Parliamentary Debates
(HANSARD)

FORTIETH PARLIAMENT
FIRST SESSION
2018

LEGISLATIVE COUNCIL

Wednesday, 5 December 2018

Legislative Council

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THE PRESIDENT (Hon Kate Doust) took the chair at 1.00 pm, read prayers and acknowledged country.

VISITORS — STEVE MILLS AND BASIL ZEMPILAS

Statement by President

THE PRESIDENT (Hon Kate Doust): Members, before we begin today, I acknowledge two very special visitors to the Legislative Council today. Mr Steve Mills and Mr Basil Zempilas are joining us for the start of our session.

SCARBOROUGH PLANNING FRAMEWORK AND DESIGN GUIDELINES — METROPOLITAN REDEVELOPMENT AUTHORITY — DEVELOPMENT APPROVAL

Petition

HON ALISON XAMON (North Metropolitan) [1.03 pm]: I present a petition containing 826 signatures couched in the following terms —

> **To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.**
>
> We the undersigned are seriously concerned that the Metropolitan Redevelopment Authority (MRA) has not adhered to the Scarborough Planning Framework and Design Guidelines which establishes the base height controls of 2–12 storeys for all buildings in the Scarborough Redevelopment Area.
>
> The MRA has instead approved the Chinese owned 3 Oceans Property development proposal for two towers of 43 and 33 storeys at the corner of Scarborough Beach Rd and West Coast Hwy. This site is designated for 12 storeys under the Scarborough Planning Framework.
>
> We therefore ask the Legislative Council to protect our coastal environment by:
>
> 1. Recommend that the Minister for Planning to direct the MRA Board to adhere to the Scarborough Planning Framework which requires all developments within the Scarborough Redevelopment Area to be a maximum of 12 storeys.
> 2. Recommend that the Minister to direct the MRA Board to reject the 3 Oceans proposal as it does not adhere to the aforesaid Scarborough Planning Framework, Design Guidelines and Height Controls agreed with the community following public consultation in 2016.

[See paper 2300.]

LOCAL GOVERNMENT STANDARDS PANEL

Petition

HON CHARLES SMITH (East Metropolitan) [1.04 pm]: I present a petition containing 15 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned support Mr Garber's serious concerns about the performance of the Office of the Information Commissioner; the Public Sector Commission and the Parliamentary Commissioner for Administrative Investigations (Ombudsman) in relation to how these State Government agencies process and resolve complaints and applications involving Local Government officers and staff.
>
> As your petitioners we therefore respectfully ask the Legislative Council to inquire into the performance of the Office of the Information Commissioner; the Public Sector Commission and the Ombudsman in relation to how these State Government agencies process complaints and applications and their subsequent actions, resolutions, recommendations in respect to Local Government officers and staff, to ensure that their conduct is fair and equitable, and that their decision making is not selectively applied. Further, consideration should be given to make Local Government officers and staff subject to the same Code of Conduct under Regulation 7 in the Local Government Act as Councillors to resolve the disparity in the application of the law. And your petitioners as in duty bound, will ever pray.

[See paper 2301.]

DEPARTMENT OF EDUCATION — PLANNING

Petition

HON DONNA FARAGHER (East Metropolitan) [1.05 pm]: I present a petition that is identical to one that I tabled a couple of weeks ago. It contains 56 signatures and is couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned are opposed
>
> - To the lack of long term planning provided by the Education Department to address the increasing student population within the Woodbridge Primary School and Guildford Primary School local intake areas.
> - To the placement of one demountable classroom and the potential placement of an additional eight demountable classrooms on the 2.4-hectare Woodbridge Primary School site.
>
> We therefore ask the Legislative Council to support
>
> - The realignment of the local intake area for Woodbridge Primary School to remove the optional intake area.
> - Plan for the reopening of Midland Primary School and commence the development of an Early Childhood Centre at the old Midland Primary School site.
> - Develop a plan of action to manage the ever-increasing student population in the Woodbridge and Guildford local intake areas.
>
> And your petitioners as in duty bound, will ever pray.

[See paper 2302.]

STATE DISABILITY PLAN

Statement by Minister for Disability Services

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Disability Services) [1.06 pm]: The McGowan government recently announced its commitment to deliver better outcomes for the more than 410 000 people with disability in Western Australia through the development of a state disability plan. The plan's predecessor, Count Me In, launched back in 2009, had a vision that all people live in welcoming communities that facilitate citizenship, friendship, mutual support and a fair go for everyone. It is now time to build on the advancements we have made as a community in the last decade and create the picture of what we envisage inclusion will look like for the next 10 years. The people of Western Australia, especially people with disability, will be front and centre in shaping this vision and consultation will extend to families and carers, support networks, service providers, state and local governments and advocacy groups. The state disability plan is the government's strategy to listen, engage and meet the needs of the disability community. We will start by creating a vision for the state disability plan that is aspirational and reflects the desires of the Western Australian community. National Disability Services WA has been a strong advocate over many years, calling on the need for a state disability plan through its pre-budget submissions to government. NDS WA's proposal for an inclusive WA will be a key part of informing the development of the state disability plan.

This plan is not just for people with disability; it is for all Western Australians who want to live in an inclusive community. An inclusive community is one that actively seeks respect for all its citizens, values diversity, ensures equitable access to resources and opportunities, and engages its citizens in decision-making processes that impact their lives. Together the state government and the disability sector are committed to ensuring quality services and the highest standard of support for people with disability, their families and their carers. As we look ahead to the future of disability services in WA, it is clear that all of us need to do our part—government, the disability sector, the corporate sector, individuals and the community—to foster collaboration, build inclusive and accessible communities and showcase the diversity and enormous contribution people with disability make to our great state.

FARMERS — MULTI-PERIL CROP INSURANCE

Statement by Minister for Agriculture and Food

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Agriculture and Food) [1.08 pm]: This year has been extraordinarily volatile for our farmers in the southern half of the state—a roller-coaster ride of promise and disappointments. This week's hail and storm damage to crops nearly ready for harvesting across wheatbelt towns such as Tammin, Bolgart and Southern Cross has been heartbreaking for growers.

Prior to the crop damage, farmers were expecting to harvest a bumper crop; the lower than average rainfall in September had been offset by timely above average rainfall in October. At the same time, farmers in the great southern are facing difficult weather conditions, producing drying dams and below average crop yields. It has been

a challenging time for Western Australian farmers. Recognising the challenges that farmers in WA face, I strongly support those in the industry exploring options that could improve the practicality of multi-peril crop insurance. Hail and frost can wipe millions of dollars from the value of crops overnight, severely impacting not only farm profitability in the short term, but also the viability of farms and farmers' livelihoods in the longer term. Multi-peril crop insurance is one avenue that can help farmers manage the risks and volatility associated with their business. It has proven to be a tool of great importance to farmers in North America.

Multi-peril crop insurance has a chequered history in WA, and Australia more broadly. I believe it is important to explore the issue in more detail to see what can be done at both state and national levels to get this cover on a commercial basis. I acknowledge the hard work and effort of Rhys Turton, vice president of WAFarmers, for engaging with this important matter.

MENTAL HEALTH — FLY IN, FLY OUT WORKERS

Statement by Parliamentary Secretary

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [1.10 pm]: I rise to inform the house of the release earlier today of the new research report "Impact of FIFO work arrangements on the mental health and wellbeing of FIFO workers". This report, funded by the McGowan government, is one of the most comprehensive research studies into fly in, fly out work practices undertaken in Australia. We know that FIFO workers play a crucial role in Western Australia's workforce; the report released today is an important body of work designed to help improve their mental health and wellbeing.

Last year, mining made up 29 per cent of the state's gross earnings. Around 60 000 people work in the industry, many of them fly in, fly out workers. This report is timely and comprehensive. More than 3 000 FIFO workers and their families participated in the research. The research report found that 33 per cent of FIFO workers experience high levels of psychological distress compared with only 17 per cent of non-FIFO workers. More than 3 000 FIFO workers and their families participated in the research, which was driven in partnership with industry, unions and researchers from Curtin University's Centre for Transformative Work Design. The report found that many FIFO workers are already undertaking positive strategies to manage their mental health and wellbeing, including maintaining regular communication with family and friends while onsite and seeking mental health support when needed. The report also points out strategies for workers to implement. There are 18 recommendations from the report, including implementing rosters and shift patterns that provide better rest time, providing permanent rooms at accommodation sites and building local community connections.

The government is actively working to address FIFO workers' mental health and prevent suicide through implementation of the statewide suicide prevention strategy, "Suicide Prevention 2020: Together we can save lives". Currently, the state government provides funding to the Regional Men's Health Initiative and Mates in Construction, which provide suicide prevention initiatives. The Centre for Transformative Work Design is also funded to develop evidence-based workplace activities and resources through the Thrive@Work Strategy to improve mental health and wellbeing in the workplace.

Last year, the state government also launched the statewide Think Mental Health campaign, which is part of a comprehensive policy approach aimed at reducing Western Australia's suicide rate by building mental health and wellbeing, increasing help-seeking behaviour and reducing mental health issues. The campaign provides information on mental health, where to get support, and symptoms and signs to look out for. The state government is urging the mining and construction industries, unions and individuals to take the lead in embracing the recommendations in the report to help improve mental health and wellbeing in the FIFO sector.

PAPER TABLED

A paper was tabled and ordered to lie upon the table of the house.

SENTENCE ADMINISTRATION AMENDMENT (MULTIPLE MURDERERS) BILL 2018

Second Reading

Resumed from 7 November.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [1.15 pm]: I rise as the Liberal opposition spokesperson to indicate our support for the Sentence Administration Amendment (Multiple Murderers) Bill. Having said that, I think it is important that I raise a number of issues about what is proposed in the legislation and suggest some improvements in light of the public policy that it purports to give effect to.

I will start with what the bill proposes to do with reference to the second reading speech, before moving on to compare it with current practice, the public policy considerations that underlie the current practice and the implications of this bill, if passed, upon matters of public interest more generally. I will also outline some of the potential problems with the bill—what it will achieve and what it will not achieve.

What does the bill propose to do? The second reading speech delivered here and in the other place announced that these are —

> … very important reforms to the Sentence Administration Act 2003 so that an Attorney General … may direct that mass murderers and serial killers must not be considered for parole or a resocialisation program.

That is true, to a degree. As we will find, the legislation does not necessarily say that they must not be considered for parole, but that they must not be considered for parole for a short period of three years. It is a long period for a prisoner, I suspect, but a short period for a secondary victim of that person's crimes—I will come to that in a moment. The second reading speech points out that from time to time Attorneys General have made announcements that certain prisoners, who these Attorneys General would be responsible for overseeing by way of their office, when the Prisoners Review Board prepared reports on them, would never be released. I will say a little bit more about that, too, and the risks that those sorts of announcements may have created. They may have been politically palatable announcements and grabbed a headline, but there were potential legal consequences—as has recently been acknowledged by the current Attorney General, who himself is not reticent in making an announcement from time to time when it has suited his purpose, certain people for whom he would have the responsibility of making a decision would never be released from custody. The second reading speech goes on to say —

> The proposed reforms are intended to go some way to address the trauma and emotional toll experienced by the family and friends of murder victims—also referred to as "secondary victims"—and others impacted by the crimes, including surviving victims of serial killers and mass murderers. The parole planning process can be a source of significant stress.

I am not sure what that means because there is not a parole planning process; a process is set out under the Sentence Administration Act. Is the minister referring to the process required under the act rather than the planning process? The speech continues —

> This is due to the anticipation that these offenders may return to the community, the re-traumatisation from being periodically asked to share one's views about the potential release of the offender, and the heightened and often unwanted media and public attention associated with these cases. By allowing an Attorney General to direct that a mass murderer or serial killer must not be considered for parole or a resocialisation program for a period of up to six years, it is hoped that this bill will moderate one driver of stress for secondary victims and survivors.

I will make a couple of points at this stage. The first is that that process was established by statute, with a view to doing what it had been understood victims wanted—that is, have some say in the parole process. In fact, over the last term of our government, a variety of amendments were made in not only the dangerous sexual offenders legislation, but also other spheres to give greater recognition to the interest of victims in the fate of prisoners, and to give victims a greater role by providing them with a voice—a say. It would not be a determining say; nevertheless, it would be an opportunity in a formal sense for the views of victims to be listened to and have weight placed upon them. However, the paradox is that when we provide victims with a voice, some people will consider that an imposition and additional trauma.

There is, of course, no compulsion for victims to respond. Under the processes of the Prisoners Review Board, it is open for secondary victims who do not wish to be reminded of the crime that had been committed against a loved one to say, "I do not want to be contacted. These are my views for the future." Some people do that, and others do not. Some secondary victims—not all, but undoubtedly a significant proportion—are reminded periodically of the crime that has been committed against a family member or friend. That is a feature of any parole system under which a prisoner has not been sentenced by a court on the basis of "never to be released". One of the great conundrums of giving the court discretion to determine not only the maximum penalty according to law, but also the minimum period of non-parole, is that there will come a time when the progress of the prisoner will be reported upon and measured. The independent board established for that purpose will gather the relevant material and make a recommendation to the relevant minister of the day, whether that be the Attorney General or the Minister for Justice, about whether the prisoner ought to be released on parole; and, if so, under what conditions.

The dilemma that is faced by this government is balancing that system against the interests of secondary victims. I should add that unlike other jurisdictions, in this state the independent body does not make the final decision but leaves the Attorney General of the day to take responsibility for that decision. If the sentence imposed by the court does not provide for custody for the term of the person's natural life, it is almost inevitable that there will be a mechanism for review and an order for parole and that that will place additional stress on secondary victims. In some cases, commonsense would tell us that a bit of faith in the system would mean that those people would never be released, or certainly not released without at least an approach to the secondary victims with a view to explaining to them the basis for that decision.

That is one of the more traumatic tasks and certainly one of the more anxious periods for an Attorney General. It certainly was for me. I used to read the reports from the Prisoners Review Board with care, and sometimes I would seek additional information from the board to assist me in my decision about whether to accept its

recommendation. I am not talking here about mass murderers and the like; I am talking generally about people who are serving a term of life imprisonment of one form or another, or indefinite imprisonment. I was always conscious that my acceptance of a recommendation could cause hurt, and perhaps dismay and distress, to secondary victims. I was always conscious that I was occupying an executive position and was the last representative of government and that I needed to have regard to the law and the principles of fairness and make rational decisions that I could justify. I could not simply say, "This person is a monster." I needed to rationalise the decision-making process. I was also conscious that I was working second-hand on material that had been provided by an independent body charged with the responsibility of marshalling the necessary evidence and making those recommendations, and I was, therefore, the last resort. If what was being done by the board was unreasonable, I was the only one who could pick it up, unless a prisoner chose to challenge the final decision. It became apparent as time went on that if I recommended against a recommendation of the Prisoners Review Board, I had to provide to the Governor rational reasons upon which the Governor could place some reliance. It was not a process of simply labelling people as monsters and ticking it off and sending it away. Some might think that is all that is necessary, but others do not regard it as simply a mechanical process but take their responsibilities to heart. I certainly felt that I did that.

We also know that some prisoners are unlikely ever to be released, unless their circumstances have changed dramatically, and that, based on previous reports, they are unlikely to do so. I think that most of the people we are dealing with here would fall into that category. In that sense, even though secondary victims face the anxiety every three years of wondering what the decision of the Attorney General of the day will be in a particular case, the result is pretty predictable. I would be surprised if a ruthless killer of a number of victims, such as Birnie, would ever be released by anyone. Another example is the butchery that was performed by Mitchell in Greenough. That case not only deeply upset the prosecutor and the judge who dealt with it, but also still resonates as one of the worst examples of killing in Western Australian history. Based on previous experience, it is highly unlikely that he would ever be released, yet those are the cases that are being focused on in this legislation. I will come to the implications of that in a moment. The second reading speech goes on to say that under this proposed reform —

> The minister is empowered to make a direction following the receipt of a designated prisoner's relevant report, which is defined to be the first statutory report for parole consideration. This has been necessary to avoid any potential interference with the minimum non-parole period set by a sentencing court and therefore minimises the risk of constitutional challenge to the making of a direction.

That, in itself, is a concern—that there has to be a limitation on the rhetoric that has been announced as the justification and rationalisation for this legislation, as there is a constitutional risk involved that needs to be carefully worked around. That is true; sometimes legislation has to be crafted to ensure that it does not infringe on matters that might render the legislation invalid, either because of the operation of the commonwealth Constitution or otherwise. But it is concerning that there are other implications. This legislation is narrowly focused on prisoners who, for the most part, have no expectation of ever being released and so will not challenge it, leaving aside other cases which one might think were equally notorious, for other reasons, but which do not fall within the scope of this discretion that the Attorney General is getting so that he can take something off his desk for up to six years and leave it to someone else to worry about. The second reading speech goes on to say —

> Ministerial directions are not compulsory, nor are they automated.

Whatever that might mean! I was not aware that we had got to the point of replacing the Attorney General with a clock or a machine, but perhaps that is just funky new language. It continues —

> The minister has absolute discretion about whether to make a direction about a designated prisoner.

That, too, is important in light of the limitations that are being placed on the operation of this act and on those who will receive a benefit from it. The second reading speech then goes into the mechanics of it. I do not think those need too much explanation, because they have become apparent. But it then goes on to say —

> The amendments introduced by this bill are targeted at the very worst mass murderers and serial killers …

So not all mass murderers or serial killers, apparently—just the very worst. In fact, it does not discriminate in that way at all. What it does focus on is two killings on different days or three killings at any time. Apparently, killing two people on the one day is not good enough, but before and after midnight is of significance—that, apparently, is the definition of the very worst mass murderers and serial killers. The second reading speech goes on to say —

> In these cases, there is no entitlement to parole or any early release —

That is absolutely true and the way the law stands at the moment —

> and the prisoner is liable to remain in custody for … their natural life.

Yes, as they currently are. It continues —

> The amendments introduced by this bill will elevate the interests of secondary victims, survivors and the community above that of offenders. Allowing for the suspension of parole consideration for mass murderers and serial killers is primarily —

So, not exclusively —

> intended to address the re-traumatisation experienced by the secondary victims and survivors of these notorious crimes.

I would be interested to know from the minister what the other considerations are. If these are just the primary ones, what were the others? That gives rise to several public policy considerations, which I will come to shortly.

There has been a great deal of publicity around this bill. It is said that it is the fulfilment of an election commitment, but I note that, at least from my research, the manifesto on law and order issued by the then McGowan opposition prior to the election made no mention of this legislation. The earliest mention I could find was on 16 February 2017, when it was said that Labor had pledged to reform WA's parole laws to ensure that serial killers or mass murderers would not be considered for parole. It mentions a campaign by one Kate Moir, the lady who was lucky enough to escape the clutches of the Birnies, and her campaign to change the law so that Catherine Birnie would never be released. The then shadow Attorney General, John Quigley, told *The West Australian* —

> … if elected, a Labor government would amend existing laws that allowed even the worst killers to be considered for release every three years.

I contend that it will still do that even after the amendments—it will still allow the worst killers to be released after three years because of the narrow focus of this bill. The article continues —

> Under the changes, an attorney-general could tell the Prisoners Review Board not to consider parole in cases of serial killing. That would be defined as two or more murders on different days or, in the case of mass killing, two or more murders on the same day.

This might be the other consideration—the one that is said to be not a primary one but a significant one. The article goes on to say —

> The parole consideration ban would last for the term of that government.

Now that, of course, is what would happen. The current Attorney General, if he has this power, would be able to say, "Don't even make a report to me; I'm not even interested in this particular prisoner. Put it off for three years." What happens in three years' time? The then Attorney General will have to either deal with it or make a similar direction. The idea, one would think, is that as well as relieving the trauma on secondary victims and the anxiety they experience and the level of uncertainty that some would experience, it will get something off his desk for three years so that there is no political consideration of whether he is going to release the prisoner before he actually receives a report. What he will do is say, "I don't even want a report. I don't want to know about it. I have made up my mind based on the first report three years ago." That is a precondition to any of these directions. Or the previous Attorney General may have made up his or her mind three years before, on their first eligibility date. The Attorney General will say, "The public don't like this. I don't want to have the political problem of making a rational decision. I don't want a problem of having to think about it. What I want to do is get it off my desk for three years and give it to someone else." To me, that seems to be an abrogation of responsibility. If the intention of this legislation is really to relieve trauma for certain victims—I say "certain", because not all of them fall within the scope of what is proposed—the government should do it. If it is going to interfere with the sentencing of the court, it should do it, but it should not use a stratagem that appears to require some careful framing and very precise definition to avoid being set aside as unconstitutional. It may very well be that if the Attorney General does take a broader look at this and include others, he might have the luxury of not having to do very much at all during his term as Attorney General—he can just give all the decisions to someone else. Nevertheless, the ban would last for that term of government.

During debate in the other place, the Attorney General, as he often does—he tends to attack reputation and use personal abuse and the like—showed a lot of derision over an explanation I had given at the time that this was first floated. I had said that I did not regard the legislation as being in the public interest, and he considered that to be an absurdity. In a moment I will explain how the public interest might be affected if the Sentence Administration Amendment (Multiple Murderers) Bill 2018 operates the way the government plans. There was further discussion and public announcements, and on 24 February 2017 the now Attorney General, then in opposition, said —

> WA Labor is pleased to take a new policy to this election. Labor's policy is to amend the Sentencing Administration Act which governs parole and provide that an AG during their time of service can issue a notice to the Prisoners Review Board ordering them not to conduct a parole hearing for a mass murderer or a serial killer.
>
> As there is no intention of ever releasing these people to parole—because for these prisoners life should mean life—as a Labor AG I would have no hesitation in directing the Prisoners Review Board not to consider Catherine Birnie in 2019 and thereby save Kate Moir from the trauma of having to relive the whole experience.

He went on to say —

> For mass murderers, those who murder two or more people on the same day or serial killers, —

This legislation does not cover that. Someone who murders two people on the same day is not one of the "worst and most notorious killers" in the state. It has to be two on different days—before and after midnight—so he is wrong there, for a start, or he has not encapsulated that commitment into the legislation. The then shadow Attorney General further said —

> There should be a hard and fast rule LIFE MEANS LIFE and under a WA Labor Government that will be the rule.

Well, life does mean life, but these people were sentenced by the courts of the day under then then parole regime. The courts never made recommendations in these cases of "never to be released" or "life means life" or any of the other rhetoric; nevertheless, he announced his then intention. That is fine. I will shortly get to the implications of that.

Much the same was said on 5 June 2017, after the election. The article reads —

> John Quigley has declared serial killer Catherine Birnie has no hope of ever being considered for parole while he is Attorney-General.
>
> "I won't be giving her parole. I know that I won't be considering Catherine Birnie for parole," the new Attorney-General said. "I can't imagine the circumstances that I would grant Catherine Birnie parole."
>
> The McGowan Government promised during the election campaign that it would introduce laws to stop serial killers and mass murderers having the right to be considered for parole every three years.
>
> It came after a campaign waged by the only surviving victim of Catherine and David Birnie's evil killing spree, who pleaded for parole laws to be toughened because the existing system forced victims to regularly relive their trauma.
>
> …
>
> Under proposed changes, the attorney-general of the day will be able to order the Prisoners Review Board not to consider parole for the worst category of killers during their tenure.
>
> "An attorney-general will be able to say I won't give (that person) parole so don't even consider it while I'm sitting in the chair," Mr Quigley said, …

The focus is again very narrow. It is not for murderers generally, and it is not a qualitative examination of the circumstances in which the killing happened; it is a numbers game. If there are enough victims, the murderer falls within the category of the worst of the worst; for others, on the other hand, if they happen to torture and murder a child, kill someone in protracted circumstances of family violence or kill two people on the same day, apparently the trauma and anxiety of the secondary victims of those crimes every three years is of no account. I would like to hear from the government why that is so.

That was one of the significant policy complications and public interest issues that the Attorney General wanted to ignore or deride in the other place. But he is setting up two classes of victims. The answer, I suspect, will be as reasoned and rational as this: "Why are you setting up two classes of victims?", "Well, because one class of victim was an election commitment, and the other was not." I shall seek to address that in due course. I hope the government can explain why the trauma and anxiety experienced every three years by the parents, the siblings and extended family of the victim of Dante Arthurs deserves less consideration by this government than does that experienced by Catherine Birnie's secondary victims, Mitchell's secondary victims or Mason's secondary victims, or all the other secondary victims who fall within this legislation. "One was an election commitment and one wasn't" is not a rational basis for public policy.

That article continues —

> But he told *The Sunday Times* he was in no rush to introduce the legislation as the first prisoner on his list was Birnie, who wasn't due for parole consideration again until 2019.
>
> Birnie's parole bid was rejected for the fourth time last year.

That would have been 2016.

Apparently there is now a rush. For some reason this legislation has to get through before we rise. I suspect the reason is this: the Attorney General, having made some very large and loud announcements about how he will and will not release certain prisoners ever, notwithstanding what the report might say, and in advance of any report from the Prisoners Review Board, has realised that there could be a little bit of a fix for him if someone were to challenge that. I refer to the answer that he gave to a question without notice on 20 November this year. My question on the prisoner Dante Arthurs, the murderer of Sofia Rodriguez-Urrutia Shu, was —

> (1) When is Arthurs eligible for release on parole?

The answer was that his first statutory review date had been calculated to be 26 June 2019, next year—in six months. The answer continued —

> This date is also his Earliest Eligibility Date for release on parole.

For those not aware of the circumstances—I am sure everyone has an outline of what he did—essentially, he lured this girl into a toilet —

Hon Alison Xamon: He did not lure her; he was waiting there for her.

Hon MICHAEL MISCHIN: He was waiting for her. In any event, he killed her in the toilet to silence her after an assault. The case received quite some publicity, and I think notoriety, and he is a risk. Nevertheless, he has not yet had his first report. The second part of the question was —

> Has the Attorney General received any representations or petitions urging him to refuse any recommendation for Arthurs' release on parole?

Members will recall that petitions have been lodged in respect of the Birnies and others, and a lot of weight has been put on the number of names on a petition. The answer was yes. The third part of the question read —

> If yes to (2), how many such representations have been made and from whom?

The answer was —

> From searches carried out within the time available, the Attorney General has received six emails from members of the public opposing parole for Mr Arthurs. The Attorney General is also aware of a change.org petition opposing parole.

People are concerned about and have a memory of this case, and are worried about it and agitating about it. Indeed, I have received an email, in quite vehement terms, referring to an email to Mr Quigley, which stated —

> Dear John
>
> **I am disgusted, appalled and completely shocked to hear that the evil monster, DANTE ARTHURS** —

Members will recall that the Attorney General uses appellations like that for the prisoners that he has said he will not be releasing —

> **is being released on parole in the near future.**
>
> It is crime to release him EVER. He should ideally be put down. As this, is unfortunately not possible in our pro-offender justice system, —

Members will recall that, in all the media releases and all the rhetoric around this bill, we are told about how this is putting victims first and foremost. The trauma to victims, presumably, is all as one, but some are more important than others. The email continues —

> HE MUST BE INCARCERATED FOR THE REST OF HIS LIVING LIFE.
>
> I am a mother of two young children, and like any other mother, having our children hurt or killed is our worst nightmare.

I entirely agree —

> **HOW CAN OUR JUSTICE SYSTEM HAVE NO REGARD FOR OUR INNOCENT CHILDREN???!!!**
>
> **DANTE IS STILL THE SAME MAN. IF ANYTHING, PRISON HAS PROBABLY MADE HIM THIRSTY FOR MORE HORRIFIC CRIMES.**
>
> **THIS MONSTER WILL UNDOUBTEDLY STRIKE AGAIN AND OUR SOFT, USELESS LEGAL SYSTEM IS ALLOWING IT.**
>
> **THE JUDGE NEEDS LOCKING UP FOR MAKING SUCH AN IGNORANT, BY-THE-BOOK DECISION.**
>
> **Sofia *Rodriquez* died a horrific death because Dante was not jailed sooner. He has stalked 12 girls and nothing was done!!**

I do not know whether that is right —

> **Our public schools are fence free. How can I ever feel that my child is safe?!**
>
> Please, do not reply with rule-book replies. Please do not let us parent's down. Please.
>
> If that were my child dead, I would be going after this monster and dealing with him as he should be dealt with.
>
> OUR LIVE EXPORT CATTLE GET TREATED WORSE THAN DANTE ARTHURS!
>
> Animals are skinned alive, burned alive, butchered alive every day in China, the Middle East and other countries. These are innocent creatures doing no one any harm. YET AN EVIL MONSTER, BECAUSE HE IS 'HUMAN' IS ALLOWED TO WALK THE STREETS AND RUIN INNOCENT PEOPLE'S LIVES?? WE ARE THICK HUMANS. WE MAY BE CLEVER BUT CERTAINLY NOT FULLY INTELLIGENT.
>
> **I BEG YOU TO DO YOUR UTMOST TO KEEP THIS VIOLENT KILLER LOCKED UP UNTIL HE DIES.**

There is a plea to me and others along the same lines. Why has the Attorney General not come out and given comfort to these people by saying, "I will never release Dante Arthurs. I have said it before about others, and I will say about this man too"—and a few others, by the way? Why has he not done that? When I asked —

> Given that the Attorney General, both when in opposition and since, has given assurances to the public that certain notorious killers will not be released, has he done so in this case; and, if not, why not?

His response was —

> Under case law and established procedures and protocols, the Attorney General must give reasons for decisions in relation to accepting or rejecting recommendations of the Prisoners Review Board.

At least we agree on something, although it did not seem to stop him when he was in opposition. It did not stop Jim McGinty when he was Attorney General. The answer continues —

> Making a decision in advance of the formal PRB process, particularly as it relates to the first Statutory Review Date, risks opening any decision up to legal challenge on the basis that it had been prejudged.

That is why the Attorney General is now in a hurry to get this through—in case someone challenges one of his intemperate announcements. That is why he is trying to cover himself. As it happens, my understanding is that Catherine Birnie did not want to be released, and had no expectations of it. She is probably not likely to lodge a challenge, as is the case with a number of other prisoners. He wants to get this through, I suggest, because he knows that he has exposed himself to potential challenge, should someone choose to do so. My last question on that point was —

> Given that the Attorney General has introduced legislation to enable him to defer reporting by the Prisoners Review Board of Western Australia in the case of certain killers, allegedly to relieve the burden on secondary victims, does he consider it also to be in the public interest to do so in the case of crimes like those of Arthurs; and, if not, why not?

I mentioned the risky nature of this. The Attorney General's response was —

> Extending the legislation to apply to all child murderers would capture some offenders whose periodic review is warranted, for example young offenders or others with reduced culpability like distressed mothers.

That may be right, but remember we are not talking here about an automated process, but a discretionary one, triggered after the first review date. Can he not look at these sorts of cases in the future and say, "That was a terrible child killer case. I haven't released that person; I'll put it off for another three years so as to relieve parents of the trauma of knowing that this person might come up again." Why can he not do that? The answer continues —

> It would also increase the risk of the legislation being challenged through the courts, which would further traumatise the very survivors and secondary victims that this legislation is working to protect.

He has made a popular decision, and now he is struggling to keep it within some bounds that will stop it from being challenged. It still begs the question as to why this legislation does not work to protect other secondary victims and survivors of notorious killers who do not fall into the category of killing someone before and after midnight, and someone after midnight, or three people at any time. The answer continues —

> The proposed laws are designed to reduce the trauma suffered by survivors and secondary victims of mass and serial murder.

