

**LEGISLATION BILL 2021**

*Second Reading*

Resumed from 2 June.

**HON NICK GOIRAN (South Metropolitan)** [8.07 pm]: I rise as the lead speaker for the opposition on the Legislation Bill 2021. My interest in this legislation goes as far back as 31 October 2018, when the Leader of the House had carriage of the bill that preceded this one. In her second reading speech, the Leader of the House mentioned powers to correct errors without the need for such changes to be enacted by Parliament. In due course I will touch on the extent of my concern. I indicate at the outset that the opposition will support this bill.

The trend in our times is for digital to replace printed copy in many aspects of our lives, and the printing and publishing needs of Parliament are no different. We can all readily see legislation online. This bill will ensure that that electronic version is indeed the official version. The State Law Publisher has served the Parliament of Western Australia well, but it is now time for it to be downsized and reconfigured to provide only limited essential services. The opposition has been told by the government that it needs to be more effective and make better use of technology, and that this bill is one way in which that will be done. Time will tell whether that is the case. However, some of the critical aspects of this change include timing, direction and communication. In my view, it is necessary for there to be careful consideration about these three critical aspects of change so that this process is managed properly and the results sought are, in fact, achieved. Importantly, when we are moving from paper to digital, it is vital that we consider certain issues such as data security, storage and retrieval.

Interestingly, the current State Law Publisher website sets out the history of the State Law Publisher and its predecessors. It was as far back as 1870 when the government printer began with the appointment of Mr Richard Pether. He applied his trade as an apprentice in 1852 at the age of 13 years with the publishers of the *Inquirer*. He left printing at the age of 26 and became a clerk in the office of the Colonial Secretary, Fred Barlee. He was appointed the government printer at the age of 31, together with a compositor, Mr William Watson. They arranged for three printing presses, equipment, type and paper to be collected from Fremantle Prison and taken by the paddle-steamer *Puffing Billy* to Perth to be housed at the newly created government printing office. This was located at the corner of Pier and Murray Streets. The premises were formally the home for destitute women. It eventually became the government printing office, until 1959. Mr Pether, who was the inaugural government printer, retired in 1901. Mr Watson succeeded him until 1907, when he then retired, and Mr Frederick Simpson was then appointed the government printer and was to become the longest-serving government printer, retiring in 1942.

During the Second World War, the government printing office played an important role in producing military maps. With the introduction of modern printing machinery in the 1950s, there came a move for the government printing office to go from Perth to Wembley in 1959. By the 1970s, the government printing office transitioned from hot-metal typesetting to offset. By the late 1980s, hot metal was being used only for some specialised work. In 1986, its operations were reviewed with the government printing office re-emerging as the state printing division, placed under the Department of Services. With the appointment of Mr Garry Duffield as the government printer in 1987 came a reform program and a significant capital injection into the state printing division. This saw the introduction of state-of-the-art equipment and, coupled with changes in management and work practices, served to make the state printing division a commercially viable organisation. These changes established the state printing office as a formidable leader in the printing industry with apprentice training and the introduction of quality assurance certification. It was to become the first major printing establishment in Western Australia to achieve such accreditation and certification.

By late 1993, the government commenced the privatisation of the printing operations of State Print, with the sale concluding in January 1995 to the Coventry Group, a Western Australian company. As part of the privatisation process, the government retained a small part of the printing operation, establishing the State Law Publisher. In that same year, State Law Publisher moved to William Street, Perth. The privatised part of State Print was to remain at the Wembley site until late 1995, when it then moved to premises in Dyer Road, Bassendean, where it was known as Allwest Print. The Sands Print Group took over the operations of Allwest in 1998 and continued to operate from the Bassendean premises until it closed in 2001.

I understand that, at its peak, the government printing office employed some 460 staff. It met most of the printing needs of not only the government, but also the Parliament, as well as printing many of the phone directories at the time. With the growth of the printing industry in Western Australia and current state-of-the-art technology and facilities available, the major needs of the government are now, of course, better served by private sector printers. In 2018, Parliamentary Counsel's Office took over the online publishing of Western Australian legislation from State Law Publisher. The following year, we saw the closure of the William Street facility and the move of staff and equipment to Dumas House in West Perth. I am informed that the current team of six is led by government printer, Kevin McRae, who was appointed in 2017.

With that historical context, the bill before us seeks to improve the provision of services to the public, create administrative efficiencies across government, reduce costs to government agencies and enhance the public account accessibility of Western Australian legislation, providing improved access to justice.

As I conclude, I will highlight the one area of concern that the opposition has, albeit that we support the legislation. This is set out on the supplementary notice paper, which members will note has been distributed. In particular, reference is made to clause 42 of this 64-clause bill. It is the proposal of the opposition that clause 42 be amended. Briefly, by way of explanation, it is our view that giving any person—whether Parliamentary Counsel or otherwise—the ability to change legislation without there being oversight by the Parliament is not satisfactory.

It is for that reason that we have suggested to the government that Parliamentary Counsel be required, once a year, 30 days after the end of each financial year, to provide a summary of the editorial changes it has made to the Western Australian laws and that that summary be provided to the Standing Committee on Uniform Legislation and Statutes Review. We will debate that further in the event it is necessary when we get to the supplementary notice paper in Committee of the Whole House. However, I ask the government to give serious consideration to this small mechanism that will provide oversight of any changes that have been made by a person other than the Parliament of Western Australia. With those comments, I indicate that the opposition will support the bill.

**HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary)** [8.18 pm] — in reply: I must admit that I am a little bit surprised to be speaking so soon. I thank Hon Nick Goiran for his contribution to debate on the Legislation Bill 2021 and his traversing of the history of the government printer. It was interesting. I believe that a government printer used to live next door to my uncle, of all people, for a very long time. His name was John Strijk. I note Hon Nick Goiran's point about the supplementary notice paper. I think it would be best to deal with this matter in Committee of the Whole House rather than in my reply. With that, I commend the bill to the house.

Question put and passed.

Bill read a second time.

#### *Committee*

The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

#### **Clause 1: Short title —**

**The DEPUTY CHAIR (Hon Steve Martin):** Members, we are dealing with the Legislation Bill 2021 and I note that we have supplementary notice paper, issue 1.

**Hon NICK GOIRAN:** This bill had a predecessor; it was the Legislation Bill 2018. It was third read in the other place on 30 October 2018 and introduced into this place on 31 October 2018. I note that, some three years later, it was never brought on again for debate for reasons known only to the government and the Leader of the House, who had the carriage of the bill at the time. I draw to the attention of the parliamentary secretary that there are a couple of differences in the second reading speech of the 2018 bill, which was read in by the Leader of the House, from the second reading speech read in by the parliamentary secretary. In 2018, the Leader of the House said that Parliamentary Counsel's Office —

... has consulted extensively on the changes that are proposed to be implemented in the bill. They have widespread support from key legal stakeholders.

I compare and contrast that with what the parliamentary secretary said in his second reading speech, in which he indicated, "All those who responded supported the proposals." Can the parliamentary secretary clarify how it is that things have changed from widespread support to now unanimous support?

**Hon MATTHEW SWINBOURN:** In terms of the language, obviously, a new speech was prepared for this bill. No different consultation occurred in relation to that. As an explanation, the best I can do about how we have gone from widespread support to unanimous support is that it is a stylistic word. Although, I acknowledge that "unanimous" has a specific meaning, as opposed to "widespread", but I would not go so far as to say that unanimous support meant that people did not raise any issues with progressing with this bill. I do not want to misrepresent that as being the bill was clapped down the street when it was announced. I cannot give a specific reason about why we have moved from "widespread" to "unanimous" other than the general stylistic issues.

**Hon NICK GOIRAN:** It has been three years since the earlier bill was introduced into this place. Is it the government's contention that fresh consultation has been undertaken with key legal stakeholders in the last three years and it is those that have then responded over the last three years that have all indicated support?

**Hon MATTHEW SWINBOURN:** There has not been any further consultation since the 2018 bill, so I think it was just a re-characterisation of what was previously undertaken.

**Hon NICK GOIRAN:** There was a discussion paper in December 2016. The second reading speech says that there were 21 submissions received on the discussion paper and it then says that an overwhelming majority supported the proposed enhancements. Can we be informed about, specifically, how many of the 21 submissions were in support?

**Hon MATTHEW SWINBOURN:** I cannot give the member a breakdown of the 21 submissions that were received and how many supported the enhancements. But I will tell the member that 21 submissions were received, mostly from Western Australian government agencies, and an overwhelming majority of submissions supported the proposed enhancements. There was some feedback on the proposals, particularly the power to renumber legislation. Some government agencies pointed out that renumbering provisions would have implications for non-legislative material that refers to legislation, and suggested that the Parliamentary Counsel's Office consult with affected agencies about the proposals to renumber. Some submissions also expressed concern that the enhanced powers be exercised conservatively in order to ensure that they do not change the law. Those submissions were taken into consideration in the preparation of the 2018 bill.

**Hon NICK GOIRAN:** Could the 21 submissions be tabled?

**Hon MATTHEW SWINBOURN:** In my advice, we are not able to table the 21 submissions because some of them were given by heads of jurisdiction and we would need to consult with them before any tabling would occur. Therefore, at this juncture, today, we are not in a position to table those submissions.

**Hon NICK GOIRAN:** How many of the 21 submissions came from heads of jurisdiction?

**Hon MATTHEW SWINBOURN:** I do not have that information at the table. I have been advised that some of them would be subject to cabinet-in-confidence.

**Hon NICK GOIRAN:** Were any submissions out of the 21 received not subject to cabinet-in-confidence or from heads of jurisdiction?

**Hon Matthew Swinbourn:** Sorry, can you say that again?

**Hon NICK GOIRAN:** Twenty-one submissions to the 2016 discussion paper were received. Were any of them not cabinet-in-confidence or from heads of jurisdiction?

**Hon MATTHEW SWINBOURN:** I do not have that information. I cannot provide that. If it is important to the member, I can undertake to provide that information to the member at a later date.

**Hon NICK GOIRAN:** It is super important because I understand that some feedback was received by the government on the 2018 bill, noting that the government decided not to undertake any consultation since that time—over the last three years. That feedback, which is now three years old, included some concerns. The parliamentary secretary mentioned one of them in particular, which was with respect to renumbering, and a recommendation that parliamentary counsel should consult. There was also some discussion about utilising these powers conservatively. Might the parliamentary secretary be in a position to advise us from whom that feedback was given?

**Hon MATTHEW SWINBOURN:** Can the member clarify his question? I am a little confused. Is he asking to whom the feedback was provided or who provided the feedback?

