## CONSUMER PROTECTION LEGISLATION AMENDMENT BILL 2018

*Second Reading*

Resumed from 8 August.

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development)** [2.10 pm] — in reply: This debate has gone on now for some time, but I think we have identified a few issues which were raised and which we have not yet dealt with in the second reading debate. Hon Michael Mischin asked questions about the consultation on penalty adjustments. Consultation on penalty levels was not undertaken with the industry because it is generally considered not appropriate to consult those who might be the recipients of penalties about what they might find appropriate. Secondly, Hon Michael Mischin asked why no separate penalties have been provided for offences by body corporates. No separate penalty has been prescribed for a body corporate as there is now a capacity to impose a higher penalty on corporations under section 40 of the Sentencing Act. Hon Michael Mischin also asked about the purpose of the amendment to the Fair Trading Act 2010. The purpose of this amendment is to confer on the Commissioner for Consumer Protection, for the purposes of the Charitable Collections Act, the suite of investigative powers that apply to other licensing and registration acts administered by Consumer Protection.

Hon Michael Mischin also asked questions about the rationale for the changes to the penalties in the Real Estate and Business Agents Act that would be effected by this legislation. I am advised that penalties across various jurisdictions were examined and a range of penalties were found. For example, under clause 62, we can see that the current penalty in Western Australia is $20 000. Across most jurisdictions, penalties were considerably higher, with the highest being in Tasmania, and we decided to establish a middle range. We have generally taken the approach of looking at what has been imposed for similar offences in other jurisdictions and have determined a middle range. Hon Michael Mischin also asked about penalties in the Settlement Agents Act. The penalties and licensing arrangement proposed in this bill are the same as those that will be made for real estate agents. The Australian Institute of Conveyancers WA is represented on the Property Industry Advisory Committee and has not raised any concerns about these amendments.

Hon Michael Mischin asked a question about penalties for street collections. The penalties have been increased. Although there are no directly relevant offences in other jurisdictions, penalties for similar public fundraising offences range up to $20 000 in Victoria. Consumer Protection engages in regular consultation with the industry regarding the administration of legislation with the Charitable Collections Advisory Committee, which meets each month. There were also questions about whether it is common for real estate agents to fail to comply with the prescribed education requirements. In response to that inquiry, I was advised that between 2014 and 2018, in excess of 70 real estate and business agents failed to satisfy that requirement each year. Over that same period, the figure for real estate and building sales representatives tended to go between 56 and 64. It is interesting that the figures are fairly consistent. Between 85 and 90 settlement agents each year failed to meet their continuing professional development requirements.

Hon Rick Mazza asked whether a child has to be living in a property to give rise to an entitlement to bolt furniture and how "child" is defined. The provision will not specifically require a child to live at a property or define an age for a protected child, but in the case of a dispute, the tenant would have to satisfy the magistrate of a genuine intent to protect a child in the circumstances of a tenancy, which would be difficult to maintain if there were no likelihood of a child being at the premises.

Hon Rick Mazza also quoted correspondence from the Real Estate Institute of Western Australia suggesting that amendments concerning apportionment of utility charges represent a policy shift in the ability of the lessor to recover supply fees. As members noted in the debate, the proposed amendment to section 49A of the Residential Tenancies Act at clause 68 of the bill does not make a material change to the current provision. It is intended to clarify the definition of "consumption" to avoid current confusion. The correspondence from REIWA quoted by Hon Rick Mazza initially incorrectly described this amendment as a significant policy shift. A meeting was held with REIWA and the Commissioner for Consumer Protection to clarify that the proposed amendments did not make a material change to the current provision. The fact that REIWA was unclear of this current requirement highlights the need for the clarification of this provision to eliminate confusion for lessors and tenants.

The amendments in 2013 that inserted section 49A into the RTA were in response to an increasingly common occurrence of property managers and landlords including additional fees when passing on utility accounts to tenants. Such fees included photocopying charges, charges for the landlord or property manager to calculate the pro rata share, postage for sending the account and credit card surcharges. It was because of all these additional charges that the RTA was amended—again, I stress—in 2013 to limit it to being a charge for consumption only. I understand that REIWA accepts that.

We note a further question. Hon Rick Mazza quoted a letter in which REIWA complained of a lack of consultation in the development of the bill. The Department of Mines, Industry Regulation and Safety strongly disputes the suggestion that REIWA had no notification of the proposed changes. Following the receipt of a letter on 1 November 2018 in

which REIWA complained of lack of consultation prior to the tabling of the bill, the Commissioner for Consumer Protection met with REIWA on 2 November to discuss the proposed amendments and detailed consultation that had taken place, including a briefing to the Property Industry Advisory Committee on the proposed contents of the bill on 23 February 2018 and progress reports at the June and September meetings. On 7 November 2018, REIWA wrote to the minister again, stating that REIWA had received additional information and clarification around many of the proposed changes and is now largely satisfied with what had been proposed. The only outstanding issue described in that correspondence was about the imposition of a potential penalty of imprisonment for trust account defalcation.

In that regard, the Real Estate Institute of Western Australia's primary concern was that an agent may be at risk of imprisonment for an offence committed by an employee. The Department of Commerce was subsequently able to provide reassurance to REIWA that that is not the case. By letter of 29 November, the then minister, Hon Bill Johnston, wrote to REIWA advising that the proposed amendment would not result in a risk of a prison sentence when an agent was not directly involved in the commission of an offence. Any disciplinary action against an agent for failure to provide effective supervision would be commenced in the State Administrative Tribunal under section 103 of the Real Estate and Business Agents Act that does not provide for the penalty of imprisonment.

Hon Rick Mazza raised the issue of a builder taking a deposit without first obtaining home indemnity insurance and the consumer being exposed to risk of loss of the deposit should the building become insolvent. I understand that section 25C(2) of the Home Building Contracts Act 1991 prohibits a builder from demanding any money from a consumer, including a deposit, before the home indemnity insurance policy is taken out on behalf of the client. Builders who breach the requirement face the maximum penalty of $100 000 as well as potential cancellation of registration. The current reform project on the WA home indemnity insurance scheme being undertaken by the department will consider alternative options for compensating consumers, including the creation of a compensation fund.

Hon Martin Aldridge acknowledged that amendments to section 49A of the Residential Tenancies Act do not alter current policy. However, he suggested that consideration should be given to changing the policy to permit lessors to recover the daily supply charge. He queried the current policy for how fixed costs for public utilities are treated. We note the member's comments and that in his view there may be some justification for reviewing the ongoing requirement of this provision. This Consumer Protection Legislation Amendment Bill was not the place for such a review because it would reflect a significant policy change and require consultation and consideration. The broader policy question of who should pay for utilities will be canvassed as part of the review of the Residential Tenancies Act. A consultation paper will be released in the second part of the year.

A variety of issues were raised by Hon Alison Xamon, and I think she has generally supported these changes and we look forward to support generally for this bill. I thank the members for all their contributions and I look forward at some point to completing this important legislation.

Question put and passed.

Bill read a second time.

*Chamber Timing Mechanism — Malfunction — Statement by President*

**THE PRESIDENT (Hon Kate Doust)** [2.23 pm]: Members, before you move into the committee stage, I advise you that you may have noticed on the screens that the timing mechanism has failed today. We will not be able to rectify it until the dinner break because that will require shutting down all lights in the chamber. Unless you want to work in the dark, which I am sure you do not, we will put in some temporary measures. As you go into committee, there will be a timer that will run for 10 minutes for each speaker, and you will be given a one-minute warning before your 10 minutes is due to expire. Hopefully, we will be able to get through the afternoon until the dinner break working through with this system.