That is right, but that is the criterion that the government has chosen, and I am looking forward to knowing why it is limited to only those sorts of cases. Why does it not extend to other notorious cases, such as that of Arthurs, or Greer? I am sorry; I forgot. Arthur Greer murdered a child, but our Attorney General released him. I saw him on television the other night giving an interview and talking about how his criminal history is a little misleading. It is not as bad as it looks—three counts of attempted murder and sexual assault of one of his daughters. There are explanations for that; he is not a child molester, apparently, but our Attorney General saw fit to send him on his way. Plainly, child murderers are not serious or notorious enough, or maybe it is because poor Sharon Mason's parents are no longer around to agitate on her behalf. The answer continues —

> The McGowan Government went to the election seeking a specific mandate for serial killers and mass murderers and we were elected overwhelmingly on that mandate.

That was the big issue, apparently. That is why people voted; not anything else. Sure, the government has a mandate for this, and we will not oppose this legislation. However, it is part of my job to caution the implications of it, and know why the government is favouring one class of victim over another, setting up a specific class of victims that will receive the benefit of this legislation, while ignoring the others. What is the rational public policy? Is there one or is it just a tick-all-the-boxes, rash election commitment that was not thought through in its entirety, and the government does not want to extend it because it may very well attract the attention of the courts and be set aside? The answer continues —

> In framing this extreme measure, we confined it to mass murderers and serial killers.

Yes, we know that, but the government has not explained why. However, it does highlight why a person must be careful when they are in a position of responsibility, and why, during the opportunity exercised by the current Attorney General when in opposition, when he made make some very large promises to the public regarding specific prisoners, I was obliged to be more restrained and not make blanket, "I will never release X" statements in advance of receiving a statutory report that I was required to consider. That was a difficult position to be in, wherever one's sympathies might lie, and one that I attempted from time to time to explain to people. Of course, it may be considered to be just legal sophistry. That is the unfortunate thing about it.

I mentioned that there were a number of public policy considerations, although that position has been derided. I am not suggesting for a moment that that in any way is a comfort for those who have suffered loss in this fashion. But, of course, our parole system is structured so that it is the Attorney General, at present—until he gets rid of the job and passes it on to someone else so that he can clear his desk—who ultimately gets to see the reports on these prisoners and who can stop them from "falling between the cracks" and, as the popular parlance puts it, "being lost in the system". The three-year reviews, whereby a body needs to look at these prisoners, means that they do not just get lost in the system and no-one has regard to the way that they are dealt with by the system. At present the Attorney General, as the relevant executive officer, being paid for that responsibility under our system, has the duty, responsibility and function to consider those reports, inquire further as necessary and make decisions that he or she can justify rationally.

I note that the current Attorney General is not prepared to go so far as to change the system and its fundamentals, but simply wants to get certain cases off his desk for three more years and to give them to someone else to worry about. The reality, of course, of that stratagem is that it is an easy way out for any Attorney General of the day to politicise the system and to continue to put the problem off, because he has built into the system a renewal opportunity. It does not just get off his desk for his term and the term of that government; the next government might think, "Well, why not? I don't want to have to worry about this. Let's get it off our desk and justify it by way of relieving the trauma on victims." So what we have, apparently, is a system that treats all prisoners equally and has safeguards, and I want to stress, in case he chooses to twist my words' meaning and purpose, that this is not a sympathy for prisoners; this is not a sympathy or, rather, an animosity towards victims. I know he will go out there and say that I hate victims of crime and that I am protecting murderers, just as he has said on other occasions that Liberals protect child molesters and sex offenders—another sort of grotesque substitute for proper argument and rational thought. But the reality is that there is a system in which we deal with prisoners, and if it needs to be rethought, it should be rethought. But that is not being done here. He is making an exception to the system in the case of some prisoners on the basis of their notoriety and the like, whereby he has taken it out of the hands of the court and he has put in a pretend system which treats them equally but which is in fact intended to achieve a totally different end. He is putting it off for three years, by making it six years between reviews, knowing full well that the next Attorney General will find it even more difficult to say, "Well, I've got to look at a report first just to find out what has been going on." The easy answer is to put it off for another three years and another three years, and so convert what was the court sentence into not just an indefinite one, but a facade of consideration under a system. He is actually putting off forever the hard day to make a decision, and that is cowardly. That is the Attorney General not doing his job rather than doing it. He can dress it up as being to help victims as much as he likes, but at the end of the day he is setting up two classes of prisoners and he is doing so not on the basis of any rationality other than numbers, and he is doing so by justifying it as being in the interests of victims, secondary victims and any survivors of their crimes.

He is also, and perhaps more importantly in the public interest, setting up two classes of victims, and that is a serious problem in this legislation. It appears as though he is refusing to extend it, but he is quite happy to set up two classes of victims in our community. He has done so by carefully limiting it to those who will not challenge it or who may not be successful in a challenge, but still distorting the public interest in that regard. I am anxious to hear why we will have two classes of victims in the future. There is the potential constitutional problem, as I have mentioned. The challenge, no doubt, will be that in reality the Attorney General will have created a never-to-be-released category of prisoners not by way of changing their sentence, not by way of any statutory intervention, not by way of a rational approach whereby there is an ability to know which will fall within and which will fall without on the basis of the gravity of their crime on an objective basis, but by way of a subterfuge—a putting off for three years that ultimately may result in a change to the sentence. I am concerned about that and, quite apart from the potential challenge to it, which will only cause additional problems, about the distortion of the system and putting it into the hands of the Attorney General of the day when there need not be any reason given and there would not be a consideration of a parole recommendation but simply on whim and in respect of political pressure—"Am I going to get a bad headline? I will put it off. I won't make a decision. Don't even bother to tell me what the report says. I don't want a report. I'm more worried about the headline." If that is how our criminal justice system is going to work in the future, I think we ought to know about it.

Some would say that these people are so basically evil that we should not have regard to that anyway. Who cares? I have a lot of sympathy for that. I think that they are odious folk, but, again, we have to be careful about what is being introduced here. If we start doing things on the basis of popularity polls, like the one that was recently in the

newspaper about euthanasia, and frame questions such as, "Do you think notorious killers, killers that kill children or mass murderers, ought to be put to death?", I reckon we could end up with a pretty high result in favour of that. But, as legislators, we have shied away from that. Indeed, some years ago, one of our research psephologists in Parliament opined to me that if there was a poll about bringing back the death penalty in notorious cases, there would be overwhelming support for it. That might win a few votes down the track, but that is not the way we have chosen to go; yet what we are doing in this case is leaving it to a discretionary system without, as I understand it, any clear rationale for why the line has been drawn in one place over another, other than that there is an election commitment in one case and not in others. Perhaps we can fix some of that.

What I have in mind is to fix that problem in this legislation. If the relevant minister, the Leader of the House, cannot explain why the line has to be drawn in the manner it has, we could provide this discretion to the Attorney General in other cases of notoriety so that the Attorney General of the day can in due course look at people like Dante Arthurs; Arthur Greer; the two women who tortured and killed that young man some time ago; the two women who tortured and killed their female friend and dumped her in a wheelie bin; or some hit man murderer who has only one victim whom we have managed to identify—all those cases in which there is trauma, anxiety and re-traumatisation for secondary victims and survivors, to give them the same comfort that the Attorney General is proposing for these secondary victims. It is not absolute; it will not be forever. It will just be for up to six years, similar to what the Attorney General is proposing here. I have in mind, and I have on the supplementary notice paper, three amendments, but one is an alternative to the other. I will give an outline so that perhaps the Leader of the House can address that situation.

The first will be to amend the short title of the bill. I should stress that there is no change to the scope of the legislation through its long title. The long title of the bill simply reads—I am pleased that the Attorney General has left it so generous —

An Act to amend the *Sentence Administration Act 2003.*

The short title, though, needs a bit of tweaking to reflect the argument that I propose for it. What I propose in my first amendment is to remove the reference to "multiple murderers" and insert something that is perhaps rather more reflective of what is proposed for the legislation as it stands, which is to replace the term "multiple murderers" with "deferring parole for murderers". It is broad enough to embrace not only what the current policy is, but also any changes that the house might feel moved to make.

The second amendment that I propose will reframe the definition of "designated prisoner" to mean any schedule 3 prisoner who is serving a sentence for a relevant offence, being a murder or a wilful murder. That will extend the legislation to one-off cases and cases in which a killer has killed two people in the one day. It will actually deal with multiple murderers because "multiple" means more than one, I would have thought. It should not matter, I would have thought, whether it is two on two different days or two on the one day. Hopefully, that anomaly can be corrected for the benefit of victims and to provide a little more certainty and flexibility to the Attorney General should he receive a report or agitation on behalf of victims in respect of a case about which he will have to throw up his hands and say, "I can't deal with Dante Arthurs or any of these other horrible things because my legislation is too limited to allow me to do that".

However, if that is thought to be going a bridge too far, I have an alternative, and that is to replace the proposed definition of "designated prisoner" of two victims on separate days or three victims at any time to that of a schedule 3 prisoner who, firstly, is serving a sentence for a relevant offence—murder or wilful murder—and has been convicted of another relevant offence. "Multiple" means more than one; there are two killings, whenever they are done. That seems fair and consistent with the policy of the bill and more satisfactorily meets the policy objective of dealing with multiple murderers. The second form of "designated prisoner" is one who is serving a sentence for a relevant offence of which the primary victim was a child—"primary" being the victim rather than a secondary victim, who is next of kin and the like—and will include child killers such as Greer, Arthurs and the ones who murdered that young boy down Rockingham way, from memory, after torturing him, or any others of that ilk. We could deal with all those. The Attorney General can relieve the trauma, the re-traumatisation and the anxiety of wondering whether these people will ever be released by putting them off for six years. And I will include also those serving a sentence for a relevant offence relating to family violence, as defined in the Restraining Orders Act 1997. We have heard a lot over the last week or so about how important it is to punish, deter and hold perpetrators to account for family violence. Here is an opportunity for this Parliament to signify how seriously it regards family violence, especially, as we have heard, that many of the perpetrators of family violence are recidivists. If it results in death and if the circumstances are considered bad enough, the Attorney General can also put off consideration of them. I think that would send a salutary message, too, if in fact this is all about the relief of re-traumatisation, anxiety and stress for secondary victims. It is a coherent policy in the public interest, because it seems to me that if one is going to go down this path, one should do so on a rational basis and treat all victims equally, or at least be able to discriminate on the basis of quality rather than arbitrary numbers. I will be moving those amendments in due course. I have been informed by the Deputy Clerk that it is arguable that the scope of the bill is being expanded. Notwithstanding that, what I am proposing falls comfortably within the long title, but because of the manner in which the bill is framed in the short title, there is an argument that my amendments go

beyond the bounds of the bill, in which case I will move at the conclusion of my contribution a motion to instruct the Committee of the Whole, which will have to convene anyway, that it have the power to consider the amendments I propose, which are contained in the supplementary notice paper.

I reinforce that there needs to be some consideration of the amendments, for this reason: the Attorney General's most recent media release on this matter highlights the problems to which I have alluded. It is from 18 October and it has the Premier and the Attorney General proudly smiling up at us. It refers to how the bill will be introduced into Parliament. This is dated 18 October 2018, which is fairly late in the piece. It was less than a month and a half before Parliament rises and even though the government did not think that it was particularly urgent or important until then, it suddenly became important and had to be rushed through Parliament. It states —

- Attorney General during their term of appointment will be able to direct that mass murderers and serial killers must not be considered for parole or a re-socialisation program
- Key election commitment intended to limit trauma to survivors, family and friends of murder victims

It is not only murder victims of these particular types of multiple murderers and the like, but also "survivors, families and friends of murder victims". It is very broad. Apparently, that is the policy intent. The detail of the media release states —

> New laws enabling the Attorney General to issue a direction to suspend the Prisoners Review Board's statutory reporting functions in respect of prisoners serving terms for serial killings or mass murders will be introduced into State Parliament today.

It then acknowledges the problem, raised before, of speaking a little too loudly and rashly without regard to one's legal responsibilities and consequences, when it says —

> Attorneys General of successive governments have consistently made public declarations that certain prisoners will not be released during that Attorney's term of appointment.
>
> However, these public declarations have had no impact as the Prisoners Review Board is required under legislation to consider whether the prisoner should be released.

I do not know why the Attorney General does not simply change that and extend it from three-year reporting to six, if that is what he really wants, instead of this stratagem. At least that would be up-front and the government would be being open about what it is doing, rather than leaving a discretion. I should add that notwithstanding that he may direct that there be no report for three years, he retains the power under the Sentence Administration Act to request a report from the Prisoners Review Board at any time. The Attorney General is promising one thing for the comfort of others, but it may not necessarily work that way if the Attorney General of the day decides to disregard that. If the Attorney General is really serious about this, he should do it properly. The media release continues —

> The proposed legislation will provide the Attorney General with the ability to give legal effect to those public declarations in respect to mass murderers and serial killers, being those who commit three or more murders on the same day or two or more murders on separate days, respectively.

I have already said my bit about the irrationality of drawing the line there. From information provided at the briefing from the Department of Justice, I understand that that definition has been picked up from legislation overseas. That may be right, but it does not mean that he has to limit it to that for the purposes of this legislation, given its policy intent as declared. The media release quotes the Premier as saying —

> "Prior to the March 2017 State election, WA Labor pledged to reform WA's parole laws to ensure that serial killers and mass murderers would not be considered for parole.

That may be right as far as it goes, but it is not closing off consideration of parole entirely. It is putting it off to the future and leaving it to discretion. The Premier continues —

> "The aim of this policy is to limit trauma to family and friends of murder victims and others impacted by the crimes, including surviving victims of serial killers and mass murderers, by suspending the consideration for parole or a re-socialisation program.

That is getting closer to the truth. The Premier says —

> "This is about putting victims and their families first, ahead of murderers.

I entirely support that sentiment and that is why I will move to extend putting victims and their families first to secondary victims of other killers who may not have accumulated the same number of victims, but have committed horrible crimes that have resulted in the death of their target. Attorney General Quigley says —

> "Survivors and secondary victims are re-traumatised every time these prisoners come up for consideration for a re-socialisation program or parole, as is required under existing parole legislation.
>
> "They are forced to relive the most horrific events of their lives all over again.
>
> "The secondary victims and survivors of these horrendous crimes have already suffered enough, they should not be put through this process every three years."

Plainly, some can and the government thinks they should be, but if the government is so minded and that is really what it is aiming at doing, rather than just creating a headline, I hope that it will support my proposed amendments to extend it to the potential for dealing with all killers in this fashion. I should add that it is a discretion so it does not mean it will necessarily capture the people who the Attorney General is worried about, such as distressed mothers who have murdered their children, or juveniles. It is up to him. But it will give that opportunity for traumatised secondary victims and survivors to have their suffering relieved. If the net is too wide by capturing all murderers, we should limit it to multiple killers in the strict sense of two victims, those who have killed children, and perpetrators of family violence. If the government thinks that is too wide, I am happy to abandon one or more of those elements.

I look forward to the minister being able to explain the public policy. As I said, the idea of saying that one is an election commitment and the other one is not is not a basis for a public policy or for identifying where the public interest lies. I would like to hear more about how in advance of a report the Attorney General is going to decide that certain cases are ones that he will never consider. Is it on the basis of newspaper headlines? Is it on the basis of a political assessment of whether the government will get good or bad press? Is it on the number of names on petitions or the number of letters, or will it be on the basis of a three-year-old report? How is the Attorney General of the day expected to deal with these? I think it is important also for determining whether a rational public interest or public policy is involved in this or whether it is, once again, opportunism.

On that note, I look forward to the explanation to be given by the Leader of the House and I propose to move my amendments in due course.

Instruction to the Committee of the Whole — Motion

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.28 pm] — without notice: I move —

> That upon the second reading of the Sentence Administration Amendment (Multiple Murderers) Bill 2018, it be an instruction to the Committee of the Whole House that it have the power to consider the amendments contained in supplementary notice paper 101, issue 1.

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.29 pm]: For members who have not seen this kind of technique before, amendments are normally moved and considered in the Committee of the Whole House stage. However, as Hon Michael Mischin has identified, if I am not paraphrasing him too much, when he sought drafting advice, it was drawn to his attention—I think by the Deputy Clerk—that it was at least arguable that the proposed amendments were out of scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018. That is also the advice that I have received, so if this motion had not been moved now, it was my intention to ask for a ruling during the committee stage about whether the amendments were in scope.

Irrespective of that advice, the honourable member has asked the house to decide whether it accepts that these amendments are in scope. My view is that they are out of scope and that we should not support the motion that has been put. The reasons I would argue that the amendments are out of scope follow.

Schedule 3 of the standing orders defines the subject matter of a bill to mean —

> … the provisions of the Bill as printed, read a second time and committed to the Committee of the Whole House, (also referred to as 'scope of the bill').

The starting point is the title of the bill. The proposed amendment clearly departs from the subject matter as reflected in the title, the Sentence Administration Amendment (Multiple Murderers) Bill 2018. The proposed amendment would extend the scheme to defer parole for all murderers or a defined subset of single murderers. In the honourable member's contribution to the second reading debate, he put essentially one main argument; that is, the scope of this bill is narrow. His concern about the narrowness of the scope was that, in his argument, it would create two classes of victim—that is, primary victims and secondary victims.

Hon Michael Mischin: No, sorry. It's two classes of secondary victims—one within and one out. The ones that get the benefit and the ones that do not.

Hon SUE ELLERY: Two classes—essentially.

In his contribution, he argued that the bill was narrow. That is my point! Indeed, it is narrow and it is narrow quite deliberately. Members may not agree with the argument that we made a specific election commitment about just these confines of narrowness. They may not agree that that is a suitable reason to support the bill. Clearly, the honourable member takes issue with us relying on the fact that we are doing what we said we would do. Members may not agree that that is a satisfactory argument but, nevertheless, his argument is that this is a narrow bill. That is the point I am making. The first change in the amendment he seeks to make would make the bill much broader. That is outside the scope of the bill. His intention is quite deliberate. His whole argument has been that the bill is too narrow, so his amendments seek to expand it. I say that, by any reading or practice of what is within or out of scope, that is clearly outside the scope of the bill.

The scope and the purpose of a bill are also determined by its clauses. If the purpose of a bill is restricted, as is the case with the multiple murderers bill, the extent to which it may be amended is accordingly restricted. The second reading speech and explanatory memorandum assist in explaining a bill's purpose. They demonstrate with clear intent that the proposed scheme is, indeed, restricted to apply to multiple murderers—more specifically, mass murderers and serial killers. Those concepts have been defined within the bill and do not encompass offenders convicted of a single murder. Clause 6 of the bill introduces the concept of a designated prisoner for the purpose of prescribing the class of prisoner for whom a ministerial direction may be made. It clearly contemplates only serial killers and mass murderers. The explanatory memorandum states that ministerial directions can be made regarding only a mass murderer, being someone who has killed three or more people, and a serial killer, being someone who has killed two or more people on different days. Further, the second reading speech clearly expresses that the amendments introduced by the bill are targeted at the very worst mass murderers and serial killers who are serving life sentences and indefinite terms in Western Australian prisons. The suspension of parole consideration for mass murderers and serial killers is primarily intended to address the re-traumatisation experienced by secondary victims and survivors of those notorious crimes. Thus, the amendment proposed by the member does not fall within the deliberately narrow scope of the bill. That is the question that the house is being asked to determine. It is not whether members agree, as a policy, that it is the right or wrong thing to do, but whether it fits within the scope of the bill. Clearly, on any reading, the argument that the member put in his second reading contribution was that he thinks the bill is too narrow, so he seeking that the house make a decision—this is something we do not do in this manner in this house very often—and agree that, in fact, the amendments are not about expanding the scope of the bill. However, they very clearly and deliberately are. The question members are being asked to consider is not whether they agree that narrow is good or bad; it is about acknowledging that the bill is narrow. If the house is going to follow the standing orders, it cannot agree that these amendments are within the scope of the bill. The bill has already been very clearly identified by the mover of the amendments as being narrow and he seeks to expand it. If the house were to grant permission to do that, it would be taking a fairly extraordinary step in determining that something that has been quite clearly explained to us as being about broadening the scope is, in fact, a legitimate thing to do when our standing orders very clearly state that it is not what we should be doing.

The way to tackle this, if the house or the member is of a view to do so, is with another bill—not this one. This is, very specifically, a very narrow proposition. If members listened carefully to what the honourable member said, he knows that. That was his whole argument; that is, the bill is too narrow. However, he is trying to expand it and to get the house to determine that in doing so it would not be breaching the longstanding practice, the content of the standing orders and the intent of the standing orders, which are quite clear. I ask members to think carefully. This is not about the bill's policy. By saying that these amendments do not breach the standing orders, we would effectively be saying that it is okay to consider something that quite deliberately seeks to expand the scope of the bill. It is completely against what our standing orders intend.

HON AARON STONEHOUSE (South Metropolitan) [2.38 pm]: I have listened to the arguments put forward by the Leader of the House and Hon Michael Mischin. I think this is a very important motion. I hope that other members will contemplate this seriously and perhaps even rise to share their thoughts on it. Potentially, the Legislative Council will be setting a precedent about how it does business. As I understand it, Hon Michael Mischin has raised the concern that his proposed amendments on the supplementary notice paper may sit on the fringes of the scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018 and there is an argument about whether they would be within the policy of the bill.

In general, I am not particularly in favour of his amendments. I understand the intent behind them but I do not suppose I will support them in the end. I am sympathetic to the idea that perhaps even if I do not support the proposed amendments, it might be worth having an opportunity to debate them on their merits as opposed to shooting them down now or having them shot down through a point of order or ruling by the Chair of Committees. However, again, there is the idea of setting a precedent going forward. The scope and policy of the Sentence Administration Amendment (Multiple Murderers) Bill has already been established in the title of the bill. It has come to us from the other place. Should we be setting a precedent here now of giving instruction to the Committee of the Whole House to consider items outside the scope that has already been agreed to? It has not been done before in this Legislative Council that I am aware of.

Hon Sue Ellery: Not in my time, and that is 17 years.

Hon AARON STONEHOUSE: Yes. There may be times in the future when we want to do this. I think, ultimately, the decision to support this motion comes down to whether we think it is appropriate to expand the scope of these amendments. I am inclined not to support these amendments in the end. The point raised by the Leader of the House is that if members wish to pursue matters outside the scope of the bill, that is an opportunity for another bill at another time perhaps. I am inclined to agree with that assessment. If members do not like the content of this bill and they think it does not go far enough, they have an opportunity to vote it down and send it back to the government with the message that it can go back to the drawing board and produce a bill that a majority of the house will agree on, rather than try to use rather obscure mechanisms such as an instruction to the Committee of the Whole House to stretch the bounds of what is acceptable in the Committee of the Whole House to pursue a different political goal.

My advice would be to send this bill back, vote it down and not proceed through a second and third reading. Let the government instead go back to the drawing board and follow that process, rather than set a precedent now that would be rather unnecessary to discuss any manner of amendments in the future that will just frustrate the legislative process unnecessarily when we can vote it down and start from scratch. I will not support this motion to give an instruction to the Committee of the Whole House.

HON MARTIN ALDRIDGE (Agricultural) [2.42 pm]: I rise to indicate that the National Party will support this motion. I have not had a lot of time to give detailed consideration to the motion before the house but I agree with aspects of what Hon Aaron Stonehouse has said, which is to let the argument on the merits of these amendments rise and fall on the policy and grounding of those amendments in the Committee of the Whole. I draw members' attention to Hon Michael Mischin's motion. They will note that he does not intend to suspend standing orders; he is intending to use the existing standing orders through this motion without notice to give a direction to the Committee of the Whole. I am not sure I subscribe to the theory presented by the Leader of the House that this is a matter that has never been done in her time in the Legislative Council. In fact, the brief advice I received is that on multiple occasions, although not recently, certainly through the 2000s, it has been used as an implement to expand consideration of a bill in the Committee of the Whole. Similarly, it was interesting to hear in the Leader of the House's contribution that she is concerned that we should stick by our standing orders. Our standing orders say that we should be dealing with motions on notice at about this time and with consideration of committee reports after that. Last week, the Leader of the House moved a motion without notice to suspend standing orders, which the National Party opposed, but the house obviously resolved a different outcome. I am not quite sure that I accept her argument to any degree when she herself seeks to suspend standing orders whenever it suits her. However, Hon Michael Mischin does not seek to suspend standing orders but, indeed, is seeking to use the existing standing orders to send a message to the Committee of the Whole to consider the merits of his amendments to the bill before us. I think the case has not been very strong by the government in opposing this motion and the National Party will support the motion before the house.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.44 pm] — in reply: I assume that no-one else wishes to speak on this. I appreciate the comments made by and contributions from members. The Leader of the House was half right. As I expressed it, the advice I received was that it was arguable that the amendments went beyond the scope of the Sentence Administration Amendment (Multiple Murderers) Bill, if one looks at not only the long title, which is very broad, but also the manner in which the bill is framed, which certainly has regard to the short title. It is quite right that I wanted, as a matter of caution really, there to be an opportunity to consider the amendments. As Hon Martin Aldridge has pointed out, we are dealing with a direction, if you like, of the merits of the amendments, particularly in light of the public policy that has been professed for this bill—that it is to relieve anxiety, trauma and upset for secondary victims and the point that there are now two classes of secondary victims potentially being established—and the opportunity to consider whether the operation of the bill, having regard to that policy, is too constrained. For example, it may be thought proper that the definition of a "designated prisoner" be amended to include multiple murderers that are two on the same day rather be two on separate days. That would not be outside the scope of the bill. It is part of what the amendment proposes to agitate. I put the argument. It would be useful to be able to agitate the issues and see why the government has drawn the line the way it has for these things, and perhaps improve the legislation. Ultimately, it will be up to the will of the house. The Leader of the House is partly right, but not entirely. I think Hon Martin Aldridge has got close to the point and Hon Aaron Stonehouse, quite apart from the standing order issue, has also picked up on why there may be some merit in discussing these matters more freely rather than being told, "Our election is our merit; therefore, we don't need to explain it. Just rubberstamp the bill." I do not want to go down the path of rejecting it entirely. My objective is not to frustrate the government's decision to put forward this legislation. My objective is to improve its operation so that it works even-handedly for all victims, or, at least others who are not included within the legislation.

Question put and negatived.

Second Reading Resumed

HON CHARLES SMITH (East Metropolitan) [2.48 pm]: I rise to make a few brief comments on this Sentence Administration Amendment (Multiple Murderers) Bill. As members may know, I have spoken in this house time and again on law and order issues. I am sure members are well aware of my views on the subject. The McGowan government has said it will be tough on crime. The house is still waiting for the McGowan government to be tough on crime. What it is good at is virtue signalling. Let us remind ourselves about the meth trafficking bill to increase the maximum sentence, which, arguably, is having little effect. The no body, no parole bill affects five or six people in the state. This multiple murderers bill will affect two or three people in the state. We still have the fake 24-hour police stations, which has taken police off the streets so they are unable to respond to calls. Although I certainly do not object to murderers not being granted parole, I ask why little else has been done regarding the Sentencing Act, the Sentence Administration Act and the Bail Act in particular. Time and again, dangerous and violent criminals are given bail to continue their sociopathic behaviour. Although the Sentence Administration Amendment (Multiple Murderers) Bill 2018 may be a small step in the right direction, it is the smallest of small

steps. Members may recall my speech earlier in the year about the so-called no body, no parole bill in which I suggested, amongst other things, the removal of parole in its entirety. Western Australia has the misfortune of having one of the highest rates of incarceration in the country and we are embarrassingly known as the meth capital of Australia. But what saddens me is that some people and politicians believe that if the incarceration rates are high, the system needs changing. The government appears to be trying to find ways to not put criminals in prison, which is both frivolous and dangerous to the community. In an attempt to improve statistics, lawmakers need to be mindful that oftentimes they may wind up making the problem worse.

In 2011, the Auditor General published a report titled "The Management of Offenders on Parole". Despite his best efforts to put a positive spin on the situation, he did have to concede a number of damning points. For example, the report noted that community corrections officers —

> … rely on parolees to provide them with information and to 'self-report' activities that could result in breach action. However, the stricter enforcement of parole conditions reduces the incentive for parolees to report issues that could result in cancellation of their parole. In the absence of other methods for detecting breaches of some conditions, parolees may be breaching conditions without DCS knowing.

Why have parole when it is not even policed properly? When conditions are reported as "not breached" by staff because it is too hard, why have parole at all? The report also concedes the difficulties in monitoring those on parole, the violations that assessors will let slip, and the community outcry; and the failure to collect data on offenders.

The Prisoners Review Board of Western Australia notes that in 2016–17, there was a 14 per cent increase in the types of early-release orders that were granted. Supervised short-term parole increased 20 per cent in the previous period. In total, 1 409 prisoners were released under an early-release order. In 2016–17, 30 per cent of parole orders were cancelled and 5.6 per cent were suspended. The Prisoners Review Board policy manual states that parole may be suspended when a breach of parole has occurred. Regarding suspensions, the policy manual states —

> The Board should not suspend parole for a fixed term to simply punish the prisoner for the behaviour resulting in the breach of parole.

Apparently, there is no consequence for breaching parole conditions. The act does not create an offence for breaching parole, so why even have it? We wonder why many people have no respect for our law. It is very weak in many instances and entirely without consequence. Take the example of the police officer who was assaulted in Geraldton and kicked in the face while he was on the ground. This was reported in the media just a few weeks ago. The offender was given a suspended sentence and walked away. What a joke!

With regard to parole cancellations, the Prisoners Review Board policy manual states —

> The Board can suspend or cancel a Parole Order whenever it considers it appropriate to do so. Generally, this will occur when the Board becomes aware that the prisoner's behaviour has demonstrated an increase in his or her risk to the safety of the community, the prisoner has re-offended or breached a condition of parole.

This shows that the 30 per cent of those granted parole either committed new offences while on parole or behaved in such a way that demonstrated they are a danger to the community.

I would like to make members aware that sometimes parole includes such conditions as the parolee not having contact with females under 16 years of age.

The Auditor General reported that that requirement was too hard to monitor. This the crux of the problem: criminals already have concessions made for them. They have two, or more, chances of being granted bail and an early plea can reduce their sentence, as can expressing remorse. In criminal trials, judges will almost never hand down the maximum sentence. If criminals behave themselves during their custodial term, we may let them go free—including murderers. As the Prisoners Review Board's statistics show, just under 1 500 parole applications were granted. Almost one-third of applications were then cancelled and almost six per cent were suspended. That is just in cases when it is clear that the person has breached a condition or shown their true colours. As the Auditor General's report notes, it is impossible to monitor everything.

Earlier this year, when Parliament was debating the no body, no parole bill, I suggested removing the option of parole. It seems that the Labor Party has taken some of that idea, but in true Labor fashion has watered it down and made it as soft as possible. We should be debating a review of the Sentence Administration Act and the Bail Act. Bail needs to be much harder to get and parole needs to be scrapped entirely. Thomas Sowell said that parole is just another way of deceiving the public. In this case, it is lies about the time that convicted criminals will spend behind bars. Suspended sentences are another form of pretend punishment to trick the public. Sadly, this is exactly how the Labor Party operates on law and order issues, from its fake 24-hour police stations to its weak amendments to parole. This bill, to quote William Shakespeare —

> … is a tale
>
> Told by an idiot, full of sound and fury,
> Signifying nothing.

HON ALISON XAMON (North Metropolitan) [2.57 pm]: I rise as the lead speaker for the Greens on the Sentence Administration Amendment (Multiple Murderers) Bill.

