something is vague and ask for it to be clarified or have something explained so he can get a more coherent and complete strategy that can then be tabled in Parliament and presented to the public. In that case, would the original strategy submitted to the Premier and his written advice to Infrastructure WA providing feedback be available through freedom of information requests?

**Hon SUE ELLERY:** I think I provided a response to the honourable member about the entirety of this process being captured by freedom of information when the chamber was last debating this bill; so, yes, indeed, the original version and the Premier’s response would be covered by FOI legislation.

**Hon MARTIN ALDRIDGE:** On that point, I think it is one thing for the minister to say that everything in the bill will be subject to the Freedom of Information Act, but I think Hon Aaron Stonehouse is asking about whether the Premier receives the strategy and returns it. This is of state significance. I think the Premier would be taking this to cabinet. Therefore, it would be cabinet-in-confidence and exempt under the Freedom of Information Act. It is little bit loose for the minister to say that this is subject to FOI, because the reality is something other.

**Hon SUE ELLERY:** The honourable member is asking me to crystal ball gaze whether or not the Premier takes his material to cabinet, and I simply cannot do that. I can only advise the chamber. I have dutifully and honestly set out the existing provisions that will apply—the Financial Management Act, the Freedom of Information Act, parliamentary privilege and openness to parliamentary questions. All of those things will apply to this legislation.

**Clause put and passed.**

**Clauses 16 and 17 put and passed.**

**Clause 18: State Infrastructure Programmes —**

**Hon MICHAEL MISCHIN:** My questions will relate to a number of elements of divisions 2 and 3. To what extent, if any, would the publication of a state infrastructure program and a commitment to it—or a major infrastructure proposal under division 3—expose the state to litigation or some sovereign risk if a government were to subsequently say that it disagreed with the priorities that had been committed to, despite the fact that enterprises had already invested in it on the assumption that that would be the way that the state government was going to do things over a period of time? A new government or an existing government that has accepted one of these strategies could decide that it is not in fact in the state’s interest. I know that the current government is quite happy to tear up contracts when it suits it, such as with Roe 8.

**Hon Alison Xamon:** Yay!

**The DEPUTY CHAIR:** Order, member!

**Hon MICHAEL MISCHIN:** If, after the publication of a strategy, people decide to invest in it because they think it is what the state government is going to do, and are then disappointed, will they have a basis for action against the state for lost expectations and the damage that is caused to them through their having misdirected their investments?

**Hon SUE ELLERY:** I go back to what I talked about in my reply to the second reading debate, which was the extent of the consultation that occurred. All the respective peak bodies, for example, are supportive of the model and are going into it with their eyes wide open. Clause 18(1) provides for the Premier’s power to prepare state infrastructure programs and make them publicly available. Under subclause (5), he may amend the program. For example, a new, incoming Premier may amend the program. It is important to recognise that the program is not about contractual arrangements. Indeed, governments change their mind from time to time; there is nothing new about the capacity of governments to make decisions about a particular piece of infrastructure that will change it, or will cancel it, or will make it do something that it was not previously going to do. There is nothing new about that; that situation exists right now.

**Hon MICHAEL MISCHIN:** What does not exist right now are plans 20-plus years into the future in the level of detail in the publication of strategies and the like. For example, Infrastructure Western Australia could decide that

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in 20-plus years we are going to need a new town somewhere between Northam and Perth. It decides where it will be located, and strategies, programs and plans are published. A major property developer decides, “Well, there you go. This is the certainty of investment that we in business have been looking for for so long. This is the whole point of the legislation—to allow continuity of investment, continuity of plans and certainty in our investments—so I’m going to buy up a whole pile of property out there and start preparing the groundwork for this town and make a major investment there.” The next government comes in and says, “Actually, we think that’s a dumb idea. We’re not going to do it.” Is there any prospect that the state of Western Australia could be exposed to a claim from that developer because their expectations have been lost as a result of a change to the future major infrastructure plans that this legislation is meant to establish and give some certainty to? I just want to make sure that that is not going to happen.

**Hon SUE ELLERY:** No more or less than the previous government’s decision to not proceed with Metro Area Express, for example. Governments make decisions to proceed or not proceed all the time. There is nothing different or new in this piece of legislation to change that in any way.

**Hon MICHAEL MISCHIN:** I suppose that is right, and I suppose that in the case of Roe 8, all that needs to happen is for a government to say, “We’re going to tear up the contracts if we get in, and if anyone tries to sue us, our new Premier knows where to find them, and they will be dealt with accordingly.” I just want to make sure that the passage of this bill and the publication of all these plans and the like will not raise expectations that the government, and hence the state of Western Australia, has made a commitment, which could then expose Western Australia to legal action or sovereign risk because of a decision that Infrastructure Western Australia makes and the Premier of the day adopts.

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

**Clause put and passed.**

**Clause 19: Infrastructure WA to assess major infrastructure proposals prior to investment decision —**

**Hon MARTIN ALDRIDGE:** I know we engaged in discussion on this in clause 1, but I seek some clarity around investment decisions. Clause 19(3) states —

(3) In subsection (2) —

*investment decision*, in relation to a proposal of a State agency, means the decision by the Government or the State agency to implement the proposal.