*Committee*

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

**Clause 1: Short title —**

**Hon RICK MAZZA**: I have a couple of questions about a few aspects of the bill—one is the Auction Sales Act 1973. In my contribution to the second reading debate, I alluded to the fact that currently the Auction Sales Act is administered by the Magistrates Court, which I think is a waste of court time. I wonder whether the department is looking at bringing the administration of the Auction Sales Act into the department itself.

**Hon ALANNAH MacTIERNAN**: Thanks, member. I think generally, given the number of different acts that are being amended, it is probably useful for us to deal with them as those provisions come up. However, I will say that the Minister for Commerce is reviewing the Auction Sales Act quite extensively at the moment. He anticipates that the review will cover that issue as well. That is under active consideration.

**Hon RICK MAZZA**: Thank you for that, minister; I am very pleased that the minister is considering changes to the Auction Sales Act to take its administration out of the Magistrates Court.

I note that clause 7 of this bill provides for a number of changes to penalties, some ranging from the current penalty of $500 to $50 000, which is a 100-fold increase. In section 25(1), the penalty of $1 000 is to be increased to $50 000. In section 30(2), a penalty of $500 is to be increased to $10 000. They are very significant increases in penalties that can be applied to breaches of those acts. Are the current penalties extremely deficient and have not been reviewed for a very long time or are the proposed penalties, perhaps, excessive? I imagine the Department of Commerce is bringing things up to date more than anything else; nonetheless, there is a massive difference between the current and proposed penalties. Instead of bringing acts back to the house to increase penalties, has the Department of Commerce considered a penalty unit system whereby a number of penalty units per breach is quoted within the act, and then an amount for each unit can be adjusted quite easily by regulation, as occurs in other jurisdictions? I think the commonwealth has a penalty unit of about $180 and some of the other jurisdictions have varying amounts. Tasmania has a penalty unit of $157 and in Victoria it is $155.46. That method is a way of keeping penalties up to date simply by changing the penalty unit rather than having to change all the acts, which, obviously, become quite outdated.

**Hon ALANNAH MacTIERNAN**: I could not agree more with Hon Rick Mazza in principle. I will certainly take that up with the Attorney General. Such an approach would need to be looked at by the Attorney General to see what we would need to do to incorporate that. There is very clear logic in that proposal. In the conventional approach we find ourselves in, a variety of legislation has outdated penalties. I understand Hon Michael Mischin, in his role as Attorney General or Minister for Commerce —

**Hon Michael Mischin**: Possibly a bit of both.

**Hon ALANNAH MacTIERNAN**: This review of penalties commenced in 2014 and was subsequently given drafting approval, but work did not progress sufficiently to introduce the legislation during the term of the last Parliament. Quite clearly, there was recognition that in some instances the penalties had not been adjusted for 50 years. In some cases, there has been significant changes to the industry. For example, the charity sector has evolved from a small volunteer base to include large and very sophisticated businesses that partner with government. Attempts were made to standardise penalties across the sector. Some penalties for unlicensed trading and property industries have increased significantly to provide some consistency across property industry licences regardless of whether a person is a real estate agent, a settlement agent, a land valuer or an auctioneer, and there have been attempts to improve consistency with other jurisdictions as we move towards a national market and mutual recognition of occupational licences. This work has been in train for the last five years. Could we perhaps address this in a more in-depth way? I certainly think there is merit in the penalty unit idea. I am certainly prepared to raise that with the Attorney General, but at this point I do not think that members would want to stop this amount of progress, recognising that there is merit in the member's general position.

**Hon RICK MAZZA**: Thanks for that, minister. I am not in any way suggesting that we make amendments to this bill. We are on clause 1 and some of this information is quite good to discuss.

The other question I have is about the Charitable Collections Act 1946. Again, the bill provides substantial increases in the breaches of that act, with penalties significantly increasing from $100 to $20 000. Charitable collections seem to be more and more prevalent these days. People have only to walk through the central business district of Perth to see that people are collecting for various charitable organisations. What surveillance of the Charitable Collections Act is currently underway to identify anomalies when people collect moneys?

**Hon ALANNAH MacTIERNAN**: Can I suggest that it would be more appropriate to address this issue when we reach the clause that deals with charitable collections because it does not relate to the general principles of the bill. I am happy to deal with it at that stage.

**Hon MICHAEL MISCHIN**: Some of the questions I will ask may relate to particular pieces of legislation and this one relates to the Auction Sales Act 1973; however, it is in the same sense as Hon Rick Mazza's question of a more general nature. If I wait until we reach the clause of the bill that deals with that, I will be criticised for straying out of its terms so I will raise it now. I thank the minister for acknowledging that the previous government did some work on auctions. One facet of that was to see whether there was a rationale for licensing auctioneers in the first place given that although it is a particular skill, of course, auctioneers do not generally hold trust accounts but act on behalf of someone else. We have a variety of measures to control the conduct of auctions but I query the need for a licensing system for stock auctioneers, general auctioneers and the like. Many of those may not require a particular licence. It may be just a skill that is built up through experience. Real estate agents who acquire that particular talent may be governed by other provisions so far as their function as a real estate agent is concerned but whether they need an auctioneer's licence is a question that needs to be considered. Has there been any progress with that? I know that by the time we lost government, significant consultation had been conducted with the

industry, but it was still a work in progress. Is the Minister for Commerce pursuing that as a discrete area of inquiry; and, if so, what is the status of that work?

**Hon ALANNAH MacTIERNAN**: As I said, I certainly would not criticise members if they raise these issues when we reach the clause in which the particular legislative reform is addressed. This will generally progress in a more orderly fashion if we deal with the particular pieces of legislation. The member has questioned the need to license auctioneers. I understand that the minister is addressing that specific issue as part of the review of the Auction Sales Act. Obviously, as the member would imagine, people who have that licence often see it as valuable but whether a positive comes from that and whether it needs to be regulated is certainly being considered by the minister. There has been discussion of the notion of negative licensing because generally people are not required to be licensed but if they perform an unlicensed task in such a way that it breaches standards, they can be subsequently banned. That work is being considered. I think the minister is hoping to have that dealt with maybe by the end of this year.

**Hon MICHAEL MISCHIN**: I thank the minister for that. As I recall, towards the end of the last term of the previous government, reforms were made to the licensing system but one area that proved rather more complex than first thought was transferring the licensing system from the Magistrates Court directly to the Commissioner for Consumer Protection.

**Hon Alannah MacTiernan**: Which licensing system?

**Hon MICHAEL MISCHIN**: For auctioneers. I take it that the general review is looking to regularise or standardise the licensing process generally by giving the authority to deal with these things to the Commissioner for Consumer Protection rather than the Magistrates Court, which always struck me as being a bit of an odd process. At one stage, it caused considerable confusion because notices reminding auctioneers that they needed to renew their licence came from the Department of the Attorney General rather than the former Department of Commerce. I take it that all that will be part of a comprehensive review of the auction sales regime, hopefully by the end this year. Has a discussion paper that sets out the areas that are being considered been issued so that we can get an insight in advance of the presentation of legislation and conduct our own consultation as necessary?

**Hon ALANNAH MacTIERNAN**: Yes, member. The department is in the final stages of preparing a decision regulatory impact statement for consideration by the minister. Once we have an agreement on the regulatory impact statement, it will be made publicly available. The member will get advance notice, before this legislation comes in, of the sorts of matters that have been considered, and the issue of whether this thing should be in the court or taken back to the department is certainly one of the considerations. I think the member will find that the thinking is not very different from his thinking during the time he was minister.