**Hon Nick Goiran:** Who provided the feedback to government?

**Hon MATTHEW SWINBOURN:** At this stage, I do not know. I will have to consult further with other people. If an answer comes tonight, I will provide that to the member, but at this stage, I cannot provide that to him.

**Hon NICK GOIRAN:** The second reading speech states that there was some feedback on the proposals to enhance the current editorial powers. I assume that if I ask who provided that feedback, we would probably be in the same situation—that the information is not readily available.

**Hon Matthew Swinbourn:** Yes, member.

**Hon NICK GOIRAN:** I ask that we add that to the list of information that might be made available. I also note that with regard to the comment about heads of jurisdiction, I always find it a curiosity when government tells Parliament that feedback from the judiciary might not be readily available. My longstanding view has been that when we look at the three arms, if government is consulting with the judiciary and the government then asks Parliament to pass some changes to the law, having taken into account the feedback of the judiciary, Parliament should be informed as to what that is, particularly given that the government has the capacity to filter what gets provided to Parliament. That is certainly within the remit of government—to provide a bill in whatever form it likes. If lawmakers are to be able to make an informed decision about issues that the head of jurisdiction has made submissions on, it is best practice for us to be able to have that information available. If that requires, as a courtesy, for the government to reach out to the heads of jurisdiction and ask them if they would be happy for Parliament to be aware of their

feedback, I think that ought to be done as a matter of course and generally be done prior to the bill being introduced and questions being asked.

That said, I will see whether I can take clause 1 as far as I can. The second reading speech states that the bill will save parliamentary time because a greater range of editorial changes could be made. It then goes on to say that the current restriction on the exercise of editorial powers will remain. It appears inconsistent to, on the one hand, say that parliamentary time will be saved because these editorial changes can be made but, on the other hand, say that the restrictions will remain. Is the parliamentary secretary in a position to clarify how time will be saved if the restrictions will still be in place?

**Hon MATTHEW SWINBOURN:** Let me see whether I can get this right. The law cannot be changed by what is happening here but the enhanced editorial powers will allow things to happen that have not previously been allowed to happen under the Reprints Act that would otherwise have had to be brought on in a bill, which would obviously change the words but not the meaning or effect of the law. That is, essentially, what those two conflicting points are trying to make.

**Hon NICK GOIRAN:** To what extent will the passage of this bill impact on the printing and publishing needs of the Parliament?

**Hon MATTHEW SWINBOURN:** If I understand the question correctly, the member is asking what impact the changes will have on what WA Parliament itself prints.

**Hon Nick Goiran:** A good example of that would be a committee report. When a committee has its report printed and published, will this bill have any impact upon Parliament's printing, publishing, resourcing et cetera?

**Hon MATTHEW SWINBOURN:** If that is what the member is asking, my advice is that the answer is no, it will have no impact.

**Hon NICK GOIRAN:** I understand that the State Law Publisher previously occupied 300 square metres of space at 10 William Street in Perth and it currently occupies 70 square metres of space at Dumas House. What reductions were made in staff and equipment to facilitate the 75 per cent less occupied space following the relocation?

**Hon MATTHEW SWINBOURN:** Member, I am struggling to understand how this fits within the bill. The State Law Publisher sits within the Department of the Premier and Cabinet and not within the Department of the Attorney General or the Parliamentary Counsel's Office level of responsibilities. I do not have an adviser here to answer that particular question.

**Hon NICK GOIRAN:** To what extent does the Legislation Bill 2021 have any impact on the State Law Publisher?

**Hon MATTHEW SWINBOURN:** The member will probably find this unsatisfactory, but I do not have any advice here in terms of the State Law Publisher. Again, the advisers who are here are from PCO and the minister's office, so I do not have anything in relation to those sorts of questions. I cannot take that any further.

**Hon NICK GOIRAN:** Maybe it is easier for me to ask this: who will be impacted by the passage of this bill?

**Hon MATTHEW SWINBOURN:** I cannot give an exhaustive list of people because I do not have that. But it will impact most significantly on the Parliamentary Counsel's Office because it will give PCO an opportunity to progress work in relation to the statute book. Obviously, the courts will be impacted by the efficiencies from accessing legislation electronically. Parties to proceedings will also be impacted because they will no longer have to produce certified copies of bills; they can rely on electronic versions. Obviously, the general community will be impacted because they can be assured that when they access law through electronic means it will be an official version that they can rely on. There may be rats and mice kind of things outside of that, but they are the main parties.

**Hon NICK GOIRAN:** Thank you, parliamentary secretary. That is helpful. I agree with that list. I accept that the parliamentary secretary might not have the information readily available today, but I am particularly keen to get to the bottom of the impact of this bill on the Parliament of Western Australia and the State Law Publisher. I would like clarity on the extent of the impact of the passage of this bill on those two bodies in particular. I think the list that the parliamentary secretary gave, which includes the Parliamentary Counsel's Office, the courts, parties to proceedings and also the general community, are good ones for the reasons that the parliamentary secretary outlined. But it would be useful to have a clearer understanding on the record of the impact on Parliament and the State Law Publisher. I am happy to try to take us forward, but I gather from the previous answers that the parliamentary secretary might need to get further information about that.