I note that currently section 12 of the Sentence Administration Act 2003 requires the Prisoners Review Board to give the Attorney General a written report that deals with release considerations for a prisoner whenever the Attorney General makes a written request for a report or the board considers it necessary to do so. Schedule 3 of that act sets out the minimum frequency for reports for certain prisoners. The due date for the first report for schedule 3 prisoners varies considerably, depending on the nature of their sentence. After that, the frequency of subsequent reports is generally one every three years. A couple of exceptions require an annual report. This bill applies to two subcategories of schedule 3 prisoners, specifically those who have been convicted of two murders on different days, who are colloquially referred to as serial killers, and those who have been convicted of three or more murders whether or not at the same time, who are colloquially referred to as mass murderers or serial killers. I note that under this bill, those prisoners would still receive the first statutory report, but the bill proposes that any time after that, the minister can fire a direction to suspend any further statutory reports or assessments for resocialisation programs, and that that direction can last for up to six years and an unlimited number of consecutive directions can be made. Upon the expiry of those directions—if that ever happened—statutory reporting under schedule 3 would resume, with the due date of the next report calculated as if the direction had not existed. The board will have up to seven months after the direction ceases to prepare the first report if needed. The advice given to me in the briefing on this bill was that it generally takes seven months to prepare a report.

This bill will give the minister absolute discretion to make a direction. The bill does not specify what matters the minister must, or, indeed, must not, take into account, not even the content of the most recent report. The bill contains no requirement that the prisoner be given an opportunity to be heard before a decision is made. This is despite the fact that a long-term prisoner may be so institutionalised that they do not want to be released, or recognises that they will not be released and therefore may be willing to consent to a direction in order to avoid ongoing drama for them.

The bill does not provide for review. The only exception is judicial review on the ground of jurisdictional error, which the explanatory memorandum states cannot constitutionally be excluded. I understand from the briefing that "jurisdictional error" means that the person does not meet the bill's criteria. The bill also does not provide for a direction to be varied or revoked. That leaves only one option. A direction relates to statutory reports required under schedule 3 of the Sentence Administration Act. A direction does not relate to reports under section 12. Therefore, under section 12, the minister can still at any time make a written request to the Prisoners Review Board for a report, and the board can, at any time it considers necessary, unilaterally give the minister a written report about release considerations relating to the prisoner. However, it is highly unlikely that this would happen. Indeed, the explanatory memorandum envisages that this would happen only in exceptional cases. The minister is certainly unlikely to request a report in any but exceptional cases, particularly if it is the same minister as the one who made the original direction. Some of the circumstances under which the minister might request a section 12 report are if there is a change of minister and the new minister holds a different view from the previous minister and requests a report; there is support from the public, or, indeed, from the secondary victims, particularly in the case of a family crime; the prisoner develops a condition such as a terminal illness or dementia and prison is no longer an appropriate place for them to remain; and there is the receipt of new evidence—that is, unless a forthcoming bill is passed that would enable an appeal to the court to be made on this ground instead.

I refer now to the most recent report of the Prisoners Review Board, which states repeatedly in the "Chairperson's Overview" that the board's workload is challenging. It notes also that there was a 12.6 per cent increase in the number of cases considered by the board in the last year alone. Therefore, it seems unlikely that the board would do anything to add to its workload, unless the circumstances were particularly compelling. Another reason that it is unlikely the board would unilaterally prepare a report is that when recommending release on parole or for approval to participate in a resocialisation program, the board has power only to make a recommendation to the Attorney General and the Governor in Executive Council. If the board knows that its report would definitely not be welcomed by an Attorney General who would strongly like to reject a recommendation for a prisoner's release to parole, it would probably be a disincentive for the board to prepare a report in the first place.

This is a difficult bill and it raises a number of issues and concerns. I need to acknowledge from the outset that the instigators of this bill were victims and secondary victims who have lobbied very hard for this. This came to our attention in a very significant way in 2016 when Kate Moir, who survived the Birnies, called for a reform to parole laws with an online petition. That online petition went on to receive 41 000 signatures. I note that the link to the petition is now closed, but that page remains. The page indicates the opposition to mandatory parole hearings, which stems from a much deeper concern of Ms Moir that the Birnies' original sentence for abducting and twice raping her was horrendously inadequate. It has been pointed out that it has been extraordinarily painful for her to go through the process every three years to have input into the release of Catherine Birnie—of course, David Birnie has died. I note that the last time parole was considered, it coincided with Ms Moir's birthday. She talked about

spending her birthday on the phone with the parole board. I know that Ms Moir approached the government of the day at that point to try to get support for changes in these laws. I recently heard an interview on the ABC with Evalyn Clow, whose sister and her sister's three children were murdered in Greenough in 1993. It made for really harrowing listening. She talked about the trauma she goes through every time she has to revisit the murders through the parole hearings, bearing in mind that her family members died in one of the most horrendous cases I can recall. I cannot take away from the very real trauma that not just secondary victims but also, as in the case of Ms Moir, direct victims of the class of prisoner to whom we are referring go through when they deal with the issue of parole. This is one reason this is a very complex issue to try to navigate, because we also need to make sure that we maintain the integrity of our parole system. We have to remind ourselves of the purpose of parole.

I want to make some other comments about concerns I have around some of the changes in this bill. I am concerned that this bill applies to children as much as it does to adults. I recognise that no children are currently captured by the provisions of this legislation. I also recognise that for a child to be subject to the provisions of this legislation, they would have to be convicted of some absolutely horrific crimes. But I also think about the circumstances through which a child might find themselves in that situation. I think about the number of children who are detained at Banksia Hill Detention Centre who were born with no chance at all—kids who were born into profound disadvantage and who have foetal alcohol spectrum disorder, for example. I consider a scenario in which a child who has experienced severe disadvantage and severe abuse, has ongoing mental health issues and may also live with cognitive impairment may kill their entire family in one hit for any range of reasons, in which case they would potentially fall within the purview of this legislation. Of course, we are talking in the hypothetical here, but I have to think about how this bill might impact people in the future; it is not enough for me to simply reflect on the people whom it will currently impact. I consider children in detention who have absolutely no-one to advocate on their behalf. There are several children in that situation. I am concerned that all that stands between such a child and direction after direction is effectively one politician with a biro and unfettered discretion. I am concerned that without the possibility of mandatory review times for parole, children could become lost in the system, noting that the matters in sections 5A and 5B of the Sentence Administration Act 2003 will never be re-examined as they grow and develop, all but for one politician with the next election to win. At the very least, I would have preferred that Parliament knew the views of the Commissioner for Children and Young People before debating the Sentence Administration Amendment (Multiple Murderers) Bill 2018. That is probably my principal concern.

I have concerns about the procedure the government proposes to adopt. The bill has not come out of a broad inquiry into parole. It is about time we had one of those. It is very important to start looking at the role of parole around issues of punishment and rehabilitation as a whole. We need to look at issues around merit, whether it needs to be extinguished in certain cases, and the processes that should apply to decisions about it. Instead, Parliament is today being asked to legislate to allow the Attorney General of the day to, effectively, thwart Parliament's will as expressed in schedule 3 and section 12A, and to duck the responsibilities those provisions impose. The current process does not allow the Attorney General to prejudge their decision on a statutory report from the Prisoners Review Board; this bill will allow the Attorney General to instead suspend the statutory responsibility of the Prisoners Review Board to provide a report. So no prejudging, but the Attorney General will still get to predetermine the outcome for as long as he or she wishes. Section 12 will be maintained, but the Attorney General will have absolute unfettered discretion to simply never use the report. It will come down to whether the Prisoners Review Board will unilaterally use section 12 to present a report it knows will be unwelcomed by the Attorney General. I have already said that will constitute extra work on top of the board's already challenging workload. It seems highly unlikely to me that that will occur.

The procedure that will be adopted through this bill will be a farce. That, together with the lack of consultation with important stakeholders, is problematic for Parliament in deciding whether certain crimes need to be singled out to ensure that parole needs to be considered less frequently or not at all, and, importantly, the processes that will apply around that. I would much have preferred this to be considered as part of an overall comprehensive consultative review of the way we deal with parole in this state that looked at the necessary reforms holistically, rather than simply trying to single this out. I recognise that it came from an election commitment, but, more importantly, I recognise that it has been driven by secondary victims who find the current process deeply traumatic. At the same time, I am concerned about looking at reform in such a piecemeal way, and I hope that this government undertakes to take a holistic approach to reviewing the way we deal with parole in this state.

HON MARTIN ALDRIDGE (Agricultural) [3.14 pm]: I rise to make a contribution to debate on the Sentence Administration Amendment (Multiple Murderers) Bill 2018, and I indicate that I am the lead speaker for the National Party. I want to talk initially about the briefing I received. This bill is much more recent than some of the bills we have been dealing with in this house over the past few weeks in that it was only introduced into the other place, if I am not mistaken, around mid-October. My briefing on this bill was therefore a bit more recent. I was aware that this bill was born out of an election commitment made by the government. At the briefing I asked for a copy of the election commitment, and I was directed to an article in *The West Australian* as the source of the government's election commitment. I was not directed to any written commitment, media statement, discussion paper or policy statement from the then Labor opposition on the matter that is before the house now. It appears that

the sole piece of information that we rely upon for the basis of the Labor Party's election commitment, only a few weeks out from the 2017 election, is this article in *The West Australian*, an exclusive by Tim Clarke, legal affairs editor, on Thursday, 16 February, 2017, titled "Labor pledge on parole ban for serial killers". I find it interesting that not only was the timing so close to the election, but also the sole piece of information that the Labor Party relies on, and indeed that we rely upon now in considering the bill before us, is this article in *The West Australian*.

It is well established in the second reading speech that the focus of the bill is to avoid the re-traumatisation of secondary victims from engaging in the parole process. A number of questions need to be considered, hopefully in the minister's second reading reply, or during the Committee of the Whole House, on the formation of the policy behind this bill, and the amendments before the house when we enter the committee stage. It is unfortunate that the house resolved earlier today not to consider, during the Committee of the Whole House, the amendments listed on issue 1 of the supplementary notice paper. It concerns me that the government has hidden behind a procedural argument rather than arguing the merits of, or defending the policy that certain classes of secondary victims should not be afforded the same rights that the government intends to provide to the secondary victims outlined in the bill before us. Nevertheless, I am sure that that will be well canvassed in the committee stage.

Obviously, the primary focus of this bill is to deal with the re-traumatisation of secondary victims. I want to quote from the article I referenced earlier in *The West Australian* of Thursday, 16 February 2017. A couple of paragraphs in particular relate specifically to the Labor Party's election commitment. It reads —

> In a move made in the light of a campaign by Birnie survivor Kate Moir, shadow attorney-general John Quigley told The West Australian that if elected, a Labor government would amend existing laws that allowed even the worst killers to be considered for release every three years.
>
> Under the changes, an attorney-general could tell the Prisoners Review Board not to consider parole in cases of serial killing. That would be defined as two or more murders on different days or, in the case of mass killing, two or more murders on the same day.
>
> The parole consideration ban would last for the term of that government.
>
> Mr Quigley said that if he became attorney-general, Catherine Birnie would be the first person he would make subject to an order.
>
> "She might well never be released but she is still considered every three years, which is traumatic for victims and relatives of victims," Mr Quigley said.

We do not have a lot of information from the Labor Party to work on, when it releases significant election commitments such as this only a few weeks out from polling day through an exclusive in *The West Australian* rather than through some other means that we could scrutinise. Perhaps that was the government's intention.

I would like the minister to consider some of the concerns and questions I have about the re-traumatisation of secondary victims. I understand that we are talking about cases of murder, so the victims are obviously dead, but we are talking about the victims' family and friends being the secondary victims. This bill assumes that all secondary victims want the same thing—that is, to avoid the re-traumatisation of engaging in a parole review process.

In considering the policy of this bill, I can anticipate three—maybe there are more—potential scenarios that could apply to secondary victims. Obviously, there is the class of secondary victim the government intends to protect through this bill—that is, those who do not want to engage in a parole review process every three years because it will re-traumatise them if they engage in that process. The second class of potential secondary victims is those who want to exercise their right every three years to actively participate in a parole review process to ensure that a person remains in prison. The third class of secondary victims that I can anticipate—when we look at reports on these things, not necessarily from Western Australia but in other jurisdictions, I think they would be relatively uncommon—is those who, potentially, after a significant passage of time, may well forgive the perpetrator of the crime and make a submission to a parole review board hearing or process about their forgiveness of the person who has committed whatever heinous crime they have committed against their family member or friend. Of course, that would be relatively uncommon, but I do not think that it is impossible. The bill treats all secondary victims the same, in that none of them want to engage in a parole review process, nor do they want their voices heard in that process, because doing so will re-traumatise them. I respect and understand that some secondary victims may have that view, but I also understand that others may not.

It is interesting to read in the second reading speech—indeed, this was reinforced during my briefing—that the first statutory report will continue. The second reading speech states —

> The minister is empowered to make a direction following the receipt of a designated prisoner's relevant report, which is defined to be the first statutory report for parole consideration. This has been necessary to avoid any potential interference with the minimum non-parole period set by a sentencing court and therefore minimises the risk of constitutional challenge to the making of a direction.

I understand that in making that first statutory report, there is engagement with secondary victims. However, what I want to understand better is that if the policy and intent of the bill is to avoid the re-traumatisation of secondary victims, to what extent will that be successful when the first statutory report will be required prior to a minister—the Attorney General—making a direction? If that is the primary purpose of this bill, to what extent will that reduce the impact on the secondary victims from engaging in that first part of the process?

It was also made clear to me in the briefing that although secondary victims are invited to participate in the parole review process, they are not compelled to participate. I understand that there will be a notification process whereby secondary victims will be contacted and made aware of the processes of the review and their rights to participate in those processes, but beyond that there is no compulsion. I will be interested to understand more fully and specifically how that will affect secondary victims when they are basically invited, but not compelled, to participate.

One of the other points that has been made—I will make it again in my contribution—relates to how the Attorney General will form a view in exercising his right under this legislation, when it passes, to give a direction. Is it the intention of the Attorney General—or indeed is there any compulsion on the Attorney General—to consult and who will he consult with? Will he consult with secondary victims to understand their view and determine whether they want a review? Indeed, if some secondary victims have different views, how will he weigh the differing views of secondary victims in the balance and determine whether a process should be allowed to continue? Is it the case that the Attorney General will not consult with secondary victims at all because, at the end of the day, the policy and focus of the bill is to avoid the re-traumatisation of secondary victims? It appears that the way to do that, through the second reading speech, is by having limited to no contact with the secondary victims.

The other matter I want to raise about this bill is the definition of a "designated prisoner". I note from the sole media article that I rely on to establish the Labor Party's election commitments in opposition that there is a difference between what the Labor Party committed to in an article of 16 February 2017 and what is before us in the house. Had it been canvassed in the second reading speech, it would have established why there is a difference between the Labor Party's election commitment and the bill before us. Nevertheless, maybe the minister can consider that in her reply. I think the best way to put on the record how the bill defines a "designated prisoner" is the second reading speech, which says —

> … ministerial directions can only be made regarding mass murderers, being someone who has killed three or more people on one day; and serial killers, being someone who has killed two or more people on different days.

Obviously, if we compare that with the Labor Party's election commitment, there is a change because in the election commitment, the definition was two or more murders on different days or, in the case of mass killings, two or more murders on the same day. The definition of "mass murders" in the election commitment was two or more murders whereas the definition that the government is now using for mass murders is three or more. The government needs to explain why it established that threshold in its election commitment and, furthermore, why it has changed the threshold in the bill before us today. I find it rather unusual that we have a situation—if I understand these provisions correctly—in which a person could murder two people on the same day and not be subject to the bill before us but if they were to murder somebody at five minutes to midnight and somebody else at five minutes past midnight, they would be subject to the provisions of the bill. I am happy for somebody to stand and tell me that that is wrong, but that is how I read the bill. Maybe there is a commonsense reason for that being the case. I would have thought that the easier way to define a "mass murder" and a "serial murder" would be to say that it relates to somebody who murders more than one person. Nevertheless, this is where the government has landed. Indeed, I think that the Labor Party needs to explain to us how, when in opposition, it developed the policy of its election commitment, which was released through a sole media article in *The West Australian* of 16 February 2017. That is the entire basis of the bill before us. Indeed, it needs to explain what has changed. Those matters need to be addressed in the second reading reply of the minister. It is unfortunate that when we enter the Committee of the Whole, we will not be able to consider the amendments of Hon Michael Mischin, if it is indeed correct that they will be ruled out, which went to —

Hon Sue Ellery: Do not reflect on a decision of the house.

Hon MARTIN ALDRIDGE: Sorry?

Hon Sue Ellery: I am saying you should not reflect on a decision of the house.

Hon Peter Collier interjected.

Hon MARTIN ALDRIDGE: He has withdrawn them.

Hon Peter Collier: No.

Hon MARTIN ALDRIDGE: Sorry; I am confused. I am aware of supplementary notice paper issue 1. I have just been handed issue 2. It is unfortunate that we will not be able to consider the amendments on supplementary notice paper issue 1, because there were some key amendments that the government needed to consider, given that we are on —

Hon Sue Ellery: That is reflecting on a decision of the house and you are not supposed to do that.

Hon MARTIN ALDRIDGE: We are in the second reading debate of the bill. We have not yet settled the policy of the bill. I am saying that it is unfortunate that the house will not be able to consider some of the important positions that have been put about why certain classes of murderers are in and certain classes of murderers are out. Indeed, the question remains that if the primary concern of the government is to avoid the re-traumatisation of secondary victims, why should this not apply to every murder? Why is the re-traumatisation of victims solely in the cases of multiple murders—in the language of the government, serial murders or mass murders—of concern when a greater cohort of secondary victims would exist with single murders? From the information that has been provided to me by the advisers in my briefing, I understand that the current definition before the house would apply to only six people. As a Parliament we are saying that yes, we are concerned about the re-traumatisation of secondary victims, but we are concerned only about the secondary victims that relate to six murderers. The government is not worried about the rest. The government has put that principle in its election commitment and in the bill before the house, which I find difficult to reconcile if we accept its argument.

I find it difficult to reconcile that the re-traumatisation of victims will occur only in cases as defined by the government of serial or mass murder. A serial murderer may well murder unrelated victims, so therefore the secondary victims would be unrelated. Why do we have concern for those secondary victims' re-traumatisation, but not for the secondary victims of someone who has murdered one person? The government needs to respond adequately to that important question in the second reading reply, noting that the policy of the bill has not yet been settled. We are in the second reading debate; the house has not yet passed the second reading of this bill. Therefore, the house is free to canvass all types of policy matters with the proposal that the government has put to the house in the Sentence Administration Amendment (Multiple Murderers) Bill 2018.

As I said, while I have been on my feet, I have been handed supplementary notice paper issue 2 for this bill and I have not yet been able to consider fully the amendment that has been circulated to the house in the name of Hon Michael Mischin. We rely upon such brief information from the government about its election commitments and it is still unclear. I was unable to identify in the minister's second reading speech how we have arrived at a different position from before the election. That really needs to be explained, because the election commitment was certainly broader or would potentially capture more murderers than the bill before us does. Perhaps there is some reasonable explanation. In the second reading speech and the briefing I received it was mentioned that there were some constitutional challenges the government needed to navigate in drafting this bill. That may perhaps explain why there has been a shift in policy between what the government took to the election and what it has now brought to this house.

In some of my earlier remarks I referred to the process leading up to the Attorney General making a direction. The Attorney General receives the first statutory report. The people who have spoken before me are clearly much more engaged in these processes than I am, but I would be interested to understand the extent to which secondary victims are involved in the preparation of that first statutory report, which the government argues in the second reading speech has to be retained. It would appear from the wording in the second reading speech that even removing the first statutory report for parole consideration was looked at, but, clearly, constitutional concerns were met. If we accept the principle that secondary victims will be re-traumatised by engaging in a parole review process every three years, but we have to retain the first statutory report to the Attorney General before he or she is able to make a direction in accordance with this bill, I would be interested to know to what extent these things occur and how they differ from the process that ordinarily occurs once we pass beyond the first statutory report. I do not believe we will be fully removing secondary victims from engagement in the parole review process, notwithstanding the fact that, as I understand it, there is no compulsion for secondary victims to engage in it. From my perspective, those matters need to be more fully considered, hopefully in the minister's reply to the second reading debate, but if not, then through the Committee of the Whole process. It concerns me that we were told this was an election commitment of the Labor Party, but this is not; there are material differences. It concerns me also that we are accepting a principle of needing to adequately protect some secondary victims but not others. I want to understand the policy rationale for the government's decision that some secondary victims ought to be protected in this way versus those involved in single murders or, as I outlined, in serial murders—according to the government's own definition—if those two murders were to occur on the same day. I find it highly unusual that the bill has been drafted in that way, but, nevertheless, I look forward to hearing about these matters in the minister's reply to the second reading debate.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.39 pm] — in reply: I thank members for their contributions to the second reading debate. Two members asked questions and expressed a view about the narrowness of the scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018. I made some comments about this earlier when dealing with the matter before the house. It is deliberately cast in a narrow view. Hon Michael Mischin said that he would not accept the answer that that is what we took to the electorate. We see this legislation as the most effective way of giving effect to that. He said that that would not be acceptable to him, but that is exactly what happened.

The reason for the legislation is to address the re-traumatisation experienced by secondary victims and survivors. The proposed reforms were triggered by the public debate that was happening around the time that Ms Kate Moir petitioned for reformation of parole laws in Australia. People have referred to her during the debate already. She is a survivor of some of the serious violent crimes, including four murders, committed by prisoners David Birnie, who is now deceased, and Catherine Birnie. Her online petition and her commentary received pretty overwhelming community support. As a consequence, the then shadow Attorney General made a public commitment at that time that we would give effect to changing the laws to address that.

The reason for limiting the scope to serial killers and mass murderers was raised. The scheme has been targeted at serial killers and mass murderers because there is little to no realistic expectation of their release. Other members have referred to the kind of popular demand to deal more harshly with prisoners when considering parole. I think this is probably reflected in Hon Charles Smith's comments. Governments of both persuasions are often approached by members of the public to intervene and to prevent parole for a range of prisoners, including these ones. Attorneys General of successive governments have sought to address these concerns by making public declarations that prisoners such as Catherine Birnie would not be released. Parole consideration for mass murderers and serial killers often attracts significant media attention. That can often frustrate the secondary victims and survivors who may be contacted by the media around the time of parole review.

Ms Moir has spoken publicly on this issue. By preventing parole planning and extending the period for when a prisoner's eligibility for parole consideration will be reviewed, with the possibility of preventing early release consideration for the rest of the prisoner's natural life, it is hoped to reduce the regularity and intensity of that media and public attention. The Attorney General recognises the trauma that victims of all crime suffer, which is magnified in a number of horrendous crimes. The government made a commitment during the election campaign that we would seek a specific mandate for serial killers and mass murderers. As such, the bill is confined to this group of murders.

The issue was touched on in the earlier debate that this legislation is unashamedly narrowly cast. That is not to say that this house might not consider other categories of offenders in the future. Nothing will stop anyone else bringing a bill before the house to deal with it. This bill is narrowly cast to give effect to the commitment we made at the time.

The offence characteristics for mass murder, which require three or more murder convictions, have been modelled on the definition of "mass killing" in section 455(d)(2)(A) of the United States Code relating to the investigation of certain violent acts, shootings and mass killings. The definition refers to three or more killings in a single incident. The definition of "serial killing" has been developed with regard to the common features of this type of offending as agreed by the Federal Bureau of Investigation at the 2005 Serial Murder Symposium. Serial killing is generally understood to involve the killing of two or more victims by the same offenders in separate events involving a cooling-off period between the incidents. The bill applies a "different day" rule to distinguish that offences are serial killings that have occurred in separate events. The latter concept, separate events, was too difficult to define in statute as it is open to interpretation. That would have presented a greater risk of challenge in the making of a direction. It is easier to ascertain that offences occurred on different days.

It was proposed that this bill is about putting the problem on the next Attorney General's desk. The section 12A statutory review process is undertaken on a case-by-case basis, with the Prisoners Review Board being required to prepare a section 12 report on a prisoner dealing with the release considerations under sections 5A and 5B of the Sentence Administration Act. Although it may be rare, particularly for a serial killer or mass murderer, it is possible that prisoners serving life or indefinite sentences and Governor's pleasure detainees—the schedule 3 prisoners—may be recommended for parole on the first occasion if the executive supports release. The proposed scheme of ministerial directions to be applied to designated prisoners will maintain discretion for the minister of the day to make a direction or to renew a direction. The minister will be under no obligation to follow the decision of a former minister. Based on public response to the proposed reforms, it is true that the making of a ministerial direction may create a public expectation that a designated prisoner will be subject to subsequent directions. However, it is also conceivable that public attitudes may change at some future time to be receptive to these types of prisoners being eligible for parole consideration. The proposed scheme will ensure that when a direction is made about a designated prisoner, the minister will have the opportunity to reconsider the making of a further direction. The minister of the day will not be constrained when making those decisions.

It was also raised that the proposed scheme of ministerial direction not interfere with the sentence of the court, take matters out of the court or convert the court sentence. High Court cases have consistently demonstrated a clear distinction between the judicial function of fixing a minimum term and executive arrangements that permit early release of offenders subject to sentences of life and indefinite imprisonment and Governor's pleasure detainees. The High Court cases demonstrate that the sentencing judge's determination of a minimum-term non-parole period does not create an entitlement or right to parole, only that the offender should be eligible to be considered for parole at a set point in time. A sentencing court is not entitled to base its decision on assumptions about the current or future statutory arrangements for early release.

A question was asked about how the Attorney General would make a decision to issue a direction. The Attorney General of the day would have absolute discretion to make a direction about a designated prisoner

and discretion to decide the period of the direction, being no more than six years. In practice, the Attorney General intends to seek relevant information from the Prisoners Review Board, the victim mediation unit and other sources available prior to determining whether to issue a direction.

Some of the issues raised by Hon Alison Xamon went in particular to children effectively being captured by the Sentence Administration Amendment (Multiple Murderers) Bill. The bill currently affords an absolute discretion, as I have just said. The policy basis for introducing these reforms is to minimise the potential traumatisation of secondary victims through the parole planning process. In the case of a Governor's pleasure detainee, and using the theoretical example of a child sentenced for multiple murders, the issue of traumatisation of secondary victims is acute due to the regularity of the periodic reports because, of course, the child is young when convicted and there is the proximity of the first report to the incident and sentencing. For this reason, it is proposed to maintain capacity, as in the current bill, for the minister to issue a direction that suspends reporting for a period that may be longer than two years, particularly when an Attorney General would not support release. Additionally, a child convicted of a second offence for murder is highly unlikely to be sentenced as a Governor's pleasure detainee. It is more likely that this child would be sentenced to life imprisonment, which is subject to a minimum non-parole period and three-yearly review.

Some of the issues raised by Hon Martin Aldridge were around the protocols for considering the victim's views about a discretion. As I have said, under the bill, the Attorney General of the day will have complete discretion in making a decision. It was determined not to legislate for the manner in which the Attorney General is to come to that decision on a direction. The legislation has been drafted in a way that minimises the ability of legal challenge by an affected prisoner, which would negate the policy of avoiding re-traumatisation of secondary victims and survivors. It is also evident that these cases involve multiple secondary victims who could have different views. The honourable member outlined three categories of those views. It is therefore the government's view that consideration of secondary victims' submissions, if any, should take place under an AG's decision-making protocol and not in legislation. These procedures can be implemented without requiring legislative change. The following procedures will be followed for secondary victims. The Attorney General will consider the views of victims as provided through the most recent statutory report. After commencement of the legislation, when a prisoner is a designated prisoner as defined in the bill and is yet to have the first statutory report, the board will indicate the views of any victims regarding a proposed direction in a statutory report. When a direction is in effect—suspending the statutory reporting functions and an Attorney General is considering a further direction—the Attorney General will seek the victims' views directly via the Department of Justice's victim services, in particular the victim mediation unit. If a victim has advised that they do not wish to be contacted under any circumstances, victim services respects those wishes and does not engage with the victim. Victims are not compelled to make a submission to the board. Although the likelihood of release is low for these very serious offenders, victims are not necessarily aware and see each appearance as a chance that the offender will be released. A victim may feel personally compelled to express their views to feel sure that the prisoner will not be released. In the case of serial killers and mass murderers, there is significant media attention, particularly at the time of parole consideration. This is also a source of re-victimisation and stress.

I think I have addressed the major issues that were raised. I note that there is a new supplementary notice paper, so we will need to go into Committee of the Whole House so I can happily answer any questions about other elements of the bill that I might have missed. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon MICHAEL MISCHIN: I want to follow up on some of the issues raised during the course of the second reading debate. I note that the Leader of the House has given a number of responses to the questions that were raised, but I share Hon Martin Aldridge's interest in the scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018. The answer that it is deliberately cast narrowly tells us nothing other than that it is deliberately cast narrowly, which is what we have seen with the bill. But I am curious about the reason that it has been deliberately cast narrowly. The reason is not merely that it was an election commitment to do this and therefore it has been cast as narrowly as possible to get away with satisfying that election commitment; is there another reason for it? After having agitated for this in opposition, why has the government not taken the opportunity to provide the benefit of this reform to a wider range of victims?

Hon SUE ELLERY: The member has made the point on several occasions now that it is not satisfactory to him that the government relies on the fact that we made a very specific commitment during the election campaign to legislate to give effect to this. I know that that answer is not satisfactory to him—he has made that clear—but that

is the reason why the government has cast the bill so narrowly. We made a very specific commitment in the very specific context of the public debate that was happening at the time about the re-traumatisation of secondary victims, and this legislation gives effect to that.

Hon MICHAEL MISCHIN: Yes, but the Leader of the House when she was in opposition and the then shadow Attorney General said—the Premier and the Attorney General have since also said—that, generally, this is all about preventing the re-traumatisation of secondary victims. Is the Leader of the House saying that the government is interested in the protection from re-traumatisation of only secondary victims of mass murderers, and not other victims?

Hon SUE ELLERY: No, I am not saying that.

Hon MICHAEL MISCHIN: Thank you. In that case, why has the government not drawn the bill a little wider to prevent the re-traumatisation and re-victimisation and the stress and the anguish for other secondary victims, since it is prepared to go this far?

The CHAIR: I am contemplating the debate in the context of clause 1. As the chamber is well aware, that does not involve a furtherance of the debate on the second reading of the bill, which has already been determined. When we talk about a narrow scope of debate, I feel that I can commit to engaging only in reference to an amendment on the supplementary notice paper, which tends to expand the scope of a provision under clause 6, and that is why I will now countenance giving the call to the minister, if she wishes to respond. The bill and its policy is what it is, and that is not up for debate in clause 1.

Hon SUE ELLERY: Thanks, Chair. That is why in my reply to the second reading speech, before the house voted to enshrine the policy of the bill, I made the point that this is a deliberately cast, narrow piece of legislation to deal with a very specific election commitment. I really cannot add any more than that.

Hon MICHAEL MISCHIN: In debates on other legislation in the other place the Attorney General said, "You're protecting murderers, child sex offender and paedophiles" when we have queried his legislation. So, channelling the standards of the McGowan Labor government, why is it protecting child killers?

Hon Sue Ellery: Chair, I am not going to respond to that.

Hon MICHAEL MISCHIN: Why is the government protecting domestic violence murderers? I am disappointed that the McGowan government's standards do not extend that far. Moving on, how many victims are we talking about in each of the six cases that we have been told are pending?