**Hon MICHAEL MISCHIN**: Thank you. Finally, on that point, can I just clarify: is it the decision regulatory impact statement or the legislation that we can expect by the end of the year? I take it that we have not yet got as far as seeking approval to draft or print if we are still trying to compile a decision regulatory impact statement.

**Hon ALANNAH MacTIERNAN**: We anticipate that this will be available by the end of the year. It is possible that it might be a bit earlier than that; it might be within the next quarter, depending on the progress of business. But a lot of work has been done in this space and it is quite advanced, but obviously the minister needs to make the final decision on the impact statement. Work is well advanced, and I imagine that this is something we would perhaps see within the next three months.

**Hon Michael Mischin**: The impact statement?

**Hon ALANNAH MacTIERNAN**: Yes.

**Hon Michael Mischin**: Not the legislation?

**Hon RICK MAZZA**: I want to ask a few questions around the amendments to the Home Building Contracts Act and —

**Hon Alannah MacTiernan**: Member, can I just ask: can we do this when we get to the particular clause?

**Hon RICK MAZZA**: I thought clause 1 was about general questions in relation to the bill.

**Hon MICHAEL MISCHIN**: Can I perhaps assist? If the minister is prepared to deal with questions generally regarding those particular acts when we get to the relevant parts of this bill, that might be the way to go. My only concern is that, for example, the questions I asked about the Auction Sales Act went beyond the specific amendments in this bill, although they were about the scheme itself. What I was conscious of avoiding, as perhaps was Hon Rick Mazza, was asking about the Auction Sales Act generally and what is going on in the background and then being told, "Hang on, there's nothing about that in part 2 of the bill; that just deals with the increase in penalties."

**Hon ALANNAH MacTIERNAN**: I am certainly happy to give that undertaking, but I am getting the sense from Hon Rick Mazza that he is actually talking about the detail of what is involved there. I am more than prepared to give

an undertaking that I will take questions more broadly on the policy schema relating to each of the sets of amendments to those acts, but I just think it would be a lot more orderly if we were to raise the member's detailed concerns about particular penalties when we come to those provisions.

**Hon RICK MAZZA**: I thank the minister for that. Just to be clear on this, it is my understanding that under clause 1 we can put questions of a general nature. Is the minister proposing that, at the beginning of each act as we go through them, we can ask questions generally?

**Hon ALANNAH MacTIERNAN**: In relation to the particular area that is being legislated, yes.

**Hon MICHAEL MISCHIN**: Just as an example, when we get to clause 3, which states, "This Part amends the Auction Sales Act 1973", that will be a sort of quasi clause 1–type scope?

**Hon Alannah MacTiernan**: Yes.

**Hon MICHAEL MISCHIN**: Yes. That will be helpful.

**Clause put and passed.**

**Clause 2: Commencement —**

**Hon MICHAEL MISCHIN**: Clause 2 provides for part 1 to come into effect on the day on which the legislation receives royal assent, but the rest of the legislation comes into effect on a day fixed by proclamation, and different days may be fixed for different provisions. Is there any reason, for example, that the provisions under part 2 relating to the Auction Sales Act 1973, which are simply increases in penalties, do not seem to require any drafting of regulations or any further work? Why can certain parts of the legislation not come into operation on the day after royal assent rather than on a day to be fixed by proclamation? I use the Auction Sales Act as an illustration, but it seems that quite a number of the amendments to statutes are fairly straightforward and involve increases in penalties or corrections of terminology and the like and are not dependent on any further work being undertaken by the department or the government.

**Hon ALANNAH MacTIERNAN**: I know this is a hardy perennial from the member. As the member will be aware, regulations will be required for a range of these things. The member has indicated that some will not require regulations—that is correct—but the view is that it makes more sense for industry to have a clear start date rather than to be in a position in which something starts on one date and then another set of things commence later, creating a whole sequence of start dates. As the member will be aware, this is a pretty standard approach. Although we acknowledge that there are a few things that will not require regulations to be developed, we believe it is better to commence those, where possible, on the same day on which the bulk of the changes take place.

**Hon MICHAEL MISCHIN**: Just on that point, can the minister give some idea as to when the amendments that do not require further work from the government are likely to come into operation, and how much warning will be given? For example—simply because it is convenient—in part 2, which provides for increases in penalties under the Auction Sales Act, is it intended that the minister will issue a communiqué to say that the legislation has been passed and has received royal assent, and that the increases in penalties will come into operation in a month or two months' time, or by a particular date? Is that how it will be, or will it simply be gazetted?

**Hon ALANNAH MacTIERNAN**: As the member is aware, we do not commence the drafting of regulations until legislation has passed. That is a well-established principle, and that will continue. Once this legislation is completed, it is anticipated that it will take about three months to complete the preparation of the regulations. Obviously, once the bill has passed, the industry will be informed of that. The industry will be notified that further work is being done on the regulations. Of course we want the industry to be informed. We are not going to gazette this legislation to take effect before the industry is informed. That would be completely and utterly unreasonable. There will be a process. Once the regulations are ready for gazettal, industry will be advised and will be given sufficient time to get their house in order. A couple of sections might be delayed. They may take further time, but we are not wanting to necessarily delay the whole legislation package because of that, particularly the commencement of clauses 52 and 81. Those clauses involve the introduction of a new option of imprisonment for some offences, which will require some amendments to the integrated court management system in consultation with the Department of Justice. We are hopeful that the remainder of the provisions will commence by the end of the year. I can assure the member that we will be keeping industry informed of that progress.

**Hon MICHAEL MISCHIN**: Thank you for that. If I understand it rightly, the commencement of those parts that do not require the making of regulations will be delayed until the bulk of the bill is ready to take effect. By "parts", I mean the parts of the bill that deal with specific statutes.

**Hon ALANNAH MacTIERNAN**: Yes. We think it would be much easier for industry to do it in that way.

**Clause put and passed.**

**The DEPUTY CHAIR (Hon Martin Aldridge)**: Members, can I have an indication of clauses before clause 67?

**Hon MICHAEL MISCHIN**: I do not know whether anyone else has general questions on the Auction Sales Act, but given the way we are approaching it, it seems we ought to go to clause 3 and have a "clause 1 debate" in respect of that; likewise with respect to clause 8 of the Charitable Collections Act and the like.

**The DEPUTY CHAIR**: Sure.

**Clause 3 put and passed.**

**Clause 4: Section 28 amended —**

**Hon MICHAEL MISCHIN**: I have more of a general question about clause 4, which also covers clauses 6 and 7. The minister mentioned that the penalties are being increased because the current penalties are out of date, and substantially so in some instances. They are substantial increases. It has been said that some of these increases are also based on equivalent provisions in other jurisdictions. For example, in proposed section 28(5) of the Auction Sales Act, a penalty of $25 000 is being introduced. A penalty of $25 000 and the like is also being introduced to proposed section 29, but some of the penalties, such as that for proposed section 6(6), is an increase from $500 to $50 000. Can the minister give us an idea of the equivalent penalties in other jurisdictions? Another example is proposed section 25, promoting or conducting a mock auction, in which the penalty has been increased from $1 000 or 12 months' imprisonment to $50 000 or 12 months' imprisonment. That is obviously more than inflation. What was used as a touchstone for what would be an appropriate penalty for that sort of conduct? If it were some interstate provision, can the minister give us an idea of what the equivalent penalties are in that other jurisdiction or jurisdictions?