**Hon MATTHEW SWINBOURN:** Certainly for the State Law Publisher, for the reasons described, I think that I mentioned that we do not anticipate that Parliament's publications will be impacted, which was the subject of one of the member's earlier questions. Is the member seeking to take further the other impacts?

**Hon NICK GOIRAN:** The difficulty is that 21 submissions were referred to in the discussion paper in December 2016. I do not know whom those submissions were from. One or more individuals from Parliament may have made a submission with respect to the discussion paper. One or more individuals from the Parliament, or indeed from the courts, may have been the ones who expressed some concerns or provided some feedback with respect to the renumbering issue. We can certainly take up the renumbering issue when we get to clause 37, because clause 37 expressly deals with numbering and renumbering. I am keen that we do not miss anything in the meantime, between now and clause 37. That is the general context for why I am trying to ascertain whether there is any impact on Parliament and the State Law Publisher. If any of those organisations have previously provided a submission, it would be helpful to know.

I guess that takes me now to the 21 submissions in respect of the discussion paper of December 2016. We have, separately, had a discussion about widespread support, and we have been provided with an explanation on the difference between widespread support and unanimous support. I understand that the widespread support is in respect of the bill. Does that indicate that there was a separate consultation process? There was the discussion paper of 2016, which attracted 21 submissions, which were seemingly largely supportive. Separately, another consultation process took place between 2016 and 2018, which then provided other widespread support. If that is the case, I seek confirmation on who was consulted in that second consultation process?

**Hon MATTHEW SWINBOURN:** I want to be precise on these things. The member has raised a number of issues about consultation. I will take them on notice and seek to provide what information I am able to provide at the next opportunity to do that.

**Hon NICK GOIRAN:** Thank you, parliamentary secretary. If I can just refer back to the debate on 27 June 2018, the Leader of the House in the other place at the time—I am not sure whether he is at the moment—was Minister Templeman. He was speaking on behalf of the Attorney General, and he made mention of the fact that the publication of these things has been shared between Parliamentary Counsel's Office and the State Law Publisher. At the heart of my concern—it is not even necessarily a concern, but a request for clarification—is the extent to which the State Law Publisher will continue to provide services to the Parliament of Western Australia. If as a result of this legislation there will be a consolidation of the role of the State Law Publisher, I want to be sure that that will not have a consequential impact on the Parliament. We went through the exercise earlier with respect to committee reports, and we are seemingly quite confident that it will not have an impact.

For many years, the State Law Publisher has provided services to the Parliament of Western Australia. If the State Law Publisher has now been reduced to a mere 70 square metres in Dumas House, instead of 300 square metres at 10 William Street, Perth, and this bill is, in part, the consolidation of that process and the continuation of a shift of responsibilities to Parliamentary Counsel's Office, that is fine as a matter of principle, but I want to be satisfied that it will not have a detrimental impact on the Parliament of Western Australia. I have come full circle. This is why we need the benefit of knowing who were the 21 submitters, most of whom seem to be largely supportive, but some of whom are not necessarily so and have raised some concerns.

I am trying to take us forward. However, I am reluctant for us to steam ahead to the remainder of the bill, for the reasons that I outlined earlier. I do not want to have a situation whereby we get to clause 37, for example, and suddenly realise that there was a submission that dealt with an earlier part of the bill. I seek clarification from the chair. Is it in order for the chamber to defer consideration of clause 1 to enable us to move to the other clauses of the bill, or must clause 1 be dealt with first?

**The DEPUTY CHAIR (Hon Steve Martin):** That is a good question, Hon Nick Goiran. I will seek some advice. I believe this is a first, Hon Nick Goiran and parliamentary secretary, so we are just doing a bit of research; bear with us, please. Members, on advice—this is probably without precedent—I believe it is possible that clause 1 be deferred until after clause 64. That would require a vote.

**Hon NICK GOIRAN:** I thank you for that advice, deputy chair. I genuinely was not sure what the answer to that would be and whether clause 1 could be treated differently. Thank you for confirming that it is possible. Parliamentary secretary, I will just test the appetite of the government about whether there is any willingness to do so.

**Hon MATTHEW SWINBOURN:** We will not be supporting a deferment of clause 1, member.

**Hon NICK GOIRAN:** In light of the numbers in the chamber, I am not going to move a procedural motion for no particular purpose. I will just make a few observations at this point. The bill before the chamber is the Legislation Bill 2021. It is largely the same bill as the one that the McGowan Labor government brought into the fortieth Parliament in 2018, almost three years ago. We have found out tonight that nobody in government has done any further consultation in the three years that have followed. As we have seen with other bills, what happens is that often the COVID-19 pandemic is blamed for the government's inability to do its work. I remind members that there was no COVID-19 in 2018 or 2019, so that excuse does not fly.

As a result of the government's lack of preparedness to consult, we are now in a situation this evening whereby the opposition supports the bill but has concerns that this bill will allow Parliamentary Counsel to change the statutes of Western Australia. We will pass bills like this bill here in a particular form and Parliamentary Counsel will have the power to make certain changes. The government will be quick to say that those changes will be "minor", and it will use language like "editorial changes" and the like. The opposition does not oppose that but wants to test what is meant by "minor" and what is meant by "editorial changes". It is for those reasons that we have put some amendments on the supplementary notice paper. However, what is of particular importance to the opposition is to ascertain which of the people with whom the government did consult prior to 2018 have raised concerns. We know from the answers that have been provided this evening that most of the 21 submissions to the 2016 discussion paper were from agencies. We also know that some were from heads of jurisdictions. We do not know what those heads of jurisdictions have said. For example, it may be that one of the responders to the discussion paper was the Chief Justice of Western Australia. It may be that the Chief Justice has raised some concerns. We do not know whether that is the case, because the government is not in a position this evening to let us know.