Hon SUE ELLERY: There are 19 victims of people who will be captured by this legislation. If the member's next question is going to be about the number of secondary victims, we are not a position to give him a number for that because, of course, it entirely depends on the particular family and friendship arrangements of those victims. I cannot give the member a number for the secondary victims.

Hon MICHAEL MISCHIN: Is it fair to say that the basis for the policy that the government has relied on and has reacted to is a campaign run before the election by a certain number of people, but the Leader of the House is not able to say how many of these secondary victims in each of these cases have contacted the Prisoners Review Board and made their views known that they are being re-traumatised whenever a parole report comes up every three years? Is the Leader of the House able to say anything on that?

Hon SUE ELLERY: The best information I have available to me at the table is that there have been several people who have contacted the board—I cannot give the member a specific number—during the course of the public debate on the legislation and one person who has contacted the Attorney General's office. I cannot be more specific than that.

Hon MICHAEL MISCHIN: So this legislation is meant to benefit only a very small number of secondary victims of murderers in Western Australia.

Hon Sue Ellery: That is your conclusion. I do not think we could say that.

Hon MICHAEL MISCHIN: How many murderers and wilful murderers are currently in the prison system?

Hon SUE ELLERY: As at 23 October 2018, a census of the WA prison population identified 285 prisoners for whom the most serious offence was murder.

Hon MICHAEL MISCHIN: I think it is a fair inference, notwithstanding the minister's previous observation, that there are likely to be a lot more secondary victims of 285 murderers, or let us say 279 murderers, as opposed to the six we are talking about here.

Hon SUE ELLERY: I understand the point that the honourable member is making. He is making the point that an even larger number of criminals who it could be argued have committed particularly heinous crimes against their victims are not captured by this provision of the legislation that is before us now. However, I do not step away from the fact that this election commitment was made for a very specific set of circumstances. It was clearly made about a narrow class of prisoners.

Hon MICHAEL MISCHIN: What was that set of circumstances? We know a bit about the narrow class of prisoners. What were the circumstances that persuaded the government that these are the most important ones to deal with and legislate for?

Hon SUE ELLERY: Chair, I have already responded to this. It was an election commitment made at the time that Kate Moir in particular was drawing attention to her particular circumstances. She generated a large degree of community support for the issues that she was raising. The Labor Party in opposition, and in the middle of an election campaign, responded to that. Those were the circumstances, as I said in my second reading reply, that led to this particular piece of legislation before us now.

Hon MICHAEL MISCHIN: To summarise, it was an opportunistic decision to support a public campaign and take advantage of the publicity at the time; otherwise, no further thought had been given to how it would operate in respect of other secondary victims. Would that be fair enough?

Hon SUE ELLERY: No, that certainly would not be fair enough. It is a fairly gratuitous swipe, I suppose. The honourable member is entitled to reach that conclusion himself. That is not the conclusion that the government draws. We made a commitment, in responding to a genuinely felt sentiment by Ms Moir herself and by others in the community at the time. We stand by our decision to do that, and we think that this legislation is the best way to give effect to that.

Hon MICHAEL MISCHIN: The minister mentioned that it was a public commitment because of public support and a campaign. Presumably, thought has been given to the acceptable parameters that should be drawn in this legislation. We have heard from Hon Martin Aldridge that part of the commitment seemed to be that a multiple murderer would be one who had more than one primary victim. However, the minister has limited it to a formula that requires two victims on separate days, or three or more victims.

Hon SUE ELLERY: As I outlined in my second reading reply, the commitment we made was about serial killers and mass murderers. Once we won the election, when considering how to give best effect to that and how to define these things, how to —

Hon Michael Mischin: Encapsulate.

Hon SUE ELLERY: Yes, that is the word, but it is too late in the parliamentary year for me to do that elegantly. In how to define that, we looked at the work being done in the US by the FBI and we balanced that against how to best give effect to the intention of the election commitment. As I said in my second reading reply, that is where those definitions came from. It was based on the work done internationally around how to describe and capture serial killers and mass murderers.

The CHAIR: Members, I want to draw your attention to the fact that we are debating clause 1, the short title; we are not debating the matters that were decided by the house at the time the second reading vote was taken. There is some scope to get into this detail under a specific clause, being clause 6. Indeed, I see there is an amendment on the supplementary notice paper. However, this is starting to stray well beyond a short title debate, in which we canvass matters that may come up for consideration in detail; it does not mean that we just go on and on indefinitely on matters that have properly been covered in the second reading. I hope that is of assistance to members as they frame their remarks on the question that clause 1 do stand as printed.

Hon MICHAEL MISCHIN: Apart from trying to frame the legislation so that it meets the expectation that has been raised as an election commitment, I want to explore whether there is a reason that it has had to be framed this narrowly. Is there a constitutional or legal problem that the government is attempting to avoid? We have heard some hints that that might be the case. What are those potential problems?

Hon SUE ELLERY: The honourable member made the point in his contribution to the second reading debate that, when drafting legislation like this, we always have to take into account the need to balance our policy objective against the danger, I suppose, that the legislation might be rendered constitutionally invalid. He made that point himself during his contribution to the second reading debate. Indeed, the government seeks to get that balance right with every piece of legislation. That is why this legislation is crafted in the way it is.

Hon MICHAEL MISCHIN: What are the risks that the government has been attempting to avoid?

Hon SUE ELLERY: I am reminded that I did respond to this question in my second reading reply, when I talked about wanting to ensure that we did not interfere with the sentence already given by the court. I gave a specific response to this particular issue.

Hon MICHAEL MISCHIN: Was interfering with the sentence the only consideration that the government took to be a risk to the validity of this legislation?

Hon SUE ELLERY: The drafters sought advice on whether there would be any constitutional issues when they were doing the work around how to describe serial killers and mass murderers. The advice they received was that there was a need to be careful to not impinge on or interfere with the sentence given by the court.

Debate interrupted, pursuant to standing orders.

[Continued on page 9161.]

Sitting suspended from 4.15 to 4.30 pm

QUESTIONS WITHOUT NOTICE

NATIONAL DISABILITY INSURANCE SCHEME — TRANSITION

1301. Hon PETER COLLIER to the Minister for Disability Services:

I refer the minister to Western Australia's transition to the National Disability Insurance Scheme framework.

(1) With regard to funding, will anyone with a disability in Western Australia be disadvantaged as a result of the transition to the national framework; and, if yes, why?

(2) With regard to service providers, will the costs of the transportation of clients continue to be covered following the transition to the national framework; and, if not, why not?

Hon STEPHEN DAWSON replied:

I thank the Leader of the Opposition for some notice of the question.

(1) The state government is working closely with the National Disability Insurance Agency to ensure that the transfer and transition to the nationally delivered model is as smooth as possible. Individuals with a Western Australian National Disability Insurance Scheme plan will have their plan transferred across to the NDIA system. All other individuals currently registered with the Department of Communities and receiving services will develop a new plan with the NDIA. The Western Australian government is committed to ensuring that no individual will be disadvantaged by the rollout of the Australia-wide NDIS in Western Australia, irrespective of whether they are eligible for NDIS supports.

(2) Reasonable and necessary supports are funded by the NDIS in a range of areas, including provider and participant transport.

PUBLIC SECTOR — SALARY BANDS

1302. Hon PETER COLLIER to the Leader of the House representing the Minister for Public Sector Management:

I refer to the Public Sector Commission's "State of the Sector" report.

(1) Which levels exist within the category Public Service and Government Officers General Agreement–equivalent salary bands, full-time equivalent, class 1 and above, and what is the total cost for each level, including salary, superannuation and on-costs?

(2) How many PSGOGA-equivalent salary bands, FTE, class 1 and above full-time equivalents have there been for each year over the last five years?

(3) Based on (1) and (2), what will be the additional cost in 2018 for PSGOGA-equivalent salary bands, FTE, class 1 and above compared with 2017 levels?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1)–(3) Given the level of detail required, we are unable to provide an answer in the time provided. It is requested that the member put the question on notice. I give an undertaking to see whether we can provide it tomorrow, but I cannot guarantee that we will able to. The Public Sector Commission does not collect information on superannuation or on-costs.

INSURANCE COMMISSION OF WESTERN AUSTRALIA — BELL GROUP LIQUIDATIONS

1303. Hon MICHAEL MISCHIN to the minister representing the Treasurer:

I refer to the Insurance Commission of Western Australia's engagement of legal practitioner Jonathon Carson to "support the Insurance Commission in its endeavours to seek an end to the Bell Group liquidations".

(1) What precisely are his brief and terms of engagement?

(2) How did that appointment come about, and who made the decision to engage him and when?

(3) What is his remuneration package?

(4) What is the legal work, advice or assistance for which he has been engaged by the commission?

(5) Was the minister consulted about the appointment; and, if so, when and by whom?

(6) What is the relationship between the role of Mr Carson and that of Mr Wayne Martin, QC?

(7) By what criteria will their performance and entitlement to remuneration be measured?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) To assist the Insurance Commission to pursue its interests in the Bell Group liquidations, Mr Carson has been engaged by the Insurance Commission as a litigation adviser to provide legal and advisory services in respect of the conduct and resolution of the Bell litigation.

(2) The Insurance Commission approached a number of senior lawyers to assist the Insurance Commission to deal with Bell Group–related matters. The process to approach and interview the senior lawyers commenced in July 2018 and concluded with the engagement of Mr Martin and Mr Carson on 29 October 2018.

(3) The Insurance Commission expects Mr Carson to work for two and a half to four days per week for two years at $450 an hour, exclusive of GST.

(4) Mr Carson has been engaged by the Insurance Commission as a litigation adviser to provide legal and advisory services in respect of the conduct of, and resolution of, the Bell litigation.

(5) The Insurance Commission advised the minister—the Treasurer—about the appointment in a briefing note on 13 November 2018.

(6) Mr Carson and Mr Martin work cooperatively with each other to provide strategic advice to the Insurance Commission.

(7) Each consultant will provide advice to the chairperson, chief executive and the board of the Insurance Commission as required. Remuneration will be payable in consideration of the due and proper performance of the consultants' obligations.

QUALITY SCHOOLS REFORM — BILATERAL AGREEMENT

1304. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to the bilateral agreement signed this week between Western Australia and the commonwealth on the quality schools reform. As a result of this agreement, and having regard to the state's contribution, will Western Australian public schools be better off in real terms than if the state had not signed the agreement?

Hon SUE ELLERY replied:

I thank the member for the question.

This is a historic amount of money from the commonwealth. It is a record amount of $5.6 billion over the life of the agreement, which goes through to 2024. The agreement ensures that about $200 million of additional funding will flow into the public education system over the life of the agreement. No other state in Australia will fund public schools to a level higher than that provided to Western Australian public schools. It is over six years, and I make the point that over those six years, there will be two federal elections, including one next year, so the Shorten–Plibersek commitment to Western Australian public schools includes $501 million on top of what the current federal government is offering to Western Australian public schools.

CHILD PROTECTION — CHILD SEXUAL ABUSE — ROEBOURNE

1305. Hon NICK GOIRAN to the Minister for Education and Training:

I refer to the minister's answers during the Standing Committee on Estimates and Financial Operations annual report hearings on 14 November, 2018, when she stated that her department does not know whether any of the six known perpetrators identified in Operation Fledermaus attend the same school as their victims.

(1) Is the minister aware that a briefing note that she tabled yesterday on behalf of the Minister for Child Protection states that the Department of Communities advised Roebourne District High School of all children identified through Operation Fledermaus as victims or alleged perpetrators?

(2) Given that the minister's answers to the Standing Committee on Estimates and Financial Operations are inconsistent with the document tabled yesterday, will she undertake to investigate this matter and provide an explanation to the house tomorrow, before the house rises for the summer recess?

Hon SUE ELLERY replied:

(1)–(2) I have already started that process. I think the discrepancy is that the school was advised, but when I was providing the answer to the estimates hearing, I do not think the people at the table had been advised by the school. That is what I think it is, but I have asked for clarification on that.

WATER RESOURCE ASSESSMENT — FITZROY CATCHMENT

1306. Hon JACQUI BOYDELL to the Minister for Regional Development:

I refer to question without notice 1284.

(1) Will the minister table any correspondence between the state and federal governments on the Fitzroy catchment and the development of the water allocation plan?

(2) If no to (1), why not?

(3) Will the minister table any correspondence that highlights any actions already taken in the development and management of the Fitzroy catchment?

(4) If no to (3), why not?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(2) Both the Department of Water and Environmental Regulation and the Department of Primary Industries and Regional Development were actively involved in technical aspects of the commonwealth-led northern Australia water resource assessment, released in September this year. CSIRO briefed state government agencies on the report and the information will be used to inform our election commitments.

(3) On Tuesday, 27 November, the McGowan government announced the appointment of Mr Bardy McFarlane as an expert stakeholder convenor on the Fitzroy River election commitments. Last week, in the Kimberley, Mr McFarlane met with a range of stakeholders, including Environs Kimberley, Martuwarra Fitzroy River Council, Rangelands NRM WA, the Kimberley Pilbara Cattlemen's Association, Jack Burton, Hancock Pastoral and local government representatives. I expect that Mr McFarlane will engage with the commonwealth government as part of the consultative process. I table the relevant press release.

[See paper 2303.]

RENAL DIALYSIS — MOORA

1307. Hon MARTIN ALDRIDGE to the parliamentary secretary representing the Minister for Health:

I refer to the Moora health service and to the minister's media statement on 24 July 2018.

(1) On what date were the renal dialysis chairs commissioned and available for use?

(2) Since the date identified in (1), how many patients have utilised the renal dialysis chairs?

(3) How many staff at the Moora health service are trained and qualified to operate the renal dialysis chairs?

(4) Have any patients been refused access to renal dialysis services at the Moora health service; and, if so, for what reason?

Hon ALANNA CLOHESY replied:

I thank the honourable member for some notice of the question.

(1) The renal dialysis unit at Moora was functionally commissioned and available for use from July 2018.

(2) To date, no patients have been referred to use the community-supported home dialysis facility.

(3) The model of renal dialysis at Moora is community-supported home dialysis. This service is for clients who are independent and responsible for conducting their own dialysis, with their own carer if required, but whose home environment is not suitable for home therapy to occur. As such, the staff are not required to be trained in dialysis; however, some staff have completed and been trained in the appropriate emergency response.

(4) No clients have been refused access to renal dialysis services at the Moora health service.

POLICE — FIREARMS LICENSING — RENEWAL

1308. Hon RICK MAZZA to the minister representing the Minister for Police:

I refer to section 9A(5) of the Firearms Act 1973, which states —

> Where a licence is renewed … within 3 months after, its expiry, it is deemed to have been renewed immediately after its expiry …

This clause, referred to as the "grace period", is not particularly well known among firearms holders. A firearm renewal fee is $55 and the penalty for not paying within the grace period is an additional $421.

(1) Can the minister please advise whether she is aware that —

(a) a number of firearms licence holders have presented to Australia Post to renew licences that fall well within this grace period and have been told that it is not possible to renew an overdue licence;

(b) Australia Post personnel are informing licence holders that their only option is to wait for another reminder that will include an additional fine; and

(c) a number of firearms owners who have followed the advice have received a demand to surrender their firearms due to the grace period being exceeded?

(2) Can the minister advise —

(a) how many firearms owners have been penalised by this incorrect advice that is being provided by Australia Post; and

(b) whether they will be reimbursed due to the erroneous information provided by Australia Post?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. This information has been provided to me by the Minister for Police. The Western Australia Police Force advises the following.

(1)–(2) The Western Australia Police Force firearms licensing service has received a small number of inquiries on this issue over the last 12 months. If a complaint is raised, it is dealt with by the Western Australia Police Force firearms licensing service providing the correct advice to the Australia Post outlet concerned. If an issue has occurred and is found to be an error in advice provided by Australia Post, the Western Australia Police Force advises that a licence holder may contact the firearms licensing service for adjudication.

MANGLES BAY MARINA — METROPOLITAN REGION SCHEME AMENDMENT

1309. Hon AARON STONEHOUSE to the minister representing the Minister for Planning:

I refer to the minister's statement in the other place on Thursday, 1 November, in which she confirmed that future planning and land-use options for Cape Peron were being actively considered by her department.

(1) Has the minister or any of her advisers met within the last six months with either the mayor, CEO or planning department of the City of Rockingham to discuss zoning or other issues related to Cape Peron?

(2) If no to (1), are there any plans to hold such a meeting in the near future?

(3) If yes to (1), was the current port installation zoning of certain portions of Cape Peron discussed, along with the planning investigation status of other portions; and, what, if any, future zoning options were canvassed or suggested?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(3) The minister is scheduled to meet with representatives from the City of Rockingham in the coming days to discuss a number of local issues, including Cape Peron.

METROPOLITAN REDEVELOPMENT AUTHORITY —
3 OCEANS TWIN TOWERS DEVELOPMENT — SCARBOROUGH

1310. Hon COLIN TINCKNELL to the minister representing the Minister for Planning:

I refer to question without notice 1085 that I asked the minister on Tuesday, 6 November this year, regarding the Metropolitan Redevelopment Authority's decision to approve the 3 Oceans development in Scarborough.

(1) Is the MRA restricted or limited in the level of discretion it can apply when approving applications that exceed a zoned planning area's maximum height allowances; and, if so, to what extent are they restricted; and, if not, why not?

(2) The answer provided by the minister on 6 November stated that the 3 Oceans proposal did not meet the basic criteria required in the areas of building height, setback, tower separation and street activation not being met. If these basic criteria, which are required to be met for a development of any size under the MRA's own guidelines, were not met, why was the development still approved?

(3) What justification or rationale has the MRA offered for its decision to overlook the 80 per cent rate of negative public deputations it received for the 3 Oceans proposal via public submissions to the Scarborough Land Redevelopment Committee?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(2) Discretion is available to the MRA under the provisions of the respective planning frameworks and has been used to approve various developments in other redevelopment areas such as Elizabeth Quay and Perth City Link.

(3) The MRA received a total of 1 445 submissions during the public consultation period for the 3 Oceans proposal, including 794 submissions, or 54.9 per cent, in support; 636 submissions, or 44 per cent, not in support; and 14 submissions, or one per cent, neutral. Although some of these submitters also took the opportunity to make a deputation to the Scarborough Land Redevelopment Committee meeting, the MRA had regard for all submissions received from the public and key stakeholders.

BUNBURY–GREENBUSHES RAIL LINE — LITHIUM MINING

1311. Hon DIANE EVERS to the minister representing the Minister for Transport:

I refer to the minister's response to my question without notice 1212, asked on 22 November 2018, regarding the ongoing negotiations between Talison Lithium and Arc Infrastructure on the Bunbury–Greenbushes rail line.

(1) Given that Main Roads has responsibility for delivering and management of a safe and efficient main road network and that the mine output is expected to increase B-double truck traffic by at least 140 additional truck movements a day, thus increasing damage to the road and safety issues, why is the Department of Transport not involved in the negotiations?

(2) If Arc Infrastructure determines that it would be uneconomical to return this line to operating condition, is there any opportunity within the terms of the agreement, or additional to the agreement, for the state government to resume control of the Bunbury–Greenbushes rail line?

(3) If yes to (2), will the government commit to a review of the feasibility of reinstating this line should Arc Infrastructure not commit to doing so; and, if not, why not?

(4) If no to (2), will the government consider negotiating with Arc Infrastructure to introduce such an option?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(4) The minister understands that negotiations are ongoing. The Department of Transport is contributing advice as part of the whole-of-government assessment of transport options. Arc Infrastructure leases the Greenbushes rail line from the state government, which makes considerations more complex.

MAITLAND INDUSTRIAL ESTATE — GAS CONTRACTS

1312. Hon TIM CLIFFORD to the minister representing Minister for Energy:

I refer to gas contracts on Maitland Industrial Estate.

(1) What is the length of the contracts for the provision of gas supplied out of Karratha from Maitland Industrial Estate?

(2) Will fracked gas from the Canning Basin be allowed to compete in the market with the gas supplied out of Karratha from Maitland Industrial Estate?

(3) If yes to (2), how will it be allowed to compete?

(4) If yes to (2), will it impact any long-term contracts; and, if so, how?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. I think the question was redirected, honourable member, because it says "to the Leader of the House representing the Minister for State Development, Jobs and Trade". I will read the answer.

The Department of Jobs, Tourism, Science and Innovation advises the following.

(1)–(4) One private company supplies gas from Maitland Industrial Estate to Horizon Power's West Kimberley Power Project, including power stations in Broome, Derby, Fitzroy Crossing and Halls Creek. The duration of these gas supply contracts are commercial-in-confidence. This domestic LNG plant has a capacity of eight terajoules a day. This is less than one per cent of the state's domestic gas market of approximately 1 110 terajoules a day. Supplying domestic gas from fracking operations in the Canning Basin will require significant private investment to develop the infrastructure required to bring gas to market. There is currently no liquefaction facility or gas project under development in the Canning Basin.

CITY OF MELVILLE — INQUIRY

1313. Hon SIMON O'BRIEN to the Leader of the House representing the Minister for Local Government:

This question was to the Leader of the House representing the Attorney General, but I understand that it has been redirected to the Leader of the House representing the Minister for Local Government.

I refer to the draft report of the Department of Local Government, Sport and Cultural Industries–authorised inquiry into the City of Melville.

(1) Has the draft report been referred to the State Solicitor's Office for review; and, if so, on what date and by whom?

(2) What was requested of the State Solicitor's Office in connection with this draft report, including a date for a response?

(3) Has the State Solicitor's Office provided advice, including any interim or preliminary advice, on this matter; and, if so, on what date, to whom and by what means—for example, phone, email et cetera?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question and his patience yesterday.

(1)–(3) In order to finalise the authorised inquiry report into the City of Melville, an iterative review process with the State Solicitor's Office commenced on 14 August 2018. On completion of the review and any consequential natural justice process requirements, the report will be released.

ROCK LOBSTER FISHERY

1314. Hon JIM CHOWN to the minister representing the Minister for Fisheries:

I refer to the west coast rock lobster managed fishery.

(1) What was the total allowable commercial catch for 2018?

(2) What is the proposed increase for the total allowable commercial catch for 2019?

(3) Will any increase, as referred to in (2), be returned to existing licence holders?

(4) If no to (3), how will the increased TACC be allocated?

(5) Is the minister intending to increase licence fees; and, if so, by how much?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The Minister for Fisheries has provided the following information.

(1) It was 6 300 tonnes.

(2) It is zero.

(3)–(4) Not applicable.

(5) No proposal to increase licence fees is under consideration.

ROCK FISHING —MANDATORY LIFE JACKETS

1315. Hon COLIN HOLT to the minister representing the Minister for Transport:

The International Organization for Standardization has a standard for safety requirements for buoyancy aids, ISO 12402-5.

(1) Is this standard recognised in Western Australia?

(2) If no to (1), why not?

(3) Is this standard recognised in any Australian state?

(4) Will the standard be considered in the trial for mandatory wearing of life jackets at dangerous fishing areas?

(5) If no to (4), why not?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) Yes.

(2) Not applicable.

(3) Yes.

(4) This is a matter for the Minister for Fisheries, as the trial is being coordinated by the Department of Primary Industries and Regional Development.

(5) Not applicable.

SINO IRON PROJECT — MINE CONTINUATION PROPOSALS — KARRATHA

1316. Hon ROBIN SCOTT to the Leader of the House representing the Premier:

(1) Will the Premier confirm the accuracy or otherwise of a report in *The West Australian* of Friday, 13 November, which stated —

> … Premier Mark McGowan threatened to intervene in the long-running stoush between —

Clive Palmer —

> … and his estranged Chinese business partner in a bid to protect workers at one of WA's biggest iron ore mines.

(2) Will the Premier confirm that maximum caution will be exercised in any consideration of amending the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Act 2002?

(3) Has the Premier's office received any request or requests from Mineralogy Pty Ltd to meet or to discuss prospective changes to the state agreement; and, if so, will the Premier table such requests and the replies?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1)–(2) I refer the member to comments made by the Premier in the other place on Thursday, 29 November 2018, and I table a copy of the *Hansard* accordingly.

[See paper 2304.]

(3) Yes, the Premier has received requests to meet with Mineralogy Pty Ltd. To date, a suitable meeting time has not been found. A meeting was agreed on, in March 2018, between Mineralogy Pty Ltd and the Department of Jobs, Tourism, Science and Innovation. However, this meeting was cancelled at Mr Palmer's request.

WA LABOR PARTY — CHINA LINKS

1317. Hon CHARLES SMITH to the Leader of the House representing the Premier:

I refer to the recent article in *The Australian* entitled "MP 'overlooked' ties to Chinese Communist Party".

(1) Are there any other members of the WA Labor Party with links to the WA Australian Council —

Hon Darren West interjected.

Hon CHARLES SMITH: I am sorry, member; I am trying to speak, thanks. I ask again —

(1) Are there any other members of the WA Labor Party with links to the WA Australian Council for the Promotion of the Peaceful Reunification of China?

(2) Has the Premier had any contact from the Australian Security Intelligence Organisation or associated commonwealth security organisations regarding these revelations about Hon Pierre Yang?

(3) Does the Premier support Hon Pierre Yang promoting Beijing's Belt and Road Initiative at the first WA Belt and Road international trade summit on 31 July 2018?

(4) Was this presentation at the behest of the WA Labor Party?

(5) Is the Western Australian government going to sign up to the Belt and Road Initiative?

(6) Given the mounting evidence of Beijing's interference in Australian affairs, why did the McGowan government pay Huawei $206 million, despite national security concerns, to maintain a public transport media data network?

The PRESIDENT: Leader of the House, before I give you the call, I am just going to remind members that when they ask a question, I am going to refer them to standing order 104, which states —

> Questions may be asked of —
>
> (a) a Minister or Parliamentary Secretary relating to public affairs with which the Minister or Parliamentary Secretary is connected, to proceedings in the Council, or to any matter of administration for which the Minister or Parliamentary Secretary is responsible;

I raise that and remind members of that standing order, because I do not believe that the first part of the question adheres to it. Leader of the House, when you get the call, you may choose not to respond, particularly to the first part of that question, although there may be other parts that also fall away from the standing order. That is up to you.

Hon SUE ELLERY replied:

Thank you, Madam President. I thank the honourable member for some notice of the question. The answer to part (1) refers to the standing orders, just as you outlined, Madam President.

(1) This is a matter for the Labor Party and, as per the standing orders of this place, the Premier is not able to answer the question as it does not relate to actions or decisions of a sworn minister of the Crown.

(2) No.

(3) Hon Pierre Yang did not attend a summit on 31 July 2018.

(4) Not applicable.

(5) The Western Australian government has not been asked to, in the member's language, "sign up" to the Belt and Road Initiative; however, as the Premier has said in the media, we want to see a continued strong relationship with China for the economic benefit of the people of Western Australia. As the member would be aware, many thousands of local jobs are underpinned by our trade relationship. The Premier is keen for governments at all levels in Australia to foster close relationships with China.

(6) I assume the member is referring to the radio systems replacement contract. The radio systems replacement project will result in a private network with use restricted to the transmission of operational data to support the Public Transport Authority's passenger rail services. As the government has repeatedly said, the commonwealth Department of Home Affairs has advised us that it has not identified any issues that would prevent the project from proceeding.

MENTAL HEALTH — CLINICAL GOVERNANCE REVIEW

1318. Hon ALISON XAMON to the parliamentary secretary representing the Minister for Mental Health:

I refer to question without notice 925 about the review of the clinical governance of all public mental health services. The minister gave an undertaking that no substantive changes would be undertaken until the review is complete.

(1) Is the North Metropolitan Health Service currently restructuring its mental health services?

(2) Is a recruitment process underway for any new substantive positions within the north metropolitan mental health services?

(3) If yes to (1) and/or (2), why is this occurring when a review of the clinical governance of all mental health services is underway?

Hon ALANNA CLOHESY replied:

I thank the honourable member for some notice of the question.

(1) Yes, the executive of the Mental Health, Public Health and Dental Services is being restructured.

(2) Yes.

(3) The restructure of the Mental Health, Public Health and Dental Services executive is appropriate operational governance and is required to enable a functional leadership. Stabilisation of the MHPHDS executive was a priority to ensure that the ongoing leadership and the service will be in a better position to respond to any recommendations from the clinical governance review.

HYDRAULIC FRACTURING — ECONOMIC ANALYSIS

1319. Hon ROBIN CHAPPLE to the Leader of the House representing the Premier:

I refer to the McGowan government's announcement on Tuesday, 27 November 2018, that it would approve fracking.

(1) Has any economic analysis of fracking in Western Australia been carried out and provided to the government in addition to the inquiry report?

(2) If no to (1), why not?

(3) If yes to (1), will the government table the analysis?

(4) If no to (3), why not?

(5) Why did the government cancel a meeting with the Australia Institute scheduled for Thursday, 29 November 2018, and instruct government members of Parliament not to attend?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1)–(4) The terms of reference of the scientific inquiry included undertaking an assessment and report on the potential impacts arising from the implementation of hydraulic fracture stimulation—fracking—on the onshore environment of Western Australia, outside of the Perth metropolitan, Peel and south west regions. Specifically, the inquiry was to identify environmental, health, agriculture, heritage and community impacts associated with the process of hydraulic fracture stimulation in Western Australia, noting that impacts may vary in accordance with the location of the activity; to use credible scientific and historical evidence to assess the level of risk associated with identified impacts; to describe regulatory mechanisms that may be employed to mitigate or minimise risks to an acceptable level, where appropriate; to recommend a scientific approach to regulating hydraulic fracture stimulation; and to hold community meetings in Perth, and the midwest and Kimberley regions.

(5) The meeting that the member is referring to was a proposed briefing to caucus, not government, and was planned for a date after the announcement of the government's position—it therefore became redundant. Instead, the caucus was briefed earlier by Dr Tom Hatton, PSM, FTSE, chair of the independent scientific panel.

WESTERN AUSTRALIAN MUSEUM — SHIPWRECKS — ABROLHOS ISLANDS

1320. Hon KEN BASTON to the Leader of the House representing the Minister for Local Government:

The co-discoverer of the 1629 *Batavia* and the primary finder of the 1727 *Zeewijk*, Mr Hugh Edwards, believes that in 2009 he and a group of volunteer explorers found and identified an additional historic wreck in the Abrolhos Islands. The Western Australian Museum was informed of the fact.

(1) Will the minister provide details of any official expeditions, diving or otherwise, since 1978 undertaken by the Western Australian Museum on the outside *Zeewijk* site in an effort to confirm or deny the existence of at least one other wreck?

(2) If no official search of the outside *Zeewijk* site has occurred, what are the reasons for this?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1) In 2009, an inspection of the *Zeewijk* site was undertaken. In 2014, the Western Australian Museum conducted a survey expedition to geo-reference the site. In March 2016, an aerial magnetometer survey of the site was undertaken. In November 2016, the WA Museum conducted an expedition, including remote sensing with a magnetometer and side scan sonar and dives on selected sites. All significant targets, except for one that was in a difficult site to access because of the swell, were investigated and in all cases the targets were either geological or modern.

(2) Not applicable.

GOVERNMENT CONTRACTS — HUAWEI

1321. Hon TJORN SIBMA to the minister representing the Minister for Transport:

I refer to the minister's response to my question without notice 1291 of 4 December seeking an update on a decision to release, firstly, the Public Transport Authority's tender evaluation report and, secondly, the government's contract with Huawei UGL concerning the Metronet 4G radio system replacement project.

(1) When referring to advice received from the State Solicitor, is the minister referring to either the Solicitor-General or the State Solicitor's Office?