**Hon ALANNAH MacTIERNAN**: It is important to understand that there have been no increases in penalties in the Auction Sales Act since 1973. Just the compound inflation would get the figure up quite some way. We are trying to bring the penalties into line with other legislation administered by the department. I think I made this comment in my second reading reply. The idea is having a look at "like" offences in different industries. We have looked at the inflation aspect. As members can imagine, the inflation aspect would be pretty significant here, given that it is 45 years since there has been a review of the penalties. We have also looked at an equivalent provision, trading without a licence for example, in other areas that are administered by the department to give a sense of equivalence. It is noted that while the increase in CPI has been about 10 times, property values over the same period have increased from a median price of $17 000 to $500 000. We are dealing with issues of considerably greater value. For auctioneers to be licensed, for example—looking at some of the other states' penalties—in Queensland it is $24 000, in South Australia it is $5 000, and in Tasmania it is $157 000. We thought the Western Australian figure was fairly moderate. We are recommending $50 000. There has been a very big leap in property values over that same time, which gives some idea of the potential losses. I want the member to understand that at the same time that we are putting this in place, a broader body of work is going on. We are dealing with not just the penalties, but indeed the whole structure of the auction sales industry. Given that it has been 45 years since this has been dealt with and given the body of work that was started during the member's time, we felt it was appropriate to deal with these penalty issues while the larger issue of the structure of the industry was being revised.

**Hon MICHAEL MISCHIN**: I understand that it is not a science, but it is rather more than inflation. I understand that that ought not to be the simple measure of what an appropriate penalty is, but I observe that an increase from $500 to $50 000 suggests that $1 back in the day—the sort of thing that I would try to crib from my parents as pocket money—is the spending equivalent of $100 today and, likewise, according to clause 25, $1 is the equivalent of $50. But, still, one learns the value of money in retrospect.

**Clause put and passed.**

**Clauses 5 to 7 put and passed.**

**Clause 8: Act amended —**

**Hon RICK MAZZA**: My understanding is that at the beginning of each bill, we can ask some general questions. One of the questions I asked earlier was about the Charitable Collections Act 1946. It is now becoming more prevalent for people to collect money on the streets on behalf of various charities. What surveillance is currently taking place to monitor collections and ensure that these people comply with the act?

**Hon ALANNAH MacTIERNAN**: The member is quite right; this industry has changed quite considerably. Indeed, many of the people who approach us on the streets are paid or receive a commission. That then arguably drives very different behaviour from that time, and probably the first three or four decades of the charitable collections legislation, when it was overwhelmingly done by volunteers. Each charity that is registered to undertake collections needs to provide audited annual reports, so there is that level of surveillance. The department also has an officer who takes complaints from the public and those complaints are investigated. An industry advisory board has been established and it brings to the department's attention conduct that it believes is not in keeping with the letter and spirit of the legislation. Anything that appears to be sharp practice and exceeds the approval of the charity in question is brought to the attention of the department through this board. Of course, there is an interest in members

of that board ensuring that there is a degree of integrity in the industry, because, as we know, if there are cases of sharp practice, fraud or money being improperly diverted, it brings the whole industry into disrepute and makes it more difficult for other members of the industry to collect. There is a level of enforcement. There are annual audited reports, there are officers who investigate complaints from the public and there is the industry advisory board that discusses these issues on a regular basis.

**Hon RICK MAZZA**: I thank the minister for that. She is quite right; there has been quite a change in the way that charitable donations are collected, and many are very much commission driven. I am interested to know how many people have been prosecuted under section 6 of the act for not holding a licence.

**Hon ALANNAH MacTIERNAN**: Because the penalty regime has been so inadequate, it generally has not been the practice to prosecute. What has been done rather is the licence has been cancelled. We do not have those figures, but I am happy to provide them later. There have not been a lot of prosecutions because the penalty is completely inadequate. The enforcement mechanism that the department has used has been the cancellation of the licence.

**Hon MICHAEL MISCHIN**: I thank the minister for that information. How many prosecutions have been conducted under section 6(2) of the Charitable Collections Act 1946? The minister said that there had not been many. Have any prosecutions been conducted over, let us say, the last 10 years?

**Hon ALANNAH MacTIERNAN**: We do not have those figures to hand, but we can certainly provide them later. It is fair to say that the numbers would be very low. Because the penalties are so inadequate, that action has not been taken. We are happy to provide that information, but I think we need to accept that in this area, there probably have not been the number of prosecutions that there should have been. Hopefully, once we get an adequate penalty regime in place, there will be some point in doing that. I am happy to separately get the figures on prosecutions to date as I do not have them to hand, but there are not many.

**Hon MICHAEL MISCHIN**: I understand that. I recollect that the Department of Commerce was doing some work on charitable collections; I cannot bring to mind precisely what that was now, but it was looking at reviewing the operation of the legislation. I note that this proposes to continue the traditional prosecution regime rather than to introduce anything by way of infringement notices. Does anything in this legislation come under the Fines, Penalties and Infringement Notices Enforcement Act? Will there be a provision to issue infringement notices rather than to bring a prosecution by way of a charge or the like?

**Hon ALANNAH MacTIERNAN**: I understand that it is possible that prescribed penalties will be made by way of regulation. I am advised that that will be considered during the development of regulations, so we will have that option of an infringement regime.

**Hon MICHAEL MISCHIN**: I take it, though, that there has been no provision for that until now, so prosecution for an offence under section 6(2) of the Charitable Collections Act will still be limited to a risible maximum penalty of $100 rather than an infringement notice with a penalty of $100 as a modified penalty.

**Hon ALANNAH MacTIERNAN**: The modified penalty is generally 20 per cent of the penalty, so that would be $20. That is laughable. That again reinforces the need to make these penalties meaningful. Indeed, moving towards a high penalty regime is the rationale and the point of a modified penalty regime, because 20 per cent of $20 000 is a meaningful sum, whereas $20 is not.

**Hon MICHAEL MISCHIN**: I understand that in the enforcement that has been exercised to date, having regard to the small penalties that are available for the prosecution of an offence and the resources that would be required to mount a prosecution, the default has been to use a withdrawal of licence mechanism. How many licences have been withdrawn over the last, say, 10 years, even if it is just a ballpark figure?

**Hon ALANNAH MacTIERNAN**: I understand that some have taken place, but I cannot quantify that at the moment. We can seek to get that information for the member. However, of course, it is compounded by the problem that, as it stands, the penalty for operating without a licence is quite meaningless. So, in a sense, we cannot give any grunt to the system until we start to raise the bar of all the penalties. We need this uplift to give some substance to the regime. The member was asking more generally about what work is being done. As he knows, in the last couple of years the commonwealth has moved into this space more generally. I understand that work is being done to work out a regime that perhaps fits better with the federal regime to reduce the burden on charities that are required to also comply with the federal regime so that there is some alignment between the two bodies of legislation.

**Hon MICHAEL MISCHIN**: I have one further question along this line. Notwithstanding the constraints about meaningful enforcement action and any meaningful sanction, does the Commissioner for Consumer Protection receive any regular complaints about the Charitable Collections Act? Can the minister give us some idea how many complaints from the public would be received in the course of a year or a couple of years regarding infringements of the act, the character of those complaints and what sort of action tends to be taken?

**Hon ALANNAH MacTIERNAN**: Regular complaints or issues are raised by the public. Indeed, I remember spending quite a bit of time in opposition focusing on this very issue. I remember a very questionable charity, the Margaret and Shane Foundation, had been taking 93 per cent of the moneys raised for administration.

