CHARITABLE TRUSTS BILL 2022

Second Reading

Resumed from 13 October.

HON NICK GOIRAN (South Metropolitan) [2.48 pm]: We return now to the Charitable Trusts Bill 2022. The house had 17 minutes last Thursday to commence its consideration of it. As has already been indicated, the genesis of the bill before us is this massive report by Mr Alan Sefton who, at the time, was Deputy State Counsel. The date of this report, *Report on Njamal people's trust*, is December 2018. The inquiry into a charitable trust was referred to Mr Sefton by the Attorney General, pursuant to section 20 of the Charitable Trusts Act 1962, which is to be amended by the bill presently before us. The inquiry commenced in May 2017 and, as I said, it concluded at the end of 2018, making 63 recommendations. In order to have the complete package, it will be necessary to refer to my initial remarks in the second reading debate from last week.

Mr Sefton identified five themes: control, tension, change, outcomes and self-interest. I unpacked some of those things on the last occasion. Last time when I spoke on this bill, I left things off with comments about the consideration of the 63 recommendations. As I foreshadowed, the first 47 recommendations in this massive report by Mr Sefton address specific issues in a particular trust that was inquired into at the time. It is not necessary for us to unpack those 47 recommendations. However, the remainder of the recommendations, those being recommendations 48 through to 61, specifically deal with amending the Charitable Trusts Act, so it is those latter recommendations that warrant our consideration. Has the government implemented all those recommendations in the bill before us; and, if not, why not? If it has, has it done so in part or in whole? Are there any deviations from the recommendations? It is these types of things that we ought to turn our minds to. It appears to me that the majority of those latter 14 recommendations are addressed in the bill, but I want to particularly examine recommendations 55 and 61. I touched on this on the last occasion, but noting that there is sufficient time to briefly recap, I will do so now. Recommendation 55 recommends as follows —

> Section 20 of the *Charitable Trusts Act 1962* be amended to:
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> - clearly specify the grounds on which a person may refuse to comply with a compulsory request to answer questions or produce documents;
> - require that if a person so refuses, they must specify the ground of their objection;
> - expressly abrogate the right to privilege against self-incrimination/exposure to a penalty, with certain safeguards to prevent those answers or documentation being used against the person who otherwise would have been entitled to assert that claim of privilege.

The sub-recommendation in recommendation 55 is as follows —

> Consideration be given to whether in making any such amendments the right to claim legal professional privilege:
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> - be abrogated in the case of a trustee where the communication relates to or concerns the management and administration of the trust and its property, and what safeguards should be imposed in relation to the use of the information or documentation disclosed;
> - be otherwise protected in the event that a person elects not to maintain objections to answering a question or producing a document to an inquiry or examination on that ground but indicates that they otherwise seek to maintain the benefit of that privilege.

It seems to me that clause 40 endeavours to give effect to recommendation 55, but it does not necessarily do so with the level of specificity set out in recommendation 55. The question that I believe I had posed on the last occasion, to which I would be grateful for a response from the parliamentary secretary in reply or in the consideration of clause 1, is: has the government been advised, and is it so satisfied, that clause 40 gives effect to recommendation 55?

The second of those 14 latter recommendations that is worthy of particular observation is recommendation 61, which reads —

> The *Charitable Trusts Act 1962* or other relevant legislation be amended to:
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> - permit evidence on applications in relation to a charitable trust brought by the Attorney General or a person authorised by the Attorney General, or otherwise with leave of the Court, to be given other than in accordance with the ordinary rules of evidence, and be based on information or belief; and
> - if considered appropriate, make the decisions and findings of other relevant regulatory bodies, such as ASIC in deciding to disqualify a person from managing corporations, admissible in evidence (albeit not determinative) on such applications.

My question for the government is: has this sixty-first recommendation been addressed in the bill; and, if it is the government's view that it has been addressed, which of the 58 clauses gives full effect to recommendation 61?