There is a simple solution to that, of course, and that is to defer the consideration of clause 1. We could then move to all the remaining clauses in this bill. There are some 63 other clauses, most of which could be dealt with fairly expediently, but the government is saying, "No. We will not agree to that to facilitate the scrutiny of the legislation; instead, we will block that from happening." While the government is busy blocking that process, it is saying, "We, the McGowan Labor government, won't provide you with the information as to who responded and provided some concerns about this bill." That is the situation we find ourselves in this evening. To say that that is unsatisfactory does not even start to cut it. Nevertheless, that is where we are at.

I would very much prefer, on a bill like this, not to have to need to ask the government questions on all 64 clauses, because this is not a bill that needs that kind of scrutiny. This bill has the support of the opposition. We have one relatively narrow concern, which can be addressed when we get to clause 42. But we want to be satisfied before we pass this bill that the concerns of others are being properly met.

When I look at the *Daily Notice Paper* and the orders of the day for today, 17 August, I note that order of the day 24 is the Courts Legislation Amendment (Magistrates) Bill 2021. The reason that that is relevant at this time is that we know there are heads of jurisdiction in Western Australia who have strong views about that legislation, and some of that is starting to emerge from some of the advocacy that has come from the Law Society of Western Australia in recent times. There is no doubt that that is why the government decided not to bring that bill on at this time.

The point is that when the heads of jurisdiction provide feedback to the government, it is important for lawmakers to have access to that information. To obstruct and hide that information does a disservice to the fulfilment of our duties in scrutinising the legislation. I express on behalf of the opposition our disappointment in the government for refusing to facilitate the passage of this bill by either deferring debate on clause 1 or simply providing the information that has been sought—that is, the information on the 21 submitters to the 2016 discussion paper and, in addition, those who have responded to any subsequent consultation. In particular, we want the information from those who have had some concerns. It has been referred to by the government as feedback, but, like anything, language can be cute at times. Feedback could also be a disguise for concerns. The government has received some feedback, or some concerns, and we want to make sure that those things are being properly scrutinised.

Our ability to do so this evening is being impeded because of the refusal of the government to provide that information. I hasten to add that, as per usual, the hardworking parliamentary secretary is doing the best he can in the circumstances that he finds himself in. He cannot suddenly produce documents and lists of things if he does not have them at his fingertips at the table of the chamber. Therefore, the criticism from the opposition is not with him, but there is criticism about the process and there is criticism of the government. The decision-makers in government have decided that they will not allow this bill to receive proper scrutiny. That is most unsatisfactory, so I regret that it has left us with no other option than to scrutinise all 64 clauses that remain.

I take this opportunity to ask the parliamentary secretary whether the government has had an opportunity to consider and consult on the proposed amendments in issue 1 of supplementary notice paper 1 from Tuesday, 15 June 2021—obviously, it was issued prior to the winter recess—and what is the attitude of the government on those amendments.

**Hon MATTHEW SWINBOURN:** I think we have considered them. The member said "consider and consult". I do not think it is normal practice to consult on opposition amendments. I do not know what others do, but I understand that consideration was given to them. We will not be supporting them and we have our reasons for that. I am happy to share them with the member now if he would like or we can wait until he proposes to move them at a later time.

**Hon Nick Goiran:** I am relaxed either way.

**Hon MATTHEW SWINBOURN:** Until the member moves them, I will leave the reasons there. As I say, I think they were considered genuinely, but we have a difference of view on them.

**Hon NICK GOIRAN:** Before we conclude on clause 1, the parliamentary secretary has indicated that there are a number of things that he will try to get information on so that there is no misunderstanding when we get to further clauses. Can he clarify what information the government is currently seeking?

**Hon MATTHEW SWINBOURN:** I think I said to the member that I would see whether I could get information for him, not to undertake to give information, because, as a parliamentary secretary, I do not have the power to give an undertaking to give the member information, only to seek to give it. There is an important distinction there. I do believe that the points the member made were about who provided feedback to the government and things of that ilk. We will obviously have people check. I do not want to do a disservice to what has transpired earlier in the night. We will have access to *Hansard*. I think I was clear at the time that I made the statements about those things about what things we would follow up. As I say, I think the member's concerns were about the 21 submissions, who submitted them, whether access could be given to those submissions and obviously the impact on the State Law Publisher and Parliament. That is what I understand the member was seeking from us and I will seek to give information.

**Hon NICK GOIRAN:** To clarify, we definitely know that there have been 21 pieces of feedback on the 2016 discussion paper. Do we have enough information available to us this evening to confirm whether there was a secondary consultation process? The parliamentary secretary might remember that I mentioned that there was a 2016 discussion paper, and we know that there were 21 submissions and that a variety of views were expressed, but was there a second round of consultation, perhaps when the bill was being drafted? Maybe, as part of that response, the parliamentary secretary could indicate how many drafts were made of the Legislation Bill.