**Hon Michael Mischin**: Expenses.

**Hon ALANNAH MacTIERNAN**: Expenses. This has obviously been an issue. My advice is that each week there are complaints or queries. Often those queries come from people wanting to know whether the group that they have been approached by is a legitimate and registered charity, so some of it is by nature of inquiry. Some of the issues may not be dealt with under the Charitable Collections Act, but become consumer protection issues if there is a question of whether deceptive or misleading conduct has taken place.

**Hon Michael Mischin**: Fair Trading Act–type.

**Hon ALANNAH MacTIERNAN**: They are Fair Trading Act–type provisions. Often, those matters will not be brought to a resolution under the Charitable Collections Act, but will be resolved under fair trading–style provisions. However, there are queries and complaints from the public at least weekly about the legitimacy and conduct of various charities.

**Hon RICK MAZZA**: We have spoken about how collecting for charities has changed. However, it is important that these amendments go through so that people can trust that the money they donate to certain organisations is going to a good cause. Quite often some obscure charity will be collecting money at the front of a shopping centre and people will be wondering whether the money is going to that charity or being used to fund someone's weekend. I am very pleased to see that we are going from a fine of $100 to $5 000 for not having a licence.

**Hon Alannah MacTiernan**: I think it is going to $20 000.

**Hon RICK MAZZA**: It is $20 000 for operating without a licence, which is a good thing. Of course, unless we have some enforcement regime besides complaints, many of these people might still fly under the radar. A lot of these charitable collections now are commission driven and are commercial industries in some respects. Is there a maximum percentage of commission that can be paid when a donation is made? If someone gives $100 towards a charity—some well-known charities use commissioned collectors—is there an upper limit to the percentage of commission that can be paid to the collector?

**Hon ALANNAH MacTIERNAN**: Member, this matter is not directly dealt with, but if there is concern about the percentage that is going into the charitable work, an inquiry can be made for revocation of the licence. A licence can be revoked if it is considered —

> (b) that the amount of any money or goods received by the person, society, body or association and applied towards charitable purposes or to be so applied is inadequate in proportion to the total amount so received; or
>
> (c) that remuneration at a rate which is excessive, in relation to the part of any money … received by the person, society … and applied towards charitable purposes, has been, or is likely to be, paid to any person from the money or goods so received;

That is, basically, the provision that deals with the amounts paid to a fundraiser. There is no set percentage. This matter would go to the advisory committee. The commissioner will express concern and ask the advisory committee to do an analysis and decide whether there is a problem in either the amount of money that is paid from the collection to the fundraiser or indeed the amount that ultimately goes to charitable purposes. The committee can make a recommendation and the commissioner, as the delegate of the minister, can decide whether to revoke the licence. The member may think that not having some upper limit on it is perhaps a little open-ended, and I think that would be understandable. Maybe this issue has to be taken up, given the prevalence now of that commercial fundraising. I am certainly happy to take that matter forward to the minister, but there is a mechanism. Again, once we start getting a decent penalty regime, we can start really putting some oomph into this regulation. Whether we need to look further afield and provide a greater degree of clarity about what is the maximum acceptable will be a matter of debate and consideration. I am sure that the minister will be happy to contemplate it. He is very keen to reform errors.

**Hon RICK MAZZA**: I thank the minister for the answer. I am glad that the minister recognises that the definition of an excessive commission seems very rubbery. I think anybody who donates $100 would be horrified to find out that $90 was going to commission and only $10 to the charity. It would be good if the Minister for Commerce would consider tightening it up and giving some definition to what percentage is acceptable and not acceptable. Consultation could be done on whether there should be guidelines depending on what the charity is. I am glad the minister has recognised the fact that it is quite a rubbery and longwinded mechanism and, hopefully, we can get a more specific upper limit.

**Hon ALANNAH MacTIERNAN**: I am told that some modern legislation would be nice in this regard. New South Wales has a more prescriptive regime. I understand that that has been found to be quite difficult to enforce, but who knows? This might be a good matter for an upper house inquiry into charities.

**Hon MICHAEL MISCHIN**: On the subject of tin rattlers who may not hold a licence seeking funds from people, have any cases been passed on to the police for enforcement under the general fraud provisions of the Criminal Code, given that someone presenting themselves as collecting for a charitable purpose when they are not would be a fraud offence? Are there occasions when, after having received a complaint, the Commissioner for Consumer Protection has simply referred it to the police to deal with the problem and perhaps move people on if they are not doing the right thing?

**Hon ALANNAH MacTIERNAN**: The creation of a nuisance is generally dealt with by local councils. The department does not recall taking action because people have been creating a nuisance. That is generally when we see action by local government.

**Hon MICHAEL MISCHIN**: It is a bit more than just a nuisance because it is a fraud, I would have thought. If someone rattles a tin and purports to be collecting for some kind of charitable institution—such as, to pick a line from a *Seinfeld* episode, the "Human Fund: Money for People"—but the money goes into their pocket, it goes a little beyond a nuisance and something for local government and is potentially a fraud on the public. I take it that the commissioner does not, as a rule, refer complaints of this character to the police, and deals with it as a bit of antisocial behaviour and a nuisance that is controlled by rangers.

**Hon ALANNAH MacTIERNAN**: I will just clarify an earlier query about prosecutions for unlicensed charitable collections: there have been nil prosecutions since 2011. Apparently, the records go back only to 2011. In respect of the cancellation of licences, 25 licences have been cancelled in the last five years. As I have said, I think that shows the importance of us having some very significant increase in the penalties because, really, these people generally have not been prosecuted; they have simply had their licence cancelled because of the meaninglessness of the penalties. Obviously, once we get meaningful penalties, it will make sense to not just cancel their licence but also prosecute them. The member is right: if these people are operating unlicensed, we would presume that they are, effectively, perpetrating a fraud. It depends. They might be giving the money to charity. They might be engaging in charitable activity, so I suppose it is not necessarily conclusive of fraud. We do not have any advice that the commissioner, as a matter of practice, has been referring these matters to the police. Obviously, this is a complex area that is operating under an old piece of legislation. This work to modernise the penalties will go some way to improving this. There is certainly an argument that we should we be going further, but, at this point, at least getting the penalties in order enables us to go forward with a bit more of a sledgehammer, which is an important way of trying to deal with this issue. I have also been advised that the department apparently does work with the police when it identifies misleading and deceptive conduct.

**Hon MICHAEL MISCHIN**: Is the minister able to tell us whether the police have laid any charges for any of that? Do the police report back to the department about the outcome of their inquiries and either write them off or commence prosecution action of some sort?

**Hon ALANNAH MacTIERNAN**: There is regular dialogue with police, but at this point we do not have any access to information on what prosecutions the police have taken. I am advised that, apparently, there has been one case in which there was a discussion with the police and it was agreed that the action would be taken by the department under the consumer law. There is ongoing dialogue, but, again, in the context of a completely inappropriate set of penalties, little progress has been made. Obviously, there are penalties under the consumer laws. I presume that we can inquire of the police as to whether there is some data on any action that has been taken and, indeed, how many cases the department might have taken action on under the consumer law.

**Hon MICHAEL MISCHIN**: I thank the minister. I conclude my inquiry on that. By way of an observation more than anything else, I notice that there is some rather quaint terminology in the Charitable Collections Act that has not been attended to. It is unfortunate that it has not. For example, I refer to section 5 of the act and the definition of "war fund", which means —

> … a fund lawfully established under the *War Funds Regulation Act 1939*.