Obviously, this is a very important trigger with regard to understanding when something ought to be referred to Infrastructure Western Australia. Can the minister, in precise detail, explain to me exactly what decision by a government or state agency would trigger this provision?

**Hon SUE ELLERY:** I am advised that it is the decision that commits funds to proceed with a particular project.

**Hon MARTIN ALDRIDGE:** Could that investment decision be something that is reflected in a budget—for example, a budget announcement for a piece of infrastructure—so that a decision reflected in the budget papers would be, for the purposes of this subclause, an investment decision?

**Hon SUE ELLERY:** Yes, it could be.

**Hon MARTIN ALDRIDGE:** Would a media statement issued by a minister be an investment decision?

**Hon SUE ELLERY:** No.

**Hon MARTIN ALDRIDGE:** For those in the Labor Party who are permitted to use Twitter, would a tweet be an investment decision?

**Hon Sue Ellery:** I’m not responding to that gratuitous question.

**Hon MARTIN ALDRIDGE:** We are not too sure. We have “yes” to budget and “no” to media statements, but we are unsure about Twitter. What about the *Government Mid-year Financial Projections Statement*? Would something reflected in that be an investment decision?

**Hon Sue Ellery:** Do you mean the midyear review? Is that what you’re talking about?

**Hon MARTIN ALDRIDGE:** That is what it is called, yes.

**Hon SUE ELLERY:** Yes, it could, and for clarification—in case Hansard did not get my comment—my comment in respect of the comment about Twitter was that I am not going to respond to what I think was a gratuitous, silly question.

**Hon MARTIN ALDRIDGE:** I think these are important things. In my view, “investment decision” is very poorly defined here, so I think we need some clarity around what exactly it is that the government needs to do before

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a decision is made. Would an announcement by a minister on social media constitute an investment decision for the purposes of subclause (3)?

**Hon SUE ELLERY:** No.

**Clause put and passed.**

**Clause 20 put and passed.**

**Clause 21: Guidelines and summary reports —**

**Hon MARTIN ALDRIDGE:** Before moving my amendment, I want to seek some clarification from the government. When I had my briefing on this bill—I admit that it was done by teleconference, so it was not ideal—I was not able to determine from the advisers why there is a compulsion upon the Premier in subclause (3), so the Premier, under that clause, must do something. Then subclause (4) anticipates the Premier breaking the law and not doing something that he must do, and therefore Infrastructure WA may make the summary publicly available. In the briefing, I was told something to the effect that this was essentially to avoid legal action. It is not clear to me exactly why this would be the case. Perhaps it would be somebody trying to enforce subclause (3), to force the Premier to do something for which there is no penalty provision, but may seek the direction of a court for him to comply with subclause (3). In my interpretation of this clause, subclause (4) is designed to provide for Infrastructure Western Australia to make the summary publicly available, but it is at its discretion, by use of the word “may”. I am just trying to understand, and I am interested in the minister’s response about why this clause has been constructed in this way, so that there is a positive compulsion on the Premier in subclause (3) and then discretion for the agency in subclause (4).

**Hon SUE ELLERY:** Under clause 21(3), the Premier must make the summary report publicly available, and only under exceptional and rare circumstances would this not occur. It was considered appropriate to give Infrastructure WA discretion in this matter, hence the use of the word “may”, as it is an independent body. However, I take the point that the honourable member is making and, on that basis, indicate that the government will support his amendment.

**Hon MARTIN ALDRIDGE:** I move —

Page 16, line 26 — To delete “may” and substitute —  
must

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 22 to 25 put and passed.**

**Clause 26: Board membership —**

**Hon PETER COLLIER:** Clause 26(5) reads —

The Premier must ensure that the Board members have, between them, expertise across a broad range of infrastructure sectors.

That, to me, seems very subjective. How can we be assured, given the significance of this board—I mentioned this in my second reading contribution—that, for want of a better term, the board is not stacked with a particular ideological bent, regardless of which party is in power, whether it be the Labor Party or the Liberal and National Parties? If there is ever an occasion to pick up on something that Hon Michael Mischin said, it is this one, with regard to bipartisanship. I do not wish to implicate potential board members, but how can we prevent members serving their ideological overlords, whether of Liberal or Labor persuasion?

**Hon SUE ELLERY:** The reason the government has chosen to go down the path of an open expression of interest process, for example, is to ensure that the process is indeed open, and that anybody with that kind of expertise in the areas of infrastructure policy, planning, strategy, funding, financing or delivery is able to apply. Ultimately, the Premier will make recommendations to the Governor, and they will be accepted or not accepted. The clause is about the kind of technical and professional expertise that the respective board members bring to the exercise. It is arguable that any government appointment is open to the criticism that it is partisan. That is arguable. There is not a provision within the clause that seeks to prevent that. I take the point that the member makes, but the purpose of the expression of interest exercise is to make sure that the process is open and that the Premier could demonstrate that he was not just picking his mates, and did not already have a list of who was to be on the board. It is an open exercise, trying to seek that kind of expertise, as opposed to political bent.