**Hon MATTHEW SWINBOURN:** I cannot take this any further because I cannot be certain of those issues. I do not want to go down a path whereby I have to later correct myself because I have given that information. I think the member asked a similar question earlier on about the stages of this thing and he talked about the 21 submissions at the preparation of the 2018 bill and I think I made comments at that time. I will stick with the comments I made at that time.

**Hon NICK GOIRAN:** If I look at the comments made on 27 June 2018, I note that the minister in the other place said —

PCO has consulted extensively on the changes that are proposed to be implemented in the bill.

Consulted extensively? This is interesting. He went on to say —

In 2015, PCO wrote to key legal stakeholders affected by the proposals to modernise the processes for publishing WA legislation and sought their feedback. All those who responded supported the proposals.

That is about a consultation process embarked upon as far back as 2015.

The minister went on to say —

In relation to the proposed enhancements to editorial powers, the PCO issued a public discussion paper in December 2016 seeking submissions on those proposals. The discussion paper was made available online, and responses could be made by way of an online survey, email or letter. Emails inviting submissions on the discussion paper were also sent to a large number of legal stakeholders and others considered to have an interest in the proposals. Twenty-one submissions were received on the discussion paper. An overwhelming majority supported the proposed enhancements.

That tells me, parliamentary secretary, that there were at least two rounds of what I am going to refer to as consultation. There was the 2015 consultation process embarked upon by Parliamentary Counsel's Office and there was the December 2016 discussion paper consultation process. I accept that the parliamentary secretary indicated that information is not readily available this evening, but what I want confirmation of is whether a third round of consultation occurred by way of the drafting process. We know that if any consultation occurred in a third phase, it must have occurred sometime after December 2016 and sometime before June 2018. June 2018 was when the 2018 bill was introduced into the other place. Over a period of about 18 months, over the course of the entire 2017 calendar year and the first half of 2018, there may have been a third phase of consultation. That remains unclear at this point. In respect of the second phase of consultation, we know that some feedback had been received on the enhancement to current editorial powers. I note that again the minister in the other place, on 27 June, said —

The PCO currently takes a very careful and conservative approach to the exercise of the editorial powers available under the Reprints Act 1984, and this approach will be adopted in relation to the enhanced editorial powers.

I have no doubt that that would be the case. There would be no good reason why PCO would change its approach. The minister went on to say —

If there is any doubt about whether the exercise of an editorial power would change the law, the PCO would not exercise the power. Any change would then have to be made by Parliament in the normal way, principally through a Statutes (Repeals and Minor Amendments) Bill.

The question I have is: what process will Parliamentary Counsel's Office embark upon to determine whether there is any doubt? It will have to decide whether something fits under these enhanced editorial powers. Ministers across a couple of Parliaments have said that if there is any doubt, PCO will not exercise that power. What is the process that will guide whether it will exercise that power or not?

**Hon MATTHEW SWINBOURN:** As the member is aware, the Reprints Act currently allows PCO to undertake editing powers. There is an internal process that it goes through in which it is given careful consideration—I think that is the term the advisers used. Going to the point the member made about the speech that was given some years ago, a conservative approach is given to that. I do not think this bill will result in a new practice because there is already an existing practice in place within PCO.

**Hon NICK GOIRAN:** I think it is a good point. There is an existing process that Parliamentary Counsel's Office uses to determine whether it will utilise its existing editorial powers or whether it will wait to deal with any of these types of matters by way of an omnibus-type bill. This bill will not change that process; it will enhance those editorial powers. What process does PCO use at the moment?

**Hon MATTHEW SWINBOURN:** From what I understand about the process that happens within PCO, it obviously deals with legislation all the time. PCO will identify at some stage that there is an error or issue that needs to be addressed. Whomever is dealing with that, whether it be the editing team, parliamentary drafters or others—because, obviously, they are all handling legislation at different times for different reasons—will identify the issue and the potential fix for the issue and then that is elevated to a senior parliamentary counsel level to approve that point. I have asked the advisers here how many people might fill that senior parliamentary counsel role and my understanding is that it is about three. We are talking about a very narrow, experienced group of people who make that final call on whether that law is changed.

**Hon NICK GOIRAN:** Thank you; that is excellent.

**Hon Matthew Swinbourn:** Just by way of interjection, I think I used the words “law is changed”. The law is never changed; it is just that the word is changed.

**Hon NICK GOIRAN:** Yes, well, that is what we hope. Whether the law is changed as a result of the amendment remains to be seen on a case-by-case basis, but I accept that this is, in part, a power that has existed with the Parliamentary Counsel's Office for some time. Equally, I note that the government expressly used the word “enhancements” in the second reading speech, so whatever the power is at the moment, and even if PCO has been using it in a conservative fashion for many years, the government is saying it is enhancing the power that is going to PCO. However, there is not an equivalent enhanced oversight regime.

The regime at the moment is that one of three people makes a final call. None of those three people have ever been elected by the people of Western Australia to be a lawmaker, but that is the regime at the moment. We are now enhancing that power. I hasten to add that we support that enhanced power, but we believe that there needs to be an enhanced oversight regime. That enhanced oversight regime could simply consist of that same office, PCO, which has said it uses the existing power conservatively and will continue to use it conservatively, and has a process that ends up meaning that one of three people has the final say on these things. The opposition is simply saying that it would not be too much trouble to ask PCO, once a year, to provide a summary of those changes so that they could be considered by the Standing Committee on Uniform Legislation and Statutes Review. That committee might decide to do nothing with it because there might be no need to. It might agree with everything that has been done—that PCO has used the power responsibly and conservatively, and that there is no change in the law. Equally, the Standing Committee on Uniform Legislation and Statutes Review might identify a problem and be then in a position to report to the Legislative Council about that problem. That seems to me to be an appropriate balance in this matter, but I think it has already been confirmed it is not a balance that the government is prepared to agree to. I think that is a real shame.