The War Funds Regulation Act was repealed by the Charitable Collections Act. There is provision for the allocation of funding and for the transferring of moneys by the Governor for various purposes. The act also speaks of "purposes connected with the present war", which is defined as meaning —

> … the war in which His Majesty was engaged commencing on 3 September 1939.

I do not know whether those funds still exist or there is any operation left for that, but it seems to me that the act could use some updating.

**Hon ALANNAH MacTIERNAN**: Yes, there are certainly some very antique provisions in the legislation. The focus was largely on the penalty regime. Presumably, these provisions were there during the member's time in government as well. Certainly, we could well see these provisions removed from the legislation on one of those bring-out-your-dead Repeal Days. As the member would know, that work is done from time to time. I am sure that as Hon Michael Mischin has raised that issue here now, our friends from the entity that does the Repeal Day legislation will take that on board and make sure that that is brought into consideration.

**Clause put and passed.**

**Clauses 9 to 15 put and passed.**

**Clause 16: Section 15 amended —**

**Hon RICK MAZZA**: I am interested in proposed section 15(2), under which a collector must keep their collection records and retain them for seven years, subject to a penalty of $5 000. Proposed subsection (3) states —

> The Commissioner may require in writing that a collector, within a specified time —
>
> (a) give the Commissioner … access …

Under proposed paragraph (b), there is scope for an audit. What concerns me with these proposed changes is that even though a collector may be required to keep records for seven years, if an anomaly occurs within the collector's records, the damage could be well and truly done before it comes to the attention of the commissioner. It does not appear to me that there is any requirement for an audit to occur on a yearly, two-yearly or five-yearly basis to assess the collector's records. There were recent allegations involving a fairly high-profile charity whose funds had been misused for personal use. Is the minister considering more regular compulsory audits of charitable collection funds?

**Hon ALANNAH MacTIERNAN**: We are seeking to recognise the development of the federal government entity, the Australian Charities and Not-for-profits Commission. Eighty-five per cent of charities in Western Australia are subject to the ACNC. We are seeking to create a requirement whereby they keep records. The reports to the ACNC will be forwarded to us by the ACNC. We are trying to ensure that the other 15 per cent provide a similar report to the state minister. This is a mechanism to enable us to pinpoint those that we need to respond to us directly—that is, the 15 per cent that are not covered by the federal legislation. Effectively, in practice, all charities will be required to provide these records to the minister each year. However, this exempts those that provide records to the ACNC from providing them to us, but we will get them directly from the ACNC.

**Clause put and passed.**

**Clauses 17 to 20 put and passed.**

**Clause 21: Act amended —**

**Hon NICK GOIRAN**: Part 4 seeks to amend the Debt Collectors Licensing Act 1964. The second reading speech appears to be silent on the reason for this act requiring amendment. Why are these amendments needed?

**Hon ALANNAH MacTIERNAN**: I thank the member for the question. Again, as with many of the other areas of the legislation, this seeks to update the penalties. I understand in this case—I thought the other one was pretty incredible—they have not been upgraded for 45 years. However, my advice is that the penalties in the Debt Collectors Licensing Act, have not been increased since 1965. The sheer fact is that it is now over 50 years since the penalties have been updated, which is a joke, and this is one of the areas identified in the review that took place in 2014 that needed to be dealt with. However, there is also growing recognition in recent years of the need to provide adequate protection to vulnerable consumers in this area.

Again, we looked in part to have some sort of consistency across jurisdictions. The $25 000 that will apply to most offences under this act is consistent with that in Queensland and New South Wales, the two jurisdictions that have equivalent offences. At the moment, the penalty for provision of false information is $100, which is clearly inadequate in this environment, so we are proposing to increase it to $20 000.

**Hon NICK GOIRAN**: Thank you, minister, for that comprehensive explanation. I agree; it is quite something that this has not changed since 1965. Certainly, there is a compelling case for change. The minister indicated that a review had been done in 2014. I am mindful that that is now five years ago. Did the review in 2014 suggest, for example, that this penalty in clause 22 be changed from $100 to $20 000 or has the decision to go to $20 000 been a more contemporary decision in 2019?

**Hon ALANNAH MacTIERNAN**: A decision was made to set that figure in 2015. The member may have been away on urgent parliamentary business when we discussed that review before. I think the change to the penalties received cabinet approval but did not get sufficient drafting priority to be dealt with under the term of the last government. We could have an argument about 2015: should we go back again and review it four years later? The fact is that it is 54 years since the penalties were set, so rather than reviewing all that again immediately, a decision was taken to accept the work that had been done and to see this as representing considerable progress; it is important to get on with it.

**Hon NICK GOIRAN**: I agree, minister. Thank you again for that useful and comprehensive explanation. The minister mentioned that part of the decision-making process was to look to consistency with other jurisdictions. The minister mentioned Queensland and New South Wales in particular. The provision we will look at in a moment under clause 22 is the one the minister quite rightly identified as an unacceptable level of $100. A decision has been made to increase that to $20 000.

**Hon Alannah MacTiernan**: What provision are you looking at now?

**Hon NICK GOIRAN**: Clause 22, which the minister indicated currently imposes a $100 fine. I agree that the $100 fine is plainly ridiculous in 2019. The bill proposes that the maximum fine be $20 000. The minister indicated that that was set by way of the 2014 review, and the decision to get to the level of $20 000 was made in 2015. The idea was for the penalties to be consistent with those in Queensland and New South Wales. What is the penalty at the moment—in 2019—in Queensland and New South Wales?

**Hon ALANNAH MacTIERNAN**: The comparison was done during that review. I cannot tell Hon Nick Goiran whether there have been changes in the other states. We suspect that there has not been, because, as we can see with what has happened in Western Australia, it takes a long time to deal with these matters. Those comparatives were done in 2014–15. We have not sought to go back and look, but certainly we are not aware of changes made in other jurisdictions since 2014–15. We looked at two things. We looked at consistency with other like provisions within our legislative regime while also taking some cognisance of what was happening in other states.

**Hon NICK GOIRAN**: It is regrettable that no-one has taken the time to look at what the Queensland and New South Wales jurisdictions have done in 2019, given that the basis of the bill is consistency with those two jurisdictions. Be that as it may, the minister indicated that another criterion that the government used in coming to this decision was to look at like provisions in the Western Australian regime. What are those other Western Australian provisions that attract a $20 000 penalty, which the government has decided is appropriate as the penalty in clause 22?

**Hon ALANNAH MacTIERNAN**: We never said that we were talking about an exact equivalence with other states. We recognise that there is a variety of penalties in different states, but they are all set very much higher than the penalties in Western Australia. Indeed, we are 55 years out of date with this provision. The penalties for real estate agents and settlement agents are set around the $20 000 level. We do not in any way think that it is inappropriate that we took that body of work and brought it to a conclusion. We did not think we should throw it out and start again, given the parlous length of time in which these acts have failed to be updated. We absolutely think that the right thing to do was to take that body of work and move it forward. We have no reason to believe that significant changes have been made in the other states, but, in any event, the most important thing for us to do after all that time was to progress that body of work and set a regulatory regime with some rough equivalence for all consumer provisions that are fundamentally designed to ensure that consumers are protected by various licensing regimes with requirements around the conduct of people who operate in those spaces.