**Hon PETER COLLIER:** I take on board everything that the Leader of the House has just said. I agree, and we do not need a PhD—just look at the boards, ad infinitum, under previous governments, and we will see former members, former ministers, and eminent party hardheads from both sides of the spectrum who have been appointed. This one, though, is a little different. These board members have a 10-year tenure, and a responsibility that goes beyond,

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dare I say, the sectional interests of a government trading enterprise or, for example, the North Metropolitan Health Service, or whatever it might be. We are talking about, generically, the whole infrastructure program for Western Australia, and a 10-year tenure. My point is that if there was a situation in which, for example, a Jim McGinty or, indeed, a George Cash was on the board for 10 years, that is a long time. I do not have an answer for this. Do not get me wrong, but I do not have a solution that can resolve this issue. If there is one chink in the armour of this bill, it is this one, and that is the fact that if we are genuinely going to have an Infrastructure Western Australia Act that provides an avenue for credible oversight of infrastructure development in this great state, we must have people on this board who have significant life skills, professional skills and experience, to ensure that they have the ambitions of the state at heart. I like to think that that will happen, but there is nothing in this clause that shows that it necessarily will. Having said that, that is all I am going to say. It is the only weak link, but I like to think that the current Premier and future Premiers will appoint, accordingly, people with the best and most appropriate skills who will provide an avenue for comprehensive infrastructure throughout the state.

**Hon MICHAEL MISCHIN:** A couple of things said by the Leader of the House troubled me. One was the suggestion that the Premier will make recommendations to the Governor, and they will be either accepted or not. Is it seriously suggested that the Governor will exercise an independent discretion, and not take the advice of the minister?

**Hon SUE ELLERY:** I was trying to pay respect to the position of the Governor. Of course, the Governor has the option to accept or not accept advice that he is provided with. It would be a very unusual set of circumstances for a Governor to reject that advice. I was just trying to pay due respect to the position.

**Hon MICHAEL MISCHIN:** That may be right, but we are dealing with practicalities here. The practicality is that the appointments will be those recommended by the Premier. Is that correct?

**Hon Sue Ellery:** I have already answered that question.

**Hon MICHAEL MISCHIN:** Okay, so the answer is yes. We now have underway an expression of interest process. There must be something that the government is looking for to determine whether the people who are writing in and saying they would like to be on the board are the sort of people who are desirable to have on the board.

*Sitting suspended from 6.00 to 7.30 pm*

**Hon MICHAEL MISCHIN:** Before the dinner break, I was about to ask about the sorts of qualifications and experience being sought for the appointments that the Premier will recommend to the Governor. Clause 26 prescribes that the board will consist of up to 10 members, of whom three will be ex officio members of the board under subclause (3), and that there must not be more government employees than there are non-government employees. Clause 26(5) states —

The Premier must ensure that the Board members have, between them, expertise across a broad range of infrastructure sectors.

Can the minister identify for us what are “infrastructure sectors”?

**Hon SUE ELLERY:** I am not sure what the member does not understand about the words “infrastructure sectors”. What is the member looking for me to explain?

**Hon MICHAEL MISCHIN:** What is an infrastructure sector?

**Hon SUE ELLERY:** There are different components of infrastructure and they go around energy, water and a range of utilities, and transport, education and health. There is a whole range of them.

**Hon MICHAEL MISCHIN:** Given that the advertising process is currently underway seeking expressions of interest for board members, have any guidelines been published or has the Premier given any indication to the interim chair, Mr Langoulant, of the talents and experience that are being sought as a guideline?

**Hon SUE ELLERY:** The expression of interest that was released on 11 May was based on the provisions of the bill that set out the respective functions and expertise. For example, clause 26(6) refers to —

... appropriate expertise in the areas of infrastructure policy, planning, strategy, funding, financing or delivery.

**Hon MICHAEL MISCHIN:** Has anything been provided by way of instruction or guidance to Mr Langoulant?

**Hon SUE ELLERY:** The best advice I can offer the member is the advertised expression of interest guidelines, which state —

The Western Australian Government recognises the role of infrastructure development as a catalyst for economic growth, creating jobs and supporting the state’s growing population.

Government is establishing Infrastructure WA, a statutory authority ... which will provide independent advice to the Government on matters relating to infrastructure and support the objectives of the *Infrastructure Western Australia Bill 2019*, which are ...

The guidelines set out those objectives, and continue —

A key role of Infrastructure WA will be the development of a State Infrastructure Strategy ...

**Expressions of Interest are sought for Board Members ...**

On appointments, the guidelines state —

... attention will be given to ensuring the Board has expertise across a broad range of infrastructure sectors. Board diversity will also be considered. Individuals who are, or have been within the past 3 years, a member of Parliament (Commonwealth, State or Territory) will not be eligible for appointment.

...