(2) When was the advice received and what is the nature of the advice?

(3) What is the nature of the "consultation with relevant agencies" the minister referred to in her answer and with whom is the minister still consulting?

(4) When will this consultation conclude?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(4) Following Legislative Council question without notice 829 asked by the honourable member on 18 September 2018, the minister undertook to request that the Public Transport Authority seek advice from the State Solicitor's Office as to the confidentiality of the tender evaluation report and the additional request from the member regarding the contract. Following receipt of this advice, the minister is consulting with the Public Transport Authority on whether it is possible for a copy of the documents to be provided with necessary redactions.

STATE FLEET — CARBON OFFSETS

1322. Hon Dr STEVE THOMAS to the minister representing the Minister for Finance:

My question without notice is to the Minister for Environment representing the Treasurer.

I refer to the Tenders WA website and the $4.5 million contract awarded on 29 November 2018 for the provision of carbon offsets, which asks the proponent to —

> … create a panel of suitably qualified carbon offset brokers/providers who will then be required to supply carbon credit solutions to offset the greenhouse emissions of the WA Government Fleet.

(1) Why was only one of the four successful contractors a Western Australian company, and does this represent a failure of the McGowan government's Western Australian Jobs Act?

(2) What is the estimated total annual value of carbon offsets to the greenhouse gas emissions of the WA government fleet?

(3) Will all carbon offsets for the government fleet be sourced from WA; and, if not, why not?

(4) Does the government have a policy regarding the procurement of carbon offsets; and, if not, why not?

(5) If yes to (4), will the minister please table it?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. I am answering this as the minister representing the Minister for Finance, by the way.

(1) The contract for provision of carbon offsets—request 2018/04988—was advertised as an open public tender. Under the previous government, contracts were awarded to suppliers based in China, Thailand and Germany, with the most recent contract awarded to a Western Australia–based firm dated from 2008. In this instance, only one Western Australian company submitted an offer. This offer was accepted and the company is one of four that make up the panel of suppliers for this contract.

(2) The current annual emissions of the State Fleet vehicle fleet are estimated at 50 000 tonnes of CO_2. The annual value of carbon offsets is dependent on the market-based opportunities available at the time of purchase and can range from $30 000 to $900 000.

(3) Carbon offset purchases involve seeking quotes from panel suppliers at the time of purchase. The final supplier will be selected on a value-for-money basis. The availability of Western Australian–based carbon offsets can be limited, which impacts local sourcing.

(4) Under section 26AA(5) of the State Supply Commission Act 1991, the Department of Finance State Fleet is obligated to offset the greenhouse gas emissions of the vehicle fleet. This obligation will be met by a value-for-money procurement of carbon offsets under the provision of carbon offsets panel contract as required in line with State Supply Commission policies.

(5) Not applicable.

POLICE — FIREARMS LICENSING — RENEWAL

1323. Hon PETER COLLIER to the minister representing the Minister for Police:

I refer to firearms licence renewals.

(1) How many infringements have been issued for failure to renew a firearms licence for each of 2016, 2017 and 2018?

(2) How much revenue has been collected as a result of infringements issued for failure to renew a firearms licence for each of 2016, 2017 and 2018?

(3) How many appeals has the Western Australia Police Force received for infringements issued for failure to renew a firearms licence for each of 2016, 2017 and 2018?

Hon STEPHEN DAWSON replied:

I thank the honourable Leader of the Opposition for some notice of the question. The following information has been provided to me by the Minister for Police.

The Western Australia Police Force advises that it is not possible to provide a response to this question within the required time period. If the honourable member puts the question on notice, I will seek further information from the Western Australia Police Force. I tried to get the member an answer, but it just was not happening.

TRANSPORT — SCHOOL BUS CONTRACTS

Question on Notice 1742 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.08 pm]: Pursuant to standing order 108(2), I wish to inform the house that the answer to question on notice 1742, asked by Hon Martin Aldridge, MLC, of the Minister for Environment representing the Minister for Transport on 6 November 2018, will be provided on 6 December 2018.

CHRISTMAS RETAIL TRADING HOURS

Question without Notice 1279 — Supplementary Information

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [5.08 pm]: On 4 December, Hon Peter Collier asked question without notice 1279 about Christmas retail shopping hours for 2018. The Minister for Commerce and Industrial Relations advised that he would endeavour to table copies of the submissions received from interested parties. I therefore table a copy of those submissions.

[See paper 2305.]

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

Assent

Message from the Governor received and read notifying assent to the bill.

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Inquiry into the Government's Local Projects Local Jobs Program — Substitution of Member — Statement by President

THE PRESIDENT (Hon Kate Doust): I have received a letter from the Standing Committee on Estimates and Financial Operations, which states —

> Dear Madam President
>
> **Inquiry into the Government's Local Projects Local Jobs program**
>
> I advise that the Standing Committee on Estimates and Financial Operations has ordered the substitution of Hon Jacqui Boydell MLC in place of Hon Aaron Stonehouse MLC as a Member of the Committee for the above named Inquiry.

This order, pursuant to Standing Order 163 is for the duration of the Inquiry and both Members have agreed to the substitution.

Yours sincerely

Hon Tjorn Sibma MLC
Chair

SENTENCE ADMINISTRATION AMENDMENT (MULTIPLE MURDERERS) BILL 2018

Committee

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

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon MICHAEL MISCHIN: Before we broke, I was asking about any constitutional legal impediment or risks to what the government has proposed in the bill. If I understand the minister correctly, the only one that the government is aware of is any consequence of imposing upon a sentence delivered by the court; hence it has selected this discretion to be available only after the delivery of the first review report. Is that correct?

Hon SUE ELLERY: Yes, that is the answer that I gave.

Hon MICHAEL MISCHIN: I take it that there is no constitutional or legal impediment to the government in due course expanding the operation of this legislation to murderers generally. Is that right or would an additional constitutional, legal impediment or risk be exposed by taking that course?

Hon SUE ELLERY: I think the first point that needs to be made is that consideration was not given specifically to expanding it beyond those that had been talked about in the election commitment. We have to start from that premise. Consideration was not given to that; therefore, particular advice was not requested on that. The advice I have is that the broader we make it, the higher the risk of a legal challenge as opposed to a constitutional challenge.

Hon MICHAEL MISCHIN: Why?

Hon SUE ELLERY: It reflects the numbers—the number we talked about before. We are talking about capturing a broader number of criminals who might take issue with that.

Hon MICHAEL MISCHIN: That is lessened because a very small number of prisoners will be targeted. As I understand the Leader of the House's comments earlier, there is little or no prospect of release of these prisoners anyway and, presumably, little or no prospect of a challenge.

Hon SUE ELLERY: The member has come at it, I guess, the back way. The starting position was the precise language used in the election commitment. That is where we started from. Advice was sought on how to mitigate any potential constitutional challenge. I have talked about that and advised the chamber about that already. The question was not put that drafters consider, or advice be sought in respect of, broadening the scope of the bill beyond mass murderers and serial killers—advice was not sought. But on the straight question of the probability based on the numbers, with a larger group of those who might feel aggrieved—in this case, criminals and murderers of other kinds—the risk of some kind of legal challenge is increased. I hasten to make the point that it is no more sophisticated than that. The starting point for the legislation was not about capturing the biggest group or capturing all murderers; it was about a very specific and narrow group.

Hon MICHAEL MISCHIN: With whom did the government consult in the course of drafting the bill or in formulating the decision to craft the bill to capture only the people whom it has captured?

Hon SUE ELLERY: In the preparation of the bill, consultation was undertaken with the State Solicitor's Office; the Chief Justice, the Honourable Mr Peter Quinlan, in his former role as Solicitor-General; His Honour Allan Fenbury; and the chairperson and senior advisers of the Prisoners Review Board. The proposal was subject to the Department of Justice's usual internal consultation process. It was circulated for consideration to the Director of Public Prosecutions, Parliamentary Counsel, the State Solicitor's Office and the Department of Treasury. Consultation also occurred with the Victim–offender Mediation Unit and the acting commissioner has advised that the office of the Commissioner for Victims of Crime supports the bill. I put that in the context that this was an election commitment. As I recall, it received considerable ventilation at the time that it was announced during the course of the election campaign.

The DEPUTY CHAIR (Hon Adele Farina): I take this opportunity to remind members that the policy of the bill was determined with the passing of the second reading of the bill. We now should be having consideration for the clauses within the policy that has already been accepted by the house.

Hon MICHAEL MISCHIN: I simply want to wind up this question of consultation or submissions. Have any submissions been received from, for example, the Law Society of Western Australia, the Western Australian Bar Association, the Criminal Lawyers' Association of Western Australia, Legal Aid WA, community legal centres or any victim support groups—anyone?

Hon SUE ELLERY: Not to the best information available to those advising me at the table.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 12A amended —

Hon MICHAEL MISCHIN: Clause 4 inserts, amongst other things, two additional proposed subsections into section 12A of the principal act, which provides that following the directions given by the Attorney General there is no periodic report that can be provided by the Prisoners Review Board.

We have been told that under this legislation, "life is life" and these people will never be released, yet earlier the Leader of the House told us that the discretion to remove the ability of the Prisoners Review Board to provide reports in accordance with its ordinarily statutory obligation is at the disposal of successive Attorneys General. How does that match up with the "life is life" claim that was made as part of the election commitment and the publicity for this bill? It is either "life is life" or "there is still the prospect of a report".

Hon SUE ELLERY: Putting in place a mechanism by which there is the capacity to reconsider—it is not an automatic decision about granting parole or otherwise—will ensure that a person does not become, if you like, lost in the system. It does not pre-empt what might happen; it just means that every six years, consideration will be given about whether it continues or not. It reflects that a different Attorney General might have a different point of view. It is essentially a check and balance to make sure that people do not become lost in the system.

Hon MICHAEL MISCHIN: That is part of the pretence, is it not? The government has told us and the publicity is that these people should not be burdened with the trauma of being re-traumatised. Labor says that for certain types of prisoners life means life—they are not going to be released ever—yet it is telling us that, in fact, an Attorney General of the day could change their mind. I thought that that was part of the current Attorney General's rationale for this legislation, because a future Attorney General might come to a different decision from the one who is there now. Which is it? Does life mean life and these people will never be released, as has been claimed, or does it mean that because of the way that the legislation has been structured, they may still be released at some stage in the future if an Attorney General takes a different view?

Hon SUE ELLERY: Life may well mean life, and I suspect that it will for these people. However, I have made the point already—I preface my response by saying that I do not accept the use of pejorative language; I do not accept that there is a pretence going on here—that this is about ensuring that there is a check and balance when considering whether reconsideration of a case is required. I personally cannot imagine the circumstances in which that might happen; nevertheless, it is part of the legislation to ensure that people do not get lost in the system.

Hon MICHAEL MISCHIN: That is the pretence. The Labor Party told the public that life means life and, under "tough Labor", these laws mean that certain prisoners will stay in prison until they die. However, there is still a way out if the Attorney General of the day does not extend this bar to even the preparation of a report. We are meant to believe that that is a check and balance against people being lost in the system. However, there is no bar to a future Attorney General saying, "This heinous criminal has been put off for six years. That period is about to expire. There will be an awful lot of publicity about this one, and I as Attorney General could look weak if I even received a report from the Prisoners Review Board, because tough Mr Quigley took it off his desk for six years and said life means life", and therefore decide to extend that, not for any rational reason, but only because he wants to avoid that sort of publicity. That sort of absolute discretion is available to a future Attorney General, is it not?

Hon SUE ELLERY: The honourable member is making assumptions about the vagaries of future Attorneys General, which I am not in a position to comment on. I have responded to the provision that has been referred to.

The DEPUTY CHAIR: Perhaps the honourable member could rephrase the question, or move on.

Hon MICHAEL MISCHIN: The power would be available to a future Attorney General, under the way the bill is constructed, to simply say, "I don't like the look on that criminal's face" or "I think it would give me bad publicity" or "I want to show how tough I am on crime", and therefore extend the prohibition on the PRB providing a report. Yes or no?

Hon SUE ELLERY: I have tried to answer the question a number of times already. The discretion rests with the Attorney General. There is no backing away from that. This bill relies on a discretionary power to be exercised by the Attorney General.

Hon MICHAEL MISCHIN: So the answer is yes—a future Attorney General can exercise his or her discretion in that irrational and perverse fashion, because it is an absolute discretion. Correct?

Hon SUE ELLERY: I am not going to accept the pejorative language of the honourable member. I have said already, and it is clear in the legislation, that it is a discretionary power.

Hon MICHAEL MISCHIN: I think the minister has answered the question. The minister has told me that I cannot speculate about what future Attorneys General might do. How does this Attorney General expect that he will exercise a discretion to extend the prohibition period? The minister has told us that he will go and get stuff from the Prisoners Review Board, and that he will consult the victim mediation unit, which would presumably seek the views of victims and hence re-traumatise them. What criteria will the Attorney General consider would be relevant to a decision to extend the prohibition if he does not have a report?

Hon SUE ELLERY: I have already in my second reading reply outlined to the chamber the kind of protocol that the Attorney will use and the information that he will gather to assist him in making his decision. I cannot add any more detail than that.

Hon MICHAEL MISCHIN: The minister has told us the information that the Attorney General will gather. Is any of this protocol in writing anywhere so that we can see whether it is comprehensive and complete?

Hon SUE ELLERY: There is a written document, which details what I have already advised the house about how the Attorney General will seek information from a range of groups to assist him in making his decision. I do not have that with me now, but I would be happy to table it at a later date. There is no further written document. The description I gave in my reply to the second reading debate and which I have given in the last few minutes is the extent of the information I am able to provide.

Hon MICHAEL MISCHIN: I would appreciate a copy of that being tabled to see what is in it.

Hon Nick Goiran: When would you get it?

Hon MICHAEL MISCHIN: Tomorrow or today.

Hon Sue Ellery: We can try to get it in the next break, which is in half an hour.

Hon MICHAEL MISCHIN: I would appreciate that. There is one other thing that I am interested in. It is one thing to gather a whole pile of information from various sources, but the Sentence Administration Act currently provides the sort of information that the Prisoners Review Board is to report upon and gather, and the release considerations when making a recommendation for release on parole. That is all in section 5A, amongst other things. It includes any victim issues and things of that nature, the likelihood of re-offending, the likelihood of complying and all that sort of stuff, and victim submissions to the board. All of that material is gathered on a three–year rolling basis. Now, the Attorney General will be able to say, "Don't even bother to create a report. I'm not interested in seeing it for three years." In three years' time, the date for another report falls due. The Attorney General, not bound by the requirements of the act, will seek other sorts of information—perhaps an overlap from various sources—to assist in making the decision on whether to extend the prohibition. What will he be looking for to guide his discretion?

Hon SUE ELLERY: I have already provided an answer to that question. I appreciate from the honourable member's demeanour that he does not find that satisfactory, but I have already provided an answer. This is a discretionary power. A deliberate decision has been made to not set out in the legislation what the member describes as criteria, or how one piece of information might be weighed against another. In taking that decision, it was determined that to get the balance right between all the things that need to be taken into account, we wanted to minimise the possible grounds that one of the prisoners encompassed by this legislation might be able to use to challenge the decision.

Hon MICHAEL MISCHIN: I understand that it is a discretionary power. As a rule, statutory discretions tend to have to be exercised in a rational fashion and not just at whim. In this case, the purpose of saying to the board that he does not want to see a report for three years is allegedly to protect against the re-traumatisation of the secondary victims. That is not going to change, unless the secondary victims have lost interest or have died and cannot make a submission. Apart from those considerations, is the number of adverse headlines that the minister is worried will affect his or her reputation a factor that could be taken into account in the exercise of discretion; and, if not, why not?

Hon SUE ELLERY: I am not sure that that is really a serious question. I am not able to provide the honourable member with anything more than I have already said.

Hon MICHAEL MISCHIN: I think the minister has answered the question, which is that it is an absolute discretion. If that is what exercises the mind and motivation of the Attorney General of the day, that is what he or she can do and there is no review of that. In any event, the Attorney General, even during that hiatus or prohibition period, can still seek a report from the board whenever he or she chooses to do so. Is that correct?

Hon SUE ELLERY: Yes.

Hon MICHAEL MISCHIN: I thank the minister. What is the purpose of that report?

Hon SUE ELLERY: Retaining section 12 negates the need to include special provisions for revocation of a direction. It allows the board to, effectively, report to the minister on any exceptional matters.

Hon MICHAEL MISCHIN: Are they exceptional matters as far as the board is concerned, or exceptional matters as far as the Attorney General is concerned? Is it the board's or Attorney General's decision to report under that provision?

Hon Sue Ellery: Honourable member, there are two provisions.

Hon MICHAEL MISCHIN: Okay.

Hon SUE ELLERY: The member may well be aware of this. Section 12 of the Sentence Administration Act states —

> (2) The Board must give the Minister a written report about a prisoner —
>
> (a) whenever it gets a written request to do so from the Minister; and
>
> (b) whenever it considers it necessary to do so.

"It" being the board.

Hon MICHAEL MISCHIN: The minister has confirmed that notwithstanding the "talk to the hand" approach of the Attorney General to show that life means life, and "I am not interested in seeing a report on this prisoner because they are really nasty people and I don't want to re-traumatise victims", the board can nevertheless report when the Attorney General decides that he wants one and when the board decides that there are exceptional reasons to do so. In writing those reports, will the board have to seek the views of victims, as it now does under its statutory three-year review? Will it trouble victims in the course of preparing those reports that can be obtained at any time?

Hon SUE ELLERY: I cannot give the member a specific answer other than to say the process will be similar to the statutory report process. So the board may or may not the contact the victims; it will depend on the circumstances.

Hon MICHAEL MISCHIN: In short, the guarantee that victims will not be re-traumatised in anything under six years is not quite correct. In fact, under section 5C of the act—unless the minister wants to disabuse me of it—the board in performing its functions is to have regard to victim submissions. Section 5A involves as one of the release considerations some regard to victims if the prisoner is to be released, including any matters raised in submissions. The idea is that, although a report every three years is traumatising and stressful for secondary victims, and the Attorney General of the day, Attorney General Quigley, can show how tough he is and say, "Don't prepare a report for three years", delaying it for six years, he might change his mind, or the board might change its mind and decide that something exceptional has come about and seek a report and the victims, as part of the board doing its job, might be troubled to have their views understood and listened to, and become concerned that there is a very realistic prospect of these people being released in any event. That would be right, would it not?

Hon SUE ELLERY: If I take the pejorative language out of that commentary, the member is at liberty to draw his own conclusions, and I know that he will, and he will vote for the bill or he will not vote for the bill. The point I have already made in my second reading reply and at the table is that, although the intent is that the section 12 reporting mechanism will not be used during the period of a direction, the retention of the ability negates the need to include special provisions for revocation of a direction.

Hon MICHAEL MISCHIN: I understand all that. The Leader of the House has told us how the act works. I am trying to work out how it can work, and I think the leader has just confirmed that it can work in the way that I have outlined. It can be that the Attorney General will say that he does not need a report for six years, but then turn around the day after and ask for a report under the powers that he has available to him and, as a part of the board's function—the way it goes about its business—it would have to have regard to victim submissions and might seek, in order to do its job for the Attorney General, input from the very victims whom we are told will not be troubled if this provision comes into effect. Is that correct?

Hon Sue Ellery: I have already answered the question.

Hon MICHAEL MISCHIN: The Leader of the House keeps telling me she cannot, but I will take that as the answer—yes, it can.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Part 2 Division 5 inserted —

Hon MICHAEL MISCHIN: I move —

> Page 4, lines 12 to 19 — To delete the lines and substitute —
>
> ***designated prisoner*** means a Schedule 3 prisoner who is serving a sentence for a relevant offence and who has been convicted of another relevant offence;

By way of explanation, proposed section 14B defines "designated prisoner" as a schedule 3 prisoner who is serving a sentence for a relevant offence and, in effect, has been convicted of two other relevant offences at some stage—that is, three convictions for murder or wilful murder—or has been convicted of two relevant offences on different days from the first. This is the point we had been discussing at some length, and of which Hon Martin Aldridge had made mention. Is there any legal reason why it must be two convictions on separate days, or is that decision made by government to narrow the scope of the operation of the bill?

Hon SUE ELLERY: We do not support the amendment; but also, it is outside the scope of the bill, in my view. I am going to ask for a ruling on whether that is the case. Very specifically, the intent of the amendment is to go beyond the two categories of criminals that were referred to in the election commitment; that is, mass murderers and serial killers. The amendment specifically refers to schedule 3. Schedule 3 contains a broader range of criminals than those two categories of criminals, so the amendment quite specifically is seeking to go beyond the scope of the bill. As expressed in the explanatory memorandum, under "Overview of the Bill", it states —

> The Bill establishes a scheme of Ministerial directions by which the Minister may direct that a 'designated prisoner', being a mass murderer or serial killer, must not be considered for parole or re-socialisation programme.

By referring to schedule 3, it encompasses a broader range of criminals than those designated prisoners as defined in the bill before us. At page 4, the explanatory memorandum states —

> Ministerial directions can only be made regarding mass murderers, being someone who has killed three or more people; and serial killers, being someone who has killed two or more people on different days.

Members will recall that in my second reading reply I outlined where the descriptions of those two categories came from. It is also reflected in the second reading speech. The amendment seeks to broaden the scope of the bill to include anyone who has murdered two or more people; prisoners who have killed two people on separate days fall within the definition of "serial killer" provided for in the bill. The issue in question then is whether the amendment proposed alters the definition of "designated prisoner". In developing the bill, the Attorney General considered the number of victims typically understood to fall within the concept of mass murderer, which at a minimum is three. The bill was drafted and introduced on that basis. Changing the definition will expand the scope of the bill. I have tried to outline why we are opposed to the amendment, because we deliberately cast this narrowly, but also that is the reason I believe the amendment is out of scope.

Several members interjected.

The DEPUTY CHAIR (Hon Adele Farina): Order, members! If I understand correctly, the minister has asked for a ruling.

Hon Sue Ellery: I have.

Hon Michael Mischin: Do I have the opportunity to speak to that?

The DEPUTY CHAIR: If you would like to, I will take your comments before I make my ruling.

Hon MICHAEL MISCHIN: I cannot agree with the minister that the amendment is outside the scope of the bill. The scope of the bill is in the short title—for what that is worth—which is "Sentence Administration Amendment (Multiple Murders) Act 2018". The definition of "multiple", unless the dictionary has changed, is more than one. The long title of the bill is broad enough to embrace this amendment. It is "A Bill for an Act to amend the *Sentence Administration Act 2003*".

The definition states —

> ***designated prisoner*** means a Schedule 3 prisoner —

That is precisely what I am proposing —

> who is serving a sentence for a relevant offence …

That is precisely what I am proposing. The "relevant offence" means exactly the same thing—murder or equivalent offence—in other jurisdictions. The only difference is that the designated prisoner committing a relevant offence is limited to two or more relevant offences at any time, or another relevant offence on a different day. No rational reason—there is no legal reason—has been advanced that requires "multiple" to be interpreted in that fashion. That is all the amendment is doing; it is not expanding. It is not intending to embrace any other schedule 3 murderers other than those who have committed relevant offences, but two of them at any time. That is plainly, in my submission, something that is embraced by the bill. It is not uncommon to change definitions in order to adjust their operation to make them more sensible or to expand slightly their operation. This amendment does not go anywhere near beyond the scope of the bill. I can understand the argument about the other amendments that I advanced, and I have withdrawn them. I understood the temper of the chamber—that it is not interested in debating the amendments to expand it to include child murderers and specific types of murder. Here it is a question of how one counts "multiple". I am saying that it should mean two, not just two on different days. That cannot be outside the scope of the bill.

Ruling by Deputy Chair

The DEPUTY CHAIR (Hon Adele Farina): Members, I have been asked to make a ruling about whether Hon Michael Mischin's proposed amendment is outside the scope of the bill. The word "relevant" does not mean identical; rather, it means "to the purpose related to" and "bearing on the matter in hand". A provision is not

relevant if it introduces new principles. There is no question that the proposed amendment will expand the scope of the bill. However, as the definition of "relevant offence" requires a murder or a similar offence under another jurisdiction, it is not in my view outside the scope of the bill, which refers to multiple murders. It clearly refers to a need for a conviction for a previous murder or similar offence and the current one, and more than one is multiple.

Committee Resumed

Hon MICHAEL MISCHIN: Thank you, Madam Deputy Chair. The question I have as part of this is: why have we chosen a particular formulation of multiple, being two on different days rather than two on one day? That seems to be unjust and it creates an anomaly. I can understand the government picking up an election commitment, but nowhere in its election commitment was there a limitation that they had to be on different days—two killings on different days. This is self-imposed limitation. I tried earlier in the piece to ascertain why the line was drawn where it has been drawn. The minister told us that there is no legal reason why and that it is not because of any constitutional reason. The only thing we have to look at in this is whether it affects the sentence. It has nothing to do with the counting exercise. As a matter of commonsense, I think the public would think it perverse and absurd to say that a person is a multiple murderer if they kill someone on Saturday and another person on Sunday, yet if the person killed two people on the same day, they are not a multiple murderer. It defies commonsense. The minister told us that, for some reason, it has been taken from some Federal Bureau of Investigation report that classifies things. There seems to be no explanation as to why that formula has been chosen when we have the discretion to define "designated prisoner" however we like. If it had not been outside the scope of the bill, we could define "designated prisoner" as someone who has killed children, someone who has killed a person in the course of family violence or however we like. It is a self-imposed limitation that has no rational explanation other than trying to narrow the scope of the bill artificially. It seems to me to be consistent to prevent a stupidity that will cause trauma and injustice to secondary victims who will be looking for comfort in this legislation—I understand that is what it is all about—simply because the government decided to refine its election commitment artificially.

Hon SUE ELLERY: The government will oppose the amendment. As I indicated in my second reading reply, the legislation was always intended to apply to mass murderers and serial killers. In developing the bill, the Attorney General considered the accepted definitions of each of these terms. The Federal Bureau of Investigation in the US defines "serial murder" as —

> The unlawful killing of two or more victims by the same offender(s), in separate events.

This definition was developed by experts from various professions, law enforcement clinicians, academia and researchers at the Serial Murder Symposium in 2005. This was amended in drafting to "different days" to ensure clarity and to reflect the cooling-off period that is evident between killings by serial killers. Definitions of mass murders or mass killings vary, with the number killed ranging from three to five. Ultimately, the definition was drawn from legislation in the US, the Investigative Assistance for Violent Crimes Act 2012, which provides —

> 'mass killings' means 3 or more killings in a single incident

Hon RICK MAZZA: I rise to say that I will support the amendment. I have listened to the debate very closely and I am yet to be convinced that if someone kills someone in the morning and then kills someone else in the afternoon, they are not a serial killer, yet if they kill someone in the afternoon and then someone the next morning, they are a serial killer. I just cannot rationalise that line of thought. I am still struggling to see how the reference to the FBI in the US is relevant. I will support the amendment simply because I am not convinced that the definition of "serial killer" having to be someone who has committed two murders over two separate days makes any rational sense in any way, shape or form.

Hon AARON STONEHOUSE: I am certainly not a fan of this bill as it is. I have concerns about the discretion that will be exercised in what seems like a rather arbitrary manner. To be clear, all we are talking about is delaying reporting for six years. We are not talking about preventing people from being released on parole. The Attorney General already has discretion in that circumstance. A lot of the people who are recommended for parole by the Prisoners Review Board never get parole. The amendment proposed here seems to be in line with the government's intent. I am unsure why the government would oppose it, because it seems as though it would enhance the bill by removing a rather arbitrary definition of "serial killer". As has been pointed out, someone who commits two murders on the same day will not be considered a serial killer but someone who commits two murders on concurrent days will be.

Can the minister give me any idea how this amendment would counter or diminish the government's intent with this bill or would somehow cause complications for the implementation of the government's policy? I am trying to figure out whether the government has a genuine concern about changing the relevant offence proposed here or whether this is another case of the Attorney General digging in his heels when this place tries to amend and enhance his legislation. I am inclined not to support this amendment, but the arguments made by Hon Michael Mischin are very convincing and it seems that this would go some way to enhancing the bill and would align it more closely with the government's policy intent.

Hon SUE ELLERY: This amendment would broaden the category of people captured by this legislation. The legislation was crafted in a way to ensure that we used a definition that was understood and had been relied upon elsewhere. Although I noticed a bit of *CSI: Crime Scene Investigation* commentary going on, the FBI is a serious organisation. It is a world leader in this kind of work. We looked to the definitions that were relied upon by one of the most prestigious criminal investigation units in the world. Members may choose not to accept that. That is a call that they will need to make. But the effect of the amendment, which is the question asked by Hon Aaron Stonehouse, is that it will capture a broader range of people.

Hon MARTIN ALDRIDGE: Did the government consult with the FBI when drafting its election commitment?

Hon SUE ELLERY: I have already answered the question about who was consulted. I answered that probably about an hour ago and I might have even answered it before that as well.

Hon Nick Goiran: What was the answer?

Hon SUE ELLERY: The answer is no. I already provided this place with that answer.

Hon MARTIN ALDRIDGE: I just did a quick search while we have been sitting here listening to all these interesting matters and I refer the minister to a manual titled "Serial Murder: Multi-Disciplinary Perspectives for Investigators" from the Behavioral Analysis Unit at the National Centre for the Analysis of Violent Crime, FBI, US Department of Justice. It defines—I am doing this from my computer—"mass murder" as "a number of murders (four or more) occurring during the same incident". The evidence that the minister provided to the Committee of the Whole just now is that the FBI defines a mass murder as three or more killings with no cooling-off period. Is the minister wrong or is the FBI wrong?

Sitting suspended from 6.00 to 7.00 pm

Hon SUE ELLERY: I want to reiterate that the government does not support the amendment. The government committed to taking what, on some measures, could be described as the extreme of suspending the parole consideration process only for serial killers and mass murderers. As I said, when considering the definition of "mass murder"—I said this in my reply to the second reading debate—the Attorney General said that there were various definitions, with the number of victims ranging from three to five. Hon Martin Aldridge is correct that the FBI has defined "mass murder" as involving four or more killings in a single incident; however, the government has drawn from the US legislative definition, which refers to three people, because we decided to use the number at the lowest end of the spectrum. We have not found a definition of "mass murder" that encompasses two or more killings.

The other point I ask the chamber to take into consideration is that if we pass this bill without amendment, it will receive royal assent next week. Under the commencement clause, the bill will take effect on the following day. One matter on which the Attorney General is preparing a ministerial direction is for the serial killer Peter Maloney, whose statutory review date is 15 December 2018. If the proposed amendment is supported, the bill will need to be returned to the Legislative Assembly and the Attorney General will not have the ability to suspend Maloney's consideration for parole. The victim's son wrote to the Attorney General about the bill. He said —

> … my mother was murdered in November 1979 by Peter John Maloney, in Esperance. He was convicted of wilful murder and sentenced to death, this was commuted to life in prison.
>
> He was also convicted of manslaughter for the killing of Elizabeth Fountain the same year.
>
> …
>
> I am deeply concerned that he will be able to be released into the community to live unsupervised, and to maybe, repeat his killing of innocent people, and devastating other families.
>
> Thank you for this opportunity to express my feelings.

Catherine Birnie is due to be considered for release on parole on 2 March 2019.

Before we rose for dinner, Hon Martin Aldridge drew to our attention a particular definition that he had found on a quick search, probably via Google I dare suggest. In my second reading reply, I described the definition as being between three and five murders. As I have said in these comments, WA erred on the lower side of that range of figures. I urge the chamber not to support the amendment.