**Hon NICK GOIRAN**: I recall the minister mentioning earlier that no-one in government has looked at the provisions in Queensland and New South Wales in 2019 and she explained in part the reason for that. She also explained that at no stage were we trying to be the same —

**Hon Alannah MacTiernan**: We are talking about an order of magnitude—being somewhere within that ballpark.

**Hon NICK GOIRAN**: I agree. What was the level in Queensland and New South Wales—not now, because the government does not know the answer to that —

**Hon Alannah MacTiernan**: In relation to which matter?

**Hon NICK GOIRAN**: Clause 22 and the $100 example that the minister gave us. What was the level when the decision was made in 2015?

**Hon ALANNAH MacTIERNAN**: I refer to the penalty for a general offence provision under the debt collectors regime and I hope that we have got this right. There are two classes. The first is the offence of being unlicensed. The penalty for operating without a licence was $55 000 in New South Wales and $24 000 in Queensland. Attached to both of those was a term of imprisonment. The penalty in South Australia was $50 000, so we recommended $50 000 for that. That is the licensing offence. Not every act has the same precise definition of "offences", but generally the range in New South Wales was between $5 500 and $22 000, and in Queensland it was $22 770 or two years' imprisonment. Our recommendation is $25 000.

**Hon NICK GOIRAN**: A couple of things arise from that. For example, the minister mentioned the $50 000 penalty that Western Australia is looking to set. Do I understand correctly that that is the $50 000 that we see in the table in clause 26?

**Hon ALANNAH MacTIERNAN**: Proposed section 5(2) provides for the penalty, which is currently $200 for an individual and $400 for a body corporate, to be increased to $50 000.

**Hon NICK GOIRAN**: That is found under clause 26, and I appreciate that we are taking the liberty of asking questions relating to parts under clause 21, so the minister has my assurance that I will not pursue this further when we get to clause 26. My point is that the minister indicated that New South Wales has a penalty of $55 000; it certainly did in 2014, five years ago. We are not sure what the level is at the moment. South Australia was $50 000 and, of course, as the minister indicated, that is a reasonable ballpark for us to set the level at $50 000, albeit it is a ballpark from five years ago. What struck me as interesting in the information that the minister provided to the house is that Queensland seems to have chosen a different approach, or it did five years ago. It was $24 000 there,

but the minister also mentioned imprisonment. What was the rationale for Western Australia choosing not to impose imprisonment as one of the options?

**Hon ALANNAH MacTIERNAN**: We made the decision that a substantial fine was great progress, and that seemed to be an adequate way forward. There has never been imprisonment in these provisions, so a determination was made that was developed by the previous government. I can absolutely guarantee the member that the penalty regime proposed in this legislation is much more like those of New South Wales and Queensland as they are now than the current regime in Western Australia. We currently have a $200 fine regime for the Debt Collectors Licensing Act; we think increasing that fine to sums of $25 000 and $50 000 will be much more like the legislation in New South Wales and the other states, if that is the member's primary concern. As I said, we took the body of work that was developed under the previous government, but that did not make it to the legislative queue in Parliament, and we have proceeded with it. We are not contemplating imprisonment at this point. We think that increasing the penalties will give us adequate control over modernising the impact of this legislation.

**Hon NICK GOIRAN**: The minister says she is confident that the levels we are setting here are much more consistent with those of New South Wales and Queensland than they are with the current levels in Western Australia. I say respectfully that the minister does not actually know that, because no-one has looked for the last five years —

**Hon Alannah MacTiernan**: Do you think they might have actually reduced their fine levels? Is that what you're thinking?

**Hon NICK GOIRAN**: I am saying to the minister that no-one has looked at this for five years, so we do not actually know what New South Wales or Queensland's current levels are; they could be $100 000 or $250 000. Unfortunately, no-one has looked at them for the last five years, so we are none the wiser today. That is the only point I am making.

I move on to a new and final area under this part. The minister has pointed out that we are looking to increase these penalties very substantially, and she has my support on that because, as she has identified, no-one has done anything on this for 54 years, so it is absolutely time for something to happen. My question is: in recent times, what is the prevalence of these penalties actually being applied?

**Hon ALANNAH MacTIERNAN**: I understand that this is not an area in which there have been any prosecutions in the memory of the advisory team, so it is obviously not an area that has been actively pursued. One would hope that perhaps, with some more reasonable penalties, we might see a bit more action in this area.

**Hon NICK GOIRAN**: This is indeed interesting. We have had no prosecutions within the memory of the advisers and the minister indicates that one would hope that there might be something happening. Can we lift this above the level of hope? Does the government have a plan as to how we are going to enforce these provisions? I am with the minister; I think it is ridiculous that this has not been looked at for 54 years, and the minister has my support in lifting to $50 000 penalties that are at the moment in the realm of $200. But there is actually no point in us having this debate and this discussion if nobody is going to enforce these penalties moving forward. What resources are being applied by government to ensure that the work we are doing at the moment is not fruitless?

**Hon ALANNAH MacTIERNAN**: I understand the member's concerns. This is obviously an area that has not been rigorously pursued. We understand that the advice that came out of the review was that if we were to provide significant penalties, it would help drive a regime in which there is more active oversight of this area. It would put the industry on notice that it will need to take the law more seriously than it does now. We do not have more information than that. Do we have a perfect system? Probably not, but the work that came out of that review and the work we are now trying to bring to fulfilment says that these pieces of legislation have, in many instances, effectively fallen into disuse because the penalty regime is so antiquated as to be meaningless. Let us get on and get this body of work done, and then we can have an incentive for more rigorous enforcement.

**Hon NICK GOIRAN**: Under clause 22, we will lift the current penalty of a fine of $100 to $20 000. Who within government will be commissioned with the task of prosecuting these offences?

**Hon ALANNAH MacTIERNAN**: The unlicensed trading provision would be dealt with by the Consumer Protection division taking action in the State Administrative Tribunal.

**Hon NICK GOIRAN**: I am guessing that somebody from the Consumer Protection division of the department would brief the State Solicitor's Office and maybe they would make an application before the State Administrative Tribunal, and somebody at the tribunal would consider the penalty and could impose a penalty of up to $20 000. Is that how it will work?

**Hon ALANNAH MacTIERNAN**: The Consumer Protection division has its own legal team. It does not need to go via the State Solicitor.

**Hon NICK GOIRAN**: This legal team within the Consumer Protection division already exists and we know it has not been prosecuting these offences—when was the last time it was consulted on the level of resources it needs to enforce these penalties?

**Hon ALANNAH MacTIERNAN**: It is not a question of the resources of the legal team. Obviously, there are the officers who receive the complaint and process it. It is then sent to the legal officers. I do not think there is a question here of the resources of the legal officers. These matters are dealt with by the complaints personnel or the personnel who deal with complaints, and the decision is made by the commissioner. That then goes to the State Solicitor's Office to take action.

**Hon NICK GOIRAN**: This enforcement team within the Consumer Protection division, as I understood the minister, consists of two parts—the complaints team and the legal team. What is the current composition in terms of the full-time equivalent or headcount of the complaints team compared with the legal team?

**Hon Alannah MacTiernan**: I do not have that material.

**Hon NICK GOIRAN**: Do the complaints and legal teams pursue and prosecute other matters in the State Administrative Tribunal, but not these particular provisions? If that is the case, why are they investing their efforts in prosecuting those offences and not these ones? Is it simply because of the magnitude of the penalty?

**Hon ALANNAH MacTIERNAN**: It is one factor that is taken into account and it is a fairly significant factor. The member would be aware that very practical decisions have to be made on a day-to-day basis about where best to allocate resources.