An Expression of Interest for the role of a Board member can be lodged by submitting a copy of your current curriculum vitae and a covering letter ... addressing the following criteria:

- Significant expertise and experience in infrastructure policy, planning, strategy, funding, financing and/or delivery at a senior level;
- Well-developed strategic skills with the ability to establish an informed perspective on short, medium and long-term infrastructure challenges and opportunities;
- A demonstrated understanding of the processes of Government as they relate to strategic assets and in particular publicly funded infrastructure;
- Demonstrated understanding of board governance with board experience, including risk management, legal, ethics and the influences and accountabilities of boards acting in the public interest; and
- Demonstrated skills in communications, stakeholder management and negotiation appropriate for Board membership.

**Hon MICHAEL MISCHIN:** That is very broad, indeed. In the interest of bipartisanship, will there be any communication with any other party in Parliament on the sorts of applicants who have applied or expressed interest for this position?

**Hon SUE ELLERY:** No. I do appreciate that the honourable member was out of the chamber last week on urgent parliamentary business when we were considering this matter, but I did address that issue; and, no, there will not be.

**Hon MICHAEL MISCHIN:** What did the minister address?

**Hon Sue Ellery:** What you just asked.

**Hon MICHAEL MISCHIN:** Was it bipartisanship?

**Hon Sue Ellery:** By reference to Parliament et cetera.

**Hon MICHAEL MISCHIN:** Okay, I take it that—well, perhaps assist me; what element of bipartisanship was mentioned in the course of the second reading speech?

**Hon SUE ELLERY:** Chair, if I may, we are going back to questions that are more appropriately dealt with in clause 1, and clause 1 has been passed by the chamber. The specific clause we are dealing with now goes to the skills and expertise sought for and the method of forming the board. I am happy to answer questions about that, but I am not going to revisit questions that more properly should have been canvassed in the debate on clause 1.

**The DEPUTY CHAIR (Hon Robin Chapple):** I take the minister's point.

**Hon MICHAEL MISCHIN:** Okay, I will do it the hard way. Where is the element of bipartisanship in clause 26?

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

**Hon MICHAEL MISCHIN:** The minister has not said anything yet. Do I take it then that there is no element of bipartisanship in clause 26?

**Hon SUE ELLERY:** I answered an earlier question asked by the honourable member in exactly the same terms. This is a very specific clause about a very specific set of circumstances. The general proposition that the member wants me to address could properly have been addressed in a broad debate, which is what the clause 1 debate is all about. The clause before the chamber right now is about a very specific set of circumstances. I have

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answered the questions on that that he has asked to date. I cannot add anything further on the broader question that he has raised.

**Hon MICHAEL MISCHIN:** Will there be any opportunity for any other political party to have a say on the composition of the board of Infrastructure Western Australia?

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

**Hon MICHAEL MISCHIN:** In other words, no. Is that correct, minister?

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

**Hon MICHAEL MISCHIN:** A no?

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

**Hon MICHAEL MISCHIN:** To add to what?

**Hon SUE ELLERY:** I have answered the question three times. There is nothing further that I can add.

**The DEPUTY CHAIR:** I have taken the point of the minister. We are dealing with clause 26 and I would ask the member to deal with the matters before us in clause 26.

**Hon MICHAEL MISCHIN:** So, the decision is solely that of the Premier. It is the Premier who has to be satisfied that the person has “appropriate expertise” and it will be the Premier’s decision about whether that person not only is sufficiently qualified but also will suit the Premier’s purposes as a member of this board. Hon Peter Collier raised the subject of political appointments and the like. There is no guarantee within the scope of the legislation that that will not occur, and that is understood. It was one of the great concerns that I had about the potential stacking of the board of those who will be the Premier’s choice, in the same way as the Premier chooses the Governor and in the same way as the Minister for Commerce chose Toni Walkington as a member of the Western Australian Industrial Relations Commission on the basis that there needed to be some union balance. Presumably, those factors will also be taken into account as to who is friends of whom and what the political allegiances are when it comes to choosing members of Infrastructure Western Australia. Is there nothing that the minister could say that would allay those fears?

**Hon SUE ELLERY:** I have nothing further to add.

**Hon MICHAEL MISCHIN:** Thank you. This establishes the concern that I have regarding the risks of a twenty-first century WA Inc. I have nothing further to say on that clause. It is self-evident what the risks are.

**Clause put and passed.**

**Clauses 27 and 28 put and passed.**

**Clause 29: Remuneration and expenses —**

**Hon MICHAEL MISCHIN:** Clause 29 deals with remuneration and expenses and the minister mentioned at some point during her second reading reply some estimated ranges of remuneration for board members. But has the Premier, who has initiated the hiring process, or is at least seeking expressions of interest for appointment to the board, formulated in draft any submission to the Salaries and Allowances Tribunal about the potential remuneration or conditions that will be around the board positions?

**Hon SUE ELLERY:** I realise that the honourable member was out of the chamber on urgent parliamentary business when I addressed this, but I did address it. It is not a matter that will go to the Salaries and Allowances Tribunal; it is a matter that will be dealt with by the Public Sector Commissioner. I was asked questions and I provided an answer in my second reading reply that indicative advice to date from the Public Sector Commissioner—this is still to be finalised—has recommended the following remuneration: the chairperson position is \$97 144 to \$109 494 per annum; the deputy chairperson position is \$45 738; and other non-government board members’ positions are \$41 926.