Hon MARTIN ALDRIDGE: Minister, we are not relying on a Federal Bureau of Investigation definition now; if I heard correctly, we are relying on some American statute. Could the minister identify that statute to the chamber?

Hon SUE ELLERY: The honourable member might have been out of the chamber on urgent parliamentary business, but I did refer to it in my second reading reply. I set out the work done by the FBI and the statute it relied upon. Section 455(d)(2)(A) of the United States Code, "Investigation of Certain Violent Acts, Shootings, and Mass Killings", refers to "3 or more killings in a single incident". In addition to that reference, I talked about other work of the FBI. I have not changed the references that I am relying on at all.

Hon MARTIN ALDRIDGE: The minister just mentioned the urgency of this bill passing because the Attorney General is preparing a direction in relation to Mr Peter Maloney—I think that is whom she mentioned. The advice I have been given is that his statutory review date is 15 December 2018. Could the minister confirm for me whether that is the date on which the review is due or the date on which the review must commence?

Hon SUE ELLERY: We will just check. I am sorry about the delay. The statutory review date is 15 December 2018. It is possible for it to present later, but the review date is 15 December.

Hon MARTIN ALDRIDGE: I take it that the report of the review is due on 15 December, which is only 10 days away. If the primary purpose of this bill is to avoid the re-traumatisation of victims, I would have thought that the parole review process would already be advanced. We are 10 days away from the review date. I would have thought that the opportunity has passed for Mr Peter Maloney. In fact, if there is not a report in draft form, it would be ready to send to the Attorney General. Could the minister explain to what extent secondary victims have already been exposed to a parole review process regarding the review of Mr Peter Maloney?

Hon SUE ELLERY: They will have already been consulted about this, but they are monitoring the situation closely. I understand that they are closely watching this debate. Part of what they are concerned about is the prospect that the person might be approved for parole. Part of the trauma for them right now is the uncertainty about what might happen to this person.

Hon MARTIN ALDRIDGE: This is my last question, because I know that other members want to ask about this. On that basis, I would assume that the Attorney General will have to give a direction within the next 10 days. This bill needs to pass, receive royal assent and be proclaimed and then a direction given within the next nine days. How can the Attorney General do that with Mr Peter Maloney if it is still unclear whether the protocol has been established? The minister committed to provide a draft copy of the protocol. How has the Attorney General satisfied himself that he has complied with his protocol to give himself appropriate information to inform himself that a direction is needed regarding Mr Peter Maloney, given that he has some 10 days remaining?

Hon SUE ELLERY: While my advisers are finding some additional information, I can advise that part of the process involves an Executive Council meeting. I understand that that can be called at short notice specifically to deal with this matter. There have already been discussions about doing that. I am just going to see if I have any additional information. No proclamation is required. This legislation will come into effect on the day after royal assent, so that part of the process is possible. I am just seeing if I have further information that will be of assistance to the member. The nature of the protocol, which I have described already, is that the Attorney General is to consider the views of the victims, and they have already been expressed. The Attorney will have for his consideration the last statutory review, which he will take into account as well.

Hon SIMON O'BRIEN: I will save some of my observations until the third reading debate, because right now we are focused on the specific matter before the Chair. I find what has just been teased out in front of us breathtaking! I understand that we are somehow being remiss in even taking a few minutes to question this Sentence Administration Amendment (Multiple Murderers) Bill and that it is absolutely critical that we do not do anything except rubberstamp it. Heaven forbid if it be amended or delayed in any way from its ultimate implementation. The reason, apparently, is to cater for a murderer called Maloney, whose case for consideration, if I am using the right term, comes up on 15 December. If we do not rubberstamp this bill immediately and get it down to the Assembly by last week at the latest, let alone the idea of having an amendment go down to the Assembly, such as what is before us now, before February, the sky will fall in and we will be guilty of providing further trauma to the people associated with the victims of Maloney.

A couple of things need to be made clear. Firstly, I think I speak for everyone in my party and everyone in the chamber when I say that we have every sympathy for the heartache that those associated with Maloney's victims have had to endure from 1979 to the present—every sympathy in the world—and we do not want to see them being subjected to that. However, in the present case, minister, if I have heard correctly, if the matter is coming up for review and a decision on 15 December, all those people who will be approached about giving victim impact statements, or whatever the testimony is called, have already been approached. They have already been through that, regrettably. That has already happened. Rushing this bill through unamended will not change that. If I am wrong in what I believe I have heard, I am sure I will stand corrected, but that is about the strength of it.

It is also the fact that successive Attorneys General have reviewed this character, Maloney, on previous occasions—I believe for almost 40 years—and they have declined to release him on every occasion. I do not know what recommendations went to those successive Attorneys General, but I think—again, I will stand corrected on this if I am wrong—the current Attorney General could also make his own decision about this matter on or after 15 December. It does not rely on this bill. This bill is about in future having a longer period before the reviews are conducted. I am sure the minister will correct me if what I am saying is not right, but it seems to me that a whole lot of debate is going on here that is being put about as something that it is not. I will save any further comments on that theme for another occasion.

What we need to be focusing on is what this debate should be about. If the government is dinkum about reducing the repeated stress on second-tier victims in future, it ought to extend this beyond the very narrow focus that it says was its election promise. Labor got into government and is now confronted with reality. I do not care about what claim members opposite made on the run, as though it has now somehow become holy writ because the Labor Party won a whole bunch of seats in a good year in the Assembly—that does not make it right. The amendment currently before the Chair would give a bit of regard for the associates and loved ones of victims of other horrendous murders as well. Why are they not entitled to the same consideration? I do not give a tinker's about what the Federal Bureau of Investigation or some court in America defines as a serial killer versus a mass murderer versus a multiple murderer or whatever. If the government insists on raising the subject and bringing forward legislation, I am just as concerned about the loved ones who have had to survive the murder of a single child in horrendous circumstances as I am about any other victim. That is why the amendment put forward by Hon Michael Mischin deserves serious contemplation, and a better form of contemplation than that which we have seen exhibited by the government so far.

Hon MICHAEL MISCHIN: The comments made by the Leader of the House representing the Attorney General raise more questions than they answer. We were told in the repeated media releases from the Attorney General that this bill was not urgent. Last year, he said that he was in no hurry to bring it in because the next prisoner who would fall within the ambit of the bill was not Maloney, but Birnie, and that would not happen until 2019—no hurry, no rush. Then the bill was introduced and suddenly we find out very late in the piece that the release of this prisoner Maloney depends on it. An element of emotional blackmail is involved in this. Suddenly it is now our responsibility to rush this legislation through because the Attorney General apparently wants to defer consideration of Maloney's case. We are told that the son of one of the victims is anxious about this. I accept all of that, but that is now a view that has been expressed and he has had to go through that process, all because this legislation has come in late. What makes him so certain that Maloney's release is going to be deferred for three years? Once the Attorney General receives this report and gives it his due consideration—if he can be bothered reading it and doing his job—he will assess the recommendation, if there is one. The advice that we received from advisers is that the Prisoners Review Board has never recommended release on parole for this man, and the Attorney General can look at the report and say, "I agree. I will not release Maloney because the board has recommended against it." If the board recommends his release, the Attorney General can say, "I don't agree with the board. I will advise the Governor accordingly and set out some reasons"—end of story, no problem. But no, it all seems to turn on him saying, "I don't even want to look at the report. Please don't give me one because then I've got to make a decision."

What makes this person who wrote this anguished letter so certain that the release of Maloney depends on our passing this bill and the Attorney General exercising his broad discretion to put it off? When was this letter received by the Attorney General? Why have we found out about it only now? Is that the basis for him to get this off his desk for three years and to not have to worry about it because it means he will not have to read the report now, or has he given some kind of assurance that we have not been told about that, without the law being changed, will compromise him? I do not get it. What is the problem? What makes this person who wrote this letter so sure that all of his problems are going to be solved by the passage of this bill and the Attorney General having the power to say, "I'm not going to consider this. I don't even want to see a report."? It is astonishing!

We have heard the rationale for the definition of "multiple murderer"—conflicting definitions from the FBI and the minister. What do they matter? "Multiple murderer" means there was more than one murder. We do not draw necessarily on an FBI investigative behavioural psychology tool as to whom they consider to be a serial killer—someone who kills and then has a bit of a cooling-off period, like a door-to-door salesman–type thing, and then gets stuck into someone else. We do not need that for the purpose of defining the victims who are supposed to get the benefit of this bill. We can define our own criteria. We can say that a "multiple murderer" is any person who kills more than one person. It does not matter. Apparently, the election commitment was "serial killer". I challenge the minister to point to where in the bill the words "serial killer" are used in any sense, let alone a technical one. I cannot find those words. The words "multiple murderer" appear in the title of the bill. Where do the words "serial killer" appear as a term of art? I may have missed it—if I have, please point it out. It is a nonsense.

The Attorney General made commitments when he was in opposition that "life will mean life". That will not be the case. He said also that he would give a direction that people would not be reported on for a period of time. That will not be the case either—people will still be reported on. The Attorney General also gave a commitment that serial and mass murderers in the broad sense, without any technical explanation, will be embraced by this bill. The Attorney General has now refined this bill so narrowly that the only people who will be protected by this bill are the victims of six killers, and to hell with all the other victims who are supposed to be protected by this noble reform of the law. We are told that 285 murderers will fall under this legislation if every schedule 3 murderer is included. The government is now saying to hell with the victims of those people. The government has found bits of law from the United States, or Kazakhstan or Outer Mongolia, to define a serial killer or multiple murderer in order to narrow down the bill as much as possible. The government is now saying that two murders is not multiple

unless the murders occurred on separate days. I find that astonishing. This Attorney General blabbed and made very large promises and raised expectations yet again, and he is now trying to backtrack from them. The result is this bill.

I have moved the amendment standing in my name because at least it adds some commonsense. I understand that the Greens may be opposed to the principle of the bill. So be it. I understand that other members may also have concerns about the principle of the bill. So be it. However, it defies logic for the government to grab a law that applies in the United States in order to qualify an election commitment that was given in very broad and robust terms by the same man who is now trying to back out of it. I have moved the amendment so that at least something rational will come out of this.

Hon JACQUI BOYDELL: I have read the information from government and listened to the debate on this issue, and it appears to me that the government seems to have relied on Kate Moir and Evalyn Clow as the main drivers in drawing up this legislation. Did the government consult those two persons when it decided how to define "multiple murderer"? Did the government seek their opinion about whether, if one of their family members was killed at five to midnight on a Saturday and another at five past one on a Sunday, they would consider that not to be captured by this bill?

Hon SUE ELLERY: The honourable member may well have been out of the chamber on urgent parliamentary business, but this is the third time I have answered a question about who was consulted, and the list did not include the two people whom the member just named.

Hon JACQUI BOYDELL: I actually heard that in the minister's second reading reply. This amendment has only just been moved. I am wondering whether the government can understand the motive behind moving this amendment. I support the amendment, because it seems exceptionally sensible to me that a "multiple murderer" is a person who has murdered more than one person. It does not matter at what time of the day on any particular day the person committed that offence. I think the public and, indeed, secondary victims would have an expectation that "multiple murderer" would mean that they had killed more than one person. Given that those two people have been great advocates for the cause of this legislation, for which I applaud them, I would be interested in their view. That is why I asked the question. If the government considered such detail from the United States on what determines a serial killer or mass murderer, why did it not consult the two people whom the Attorney General seems to have quoted and used in his media statements?

Division

Amendment put and a division taken, the Deputy Chair (Hon Adele Farina) casting her vote with the noes, with the following result —

Ayes (14)

Hon Martin Aldridge	Hon Donna Faragher	Hon Simon O'Brien	Hon Colin Tincknell
Hon Jacqui Boydell	Hon Colin Holt	Hon Robin Scott	Hon Ken Baston *(Teller)*
Hon Jim Chown	Hon Rick Mazza	Hon Tjorn Sibma	
Hon Peter Collier	Hon Michael Mischin	Hon Charles Smith	

Noes (15)

Hon Robin Chapple	Hon Sue Ellery	Hon Alannah MacTiernan	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Martin Pritchard	Hon Alison Xamon
Hon Alanna Clohesy	Hon Adele Farina	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Stephen Dawson	Hon Laurie Graham	Hon Aaron Stonehouse	

Pairs

Hon Dr Steve Thomas	Hon Matthew Swinbourn
Hon Colin de Grussa	Hon Dr Sally Talbot
Hon Nick Goiran	Hon Kyle McGinn

Amendment thus negatived.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.

RESIDENTIAL TENANCIES LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2018

Assembly's Message

Message from the Assembly notifying that it had agreed to amendments 2 to 6, 9 to 14, 16 to 20 and 24 made by the Council, and had disagreed to amendments 1, 7, 8, 15 and 21 to 23, now considered.

Committee

The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Amendments 1, 7, 8, 15 and 21 to 23 made by the Council, to which amendments the Assembly had disagreed, were as follows —

No 1

Clause 5, page 4, line 24 — To delete "fundamental".

No 7

Clause 12, page 10, line 25 — To delete "tradesperson; and" and substitute —

tradesperson, a copy of whose invoice the tenant must provide to the lessor within 14 days of the alterations being completed; and

No 8

Clause 12, page 11, line 2 — To delete "so." and substitute —

so and the restoration must be undertaken by a qualified tradesperson, a copy of whose invoice the tenant must provide to the lessor within 14 days of the restoration being completed.

No 15

Clause 31, page 30, line 17 — To delete "fundamental".

No 21

Clause 35, page 34, line 25 — To delete "tradesperson; and" and substitute —

tradesperson, a copy of whose invoice the long-stay tenant must provide to the park operator within 14 days of the alterations being completed; and

No 22

Clause 35, page 34, line 32 — To delete "so." and substitute —

so and the restoration must be undertaken by a qualified tradesperson, a copy of whose invoice the tenant must provide to the park operator within 14 days of the restoration being completed.

No 23

Clause 35, page 34, after line 32 — To insert —

(6) The long-stay tenant must give notice of the prescribed alterations to the park operator within 14 days after the alterations have been completed.

The DEPUTY CHAIR: I will deal with each amendment the Legislative Assembly disagreed to in turn.

Hon ALANNAH MacTIERNAN: I move —

That the Council does not insist on amendment 1.

Hon MICHAEL MISCHIN: It is regrettable that the Assembly did not accept this amendment from the Council. Before I make the following points, I express disappointment in the manner in which what passed for a debate was conducted in the other place. There was a lot of rhetoric about how important the word "fundamental" was, but there was a concession that it made no difference to the bill and the assertion that somehow the inclusion of that word and phraseology was attributable to the Chief Magistrate—that the Chief Magistrate had asked for, recommended or insisted upon it as guidance. I understand a court seeking some words of guidance in a statute to assist it in its interpretation and application of the law, but I would be astonished if something as ungrammatical and as meaningless as that was actually formulated by the Chief Magistrate. Nevertheless, there was a lot of rhetoric about how the Chief Magistrate had wanted that in the bill. I hope that the minister is able to provide a copy of the correspondence—the evidence of that. If she cannot, I would like to know why.

On the last occasion that this bill was before the chamber, we also heard from Hon Alannah MacTiernan that the language was picked up from various sources, such as the Universal Declaration of Human Rights and the Australian Human Rights Commission. I would like to know where the words "fundamental violation of human

rights" appear in those documents. She, herself, said that it does not in itself necessarily have a major impact; yet, it is important enough for the Assembly to return to us and say that it insists on the term "fundamental violation" being in the bill.

We heard that the wording has been taken directly from Victorian legislation. Yes, the preamble of the Victorian Family Violence Protection Act 2008 refers to the fundamental violation of human rights. However, I do not know what relevance that has to Western Australian legislation, particularly as the phrase does not appear in our Restraining Orders Act 1997 from which other definitions are drawn. I maintain that the terminology is ungrammatical, it is meaningless and it does not assist in the interpretation or application of what is proposed in the legislation; and, indeed, if a court has to struggle with what a fundamental violation is as opposed to any other sort of violation of human rights, it might in fact cause more problems than it solves.

I would appreciate it if the minister could, if she is able to—I doubt it somehow—produce the evidence to support her proposition and what caused so much anguish in the Assembly, where the minister responsible for the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 waxed lyrical about how, if we remove this word, we are somehow demonstrating that we hate victims of family violence, that we support family violence or that we are indifferent to family violence, and other absurd attacks on reputation that passed for debate in that place or for any rational consideration or understanding of the legislation. Having said that, from the Liberal opposition's point of view, it is not worth arguing the point; if the government insists on adding adjectives to the wrong nouns in its legislation, so be it. We will not be contesting that particular amendment. But is the minister able to provide us with the evidence to support the propositions that have been made about the appearance of that form of words in any of the human rights material that she has been talking about, and the Chief Magistrate's submission in that regard?

I should point out that it is not just the Liberal opposition and Hon Rick Mazza who took issue with the nature of that phraseology; it was also the Standing Committee on Legislation. Having read the *Hansard*, we know that down in the other place the minister was complaining that—this is a beauty—because members are moving amendments that go beyond the committee report, somehow that is a rejection of the committee report, no less, and utterly unprecedented, utterly wrong and showing bad faith. Apparently, according to that minister, it was not the government that referred the bill to the committee; it was the Liberals that did it. The "Liberals done it" in the whodunnit stakes down in the Assembly and in this government, and the "deal" was that if the committee reported on the bill, there would no debate on it afterwards and we would not reject the report by suggesting any other improvements to the bill. This is novel stuff. I do not know what he was on at the time, but that is just astonishing and it is totally unconnected with the history of this government's behaviour when it was in opposition. Nevertheless, those seem to be the propositions: we are here to rubberstamp bills and not suggest any improvements. We should get out of the way of the debate because the government has the majority; therefore, whatever it proffers is by definition good and in the public interest.

We will not argue with the government but we think it is the wrong word in the wrong place. The committee had its doubts about it. It wanted the minister to explain what it meant, because the committee could not work it out. Hon Rick Mazza did not understand it and it was not explained to him. The minister could not explain it in any rational way. We supported Hon Rick Mazza's amendment because it seemed like the sensible thing to do. Obviously, it is going to be so critical to the passage of the bill that over the Christmas–new year period, all sorts of safety considerations will arise even though the bill will not come into operation for six months, after some of the regulations are drafted. We will not argue against it, but I invite the minister—if she can—to enlighten us on the big secret held by her and the minister as to what it means, the foundation documentation on which it is based and, in particular, the correspondence from the Chief Magistrate that this form of words is essential to guide him.

Hon ALANNAH MacTIERNAN: I want to make it very clear that I never said that the Chief Magistrate said that that particular form of words should be incorporated.

Hon Nick Goiran: You didn't, but the minister did.

Hon ALANNAH MacTIERNAN: I said that the Chief Magistrate had asked and said that it was exceptionally important to have the guiding principles incorporated into the legislation, because that will be a very important component of the legislation and enable it to be properly interpreted. The words "fundamental breach" are varied —

Hon Nick Goiran: It's "violation"; get it right. Let's start on the right foot, please. It's going to be a long night otherwise.

Hon ALANNAH MacTIERNAN: Yes, I thank the member. "Fundamental violation" appears in the Australian Law Reform Commission report and is referred to, as I understand it, in the Victorian legislation, which is generally considered the gold standard and the benchmark of legislation.

Hon Michael Mischin: Minister, why is that the benchmark of this legislation?

The DEPUTY CHAIR (Hon Adele Farina): Order, members! I note that Hansard has occasionally been straining to hear the minister, so I ask that we keep the side conversations to a minimum. If the minister could please speak up a bit, that would be appreciated.

Hon ALANNAH MacTIERNAN: I am clarifying that we never said that the Chief Magistrate prescribed those words, but the Chief Magistrate wanted the principles to be articulated within the legislation. These words indeed appear in the Australian Law Reform Commission report and are also reflected in the Victorian legislation, which is generally considered the benchmark by the Australian Law Reform Commission. Our view is that there is a strong precedent for the incorporation of those words. We were very concerned that to delete "fundamental" would send a message that somehow or other we were taking a step back from the legislation or the concern about domestic violence; we had put up a bill to Parliament that referred to a "fundamental violation" and then when it came to the Legislative Council, we decided that we did not want it to appear to be as significant. That is the logic of why we did not support that deletion. The Legislative Assembly felt that it could not accept stepping backwards from the semiotics of the word in the guiding principles. I understand that the members had agreed. I was under the impression that we had agreed that we would proceed with that, but that is my commentary and I simply have nothing further to add on that.

Hon RICK MAZZA: I moved this amendment in the first instance. After having been on the Standing Committee on Legislation and analysing this bill in some detail, the reason that I moved the amendment is that it did not quite make sense to me that we could have a fundamental violation of a human right, which is to try to categorise a violation. A violation of a human right is simply a violation of a human right. I do not know whether we can have a fundamental one. In saying that, I do not think that it will change the bill and I will support the minister's motion not to insist on the amendment.

Hon NICK GOIRAN: Twice tonight, the minister has mentioned that the words "fundamental violation" appear in the Australian Law Reform Commission's final report and in the Victorian legislation. Does the minister have the Standing Committee on Legislation's thirty-eighth report at her disposal this evening?

Hon Alannah MacTiernan: I do.

Hon NICK GOIRAN: If I could ask the minister to turn to page 12, paragraph 7.22, I will quote what it says —

> Noting the absence of the term 'fundamental' in both the Restraining Orders Act 1997 and the Australian Law Reform Commission's final report, the Committee makes the following recommendation.

The reason I draw the minister's attention to that is that I would like to know whether the government disagrees with that paragraph. I draw to the minister's attention that the chair of the committee is Hon Dr Sally Talbot. Does the government disagree with that paragraph? While the minister is contemplating whether she agrees with Hon Dr Sally Talbot, can I ask the government in how many other statutes in Western Australia—forget about Victoria, because the minister has already told us it appears in the Victorian legislation—the phrase "fundamental violation" appears?

Hon ALANNAH MacTIERNAN: I refer the member to the Australian Law Reform Commission report. I am being shown an electronic copy of that report and the principles referred to in chapter 7 state that family violence is a fundamental violation of human rights. That appears in the report. As far as we know, the Victorian legislation is the only legislation. It is new legislation and this is the principle we have adopted.

Hon NICK GOIRAN: Just going to my question, in how many statutes in Western Australia does the phrase "fundamental violation" appear?

Hon ALANNAH MacTIERNAN: It will appear in this statute if we ever get around to approving it!

Several members interjected.

The DEPUTY CHAIR: Order, members!

Hon NICK GOIRAN: Just to be clear then, minister —

Hon Alannah MacTiernan: I have been clear. I am saying that if this legislation passes, the term will exist in this bill as it does in the Victorian legislation and as it is referenced in the Australian Law Reform Commission report. To my knowledge, it does not appear in any other legislation. That is clear and I have no further comment to make on it.

Hon NICK GOIRAN: I thank the minister for being clear for the first time this evening.

Hon Alannah MacTiernan interjected.

Hon NICK GOIRAN: Tomorrow, Thursday, is the last day and Thursday is always the minister's strongest day. I know she is looking forward to non-government business tomorrow.

Hon Alannah MacTiernan: This is threatening behaviour. We are dealing with a bill here.

Hon NICK GOIRAN: Please, minister.

Several members interjected.

The DEPUTY CHAIR: Order, members!

Hon NICK GOIRAN: We are dealing with a fundamental problem here, minister.

The DEPUTY CHAIR (Hon Adele Farina): Order, members; that includes Hon Nick Goiran. We are dealing with the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018. Can we try to stay focused on that bill.

Hon NICK GOIRAN: I shall provide my remarks through you, Deputy Chair, rather than being distracted by the silliness of the minister. I am happy for members to go through the *Hansard* tomorrow and check, but we have heard now, for the first time this evening, clarity from the minister that the words do not appear in any other statute in Western Australia. For the first time in Western Australian history, we will have the insertion of the words "fundamental violation". On this occasion I agree with the minister, because I have also conducted a search to verify whether the phrase "fundamental violation" appears in any other statute in Western Australia, and it does not. This would be the very first time. It may interest members to know that the word "violation" appears on several occasions, but never does it appear in conjunction with the word "fundamental". The minister and her colleagues have decided that for the first time in Western Australian history, we are going to insert the phrase "fundamental violation". As has already been indicated by my learned friend Hon Michael Mischin, the opposition will not be opposing this particular motion by the government. It insists that for the first time in Western Australian history we are going to have this phrase in our statutes. We were not going to fight on this particular issue because it is a nonsense that has been created by the government, but we want it to be clearly on the record that it does not appear in any other statute in Western Australia. This is why there was the concern at first instance. It is ridiculous to start introducing the concept of a "fundamental violation". As the learned minister would know, it will create the possibility of an interpretation issue within the courts. It will create a farcical situation. Because the government has decided to insert this phrase, the courts will be required from time to time to determine whether there is a difference between a violation and a fundamental violation. The courts will say: there must be a difference because the Legislative Council decided that it was very important for the word "fundamental" to be inserted. In fact the Legislative Assembly was so assured that it needed to be included that it even sent it back to the Legislative Council. The Council capitulated and said, "We'll just agree to it anyway." The judge or the magistrate who then has the legislation before them has no option but to say at that point, "Clearly, the lawmakers of our state, the elected representatives, thought it would be very important in this particular legislation that there was this extra word 'fundamental'. It does not appear in any other statute, so the Legislative Council and the lawmakers must have thought it was important."

That is what is going on here, minister. I understand the minister gets that. I say in all sincerity that I know the minister gets that, but can I say that her colleagues from the other place clearly do not. A quick perusal of the *Hansard* from the other place as to what happened last week demonstrates that. In fairness to the minister today, it has been the first time that a government member has been able to articulate some kind of response. I give the minister credit for what has happened here this evening. That was completely absent from the debate, until now. It does not change the fact that we are still inserting an unnecessary word. It will create the possibility of an interpretation problem down the track and does not change the fact that I think it is bad lawmaking. I at least give this minister credit for what the other members were incapable of doing, which was to provide a cogent explanation for why the government would go down this path. If the explanation by this government is, "We're going to do it because the Victorians are doing it", so be it. That is not a sufficiently persuasive argument for me. I could not care less what the Victorians are doing with respect to their legislation. I think that the Victorians have made a drafting error in their legislation. Because they make a drafting error, and the Victorian MLAs and MLCs did not pick it up because they were too busy at the football or whatever they were doing on that particular occasion, we are going to slavishly follow their precedent! That is pathetic lawmaking. I am not going to be associated with that.

If this government insists that this legislation cannot possibly pass without the word "fundamental" being included, as Hon Michael Mischin has indicated, the opposition will not be an obstacle in that respect. I want to make the point that it is very disappointing that the government has not understood this "fundamental" issue to do with the interpretation of legislation. I am very disappointed about that. Nevertheless, so be it. So that the minister and the government are clear that that is the situation they are creating, and so long as the 35 voting members of this chamber understand that that is the situation they are creating, so be it. Far be it from us, the opposition, to create an obstacle for the government on this. The government has been insistent that this is crucial legislation that must pass—it must pass last week! In fact there has been outrage that it has not passed sooner. I note in passing that we have finally got to this bill today after the government decided that it was not its top priority. That is perhaps a matter for another occasion.

I indicate in closing that this is poor lawmaking. I give credit to the minister, at least for the first time, for providing some explanation about the Victorian legislation. To me, it is not persuasive and it should not be included. We should be insisting that the word "fundamental" be removed as a matter of proper lawmaking, but if the government insists, so be it. As Hon Rick Mazza indicated, in the end it is not going to affect the operative provisions of this legislation. The truth is that whether or not the word "fundamental" is there, a victim of domestic violence who is fleeing domestic violence and wants to terminate their lease agreement will be able to do so on

seven days' notice upon providing some evidence, potentially in the form of a family violence report. That will happen irrespective of whether "fundamental" appears in the legislation. That does not change the rhetoric of the members of the other place to the contrary—that is, that somehow the opposition and anyone who supports the opposition is evil in this respect and very pro-violence against women. Not only is that outrageous, but also it is, frankly, embarrassing that any lawmaker would stand up in any Parliament around the globe and say that. The debate in the other place was appalling. The concept is not difficult. It is an unfortunate reality that sometimes members can be elected to this Parliament with no appreciation of the implications of inserting certain words. What happened last Thursday made that all the more clear. Nevertheless, if the government absolutely insists that it is fundamental to this bill that "fundamental" be included, the opposition will not oppose that.

Hon MARTIN ALDRIDGE: I rise briefly on behalf of the National Party to indicate that we will not oppose the motion moved by the minister on amendment 1. In doing so, I want to associate our position with the comments just made by Hon Nick Goiran. The debate in the Assembly last Thursday concerns me deeply. I believe that the Minister for Commerce and Industrial Relations misled the other place about the position of the Legislative Council. He said that the amendment had been sent to the Legislative Assembly because we opposed the view that it is a fundamental human right to be protected from domestic violence. Of course, I did not hear a single member of this chamber claim that during the course of the debate last week.

At least the minister is consistent in his approach to this issue. True to form, he is once again more concerned with playing politics than making sure that the policy of this bill is right and that victims of family and domestic violence have the most adequate and appropriate protections available. We will not play that game, so we have agreed to compromise on this matter. We recognise that if the future circumstances that have been outlined by Hon Nick Goiran arise, they will hang fairly and squarely on the shoulders of Hon Bill Johnston.

Hon AARON STONEHOUSE: I may be covering some ground that has already been trod, but there seems to be a great misunderstanding in the Legislative Assembly that the amendment to remove "fundamental" is somehow a reflection of how seriously members take domestic violence. That certainly is not the case. As was pointed out by Hon Nick Goiran, this is a matter of interpretation. I also point out that the question is not whether it is a violation of a fundamental human right; it is whether it is a fundamental violation of a human right. The government has not given us an adequate reason for why the term "fundamental violation" should remain. As has been pointed out, it does not appear in any other statutes of the state. Having read the *Hansard* of the debate in the Legislative Assembly of last Thursday, it appears that Minister Johnston has gone some way to confuse the debate in the lower house by misrepresenting the views of the Legislative Council. He stated —

> In the other house, the shadow minister said that it is not a fundamental human right to be protected from domestic violence.

No-one ever said that! That was not said once! That is a complete misrepresentation. It is not about whether it is a fundamental human right; it is about whether the term "fundamental violation" is appropriate in this case. Unfortunately, the minister has said pretty clearly that, again reading from *Hansard*, if the Liberal Party votes again to say domestic violence is not a fundamental violation of human rights, the bill will cease to exist. It is very frustrating because it is not just the Liberal Party that operates in the Legislative Council, of course; there is an entire crossbench. It is quite often how members of the crossbench—the Greens; One Nation; the Liberal Democrats; the Shooters, Fishers and Farmers Party; and the Nationals—vote that determines what legislation or amendments pass. It is not actually always up to the Liberal Party.

In any case, on the substantive motion before us, it is bad form to insert words such as "fundamental violation" for what seems to be little more than virtue signalling. Ultimately, it would be a shame to hold up this entire Residential Tenancies Legislation Amendment (Family Violence) Bill on that single term. As has been pointed out by previous speakers, it will not affect the operative provisions of this bill, albeit, it may cause issues of interpretation down the track. Therefore, I will not oppose the motion in front of us now to reject that amendment.

Question put and passed; the Council's amendment not insisted on.

Hon RICK MAZZA: I move —

> That the Council insists on amendment 7.