Before this bill comes into operation, will it require the preparation of any regulations? If so, what is the current status of that preparation?

**Hon MATTHEW SWINBOURN:** There will be a requirement for regulations. My advice is that they have not been prepared because we are waiting for the passage of the legislation.

**Hon NICK GOIRAN:** That is a usual explanation. There is no doubt that this bill is going to pass, unamended, so I would encourage parliamentary counsel and those responsible to commence the preparation of the regulations



so that this new law, which was inexplicably delayed by the government for three years after it was introduced in 2018, can now commence.

What clauses of the bill will be impacted by the need for regulations?

**Hon MATTHEW SWINBOURN:** The following clauses will be impacted: clause 8(3), which is about prescribing an alternative website if the usual address for the WA legislation website cannot be used for technical or other reasons; clauses 10(1)(c) and (d), which specify the particular subsidiary legislation that must be published on the WA legislation website; clause 10(1)(e), which prescribes other laws that must be published on the WA legislation website; and clause 10(2)(a), which prescribes other material that may be published on the WA legislation website. The difference between those two subclauses is that subclause (1) is about subsidiary legislation that must be published and subclause (2) is about the ones that may be. These clauses will also be impacted: clause 15, which prescribes the recognised formats for official electronic versions of legislation; and clauses 15 and 16, which prescribe the way in which the official status of electronic and hard-copy versions of legislation will be indicated.

**Clause put and passed.**

**Clause 2: Commencement —**

**Hon NICK GOIRAN:** Clause 2 deals with the commencement of the bill. It indicates that, with the exception of part 1, the bill will commence on a day fixed by proclamation. When does the government intend to proclaim this bill?

**Hon MATTHEW SWINBOURN:** I am advised that it will be in the first half of 2022. The rationale for that is the need to prepare the subsidiary legislation—the regulations—and also for the Parliamentary Counsel's Office to put in place administrative arrangements due to the consequences arising from the passage of the bill.

**Hon NICK GOIRAN:** I understand the need for the drafting of regulations. The parliamentary secretary mentioned that four clauses are impacted by the need for regulations: clauses 8, 10, 15 and 16 of the bill. I imagine that that small amount of regulation drafting would not be the reason that this legislation needs to wait until the first half of 2022. It is more likely that the reason would be the administrative arrangements that the parliamentary secretary referred to. What are those administrative arrangements?

**Hon MATTHEW SWINBOURN:** I am advised that the administrative arrangements to be put in place are between PCO, the Department of the Premier and Cabinet, which currently publishes the *Government Gazette*, and other government agencies to enable subsidiary legislation to be published on the WA legislation website instead of in the *Gazette*.

**Hon NICK GOIRAN:** Do the administrative arrangements have nothing to do with staffing, resources or anything of that nature?

**Hon MATTHEW SWINBOURN:** Sorry, honourable member. I listened to the member's question, but in the course of discussing it at the table, I missed its precise details. Can the member just be clear about what it was that he asked?

**Hon NICK GOIRAN:** I was asking whether the impact and resourcing of staffing was captured by these administrative arrangements that are needed and will delay the commencement of this law until the first half of 2022.

**Hon MATTHEW SWINBOURN:** No. My advice is that that is not the impact.

**Hon NICK GOIRAN:** I find it curious that the act needs to wait until the first half of 2022 when I have seen some regulations get drafted at great pace. I am not sure why this one needs to wait until 2022. That said, can I take it that the government is not in a position to guarantee that the act will commence in the first half of 2022?

**Hon MATTHEW SWINBOURN:** In these times, member, I cannot give such a guarantee, for any multitude of reasons. The most obvious reason is, as we all know, the impact that the COVID pandemic might have, or any other sorts of issues. It would be speculation, so I do not think it would be appropriate to give any guarantee. It is the government's intention to do it in the first half of 2022, and I suspect that PCO is very keen to progress that, given that the legislation relates directly to its work.

**Hon NICK GOIRAN:** Can the parliamentary secretary guarantee that it will be done sometime in the next 10 years?

**Hon MATTHEW SWINBOURN:** To the extent that I am able to give such a guarantee, it is absolutely our intention to do it within the next 10 years. Parliamentary Counsel's Office has pursued the introduction of this bill with great enthusiasm. The bill will improve the way PCO can deliver its services to the state. I know what the member is getting at and the point he is making. Together with the government, PCO is keen for this bill to be passed and the act proclaimed so that more efficient and effective processes for the publication of WA legislation and enhanced editorial powers can be put in place, to name just two of the benefits that will be implemented by the bill.

**Hon NICK GOIRAN:** We know that the government cannot guarantee that this will happen in the first half of 2022, but it has an intention for it to happen then. I am curious about why it needs to take that long, given the little amount that needs to be done to bring this legislation to fruition. Nevertheless, the government is saying that it will take

until the first half of 2022, but it cannot guarantee that. That is the government's intention. The government is equally intent on seeing this legislation become law within the next 10 years, but cannot give us an ironclad guarantee that that will be the case. This brings me to the amendments on the supplementary notice paper, and I take this opportunity to explain to members why it is that the opposition proposes to oppose clause 2.