**Hon MICHAEL MISCHIN:** Is the remuneration for those who are not public servants going to be in addition to any funding that they can obtain or remuneration for private work that they are doing?

**Hon SUE ELLERY:** If I understand the question correctly, the member is asking whether this is in addition to income they earn in their private capacity. Yes, of course it is.

**Hon MICHAEL MISCHIN:** So, a member who is not a government member can be an employee or receive remuneration and be bound by conditions of responsibility to some non-government organisation and can also sit on Infrastructure Western Australia and be paid to decide the future of Western Australia’s infrastructure?

**Hon SUE ELLERY:** This is exactly what happens now for board appointments.

**Clause put and passed.**

**Clauses 30 to 43 put and passed.**

**New clause 43A —**

**Hon SUE ELLERY:** I move —

Page 27, after line 12 — To insert —

**43A. Financial interest in a matter**

For the purposes of this Subdivision, a member of the Board or of a committee has a direct or indirect financial interest in a matter if it is reasonable to expect that the matter may, if dealt with by the Board or committee in a particular way, result in a financial gain, loss, benefit or detriment for the member or a person closely associated with the member.

This amendment strikes the right balance for transparency and disclosure. It is consistent with other states that require financial interests to be publicly disclosed. No other IWA-style body requires public disclosure of non-financial interests and this has proven to work well in other jurisdictions. This amendment picks up a debate in the Legislative Assembly when the member for Dawesville questioned why the approach of Infrastructure New South Wales was not chosen, whereby all members have to disclose their pecuniary interest up-front and those disclosures are recorded in a book that is available for inspection by the public. That assertion was not entirely correct. The Infrastructure New South Wales provisions require that members disclose a direct or indirect pecuniary interest only in a matter being considered or about to be considered by the board and these disclosures must be recorded in a book that is open for inspection. There is no requirement under Infrastructure New South Wales' provisions for board members to disclose their interest up-front in a register.

The provision that we drafted and put before the chamber requires that when a financial disclosure is made under clause 44, this be made publicly available on request for inspection. Accordingly, amendments 9/NC43A, 10/44 and 11/46, which are set out on page 2 of supplementary notice paper 118, issue 5, are a combined package to address that issue. Although I am moving the first one, the three of them go together to create the effect, which was raised in the Assembly and which the government is happy to proceed with.

**Hon MICHAEL MISCHIN:** I do not have a problem with the clause—just a question. How does one determine a relationship and whether someone is closely associated with a member? What is the range of that sort of relationship?

**Hon SUE ELLERY:** We anticipate that the board is likely to set its own policy on that matter. However, it is possible to do so by regulation that either of those could set the arrangements that need to be tested to ascertain what constitutes close.

**Hon MICHAEL MISCHIN:** Let us say, for example, that I am the director of a company that is closely involved with an infrastructure sector of the character that the minister has described. Part of my circle of associates and friends is a director of an infrastructure sector company. Decisions are made planning the state's infrastructure that would benefit that other company. On the face of it, does that indicate a close enough association to fall within the scope of new clause 43A?

**Hon SUE ELLERY:** As I just explained, I cannot give the member a specific response to that question. The board will either set its own policy on what it deems to meet the definitions of requiring that kind of disclosure or it may be something that is captured in future regulations.

**Hon ALISON XAMON:** I thank the minister for explaining why she moved to insert new clause 43A. I thought it was very helpful that the minister also foreshadowed the other related amendments because it helps to progress this discussion. I mention that because I have a similar amendment to clause 44. Without wanting to pre-empt that, if we are able to have the discussion as a whole now, depending on the will of the chamber and whether this new clause gets up, it will influence my decision on whether I proceed to move an amendment to clause 44. On that basis, I have been looking at new clause 43A in conjunction with the other foreshadowed amendments that have very helpfully been put forward by the Leader of the House.

I have a couple of comments that I wanted to make that differentiate between those collective amendments and the nature of the amendment that I originally foreshadowed. I would like to get the government's views and its rationale on why it wanted to pursue that different approach. As was correctly identified by the minister, this arose from a debate in the other place. It was suggested that there may be a willingness to look at an amendment of this sort. Effectively, I will refer to the collective government amendments because I think that is more helpful. What the collective amendments do is very different from the amendment that I have foreshadowed. The government's amendments only relate to financial interests whereas the amendment that I have foreshadowed relates to material personal interests, even though that is not specifically defined within the bill. I spoke about that during the second reading debate, and it was responded to. Therefore, the intent of the amendment that I have foreshadowed is broader than simply looking at financial interests.