There has been a lot of discussion behind the Chair on the provision of invoices should work be undertaken by a qualified tradesman, which is a condition of the bill. When security attachments are put onto a property, it is to be done by a qualified tradesman, a requirement of the bill. The amendment I put forward was that a copy of those invoices be provided to the landlord within 14 days. I think it is a very sensible amendment. Hon Alison Xamon has spent a lot of time over the last few days consulting with stakeholders from the social services sector and they have become quite comfortable with that outcome. Some of the objections to it were that invoices may not be available for charity work when a charity may install appliances or it may be done on a voluntary basis. The argument against that is that invoices can have a nil balance. When someone does it on a charitable basis or on behalf of a charity, it will still have to be undertaken by someone who is qualified, particularly for electrical or

asbestos work. In those cases, an invoice can still be provided. Even though there is no charge, an invoice is valid and to be provided to the landlord. In those circumstances, this is an amendment that we should send back to the Assembly and insist that it be provided. In a conversation I had with a stakeholder from one of the organisations that looks after people who have issues with domestic violence, they said to me that it was a good idea that the landlord be advised that this work had been undertaken so that the landlord was aware that fittings had been put on the property. Also, at some later stage, if the invoices are there, it will take care of things like insurance, warranties or whatever may occur sometime in the future. I commend that motion to the chamber.

Hon ALANNAH MacTIERNAN: I rise to indicate that in the interests of getting this moving, we are not opposing this motion. We think that it will place an unnecessary burden on the victims of domestic violence at the time that is most challenging for them. We note the issue raised by the member that one of the stakeholder groups indicated that it was a good idea for the landlord to be notified. We agree with that and in fact that is why we proposed amendment 6, which we inserted in this place in order to address that important issue that the landlord be notified that alterations were going to be made. That issue has been dealt with by that other amendment. As I said, the minister has agreed to not oppose this amendment in order to get this process underway. However, we indicate that at a later stage we may need to come back and look at deleting the other provision that we put in to address that same issue so that we do not have these two different procedures with which a tenant needs to comply at the time of the installation.

Another concern has been raised about invoices. We have made it very clear that we expect that the court would interpret that invoice very broadly, given the conversations that have been had and the statement of intention from Hon Rick Mazza about what he was intending to achieve with this amendment, and likewise the reason why we have accepted it. Hopefully, this will be an aid to any court wanting to interpret what an invoice is. I know that Hon Alison Xamon also shares that concern. If it is an invoice of "nil", we expect that what will be sought here is some account of who has done the work rather than any account of the amount of money involved in the transaction. We want to put on notice that at some future stage we believe that it probably would be desirable to remove the other amendment. We do not propose to do that now because obviously that is not something we can do within our standing orders. Nevertheless, we want to make progress so we will not oppose Hon Rick Mazza's motion.

Hon MICHAEL MISCHIN: I am pleased that the government is moving forward on this despite the turmoil in the Legislative Assembly where it seemed to have been a major issue and where it was said that we are imposing terrible burdens on those who are the victims of domestic and family violence, that we are being oppressive and the like, and that it is totally unnecessary. I heard the minister's comments about amendment 6. It needs to be understood that we are dealing with a situation that is not a normal tenancy in which someone wants to make an alteration to the lessor's premises by putting up a rail or something in the kitchen, or some hooks in the bedroom or whatever it happens to be: "I want to make an alteration. Can I do that?" The lessor then gives permission and says, "Yes, you go ahead and do it. You pay for it and you take it down at the end of the tenancy if I want you to." Here is a case in which no permission is required and no permission is being sought. Therefore, it is not unreasonable for a lessee to say to the lessor, "I want to do certain work on your premises of a security nature"—because the regulations limit what the lessee may do. The lessee may say, "I want to put up a security camera, change the locks on the door, put up a gate, trim the shrubbery and put up security screens." The purpose of amendment 6 is to ensure that the lessee gives the lessor the courtesy of saying, "I want to make various alterations to your premises." There is no harm done. It is hardly oppressive.

Amendment 7 builds on the requirement, which the government has prescribed, that the work be done by a qualified tradesperson. It is simply about saying, "Here is the work that has been done." The lessee may have notified the lessee that they want to do A, B, C and D, but the tradesperson has done only B and C, and they give the lessee an invoice for that work. We can invoice people on a cost basis. We can invoice people for zero. The purpose of an invoice is to provide evidence that the work has been done. There is nothing hard about that. An invoice is important for a lessor because it provides evidence of the work that has been done to the lessor's premises. If the tenant for some reason cannot make good, or if the work done by the qualified tradesperson is negligent, has damaged parts of the property or is a hazard of some sort, the lessor will know who did that work and can go after that person and seek redress. It is not unreasonable. It is not a great burden. Therefore, I am glad the government has finally seen sense with this amendment.

The corollary is some further amendments with regard to restoration work. The government also took umbrage at those amendments. The government proposed to insert provisions, one of which still survives, to the effect of notifying the lessor that the restoration work had taken place. We do not insist on that amendment. However, none of these things are onerous. It is about providing a list of the work that was done by the qualified tradesperson so that the lessor will know where to go to seek redress if the tradesperson did not do the work, or the work was not done properly and was a rubbish job, because the tenant will be able to provide evidence of that.

There is nothing onerous about this amendment. It will not add bureaucratic red tape. It is just part of the normal activity of human beings in our society in getting evidence of work done on a property that they are either paying for or renting. I am glad the government has finally seen reason. We will be supporting the amendments that have

been moved and that were very rashly and hysterically rejected by the minister in the other place. I am pleased that we have come to an accommodation that will progress the bill and put in place the protections that will be provided by this bill as soon as possible.

Hon ALISON XAMON: I rise to ask some questions and get further clarification on this amendment. I note that this amendment is the result of considerable discussion behind the chair and the goodwill that has been shown across the chamber—I include the government in that—to ensure that this legislation can move forward. I believe every member of this place wants to improve the supports for people who find themselves in this situation, in particular women. I am aware that during the discussion behind the chair, concerns were raised about how the word " invoice" will be interpreted. I share those concerns. I am seeking further clarification about how that word could potentially be interpreted. In some situations, an invoice would be fairly straightforward. As was mentioned by Hon Rick Mazza, the work may be required to be undertaken by people with special expertise, such as electricians. I note that the provisions in this bill do not override the Electrical Safety Act, nor, indeed, the provisions relating to working with hazardous materials such as asbestos. I recognise that for that work to be undertaken, there is a legal requirement that particular certification is to be handed over by the qualified tradesperson. This provision simply requires that the paperwork is to be handed to the owner within a particular time frame, so that they have a record of the work, particularly electrical work, that has been undertaken at those premises.

What is less clear is when work is undertaken that does not necessarily require someone with specified expertise. We note that the substantive legislation as put forward by the government, and I understand this particular provision, arose as part of the government's original negotiation with real estate agents, and requires that any additional installations or upgrades to a house are done by qualified tradespeople—that is, people with professional qualifications. The question I have is around how we are going to define an invoice for work done by people on a pro bono basis. For example, some organisations specifically assist women and children who are experiencing situations of domestic and family violence and need support. Those organisations may have pro bono professional people who can assist with making upgrades to homes and, as a result, no money will change hands. Can I please have it confirmed that if a piece of paper is produced that confirms that particular work has been done by somebody who has the necessary qualifications—that may be a regular tradesperson—that will be sufficient to qualify as an invoice for the purposes of meeting the requirements of this amendment?

Hon ALANNAH MacTIERNAN: Yes. That is certainly the interpretation that we would want to follow. I understand that when Hon Rick Mazza moved and argued for the amendment, he was very conscious that the invoice should also cover pro bono work, and that the invoice really constituted a statement of the work having been done by that person.

Hon ALISON XAMON: I thank the minister for the additional clarification. In the event that a tradesperson, paid or unpaid, fails to provide an invoice, how is it anticipated that the renter will be able to comply with the provisions in this amendment?

Hon ALANNAH MacTIERNAN: As I read the clause, it says that where there is an invoice, of whatever nature, that invoice is to be provided.

Hon ALISON XAMON: Can I confirm that if an invoice is never produced by the person who undertook that work, it will be deemed that the renter has not breached their obligation?

Hon ALANNAH MacTIERNAN: I think that would be the natural reading of the amendment.

Hon ALISON XAMON: If a renter has received a receipt but, for whatever reason, is unable to or does not hand that over to the lessor, will any penalties flow from that; and, if so, what will those penalties be?

Hon ALANNAH MacTIERNAN: The point is that they would be in breach of the act generally. They would be in breach of their lease. Under the structure of this legislation, a person is required to meet the terms of their tenancy agreement. This creates a set of exceptions that allows a person to do something as a statutory right, but requires that, as part of that statutory right, where they have an invoice, they are to provide that invoice. If they fail to do that, one would argue that their statutory protection might fail.

Hon RICK MAZZA: I just want to clarify something here on the discussion that just took place. My natural reading of this clause is that an invoice is to be provided for the work undertaken by a qualified tradesman, as is required by the bill. I would expect that in most cases an invoice would lay out the work that has been undertaken, particularly when that work was required to be done by a licensed tradesperson, such as an electrician, someone who is handling asbestos, or even plumbing, if that came into it. In those circumstances, an invoice would be provided. If the work is done pro bono—on a voluntary basis—an invoice can be provided, as far as that is concerned. I do not know that not providing the invoice is okay. I think that if the landlord insisted that something was given to them to evidence the fact that a qualified tradesperson had undertaken the work, in case the lessor, as I described when I spoke the first time, requires that for an insurance claim or some other thing, then it is important that it be provided.

Hon MARTIN ALDRIDGE: I rise to indicate the National Party's support for the motion moved by Hon Rick Mazza. In doing so, I want to indicate that I think this scenario is certainly not the most perfect one. If I reflect on this part of the bill in relation to prescribed alterations, the entire drafting of this part of the bill is most inadequate. I am somewhat heartened that some improvement is being made and that, as I understand it, next year there will be a review of the Residential Tenancies Act as a whole, which might well reconsider some of these matters more fully. A fair bit of conversation has just occurred about how an invoice would be defined, which I am less concerned about. I think there has been some confusion in the community about the term "qualified tradesperson", which, of course, is not the construction of the non-government parties of this chamber; it is the construction of the government. Those are the government's words; that is its benchmark. If we want to talk about imposition on the people to whom this bill will apply, that would be a greater imposition than the word "invoice". Nowhere in this bill, nor indeed in the Residential Tenancies Act, is a qualified tradesperson defined. It is interesting looking at the committee's report, in which the Department of Mines, Industry Regulation and Safety has listed the types of security upgrades it intends to prescribe in regulations. One of them is the pruning of shrubs and trees abutting the agreed premises. According to this bill, which will hopefully pass shortly, that work needs to be done by a qualified tradesperson, which is undefined in this bill and the act. I will be interested to hear the advice that will be provided to tenants, when they want to remove some shrubs abutting their property to improve their security, about which qualified trade they will be obtaining the services from in order to comply with the government's bill.

Obviously, the amendment moved by Hon Rick Mazza does not go to those issues; it goes to the issue of invoicing. It is something that we in the National Party were committed to when this bill was previously passed through the house. We respect, but do not accept the view of the government about this being an onerous requirement. We think it is a fair and balanced provision. I hope that the review of the Residential Tenancies Act looks more closely at this part of the bill when it does its work next year. I draw members' attention to section 43 of the Residential Tenancies Act, which refers to urgent repairs. That section contains a definition of "suitable repairer", which states —

> ***suitable repairer***, in relation to urgent repairs, means a person who is suitably qualified, trained or, if necessary under any written law, licensed or otherwise authorised, to undertake the work necessary to carry out the repairs;

I think that is a far more reasonable definition, albeit not perfect. A person might need to be a suitably qualified person or suitably qualified installer. I think that which exists in the current act is a far better definition than this new term being introduced by the government of a "qualified tradesperson". I think it is going to create more of a challenge for government agencies, community legal centres, tenants and landlords than the word "invoice". I support the motion.

Hon ALANNAH MacTIERNAN: I think that there is some substance in the member's point about a suitably qualified person. Although it is not germane to any of the amendments here tonight, we certainly take that on board.

Hon MICHAEL MISCHIN: I want to clarify something. The failure on the part of the tenant to provide an invoice, does that result in the tenant committing an offence under the act or simply breaching a condition of the tenancy that is implied by way of the act?

Hon ALANNAH MacTIERNAN: If the tenant does not comply with the provision as it is articulated, as we said, that could constitute a breach of their tenancy and consequences could flow from that.

Hon MICHAEL MISCHIN: I understand that, but it does not constitute an offence—there is no offence-creating provision regarding that sort of a breach.

Hon ALANNAH MacTIERNAN: I do not believe that when the member moved the amendment, he included a breach provision within it, so it is not within the ambit of the motion that is being considered.

Hon MICHAEL MISCHIN: I understand that, but certain failures to comply under the Residential Tenancies Act may constitute an offence and can be punishable by a penalty. If the lessor fails to do something, a penalty is prescribed. If a lessor or tenant fail to do certain things, there is a penalty. Is there any penalty provision—any offence provision—that can operate under these particular provisions in order to make a breach an offence? I do not think that there is.

Hon ALANNAH MacTIERNAN: My advice is that there clearly is not.

Hon MICHAEL MISCHIN: It is important, because I refer to the debate in the other place, which got increasingly hysterical. At page 103 of the uncorrected *Hansard*, the minister commented on amendments 7 and 8. He said —

> I will point out a third thing. Let us assume that these amendments were agreed to. That would mean that a tenant who did not produce an invoice would be subject to the penalties under the act, and they are extensive. I do not understand why the member —

That is, Mr Peter Katsambanis, the member Hillarys —

> wants to allow victims of domestic violence to be prosecuted in the Magistrates Court and fined for not giving an invoice to their landlord, because that is what the opposition is asking.

I take it then that the minister, to put it mildly, did not know what he was talking about—correct?

Hon ALANNAH MacTIERNAN: We are not opposing the motion. We are dealing here in this place with the motion, not the bill at large.

Hon NICK GOIRAN: How things have changed since last Thursday! Last Thursday, we were told that what Hon Rick Mazza was doing was inappropriate, unnecessary and burdensome on tenants. Effectively, the Liberal Party in particular was vilified for having anything to do with the Shooters, Fishers and Farmers Party, as was anyone who supported what the honourable member was trying to do. On multiple occasions in the other place, the question was asked rhetorically: why create unnecessary burdens? I note that tonight the minister in this place has also suggested that somehow this amendment moved by Hon Rick Mazza will create a burden, something quite onerous, on a tenant. What Hon Rick Mazza is asking the tenant to do is to pick up the invoice and give it to the lessor with the proviso that it be done within 14 days. I challenge the government in either this or the other place to explain, in a cogent and sensible fashion, how that is onerous to any particular individual. It is absolutely the opposite of onerous. I might add that it is in circumstances in which ordinarily a tenant cannot make alterations to a property without the consent of the lessor.

The government's bill, which we have all supported—this particular clause has been through both places and agreed to—creates an extraordinary power for a tenant who is subject to family violence to make alterations to a property without the consent of the lessor. That is an extraordinary power that will be created by this Parliament for circumstances in which we, the Parliament, say it is necessary to do so; it is necessary for the alterations to be done without the consent of the person who actually owns the property, for the sake of the person who is subject to family violence. We have all said that, and all that Hon Rick Mazza is saying is that that should not be done in secrecy. Why this government is so obsessed with secrecy and a lack of transparency is beyond me. All that we ask is that the tenant lifts the document—surely, it is not too heavy and is most probably one page only—and provides it to the lessor within 14 days. That is all that is being asked. But we have been castigated time and time again and told how terrible we are for supporting Hon Rick Mazza because we will create something that is very onerous, unnecessary and a great burden.

I also note that the minister who has ultimate carriage of this bill in the other place has suggested that the reason that the amendment is not needed is that it is not victim focused. I mean, for goodness sake, Mr Chair, is it beyond the wit of government members to understand that lessors might not be perpetrators; that lessors might have absolutely nothing to do with the family violence that is taking place—nothing whatsoever—and that it is okay for them to know that their property has been altered? The notification might be in the form of an invoice that tells them what work has been done, the cost of that work—whether it was nil, $2 000 or whatever the sum—and the qualification of the person. After all, it was the Labor government that introduced the concept of a qualified tradesperson. It was the government that insisted that this type of security alteration work that will be done without consent must be done by a qualified tradesperson. The government was the one that had said so, and everybody agreed to it, and Hon Rick Mazza simply asked for the tenant to lift the document and give it to the lessor. But last Thursday we were told that that is very onerous, very unnecessary and outrageous, and that we are terrible human beings if we can possibly agree with Hon Rick Mazza on this topic.

Lest anyone think that that was a long, long time ago, on Thursday—just yesterday, 4 December—Dr Mike Nahan, MLA, received a letter from Bill Johnston, Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement. I do not know whether Hon Rick Mazza has seen this, but his name has been taken in vain by the minister. The minister wrote —

> Despite being part of the Committee process, Hon. Rick Mazza MLC moved a number of further amendments.

Can members imagine a member moving an amendment in this place despite being part of a committee process? I will tell the government that should there one day be a bill in this place to do with end-of-life choices, I was part of the committee process and a heck of a lot of amendments will come forward.

I digress. The letter continues —

> These amendments are not supported by the Government and, in my view, are inconsistent with the Committee's report.

It does not go on to explain in what way it is inconsistent with the report. I was the deputy chair of that committee. In no way has anything that Hon Rick Mazza done been inconsistent with the committee report. The committee report may be silent on a topic such as this issue. That is no wonder, because the committee was asked to report in such a tight time frame. It was less than the time that the house gives to the Standing Committee on Uniform Legislation and Statutes Review. It is no wonder the report was silent on a lot of things. I can hardly blame Hon Sally Talbot for having to try to chair a committee in such a short time. She did her best, but apparently it is not good enough for Bill Johnston.

He continues in his letter —

> While the Government did not support the further amendments, the Liberal Party in the Legislative Council did.

Funny that. Anything that the Liberal Party does in the Legislative Council apparently just becomes the law of the land. He forgot to mention that a stack of other parties in this place also agreed with Hon Rick Mazza. That was just yesterday, yet, if my ears do not deceive me, I heard the minister just moments ago indicate that the government is supportive of this. What has happened in the last 24 hours? When was this letter drafted? Was this letter drafted on Thursday and it finally got to Australia Post and to Dr Mike Nahan yesterday? What is going on with this government that on Thursday, and as of yesterday, the day that this letter was received, it was a great outrage that anyone could agree with Hon Rick Mazza, but today it is okay? I think that is what we call egg on the face of the government for its absolute stupidity of last week. It was not the first time in the last three weeks that we have had our time wasted in this place over pointless objections by the government, only to find that when push comes to shove, it agrees. Like Hon Michael Mischin, I am delighted that, at long last, as tortuous as the process has been, commonsense has prevailed and the government has realised that it is not unnecessary or onerous for a tenant to lift a document and give it to a lessor within 14 days.

Hon ALANNAH MacTIERNAN: The minister has made these concessions in order to get the bill through. We listened to the concerns of Hon Rick Mazza and we agreed that there needs to be some mechanism whereby the landlord receives notice that there would be alterations. That is why we moved amendment 6, which we thought would adequately deal with that because, at the end of the day, the tenant will still have the obligation to make good that they would always have had. It was not as though we were arguing for secrecy. We took on board the concerns of Hon Rick Mazza and, therefore, moved what is now described in the document before us as amendment 6. We did not get it through, so it is not that the minister has changed his mind about what is reasonable and what is the most appropriate way, but we cannot always let the best be the enemy of the good. We have decided to move on. Hon Nick Goiran might want to read some of the annexures to the minister's letter and that might give him an idea of why the minister was a bit concerned.

Hon NICK GOIRAN: I thank the minister for inviting me to refresh my memory with the letter of 4 December. One thing that I forgot to quote a little earlier was the penultimate paragraph of the letter provided by the government yesterday, so I quote —

> The Christmas and New Year period is tragically characterised by a spike in domestic violence. To assist Western Australian victims, I am seeking confirmation of the Parliamentary Liberal Party's support for the Bill.

I might say several things about that. The Parliamentary Liberal Party has always supported this bill. It has supported the bill at every stage in every house. The other point is that it is very, very cute of the government to refer to the Christmas and new year period as tragically characterised by a spike in domestic violence when its own bill will not be ready by that very time. It was this minister who on only Thursday last week told us that the government would not be ready until the end of February. It is pathetic, dirty politics by the government to refer to the Christmas and new year period as tragically characterised by a spike in domestic violence and somehow imply that we are holding up this legislation and that there is going to be more domestic violence because of our behaviour. It is pathetic, dirty politics. The government has been caught out yet again on another bill because of its mismanagement. I simply ask that we support Hon Rick Mazza in a unanimous fashion at this time.

Hon ALISON XAMON: I rise to get further clarification about this amendment. I am concerned to hear about conversations that occurred in the other place that make reference to similar provisions to this attracting a penalty and what sounds like a quite onerous and over-the-top response in the event of breach. I of course recognise that members in the other place did not have the benefit at the time of being able to view the specific amendment in front of us today. I am concerned to ensure that any future interpretations of the specifics of this provision are simply viewed as a result of discussions in this place and not as a result of any discussions that may have occurred in response in the other place. As such, I wish to get confirmation that my understanding of the way that this will operate is correct; that is, when receipts are provided for work having been done, the tenant has the responsibility to simply hand those invoices, those receipts, to the lessor and that in the event that an official receipt is not provided, that simply confirmation by the person who has undertaken the work that they have undertaken it will suffice for the purpose of being defined as an invoice, and that this provision will apply when invoices have actually been provided. I also want to confirm that in the event that an invoice is not supplied, it may constitute a breach of the tenancy, but no specific penalty flows.

Hon ALANNAH MacTIERNAN: I just want to clarify that I think in relation to that last matter, if the tenant does not comply with the obligation set out, which is to provide a copy of an invoice to the lessor, it could constitute a breach of the Residential Tenancies Act, but even though it is a breach of the act, there is no penalty attached to it.

Question put and passed; the Council's amendment insisted on.

The CHAIR: Members, we now come to contemplation of amendment 8 contained in the message. I draw members' attention to supplementary notice paper 67, issue 10.

Hon MICHAEL MISCHIN: This relates to another amendment that was proposed and moved by Hon Rick Mazza. The purpose of amendment 8 is to similarly evidence, in the same way as the making of alterations, the completion of restoration work. If members read it in context, proposed additions to section 47 of the principal act will read —

> For the purposes of subsection (4) —
>
> …
>
> (d) the tenant must restore the premises to their original condition at the end of the residential tenancy agreement if the lessor requires the tenant to do so and the restoration must be undertaken by a qualified tradesperson, a copy of whose invoice the tenant must provide to the lessor within 14 days of the restoration being completed.

I understand the concern on the part of the government and also on the part of Hon Alison Xamon, and I think others have also had the opportunity to reflect on the wording of that over the last several days in a rather less panicked and rushed atmosphere. We have been able to consider more carefully whether the intention behind that, worthy as it is, is properly reflected by the amendment that Hon Rick Mazza proposed and which was passed. The way that it has resolved itself is that there can be an improvement made to that. There are two implications. Firstly, that it requires a qualified tradesperson to do the restoration work. The work may not have to necessarily be done by a qualified tradesperson to be of an adequate quality. In the general obligations under the Residential Tenancies Act and tenancy agreements, there is a requirement to make good premises at the end of a tenancy. It seems to be unnecessarily onerous to require a qualified tradesperson to do the restoration work at the completion of the obligations of the tenant, in this case. Secondly, a copy of the invoice must be provided to the lessor within 14 days of the restoration work being completed. That would seem to still be a worthy thing so that the lessor knows not only that work is proposed on his or her premises but also that the work has been completed on his or her premises and that when the restoration takes place, there is some evidence that it has been done in a proper fashion. Once again, we have issues with the lessor being able to go to someone and say, "You've made a mess of it. I can't go after the tenant because they're impecunious." They may not have the resources to be able to do it, but there is a certain quality that has been maintained.

The alternative that I have proposed is in the supplementary notice paper, and that is to not insist on amendment 8 and to move an alternative form of words. That appears at 1/AA8 on supplementary notice paper 10, by substituting the words —

> so and, where restoration work has been undertaken by a tradesperson, must provide to the lessor a copy of that tradesperson's invoice within 14 days of that work having been performed.

Once again, an invoice may be for a zero amount. It is really just evidence of the work that has been done. Members will note that I have omitted the necessity for it to be a qualified tradesperson. It can simply be a tradesperson such as a basic handyman who does this sort of restoration work—someone who knows what they are doing—which is not uncommon when tenants are restoring a premises at the end of a tenancy. It could be a carpet cleaner or it could be any tradesperson who knows what they are doing and can remove security screens and do other sorts of work. If it involves electrical work, a higher qualification and experience will be necessary, but this amendment has a lot more latitude. Of course, the invoice can be delivered for a zero amount. It can be a tradesperson who is provided by a women's refuge or another community organisation such as a church group—whatever it happens to be. I hope that this is a suitable compromise, which will achieve the ends that Hon Rick Mazza and others were concerned about, but at the same time will ameliorate the concerns of Hon Alison Xamon and the government and will not impose greater than normal obligations on tenants who were hoping for the benefit of this legislation. I move —

> That the Council does not insist on amendment 8 and makes the following alternative amendment in substitution —
>
> Page 11, line 2 — To delete "so." and substitute —
>
> so and, where restoration work has been undertaken by a tradesperson, must provide to the lessor a copy of that tradesperson's invoice within 14 days of that work having been performed.

The CHAIR: Procedurally, we are going to deal with this in a precise fashion. I know you will all want to assist in that. A couple of questions will have to be put, but first it might be helpful if Hon Rick Mazza, who was seeking the call, makes a brief observation.

Hon RICK MAZZA: I will support the alternative amendment. The original amendment required that the restoration be undertaken by a qualified tradesperson and the invoices then provided to the lessor. The reason the original amendment had those words was to be consistent with the requirement in the bill for a qualified tradesperson to install those fixtures. It would follow that a qualified tradesperson would have to remove those fixtures, particularly when a licensed tradesperson was needed. After a lot of discussion behind the Chair, there was some concern that work such as patch and paint would require a qualified tradesperson, which would be an extra expense and burden on the tenant. I accept that. The amendment put forward by Hon Michael Mischin is

a good alternative. If a tradesperson such as an electrician or some sort of security installer is required for those items to be removed, invoices would be provided. I expect that in the vast majority of cases, the lessor will not require those additions to be removed. However, there may be the odd occasion when the lessor believes that they are ugly and wants them removed or the tenant will want to take them down to move them elsewhere. In those cases, there will have to be a restoration. On page 11, in proposed section 47(5)(e), the bill states —

> the tenant must restore the premises to their original condition at the end of the residential tenancy …

I think it would be near on impossible to restore the premises to their original condition if brickwork or fascia has been drilled into to attach those fixtures. I think that most reasonable landlords would understand that it would be patched and painted, but it will never be restored to the original condition. I think the government's bill is more onerous than my original amendment that required a tradesperson to remove those things and provide the invoice. Having said that, I am very comfortable with the alternative version moved by Hon Michael Mischin and I will support that.

Hon ALANNAH MacTIERNAN: We will not oppose this substitution. We certainly think it is an improvement on what was there. I point out to Hon Rick Mazza that the provision of "making good" is a fairly standard provision and obligation on a tenant. However, we are happy to let this substituted amendment go through.

The CHAIR: This process is slightly different from our normal dealing with consideration of a bill in the Committee of the Whole House. We are not considering a bill in the Committee of the Whole House at the moment; we are considering a message in relation to a bill in the Committee of the Whole House. The words I am about to put are a little bit different from the form in which I would normally frame a question. In the first instance—I have noted that there seems to be agreement about this—there will be a question that the alternative amendment be substituted. That will then alter the matter that we will be dealing with. If that is agreed to, we will then proceed to the rather more substantial question that the alternative amendment be insisted upon. There are two parts to this. The first is that we work out what we will insist on or not. Hon Michael Mischin has moved the amendment standing in his name on the supplementary notice paper. In the first instance, I will put the question that the alternative amendment be substituted.

Question (alternative amendment) put and passed.

The CHAIR: I think we have led our way to the motion that now substantively stands in Hon Michael Mischin's name. I do not know that anyone wants me to read it out. The motion is —

> That the Council does not insist on amendment 8 and makes the following alternative amendment in substitution —

They are the words we have just agreed to. The question is that the motion be agreed to.

Hon NICK GOIRAN: Obviously, I agree and will support the motion. I stand to clarify something with the government because I am concerned with what I can see is potentially happening here. All of a sudden the government is using language that it will not oppose what has occurred. That is good; we are making progress. Despite the fact the government said it would not oppose it, I heard from the Chief Whip in this place that there was some opposition. I want to be very clear here with the minister because it is very important for the social services sector that we have certainty at the end of this process. That is the thing it is wanting. I want to be very clear that the government is not saying, "Look, here in the Legislative Council we will not oppose what is going on here because we want progress", and when we find the bill goes to the other place with the amendment, the government has a contrary position. As I indicated previously this evening, the government had a radically different position on Thursday last week, still very different yesterday, now all of a sudden, today, it is not opposed. Can we get clarification from the minister: will these amendments be supported by the government in the other place or is all this a big waste of time?

Hon ALANNAH MacTIERNAN: The member tried to run this last time, and we made it very clear that any amendment that we supported, as we certainly did, would be supported in the Legislative Assembly. Of course, this is a settlement that has been agreed to by the responsible minister.

Question (the Council's original amendment not insisted on) put and passed.

Hon ALANNAH MacTIERNAN: I move —

> That the Council does not insist on amendment 15.

Hon MICHAEL MISCHIN: For the same reasons that we did not pursue the issue with amendment 1, we will not pursue this amendment. It is an infelicitous use of language. I do not believe it is in the United Nations convention. It seems to have had its genesis, if one can follow its spoor through various documents, in a rather poorly worded phrase in the Australian Law Reform Commission report, which found its way into Victorian legislation and now seems to have been picked up without any critical analysis for this legislation, but it does no harm. It probably will not do much good, but we are not going to oppose the rejection of that amendment.

Hon RICK MAZZA: I rise to say that this amendment really just mirrors amendment 1 that we discussed earlier. All the debate around that amendment is relevant to this one. This bill simply amends two pieces of legislation and this amendment mirrors the first one that we have already debated.

Question put and passed; the Council's amendment not insisted on.

Hon RICK MAZZA: I move —

That the Council insists on amendment 21.

Hon ALANNAH MacTIERNAN: I acknowledge that we will not be opposing this motion.

Question put and passed; the Council's amendment insisted on.

Hon MICHAEL MISCHIN: This is a journey of exploration for all of us. I have never encountered this procedure in the last nine years of serving in this place. It is a novelty and a change is as good as a holiday.

Amendment 22 reflects amendment 8 but in respect of residential parks long-stay tenants. The wording is pretty much the same and for the same reasons, I propose an alternative amendment crafted to accommodate providing a tradesperson's invoice to a park operator within 14 days of restorative work having been performed by that tradesperson. I therefore move —

That the Council does not insist on amendment 22 and makes the following alternative amendment in substitution —

Page 34, line 32 — To delete "so." and substitute —

so and, where restoration work has been undertaken by a tradesperson, must provide to the park operator a copy of that tradesperson's invoice within 14 days of that work having been performed.

The CHAIR: Again, I will invite the Committee of the Whole to consider this amendment in two steps. The first question is that the alternative amendment be substituted.

Question (alternative amendment) put and passed.

The CHAIR: The question now is that the motion that the Council does not insist on amendment 22 be agreed to.