**Hon NICK GOIRAN**: I agree, minister. It is not a great use of resources for people within the Consumer Protection division to be investing time in a legal team to prosecute cases in which the fine will be $100. I concur with the minister. Could the minister give some assurance that some consultation with those individuals will occur to ensure they have the necessary resources to pursue these matters? The minister mentioned there are two teams—the complaints team and the legal team. Even though a decision has been made not to prosecute these matters, which I can well understand, what volume of complaints received was it decided not to pursue?

**Hon ALANNAH MacTIERNAN**: We do not have that information at this point in time.

**Hon MICHAEL MISCHIN**: I want to clarify something. Perhaps I misunderstood an answer the minister gave to Hon Nick Goiran when she said that prosecution action is taken in the State Administrative Tribunal in respect of these matters. I am wondering where the jurisdiction lies in that, or maybe I misheard.

**Hon ALANNAH MacTIERNAN**: That was a very interesting question, member! Different advice has now been given. For some reason or other the advice has changed on the disciplinary processes, which appear not to include trading whilst unlicensed. I apologise because I was advised that trading whilst unlicensed was a matter that went to the SAT. It turns out that is not correct. In fact, all these matters are taken to the Magistrates Court. The size of the penalties indicate it will be the Magistrates Court. I apologise for that misleading advice.

**Hon MICHAEL MISCHIN**: That is fine. I am glad that it has just been clarified. It confused me. I take it that if the commissioner withdrew the licence and there was some argy-bargy about that, the proceedings on the forfeiture of licences and things of that nature would go before the State Administrative Tribunal for resolution. That is the sort of thing that would go before the State Administrative Tribunal for resolution but prosecuting people for unlicensed trading and the like would not.

**Clause put and passed.**

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

**Clause 26: Various penalties amended —**

**Hon MICHAEL MISCHIN**: Clause 26 bears the heading "Various penalties amended" and purports to amend provisions listed in a table set out in that clause. I refer to section 5(2). We are told that it is proposed to delete the current penalty provision, which is —

> Penalty: For an individual, $200. For a body corporate, $400.

That is to be replaced with —

> Penalty for this subsection: a fine of $50 000.

I do not blame the minister for this, but the second reading speech itself was rather slight on the detail of how things were being approached in this bill. I do not recall any specific mention of the Debt Collectors Licensing Act, let alone this provision. The explanatory memorandum tells us —

> Clause 26 makes the following amendments to penalties:
>
> - Penalty for a contravention of any provision of section 5 (the requirement to hold a licence) is increased from $200 for an individual and $400 for a corporation to $50 000.

During my second reading contribution, I asked the minister to assist—I am sorry if the minister addressed it specifically in her reply, but I may have been distracted while that was going on—by putting on the record for the

house how that will work. I presume it is through a more general provision in the Sentencing Act but I think it is important to have that explained and also an explanation for why we have removed a specific penalty for a corporation rather than favour a generic provision. If that in fact is the case, I have a question after that on other provisions in the Sentencing Act.

**Hon ALANNAH MacTIERNAN**: I thank the member for that question. As a result of the operation of section 40 of the Sentencing Act, it is no longer necessary for a different penalty to be prescribed for a corporation. Because of legislative change since 1965, when this act was introduced, that is no longer required. It is basically because of the operation of section 40 of the Sentencing Act. That is the reason we have not needed to provide two sets of penalties.

**Hon MICHAEL MISCHIN**: I thank the minister for that. I take it that that is the provision in subsection (5), which refers to up to five times the amount of the penalty for an individual or natural person, and that brings it to $250 000 as the potential penalty.

**Hon Alannah MacTiernan**: That's correct, member.

**Hon MICHAEL MISCHIN**: If that is right, it is not very clear in the explanatory memorandum, which tells us that it has increased from $200 for an individual and $400 for a corporation to $50 000. It is $50 000 for an individual and $250 000 for a corporation.

**Hon Alannah MacTiernan**: I take your point.

**Hon MICHAEL MISCHIN**: Section 40 also provides that a court sentencing an offender may also make a disqualification order—I do not think that any particular one is applicable here—and, significantly, a court can also make a reparation order under part 16 of the Sentencing Act. Otherwise, do other penalty provisions of the Sentencing Act apply generally to these regulatory statutes; and, if so, even though the penalty for some of the offences that we are dealing with may be absurdly low, is there not a benefit to be obtained from time to time by instituting a prosecution action to get a significant amount of reparation for damage caused in particular cases, and has that ever arisen in any other acts that we are dealing with?

**Hon ALANNAH MacTIERNAN**: We are not aware of other provisions of the Sentencing Act that could be exploited here. The advice from the Parliamentary Counsel's Office was simply that we no longer needed a two-pronged penalty regime because of the provisions of the Sentencing Act. No other particular provisions of the Sentencing Act were drawn to our attention in making a decision on this legislative package, which, I remind the member, was developed when he was at the helm.

**Clause put and passed.**

**Clauses 27 to 29 put and passed.**

**Clause 30: Act amended —**

**Hon RICK MAZZA**: Part 6 of the bill deals with the amendments to the Home Building Contracts Act 1991. These amendments basically provide some exclusions to the requirement for home indemnity insurance in certain circumstances, particularly for painting contractors and other work that is not so much building related. It also provides for relevant circumstances. I have a more general question about the home indemnity insurance scheme and it is something that has bugged me for quite a long time. My understanding is that when a client or a customer wishes to enter into a home building contract with a builder that is outside the exclusions proposed in this bill, the builder is required to take out home indemnity insurance at a certain point in the building contract, but not at the point at which the client pays the deposit. Currently, there is a limit on the deposit of 6.5 per cent of contracts valued at between $7 500 and $500 000. If someone is looking to build a house and the building contract is for, say, $300 000, the builder can require them to pay a deposit of $19 500, which they hand over. Unlike with a settlement agent or a real estate agent, that money is not put into a trust account; it is put into the builder's general operating account. Until such time as the contract gets to a certain point, which is pretty much before the commencement of the contract, the home indemnity insurance policy is not taken out and therefore the $19 500 in the example I have given is at risk if the builder becomes insolvent during that time. That is my understanding of it and the minister can correct me if I am wrong—I hope I am wrong. However, if I am correct, is the department looking at closing that loophole whereby consumers are significantly exposed to paying large sums of money because they have paid a deposit and the money is paid into the general account of the builder but no insurance is in place at that point?

**Hon ALANNAH MacTIERNAN**: Yes, the member is right; that is a potential problem. Builders obviously are required to have insurance in place before they demand any money. Theoretically, the way the legal system works is that the builder is prohibited from taking money before the insurance is in place. There is a penalty for that of $10 000, as well as the builder potentially having their registration cancelled. If a builder does that, they will have breached the law. There is a disincentive for builders to do that because they could face a significant penalty or, alternatively, have their registration cancelled. The situation the member is referring to, though, is when they have

breached the law but it is before it has been brought to the attention of the regulators and they have gone broke, the deposit is lost and the consumer is unprotected during that period. I totally understand that that is a problem. The department is currently doing a very comprehensive review of the whole home building insurance area and, indeed, whether there are alternatives to insurance that would provide better coverage, such as establishing a compensation fund. The department is well aware of this problem. A penalty is imposed on people who do that, but the practical problem is that this often does not come to the attention of the regulator until such time as the builder is about to go bust, in which case the builder will lose their licence anyhow and will not be in a financial position to pay the fine. We understand that problem and we are having a comprehensive review of whether home building insurance is the best mechanism or whether there are alternative provisions.

**Progress reported and leave granted to sit again, on motion by Hon Alannah MacTiernan (Minister for Regional Development).**