Another key difference is that the government's amendments mean that someone can get only a summary of the record rather than the record itself. The other difference is that the government amendment means that one is only

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able to inspect, and even in that instance, only in a way in which the regulations specify. Of course we do not have the benefit of the regulations to determine what that will look like. It could end up being quite onerous. We do not know because we do not have them. It might be quite difficult to obtain. For example, I could foresee a situation in which the regulations would require someone to physically go into offices during certain hours to inspect and they would have no capacity to get a copy of the record or show it to anyone else. They are the key elements in the package of proposed amendments that are different from the broader amendment that I have foreshadowed. I would appreciate it if the government could explain why it is preferable to narrow down the scope of the proposed amendment. There may be a good reason for that. In the event that there is not and that this new clause fails, I advise the chamber that I will move my amendment to clause 44. Even if my amendment does not get up, I still think that the government's proposed amendments are better than not having any amendments in the bill. Either way, I think we are looking at an improvement.

**Hon SUE ELLERY:** The amendment in my name is drafted to be consistent with the New South Wales model. It is deemed that financial interests as opposed to pecuniary interests require a higher test, if you like, of disclosure. The risk is higher when we are talking about people's finances as opposed to who their second cousin is. This was deemed to be a higher test, and that is why we have chosen to go down this path.

**Hon ALISON XAMON:** That certainly answered my first concern. The Leader of the House advised the chamber that she believes it sets a higher bar. I also raised issues about the nature of the record that will become available. I am concerned that it is lesser than what would otherwise be proposed within my foreshadowed amendment in the sense that it is only a summary rather than a copy of the record itself. Also, there is still a lack of specificity around how that will be accessed because that is meant to be prescribed by regulation. I would appreciate getting some advice on why it was felt necessary or important to narrow down that scope and also whether any advice can be given to the chamber on the anticipated likely process that will be incorporated within the regulations around inspection.

**Hon SUE ELLERY:** The advice that I have received is that the nature of the information that is appropriately disclosed is people's private information. If someone specifically wants to see it for the purposes of probity, they should be able to. There is a difference between that and having it open for everybody who wants to see it just as a matter of curiosity.

That is the reason for making it available on request. Part of my amendment to clause 44 states —

(7) Without limiting section 71, the regulations may provide for how the record is to be made available.

For example, we would not want to disadvantage someone who wanted to make a request but lived far from the Infrastructure Western Australia office. It might be that those regulations will give consideration to how that information might be provided electronically on request. The proposal is that that be dealt with by way of regulation so that the people involved can take the time to work out the most practical way to provide the requested information.

**New clause put and passed.**

**Clause 44: Disclosure of material personal interests —**

**Hon ALISON XAMON:** As I indicated in my previous contribution, because the previous new clause has been agreed to by the chamber and is part of the package, I will not be proceeding with the amendment standing in my name.

**Hon SUE ELLERY:** I move —

Page 28, after line 6 — To insert —

(6) Infrastructure WA must keep a record of each disclosure or determination under this section that relates to a direct or indirect financial interest in a matter, and make a summary of the record available, on request, for inspection.

(7) Without limiting section 71, the regulations may provide for how the record is to be made available.

As I explained, this is the second part of the package of amendments to give effect to disclosure of board members' financial interests.

**Amendment put and passed.**

**Hon MICHAEL MISCHIN:** Subclauses (1) and (2) of clause 44 prescribe a penalty for those subclauses of a fine of \$10 000. I take it that that creates an offence for each of those subclauses. If so, who will be able to prosecute?

**Hon SUE ELLERY:** The responsibility for the act will rest with the Premier. The prosecution or pursuit of the fines will be done by the state—perhaps the Director of Public Prosecutions on behalf of the state. That is the advice I have been given.

**Hon MICHAEL MISCHIN:** It is a little more complicated than that. No authorised officer is prescribed under the legislation to lay a charge. It may be that something is in the Criminal Investigation Act or the Criminal Procedure Act,

but at the moment, this legislation has a provision that requires certain action and prescribes a penalty. Section 72(1) of the Interpretation Act states —

Where in an Act a penalty —

(a) is specified without qualification at the foot of a section of the Act; ...

then, —

Amongst other things —

unless the contrary is expressly provided, a contravention of the section or subsection, or, as the case may be, of any of the subsections, is an offence the penalty on conviction for which is the penalty specified.

That still requires someone with authority to lay the charge. Ordinarily, it would be an authorised officer of some sort. I was hoping that the minister might be able to point us to how, in practical terms, someone would be able to investigate and lay a charge, and under whose authority they would be able to do so. If that has not been covered off, this might be an opportunity for the government to consider whom that ought to be. It seems to me that these are not indictable offences, so they would not, as a matter of course, fall under the responsibility of the Director of Public Prosecutions. It is not clear whether the Western Australia Police Force would be involved. It seems to be just at large. If there is a deficiency, perhaps it ought to be addressed before this bill is passed.

**Hon SUE ELLERY:** We are seeking further advice. I give the member an undertaking that I will give him an answer to that question before we finish the bill.

**Hon MICHAEL MISCHIN:** The minister might want to consider another element—that is, whether any consequences will flow from this other than a charge and, following a prosecution, a penalty. Will there be any effects on the person’s ability to act on the board thereafter for a breach of that duty?

**Hon SUE ELLERY:** The relevant clause has already been passed. Clause 30 has a cross-reference to clause 44(1) and (2).

**Hon MICHAEL MISCHIN:** I understand that the minister is going to explore the answer. It may be that if there is a problem, it will need to be dealt with in that clause.