I consulted with Parliamentary Counsel's Office about the amendment that sits on the supplementary notice paper—in particular, the amendment at 2/NC2. It was the view of Parliamentary Counsel's Office, or the advice, that the best way to achieve the objective that I was seeking would be by opposing clause 2 and inserting a new clause 2. The extent that there is a difference between what is currently sitting in the bill at page 2, lines 4 through 8, and what would appear in the event that new clause 2 was agreed to is, really, two particular points in the amendment. One point is that proposed section 44, "Review of Act", would commence on the day after assent. There is no good reason—I think the government might be willing to agree to that—why proposed section 44 cannot commence the day after assent. Nothing much turns on that. But what does turn on it is that there is also a proposed amendment that would ensure that if this law was not brought into effect sometime in the next 10 years, the act would be repealed.

This is the type of amendment that received—let us use the language of the government—"overwhelming support" or great levels of support, certainly in the fortieth Parliament. An overwhelming majority used to frequently support an amendment to this effect. In the fortieth Parliament, it became quite customary to see amendments of this sort put forward, which would simply ensure that if a government of any persuasion decided that it did not want to or could not proclaim an act, the act would be repealed if a period of 10 years had passed. I understand that during the clause 1 debate, the parliamentary secretary indicated that the government will not be supporting that amendment. Now might be a convenient time to provide some explanation.

**Hon MATTHEW SWINBOURN:** The member is right; we will not be supporting that amendment. The government has included a review provision in clause 44, which the member quite rightly pointed out, requiring the relevant minister to review the operation and effectiveness of the act and to prepare a report on that review as soon as practicable after the first anniversary of the day on which proposed section 44 comes into operation. What the member is seeking to do with his amendment to the commencement provision is have the review provision come into effect on the day after royal assent, meaning that the remainder of the act will come into effect on a later proclamation date and it will not have been in operation for five years when the review provision requires the review to be conducted. It makes sense for the review period to start to run only when substantive provisions of the act come into operation; it makes no sense for us to support a review period running when no substantive provisions have commenced. Therefore, we will not be supporting that part of the member's amendment.

Regarding the other part of the member's amendment, the member is seeking an amendment that will repeal the act automatically if the remainder of that act is not proclaimed within 10 years after the day of royal assent. This is, obviously, the preferred drafting of PCO for these commencement clauses. The government opposes the inclusion of automatic repeal mechanisms in a piecemeal way in individual acts. Although the government understands the reason behind the request, which is to avoid legislation languishing on the WA legislation website without it ever being proclaimed, this legislation before us is not the type that will linger unproclaimed for any length of time. Given our intention to proclaim, the amendment will have no effect at all.

**Hon NICK GOIRAN:** The government might say that, but it would be surprised how quickly time passes, because it has been three years since this bill was first brought in by the Leader of the House and it has been allowed to languish ever since. Three years goes quite quickly. One would be surprised how quickly time can pass.

With regard to the contention that effectively it is not worthwhile allowing clause 44 to commence immediately, thereby triggering the time period in which the statutory review will take place, I offer the following observation. I appreciate that it is hardly going to persuade or change the mind of the government but I think it is worthwhile. If in five years' time, we find that the government—hopefully, it will be a new government by then—has still not proclaimed this particular bill, would it not be a good thing for someone within government to prepare reports to that effect and alert the Parliament to say, "Five years has passed in this 10-year time frame. Are we still serious about this legislation or not"? At that point in time, the report might come to the house and the government will say, "We haven't proclaimed it for these reasons and we no longer have any intention of proclaiming it." That would be a good thing to know. I think it fits in well with this notion of having this 10-year period that will finalise the period of time in which a proclamation can take place. As I said, I make those comments knowing full well it will not change the attitude of the government with respect to clause 2. I note that in the event that our intended opposition to clause 2 is not supported by the house, proposed new clause 2 will fall away.

**Clause put and passed.**

**The DEPUTY CHAIR:** Can I get an indication of whether members want to go through the bill clause by clause?

**Hon NICK GOIRAN:** At this stage, it is the opposition’s intention to go through each of the clauses. There will be no need to ask that question. However, I hasten to add that if the government is in a position to provide the information that the opposition was reasonably seeking in clause 1, there will be absolutely no need to do so.

**Clause 3: Object of this Act —**

**Hon NICK GOIRAN:** The first two objects of the act, which are set out in clause 3(2)(a) and (b), do not create any concerns because they simply indicate that the desire is to ensure that our legislation is made publicly available and to ensure that official status is given to the electronic form as well as the hard copy. However, the third of the objects provides some concerns for the reasons that I outlined earlier. Are there any changes to clause 3 in the bill before us compared with the 2018 version of the bill?

**Hon MATTHEW SWINBOURN:** There is only one object in this bill; the other three things set out how that object is achieved. I am advised that there are no differences between clause 3 in the 2018 bill and clause 3 in the 2021 bill.

**Hon NICK GOIRAN:** Clause 3(2)(c) states —

conferring power on the Parliamentary Counsel to make editorial changes ... in appropriate cases ...

What is meant by “appropriate cases”? Can the government provide examples to the house?

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