Question (the Council's original amendment not insisted on) put and passed.

Hon ALANNAH MacTIERNAN: I move —

That the Council does not insist on amendment 23.

We think this amendment might have been sent to the Assembly in error. We do not think we actually moved it.

Hon Nick Goiran: You had better check the *Hansard* and you will quickly see that you moved it and we all agreed.

Hon ALANNAH MacTIERNAN: In any event, there seems to be some confusion. There was some dispute about whether this amendment was dealt with. We are happy to remove it. Can I just say, because this will be the last motion, that I thank the members who have tried to bring these matters to a resolution. I particularly thank Hon Alison Xamon, who has played a very positive role.

Hon MICHAEL MISCHIN: For the record, and for the assistance of those who will have to deal with this in the other place in due course, amendment 23 was a government amendment. It closed off the notice requirement regarding alterations to a property. Amendment 6 inserted a requirement that a tenant advise a lessor in advance of the intention to make alterations. That is mirrored by amendment 20 for residential parks long-stay tenants. Amendment 23 requires a residential parks long-stay tenant to inform the lessor that the alterations have been completed. The purpose of that amendment is to complement an amendment that the government had proposed in supplementary notice paper 76, issue 8, at 42/12, which was in like terms to this amendment in respect of residential tenancies. After the passage of the invoice amendments that we have dealt with, Hon Alannah MacTiernan withdrew proposed amendment 42/12 as "no longer required". However, it seems that this amendment was overlooked. It is not unreasonable or burdensome that a lessor should be told about what foreshadowed works have been implemented on the lessor's property. It is sensible. It may also have safety implications. A lessor needs to know whether, and to what extent, their property may have been converted into a fortress or protected in some way. However, advice about the completion of the works is dealt with by Hon Rick Mazza's amendments 7 and 21. In that sense, amendment 23, like amendment 42/12, is redundant. The tenant does not need to tell the lessor or the park operator that it has been done because there will be an invoice within 14 days showing what has been done. But this only highlights that invoice provisions or something like them are necessary so that a lessor knows what has been done to their property and what might need to be restored in due course. There is no need for this particular provision and there is no harm in it being removed. I find it a little ironic that when Hon Nick Goiran asked a few minutes ago whether the government not opposing amendments

here meant that they would be supported in the other place, the minister responded, "Any amendment we support, we will support in the other place". Well, this one was not! This one went to the other place as a government amendment and the minister down there lambasted it and, with the numbers down there, rejected it. So that is not quite right. Anyway, I am given some comfort that history will not repeat itself in respect to the current ones. We do not insist on this amendment.

Hon MARTIN ALDRIDGE: I am a bit confused by this motion. Maybe the minister could assist me. When amendment 23 was sent down to the other place, Hon Bill Johnston told the Assembly that this amendment was not needed because amendment 20 had dealt with the issue. Amendment 20 provides for written notice to the park operator of the tenant's intention to make the prescribed alterations. Amendment 23 provides that notice of prescribed alterations is to be given to the park owner following the alterations being made. Minister, was Hon Bill Johnston wrong in what he told the other place?

Hon ALANNAH MacTIERNAN: As the member is aware, there was a fairly fluid situation going on. He would be aware that there are two sets of parallel amendments because there are two pieces of legislation. That provision was drafted by the advisers when we were dealing with the first piece of legislation. That was expressly withdrawn, because we did not want to proceed with that. There seems to have been some confusion when we came to the second piece of legislation. That was what the minister was picking up on—that we had actually withdrawn the amendment in relation to the first set of legislation and it was certainly our intention to remove it for the second. Somehow or other, in the chaos of the day, that did not happen, but that has been corrected.

Hon MARTIN ALDRIDGE: I tend to agree that the minister's handling of this matter in the other place was chaotic, but I do not accept the Minister for Regional Development's explanation. I agree with her. If I am not mistaken, the reason amendment 23 is not required is that amendment 22, not amendment 20, has now dealt with the matter of notification following alterations, because of the provision to provide an invoice within 14 days. I think we should be very clear that there was confusion in the other place. Minister Johnston said —

> … this should be victim focused; that should be the discussion. We are the elected government of Western Australia; we have the support of industry, victim organisations and the broad community. This is not needed. It is not victim focused. We do not support it.

I think if anyone was confused or chaotic, it was Minister Bill Johnston in not realising that this amendment related to amendment 22 and not amendment 20. Indeed, it was you, minister, who moved the amendment.

Hon ALANNAH MacTIERNAN: I do need to explain. Minister Johnston was correct. What happened is that the advisers drafted several variants of amendments as we worked to accommodate the concerns of Hon Rick Mazza and others on the issue of notification. In the first instance, given amendment 6 and its parallel amendment 20 in the two pieces of respective legislation, it was our view that this other notification provision was not required. These were alternatives that had been drafted by our advisers giving two different methods that we could put on the table to accommodate the concerns that people had about notification and rectification. As the member can see, once we were successful with amendment 6, we then did not proceed with the equivalent of amendment 23 in that part of the legislation. It was an error, as I said, that this amendment was not withdrawn. The minister quite correctly indicated that we had put up amendment 20, and we had put up amendment 6 and an equivalent of amendment 23 in that first instance. The minister was correct in his comment that we believed that the notification provision had been dealt with by the amendments we had previously made.

Hon MARTIN ALDRIDGE: If I am wrong, I want the minister to explain this to me. She is saying that Minister Johnston was right, and amendment 23 was not required because of amendment 20. Amendment 20 relates to giving notice prior to alteration. Amendment 23 deals with providing notice after alteration. Can the minister please explain to me what I am not getting? Can she explain to me how amendment 23 is not required because of amendment 20?

Hon ALANNAH MacTIERNAN: The concern was that there needed to be some mechanism whereby the landlord was made aware of alterations that had been made, so it could be done either before or after. That was our view, when they were put up as alternatives, as is demonstrated by the fact that we did not proceed with the other amendment in the first instance. If the member wants to insist on this amendment, I would be surprised, but I have moved that we do not insist on this amendment.

Question put and passed; the Council's amendment not insisted on.

Report

Resolutions reported, the report adopted, and a message accordingly returned to the Assembly.

CHILD SUPPORT (COMMONWEALTH POWERS) BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.31 pm]: I move —

That the bill be now read a second time.

The bill will greatly benefit ex-nuptial children in this state. It will ensure that they receive immediately all the benefits of commonwealth legislative amendments to the child support scheme, like all other children in Western Australia and like children in other parts of Australia, rather than having to wait for the enactment of WA adoption legislation.

As members will be aware, the commonwealth child support scheme was introduced with the objective of ensuring that separated parents shared equitably in the financial cost of supporting their children. The scheme operates under two commonwealth statutes: the Child Support (Registration and Collection) Act 1988 and the Child Support (Assessment) Act 1989. In this context, the commonwealth Parliament has constitutional power to legislate with respect to children only if they are the product of a marriage. Legislative power with respect to unmarried parents and their children vests in state Parliaments. For the commonwealth child support acts and, therefore, the child support scheme to apply uniformly to married and unmarried couples and their children, state Parliaments must either, firstly, refer legislative power in respect of the maintenance of ex-nuptial children to the commonwealth Parliament or, secondly, afterwards adopt the commonwealth acts under which the scheme operates by state legislation.

All states except Western Australia have referred legislative power so that whenever one or both of the commonwealth statutes is amended, those amendments have immediate application to all children in those referring states. Instead of referring power to the commonwealth Parliament, this Parliament has previously adopted the commonwealth legislation that governs the child support scheme. As members will be aware, these commonwealth acts have been amended many times. Under section 51(xxxvii) of the commonwealth Constitution, amendments to the commonwealth child support legislation extend to Western Australia only when this Parliament afterwards adopts the amended commonwealth legislation. Therefore, the method of adoption of laws, rather than referral of legislative power, means that the child support scheme as amended by commonwealth acts does not apply to unmarried couples and their ex-nuptial children in Western Australia until this Parliament amends the Western Australian Child Support (Adoption of Laws) Act 1990 to adopt the commonwealth acts as amended. During the hiatus between amendment of the commonwealth acts and adoption by the Western Australian Parliament, often ex-nuptial children in Western Australia do not have the benefits of the commonwealth amendments. Until this Parliament adopts the commonwealth acts as amended, two versions of the commonwealth legislation operate in WA. This Parliament regularly has to pass bills adopting current versions of the commonwealth child support acts. Since 1990, this Parliament has passed eight such bills. As amendments at commonwealth level are becoming more frequent, the need for adopting bills in Western Australia is correspondingly greater. For example, there have been three such Western Australian bills in the past four years.

Under section 51(xxxvii) of the commonwealth Constitution, this Parliament can adopt amendments only after they have been enacted by the commonwealth Parliament and then, in practice, only when Western Australian parliamentary time is available. The result is that considerable time often elapses between the commencement of a particular amendment to the commonwealth child support acts and the adoption of the same amendment by this Parliament. As the commonwealth amendments take effect immediately for children of a marriage in Western Australia, these delays mean that, for a period, the commonwealth scheme does not apply equally to children of a marriage and exnuptial children in Western Australia. Authorities administering the child support scheme need, in effect, to operate two schemes in Western Australia: one for children of a marriage and one for exnuptial children. This inequality can disadvantage the latter, especially financially. It should also be noted that since the first adoption by the Western Australian Parliament in 1988 of the commonwealth legislation relating to the child support scheme, the WA Parliament has always adopted, albeit with some delay, all commonwealth amendments. Therefore, firstly, this bill will adopt all commonwealth child support laws that this Parliament has previously adopted and also commonwealth amendments that have been enacted between 1 September 2017 and when this bill receives assent. Secondly, the bill refers state legislative power to the commonwealth Parliament.

Members will also note that the adoption and referral can be terminated by the Governor issuing a proclamation that has been approved by both houses of this Parliament. I trust that all members will agree that this bill will greatly benefit children in this state.

Pursuant to standing order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that, by reason of its subject matter, is part of a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2306.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF NAME) BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.37 pm]: I move —

That the bill be now read a second time.

During the November 2011 meeting of the former Standing Council on Law and Justice, ministers agreed to consider implementing recommendations in the discussion paper "Ten Recommendations for a Better Approach to Change of Name Processes in Australia". Members noted that national consistency in change-of-name processes is critical to supporting identity security outcomes under the endorsed National Identity Security Strategy. Further, the 2014 Sydney Martin Place siege report recommended that state and territory registries implement change-of-name process improvements and better information sharing between government agencies. This report also recommended greater use of the national Document Verification Service to authenticate identity documents.

This bill amends the Births, Deaths and Marriages Registration Act 1998 to improve the change-of-name process that may be exploited for fraudulent, criminal or other wrongful purposes. There is currently no restriction in the act on people born elsewhere in Australia from applying to the Western Australian registrar for a change of name. There is also limited provision to decline a change of name even if there are concerns about the reasons for the change; nor are there limits to the number of times a person can change their name. These factors have been identified as considerable risks and weaknesses in change-of-name processes across Australia. The bill will remedy these current weaknesses by requiring a person to be born in Western Australia to be eligible to apply to the registrar for a change of name. A person born elsewhere in Australia must apply to the state or territory of their birth. An overseas-born person must be a permanent resident or Australian citizen and have ordinarily lived in Western Australia for at least 12 consecutive months to be eligible to apply. These general requirements will ensure that an Australian-born person's change of name is linked with their birth registration and that an overseas-born person has a link with the state or territory where their name is being changed. This will limit opportunities for a person to create multiple identities across Australia.

The bill also limits a person to changing their name once in a 12-month period and up to a maximum of three times in a lifetime. However, the bill takes into account special circumstances for children whose name is changed, such as decisions by the Family Court or when changing names due to marriage, divorce or other exceptional circumstances, such as for protected persons and people experiencing domestic violence. It further restricts certain classes of offenders, being restricted persons, from exploiting weaknesses that allow them to evade or hinder supervision. The bill restricts these offenders from changing their name without obtaining approval of an appropriate supervisory authority. These restrictions apply to dangerous sexual offenders, detainees, persons subject to early release orders, prisoners, supervised offenders and supervised young offenders managed in the community.

The bill further recognises strengthening of those protections afforded to Western Australians under the Dangerous Sexual Offenders Amendment Act 2017. Importantly, the Community Protection (Offender Reporting) Act 2004 will continue to operate. The bill enables information sharing between the Registry of Births, Deaths and Marriages and the relevant supervisory authorities to identify those restricted persons. These arrangements also allow supervisory authorities to update the information management systems relating to restricted persons before and after a change of name. Additional information sharing with other agencies will minimise the risk of a person creating and using multiple identities or to avoid detection such as when a driver's licence may have been cancelled. Other changes allow the registrar to require further evidence of an applicant's entitlement to apply to change their name and will assist the registrar to refuse a change of name if they have a history of debt avoidance.

The bill will allow the registry to fully participate in commonwealth initiatives such as the national Document Verification Service. This online service authenticates identity credentials, such as birth certificates presented by individuals when applying for passports. The registry will also use the verification service to authenticate evidence of identity credentials, such as passports and drivers' licences, provided to it for the purpose of changing a name or seeking access to life event information within the Western Australian register. This will serve to strengthen name-based identity checks.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill for the following reasons. Firstly, it does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Secondly, it does not by reason of its subject matter introduce a uniform scheme or uniform

laws throughout the commonwealth. The drafting of the bill was a recommendation of the then Standing Council on Law and Justice on 18 November 2011. That recommendation was that jurisdictions consider implementing a best practice approach to the change-of-name process in order to minimise abuse of the system. In this context, that jurisdictions consider this issue, they retain their discretion on whether to legislate and the form and content of any legislation. Some states and territories have opted to legislate. These legislative responses differ in their particulars and are not co-dependent, reciprocal or uniform in nature. Others have opted to utilise operational policy, rather than legislate.

I commend the bill to the house and table an explanatory memorandum.

[See paper 2307.]

Debate adjourned, pursuant to standing orders.

INTERNATIONAL DAY OF PEOPLE WITH DISABILITY

Statement

HON ALISON XAMON (North Metropolitan) [9.43 pm]: I rise because Monday, 3 December was International Day of People with Disability, and this is a really good opportunity for us to acknowledge people living with disability and the extraordinary gains that have been made in our disability sector. This year's theme is "empowering persons with disabilities and ensuring inclusiveness and equality". It is also a day to promote awareness of the challenges that continue to be faced by people who live with disability and the role that our community plays in accelerating the eradication of barriers to social inclusion and equity and participation and citizenship.

In the spirit of celebration, I use this opportunity to acknowledge and highlight the fantastic initiative that has been undertaken by People with Disabilities (WA) Inc and that is the Connect with Me project, which is particularly in keeping with this year's theme. The Connect with Me project aims to make co-design a valued component of business rather than a compliance consideration. The project provides a mechanism for organisations to capture information based on the lived experience of people with disability. It helps to ensure that people affected by a decision have some direct say in what happens in their lives. There is always a lot of discussion about the importance of co-design, but there is precious little information about how to actually do it. Connect with Me is thought to be the first co-design tool developed specifically for people with disability living in WA. The model has three components—a guide explaining the co-design process, a toolkit to support co-design practice and a group of co-designers who provide advice and support to organisations hoping to go down this path. It effectively helps organisations to co-design better to ensure that our communities are appropriately accessible and inclusive for everyone going forward.

Another key strategy needed to ensure that people with disability are able to fully participate in society is the provision of ongoing funding for systemic advocacy. Of course I acknowledge that this government has recently announced funding for systemic disability advocacy as part of the transition phase to the National Disability Insurance Scheme, but I cannot stress enough that this interim funding does not remove the need for ongoing systemic advocacy services in this state. It is really important that we do not go down the same path as Victoria and New South Wales, where the withdrawal of systemic advocacy funding at the end of their NDIS transition periods resulted in a lot of turmoil and problems within the sector and they ultimately had to reinstate it. I urge this government to recognise that this is a core business of the disability sector and hopefully that planning will remain ongoing. Systemic advocacy plays a key role in ensuring that services such as housing, justice and support are all in place and operating effectively on an ongoing basis.

The reality is that we constantly need to improve. We need to make sure that the great work that has been started with the Connect with Me project and the interim funding for systemic advocacy ultimately becomes embedded in our system and that they are able to be relied on as key principles underpinning the way in which we build more inclusive communities now and into the future. Unfortunately, we still have a long way to go. Only this week I asked a question that highlights just two examples of barriers faced by people with disability when accessing transport services in WA. This arose out of some conversations I had with people. The issues are deaf people not being able to hear announcements of changes in schedules and wheelchair users not being able to access the allotted space on trains and buses because of people with prams and bikes taking up space. These are just everyday hurdles that people live with, but they are the sorts of things we should be able to simply address, yet we do not. It means that people cannot access the most basic services.

I note the words of the late Stella Young, writer, comedian and advocate for people with disability, who sadly passed away four years ago. I think her words resonate quite significantly. She said —

> We are not wrong for the world we live in. The world we live in is not yet right for us, and we need to change it.

I say hear, hear! International Day of People with a Disability is a pertinent reminder to acknowledge the great things taking place in the disability sector, but there is no room for complacency. There is always so much more that needs to be done.

CARNARVON SCHOOL OF THE AIR

Statement

HON ROBIN SCOTT (Mining and Pastoral) [9.49 pm]: I would like to inform the chamber of where I was on Monday. I was very fortunate to be invited to the Carnarvon School of the Air end-of-year concert held at the Camel Lane Theatre in Carnarvon. The concert started off with a welcome to country followed by the national anthem. All the students, from kindy right through to year 6, participated in the presentation of jungle drums. The concert featured warthogs, leopards, elephants, giraffes and colourful birds. The students received their lines via the School of the Air. They had only two hours to rehearse. Many people may have thought that a lot of overacting was going on, but I can assure members that it was purely enthusiasm from the students! Some families had travelled more than two hours and some more than six hours, but the travel meant nothing to the parents. When I spoke to parents afterwards, they said they wanted to make sure that their kids got the opportunity to meet up with their peers.

I was also privileged to present the year 2 Endeavour Award to a young man by the name of Stanley Hammerquist. There were also awards for music, art and sport, as well as book and citizenship awards. The new school captain was announced, along with the sports captains—one boy and one girl. Rio Tinto provided the graduation prizes. Judging by the smiles on students' faces, everyone was very happy with their prize.

Sadly, Principal Gossage is retiring after seven years at the helm of Carnarvon School of the Air. After the concert, I was able to have a coffee with him. He explained to me that he was very sad to be leaving. He also told me that during his seven years at the school, he had noticed that funding for Carnarvon School of the Air had slowly been dwindling. He was also concerned that some parents would no longer be able to afford to send their kids to camp school. He also said that people from Carnarvon were arranging to make sure that every kid would get to this camp school through donations and help from others in the town. As the Labor government prepares its budget for next year, I hope it will take into consideration these words from someone who is at the coalface.

BUNBURY–GREENBUSHES RAIL LINE — LITHIUM MINING

Statement

HON DIANE EVERS (South West) [9.52 pm]: Today, I asked a question without notice related to the Bunbury–Greenbushes rail line and, unfortunately, the answer was less than what I had hoped for. It basically just said that it is an agreement with Arc Infrastructure and that it is complicated. We understand that it is complicated, but that does not mean we should shy away from it.

I want to say a few words about this rail line. People down there are really hoping that, rather than lithium being transported on trucks to the port or to Kemerton, it is transported by rail. A couple of feasibility studies have been done recently on this rail line showing that it is financially a good idea, especially knowing that the mine will be there for 20 years, and possibly longer. Significant capital will have to be put into it. I imagine this is where that complication comes in. Arc Infrastructure of course does not want to have to pay for any of that capital and I am sure that the state does not want to have to pay for it either. The mine is saying it is not its issue; it will just put it on trucks. Somebody will have to pay for it. The agreement with Arc Infrastructure states it can determine that a line is uneconomical to run and then basically close it. It does not really say what happens after that. I am hoping that, through those conversations that Main Roads WA or the Department of Transport is having, they look into the idea and the legal ramifications of possibly taking back that line within the realms of the state running it. We need the rail line. Parts of the train line down there are quite crowded. It may be that more infrastructure is needed to free up some of that space, such as sidings so that trains can pass each other. A considerable amount of infrastructure is needed, but the benefits would be ongoing. The timber industry is listening closely to these negotiations because it is looking at possibly using the line. The line was closed when the timber industry slowed down. There was not enough volume to keep it open, but it is listening again to hear whether that line will open up. I hate to use the phrase "build it and they will come", but as we progress through the next couple of decades and fossil fuels become more expensive, putting things on rail will become more economical. The lines can be run with electricity. There will be many benefits if we can just step outside of thinking about who will pay for it now and what it will cost and look to the future and the benefits of having that rail line open. I hope that the answer I got is trying to hide some of the negotiations that are going on. I will be patient for a while and see whether those rail lines might be opened somehow. That is the best answer. It is economically feasible and it is what the people down there want.

RELIGIOUS FREEDOM

Statement

HON CHARLES SMITH (East Metropolitan) [9.55 pm]: I rise to speak briefly on a very important matter relating to religious freedom in Western Australia. Members may be familiar with the case of wedding photographer Jason Tey, who was recently hauled in front of the Western Australian Equal Opportunity Commission after he agreed to photograph the children of a same-sex couple but disclosed a conflict of belief in case the couple felt more comfortable hiring somebody else.

Mr Tey did not refuse service. He offered to do the job. He simply stated his traditional Christian belief. The conciliation conference failed and he now finds himself on the wrong side of the WA State Administrative Tribunal. According to recent media reports, it was demanded at the conciliation hearing that Mr Tey provide an admission of discrimination, as well as a written apology to be published publicly on the homepage of his website and all social media pages associated with his photography business for at least two months. Those unreasonable demands should be called out for what they were—that is, a crude attempt to publicly bully, shame and punish Mr Tey. No sensible person could accept such malicious attacks on their character and livelihood.

For those who care about religious freedoms, the Tey case is extremely disturbing. Politicians in this place constantly preach about tolerance, yet here in WA a Christian man is being harassed for expressing his beliefs. Worse, this harassment is being sanctioned and financially supported by the state. State anti-discrimination laws are being used to coerce Christians into doing things against their will for fear of persecution. In Mr Tey's case, he did not even decline service, yet he was still the subject of a complaint.

Australia is historically a Christian society, but today many Christians are suffering from the reality or fear of vilification. We have seen how Christianity and its crucial role in shaping Australian society have been virtually expunged from the education curriculum. We have seen how high-profile Christian campaigners in Western Australia, such as Mrs Margaret Court, have been attacked and smeared for expressing their beliefs. Mrs Court was forced from her position as patron of John Forrest Secondary College's specialist tennis program for daring to publicly support the traditionalist view of marriage. The Minister for Education and Training supported the actions of the school board in effectively firing Mrs Court for her beliefs. In other words, the education minister condoned a policy of excluding committed Christians from school sporting academies.

Hon Sue Ellery: I did not!

Hon CHARLES SMITH: According to media reports, that is so.

Several members interjected.

Hon CHARLES SMITH: That is what was reported in the media.

Several members interjected.

The PRESIDENT: Order!

Hon CHARLES SMITH: I cannot imagine that Sir John Forrest would have supported the anti-traditionalist values now espoused by the school that carries his name.

House adjourned at 9.59 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

NATIONAL DISABILITY INSURANCE SCHEME — WA COUNTRY HEALTH SERVICE

1749. Hon Alison Xamon to the parliamentary secretary representing the Deputy Premier; Minister for Health; Mental Health:

I refer to comments made during Legislative Assembly estimates hearings about the possibility of the Western Australia Country Health Service (WACHS) being a service provider under the National Disability Insurance Scheme, and I ask:

(a) has a decision been made about the ongoing role of WACHS as a service provider;

(b) if yes to (a):

(i) what parameters have been agreed to; and

(ii) is this arrangement intended to be ongoing or part of a longer term transition plan; and

(c) if no to (a), when will a decision be made?

Hon Alanna Clohesy replied:

I am advised that:

(a) Yes. The WA Country Health Service (WACHS) has made a decision that it will not become a service provider under the National Disability Insurance Scheme (NDIS).

(b) (i) Consistent with the Bilateral Agreement between the Commonwealth and Western Australia: Transition to NDIS in Western Australia, WACHS will withdraw from the provision of 'in-kind' NDIS responsible services. WACHS is working with the National Disability Insurance Agency (NDIA), NDIS service providers and clients to ensure continuity of service and a seamless transition to the NDIS.

(ii) The arrangement is part of the agreed Commonwealth and state NDIS transition plan.

(c) Not applicable.

HEALTH — TICK-BORNE DISEASE — LYME-LIKE ILLNESS

1751. Hon Alison Xamon to the parliamentary secretary representing the Deputy Premier; Minister for Health; Mental Health:

I refer to question on notice No 1604, in which the Minister for Health advised the department was awaiting the outcomes of the July Debilitating Symptom Complexes Attributed to Ticks Patient Forum before considering a Western Australian based approach to Lyme-Like illness, and I ask:

(a) given the report has now been released what concrete actions have been taken by Western Australia Health towards advancing the outcomes contained in this report;

(b) in particular:

(i) what is the Government doing to raise awareness in the community and amongst general practitioners about Lyme-like illness; and

(ii) does the Government intend to put in place education programs to prevent people acquiring tick borne infections; and

(c) has the Minister given further consideration to a state-wide specialist support service?

Hon Alanna Clohesy replied:

I am advised that:

(a) The report of the DSCATT (debilitating symptom complexes attributed to ticks) Patient Group Forum held in Sydney on 27 July 2018 was released on 9 October 2018. The Forum's outcomes were that:

> "The multidisciplinary approaches presented at the forum needs further exploration and to be collaboratively developed but should be pursued.
>
> Ministerial support will be sought to convene a 'think tank' which will include other disease like groups (e.g. (myalgic encephalomyelitis/chronic fatigue syndrome ME/CFS), biotoxins) to develop and co-design the way forward.
>
> Further research is required however treatment pathways cannot wait until the research is completed and needs continued focus.
>
> Education and awareness is the highest priority with a strong focus on prevention, children, community awareness and GP knowledge and acceptance."

The Department of Health (DOH) continues to be committed to a nationally coordinated and consistent approach regarding debilitating symptom complexes attributed to ticks (DSCATT) and will work through the Australian Health Protection Principal Committee (AHPPC) to progress the Forum outcomes.

On 16 November 2019, the Commonwealth Department of Health published a request for tender for development of an evidence-based clinical pathway for patients with DSCATT, https://www.tenders.gov.au/?event=public.advancedsearch.keyword&keyword=dscatt

(b) (i) The DOH supports that information provided in the Australian Government's recently released position statements on Lyme disease in Australia and Debilitating Symptom Complexes Attributed to Ticks (published on the national Lyme disease webpage http://www.health.gov.au/lyme-disease) and recommends the use of these position statements by general practitioners and other health professionals. Members of the public and health practitioners who request information from DOH about Lyme disease or DSCATT are referred to the national Lyme disease webpage http://www.health.gov.au/lyme-disease to raise their awareness of national developments around this issue.

(ii) No. The Department of Health does not intend to put in place education programs to prevent people acquiring tick borne infections but will encourage a national approach based on Australian Government resources.

(c) The Minister for Health will give further consideration to a state-wide specialist support service after the outcomes of the 'think tank' described in (a) have been made available.

DISABILITY SERVICES — LOCAL COORDINATORS

1754. Hon Alison Xamon to the Minister for Environment; Disability Services:

I refer to the planned transfer of 200 Local Coordinators from the Department of Communities to the National Disability Insurance Agency, and I ask:

(a) how many Local Coordinators have been transferred to the National Disability Insurance Agency as of 30 October 2018;

(b) are the numbers transferred to date in accordance with the original schedule;

(c) if no to (b), why not; and

(d) when is the full transfer of Local Coordinator staff scheduled to be completed by?

Hon Stephen Dawson replied:

(a) As at 30 October 2018, 40 Local Coordinators have been transferred to the National Disability Insurance Agency (NDIA).

(b) Not applicable as there is no schedule for the transfer of Local Coordinators to the NDIA.

(c) Not applicable.

(d) The NDIA have advised that the First Offer pool remains open until 2023 and, while this pool is open, the NDIA may opt to offer employment opportunities to suitable Local Coordinators.

REGIONAL DEVELOPMENT COMMISSIONS — SPECIALIST LOCAL PROCUREMENT OFFICERS

1756. Hon Martin Aldridge to the Minister for Regional Development:

I refer to the State Government's election commitment to establish a 'specialist local procurement officer' in each Regional Development Commission (RDC) and I ask:

(a) with respect to each RDC please advise:

(i) the name of each specialist local procurement officer;

(ii) the employment level of each position;

(iii) the commencement date of each position;

(iv) if the position is full-time or part-time and if part-time the extent to which it is part-time; and

(v) if the position has responsibilities other than that of a specialist local procurement officer and if so what those responsibilities are;

(b) what are the key performance indicators by which the success of these positions can be assessed;

(c) on how many occasions has each officer directly assisted a regionally located business to secure a government contract;

(d) of those identified in (c,) please identify the business and the contract identified;

(e) on how many occasions have officers supported decision making for the awarding of State Government contracts; and

(f) of those identified in (e), please identify the contract and the decision making process assisted by the officer?

Hon Alannah MacTiernan replied:

(a) These positions are now designated as Local Content Advisers. The nine Local Content Advisers are located in the nine Regional Development Commissions across the State.

(i)–(iv)

	Name	Employment level	Start date	Full-time/ part-time
Gascoyne Development Commission	Jill Dwyer	Level 6	01/05/18	Full Time
Goldfields-Esperance Development Commission	Peter Rampellini	Level 6	02/07/18	Full Time
Great Southern Development Commission	Gavin Ellis	Level 6	01/05/18	Full Time
Kimberley Development Commission	Dylan Heath	Level 6	05/06/18	Full Time
Mid West Development Commission	Gary Savill	Level 7	16/04/18	Full Time
Peel Development Commission	Tahlia Jones	Level 6	30/04/18	Full Time
Pilbara Development Commission	Eliza Carbines	Level 6	23/07/18	Full Time
South West Development Commission	Carly Anderson	Level 7	01/05/18	Full Time
Wheatbelt Development Commission	Megan Creagh	Level 6	02/07/18	Full Time

(v) The Local Content Adviser's key responsibilities are to:

Support regional suppliers and contractors to connect to government procurement opportunities;

Encourage Government agencies to maximise supply and job opportunities for regional businesses on government projects;

Influence and support the implementation and application of the WA Industry Participation Strategy, Buy Local Policy and Aboriginal Procurement Policy;

Connect regional businesses to capacity and capability building initiatives; and

Support local content outcomes through Royalty for Regions funding and programs.

(b) The key progress indicators are:

Buy Local Policy and WA Industry Participation Strategy	Increasing the percentage of Government contracts going to local suppliers and contractors, both as head contractors and via the supply chain
Aboriginal Procurement Policy	Increasing the percentage of Government contracts going to suppliers and contractors who meet the Aboriginal Business definition.
WA Regional Business	Increasing the percentage of regional government contracts going to regional suppliers and contractors, both as head contractors and via the supply chain.

(c)–(f) Local Content Advisers are responsible for ensuring local content policies and possibilities are understood and implemented by various procuring agencies.

Between 1 July 2018 and 30 September 2018 Local Content Advisers recorded a total of 774 engagement activities across the nine regions. These interactions included industry, government agency and Aboriginal business engagement, tender promotion, business capacity building and support for WA Industry Participation Plans.

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