**Hon SUE ELLERY:** The advice I have is that the Director of Public Prosecutions would prosecute.

**Hon MICHAEL MISCHIN:** Can the minister explain why? As I said, the Director of Public Prosecutions is seized of indictable offences. As a general rule, that is the director’s responsibility. This does not seem to be an indictable offence. At worst, it seems to be a simple offence.

**Hon SUE ELLERY:** I told the member I would give him an answer to the question before we finish the bill. Mr Deputy Chair, while we deal with the rest of the bill, one of my advisers might leave the table so she will not have to text and will be able to talk to the person. I give the member an undertaking that I will give him an answer before we finish with the bill.

**Clause, as amended, put and passed.**

**Clause 45 put and passed.**

**Clause 46: Section 45 may be declared inapplicable —**

**Hon SUE ELLERY:** I move —

Page 29, lines 9 to 13 — To delete the lines.

This is the third part of the package of amendments to give effect to the disclosure of financial interests.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 47 to 63 put and passed.**

**Clause 64: Confidentiality —**

**Hon MICHAEL MISCHIN:** Once again, in clause 64(1), a penalty is prescribed for a breach of the injunction against the use or disclosure of information. The penalty is a fine of \$10 000, which I presume is the maximum. Once again, we have the question of how that is to be prosecuted and by whom. I simply draw the matter to the minister’s attention so that she can assist us with that in due course.

**Hon SUE ELLERY:** Noted.

**Clause put and passed.**

**Clauses 65 to 71 put and passed.**

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**Clause 72: Review of Act —**

**Hon ALISON XAMON:** I want to, hopefully, expedite this matter by referring to not only the proposed amendments standing in my name, but also the dualling clause that has been proposed by the government, because I think it will help us to have that discussion all at once. Effectively, the only difference between what the government has proposed—which is still an improvement on the current review clause within the bill as it stands before us—and my proposal is my proposed new clause 72(3), which seeks to prescribe particular elements of the review that the Greens would like to see undertaken within the overall review process. I note that the way I have proposed to word that specifies that it is not intended to limit any of the review processes within proposed subclause (1), but I want some specifics to be addressed. From speaking behind the Chair, it is my understanding that part of the government concern about prescribing specifics that need to be part of the review is that they may be interpreted in a future review process as somehow limiting the scope of that review. Respectfully, I have a different view. I think the subclause is worded in a way that makes it clear that it is not intended to limit at all, but is intended to ensure that specific issues are going to be addressed.

The first question I have for the minister, before I deal with the issues around my proposed new clause 72(3), is whether the government's concern is as I have just described, or whether I have misunderstood.

**Hon SUE ELLERY:** There are a couple of reasons why the government does not support the review provisions set out in proposed new clause 72 in the name of Hon Alison Xamon.

For the benefit of the chamber, I will walk everybody through what is on supplementary notice paper 118. At the bottom of page 2 of the supplementary notice paper is an amendment in the name of Hon Alison Xamon that would have the effect of opposing the existing clause. Immediately below that is one in my name having the same effect—to oppose the existing clause. At page 3 of the supplementary notice paper is a version of a new review clause in the name of Hon Alison Xamon, and immediately below that is the government's preferred version of a review clause. It is a different version from the clause that is in the bill before us. It takes into account one of the key elements raised by Hon Alison Xamon, which is a rolling review, but does not take into account those elements she has identified in her proposed new clause 72(3).

There are a couple of reasons why the member's proposed clause 72(3) is not acceptable to the government. Parts of that proposed subclause are now redundant, given that I have previously confirmed that the bill does not impact assessment, approval or review processes under other acts, such as environmental impact assessments. The government is of the view that creating a list of factors that future reviews must consider is likely to limit the scope of such reviews in practice, and that would not necessarily be a desirable outcome. The alternative that has been drafted, which appears on the supplementary notice paper in my name, applies subclauses (1), (2) and (4) of the amendment proposed by Hon Alison Xamon, but not subclause (3). Proposed clause 72(3) includes detailed information that a review must address. This is considered inappropriate and in some cases actually beyond the scope of this legislation—for example, the impact on environmental impact assessments—and the government would be concerned about the precedent set for other legislation.

**Hon ALISON XAMON:** That was very helpful.

**Clause put and negatived.**

**New clause 72 —**

**Hon ALISON XAMON:** I thank the minister for her response. I certainly am persuaded by the comments that she made about proposed subclause 3(c), and she is indeed right, that at the time this particular amendment had been proposed, there was great uncertainty about whether this legislation was likely to impact on environmental assessments. I think the chamber has been fully satisfied that in no way is this legislation able or intended to override our ordinary environmental assessment processes. As such, I heartily concur that that makes this provision completely redundant and, if anything, unhelpful. As such, I will not be moving the amendment standing in my name, but I would like to ask some questions of the minister please, if I may.

I want to confirm that it is likely that a review will incorporate the extent to which the objectives of the act have been achieved. Can the minister please confirm that that is likely to be incorporated within the review?

**Hon SUE ELLERY:** Yes, I can confirm that.

**Hon ALISON XAMON:** I thank the minister. Can the minister confirm that a review is likely to also examine the degree to which the act has promoted transparency and public accountability in infrastructure planning and coordination?

**Hon SUE ELLERY:** I am not sure that I can give the honourable member confirmation of that, because there is not a provision set out in the objectives of the bill before us that goes to those issues. The government says that those elements have been embedded in the course of the various clauses—for example, the ones about publishing certain information. To the extent that the review would look at the operation and effectiveness of the act, it would

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look at those elements that make up what the government says are the transparency elements. It will be looking at whether the reports have been published and whether there is an issue with publishing the reports in a timely fashion et cetera.

**Hon ALISON XAMON:** Thank you, minister, that is helpful, because I understand that one of the aims of this bill is to make sure that we have some more transparency around how these decisions are made.

Finally, I would like confirmation of whether it is likely that any future review will also include the adequacy of the provisions of the act that are dealing with the disclosure of material or financial personal interests of the board, the committee members and the CEO?

**Hon SUE ELLERY:** Given that is a provision of the act, yes, I can confirm that it is likely that that would be considered in the review.

I move —

Page 43, after line 20 — To insert —

**72. Review of Act**

- (1) The Premier must review the operation and effectiveness of this Act, and prepare a report based on the review —
  - (a) as soon as practicable after the 5<sup>th</sup> anniversary of the day on which this section comes into operation; and
  - (b) after that, at intervals of not more than 5 years.
- (2) The obligation under subsection (1) is limited to 3 occasions.
- (3) The Premier must cause each report to be laid before each House of Parliament as soon as practicable after the report is prepared, but not later than 12 months after the 5<sup>th</sup> anniversary or the expiry of the period of 5 years (whichever is relevant).

As I have explained to the chamber already, this is an alternative review. It picks up the key provision that Hon Alison Xamon was seeking, which is around the rolling review every five years, as I so moved.

**New clause put and passed.**

**Clauses 73 to 76 put and passed.**

**Postponed clause 10: Annual work programme —**

Resumed from an earlier stage of the sitting on the amendment moved by Hon Peter Collier.

**Hon SUE ELLERY:** I move the amendments standing in my name, at 15/10 and 16/10 of supplementary notice paper 118, issue 5 —

Page 9, line 19 — To delete “may” and substitute —

must

Page 9, after line 20 — To insert —

- (6) Infrastructure WA may remove from an annual work programme any information that it considers to be confidential or otherwise not suitable to be made publicly available, prior to making the programme publicly available.

This will have the effect that was sought by Hon Peter Collier to delete “may” and insert “must” in respect of publishing the annual work program. If I can talk to them as a package, amendment 16/10 has the effect of providing that carve out, which the government sought. It introduces a new subclause (6), which states —

Infrastructure WA may remove from an annual work programme any information that it considers to be confidential or otherwise not suitable to be made publicly available, prior to making the programme publicly available.

**Hon PETER COLLIER:** I want to thank the minister and the government for those amendments. That does satisfy me; it makes the bill more transparent and open, as we all want, and so the opposition will obviously be supporting this raft of amendments.

**Hon ALISON XAMON:** I appreciate being able to deal with them as a suite of amendments; it makes it much more efficient. I have a couple of questions. Regarding the amendment proposed by the minister, can the minister confirm whether it is likely that the confidential information, which is going to be removed, will still be able to go through the FOI processes?

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**Hon SUE ELLERY:** The answer is yes. There is nothing in the amendment before the chamber now that diminishes the commitments I made earlier about the coverage of the freedom of information legislation.

**Hon ALISON XAMON:** Is it likely to be the case that there will be an indicator that information has been removed or will people have to simply speculate on the absence of information? Will it, for example, attach a note or something to it, which will indicate that that information is not there?

**Hon SUE ELLERY:** This was drafted about an hour ago, so I am not sure that consideration has been given to that level of detail. It is certainly something I can undertake to raise with the Premier.

**The DEPUTY CHAIR (Hon Robin Chapple):** Is leave granted for Hon Peter Collier to withdraw his amendment?

**Amendment, by leave, withdrawn.**

**The DEPUTY CHAIR:** We go back to the amendments before us. The Leader of the House representing the Premier has moved —

Page 9, line 19 — To delete “may” and substitute —

must

**Amendment put and passed.**

**Hon SUE ELLERY:** I have moved the second part of that package of amendments, at 16/10 of supplementary notice paper 118, issue 5.

**The DEPUTY CHAIR:** The Leader of the House has moved —

Page 9, after line 20 — To insert —

- (6) Infrastructure WA may remove from an annual work programme any information that it considers to be confidential or otherwise not suitable to be made publicly available, prior to making the programme publicly available.

**Amendment put and passed.**

**Hon SUE ELLERY:** Mr Deputy Chair, if I may, I gave an undertaking that I would seek some information before we finished with the bill. I do not have that information yet, so I ask that you report progress. If that information comes back before we finish, we can come back to this bill and deal with it; otherwise, we might come back and deal with it tomorrow.

**Postponed clause, as amended, put and passed.**

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