Having briefly touched on this massive report—which I have referred to previously and to which I will from here on in refer to as the Sefton report 2018—I now turn to the issue of consultation and the government's secrecy around the consultation process associated with this bill. It is timely to be having this discussion hot on the heels of the third reading debate we had moments ago on the Health and Disability Services (Complaints) Amendment Bill 2021. That bill was considered at length by the Committee of the Whole House last week. It was in part held up because of consultation secrecy by the McGowan government. Elements of that type of secrecy have emerged with this bill. I draw to members' attention that when the government provided a briefing to the opposition, we asked who was consulted about the bill. We were given a list of 14 stakeholders. On the last occasion that this matter was before the house, in those brief 17 minutes last week, I listed those 14 stakeholders, and I do not propose to do so again this afternoon. I will, however, reiterate this point: when the list of 14 stakeholders was provided to the opposition, we were told that consultation with those 14 stakeholders occurred between May and July last year. Consequently, we asked the government about the nature of any concerns that were raised by the 14 stakeholders. There is little point in consulting with so-called stakeholders if their concerns are kept secret. The point of a consultation process is to ensure, to the best ability of the government, whoever is in government at the time, that when it produces a bill to the Legislative Council—in this instance, the Charitable Trusts Bill 2022—that it is in the best possible form for the people of Western Australia to be passed.

Governments consult stakeholders and experts in the field to ensure that bills are in the best possible form. If concerns are raised, they ought to be transparently provided; yet, when we asked the government about the nature of those concerns, its response was that the consultation process was undertaken by the State Solicitor's Office and the Attorney General's office on a confidential basis and that stakeholder feedback was taken into account during the drafting. When we asked to what extent the bill addressed these concerns, the government simply told us to refer back to the previous answer. The government seems to misunderstand the distinction between confidentiality and secrecy.

Hon Alannah MacTiernan: What we do understand is that if you want to know stakeholder concerns, why aren't you going out there and talking to the stakeholders? That is what you do in opposition. I don't know whether you guys have missed the basic induction classes about how opposition works.

Hon NICK GOIRAN: Acting President, that was an interesting observation from the Minister for Regional Development, who is a very experienced member of Parliament, not only in this Parliament but also across multiple chambers and multiple Parliaments. Her interjection cannot simply be dismissed as a trivial matter. She suggests that it is appropriate for the opposition to knock on the door of these stakeholders to ascertain whether they have any concerns about these matters. I might draw something to the attention of the Minister for Regional Development, who has all of a sudden shown an interest in the Charitable Trusts Bill 2022. Perhaps she will be assistant counsel to the parliamentary secretary in the prosecution of this matter.

Hon Alannah MacTiernan: I will just tell you: I have done 13 years of opposition, and I know what you need to do to advance your case. You actually have to get out there, out of your comfort zone, and talk to people.

Hon NICK GOIRAN: Indeed, Minister for Regional Development. On that point, we are in very furious agreement. The minister is now somewhat of an expert on this Charitable Trusts Bill 2022 and ably assisting the parliamentary secretary. My experience has been that I do not think he needs her assistance. Nevertheless, since the minister is showing such an interest, I might draw to her attention who the 14 stakeholders are. I suspect that if I asked the minister to name one of the 14 stakeholders, she probably could not do it. The 14 stakeholders include the Department of the Premier and Cabinet's Aboriginal policy and coordination unit. The minister might explain to the house how a member of the opposition might be able to break open the doors of the Department of the Premier and Cabinet's Aboriginal policy and coordination unit and ask it for its feedback on this bill. Do not tell me how to be an opposition member and how to consult with stakeholders. The minister's government is keeping this information secret. We would like to know what it had to say about this matter.

Hon Alannah MacTiernan: They are part of the government, and we have the government response.

Hon NICK GOIRAN: The government response is the pathetic quote "refer to the response to question (7)(b) above". What was that? The consultation process was undertaken by the State Solicitor's Office and the Attorney General's office on a confidential basis. Stakeholder feedback was taken into account during the drafting.

The pattern of behaviour here seems to be that the McGowan government confuses confidentiality with secrecy. I have no problem with the government undertaking confidential consultation with stakeholders, but it does not mean that the concerns need to be kept secret. It might interest the Minister for Regional Development that Senator Patrick Dodson was one of the 14 people who was consulted about this bill. We do not necessarily need to know who raised the concern, but Parliament is entitled to know what the concern was. If there is a concern about the Charitable Trusts Bill 2022—whether it was made by Senator Pat Dodson or Alan Sefton, Senior Counsel, who authored the massive report—we would like to know what the concern is so that we can tease it out. We can ask

the hardworking parliamentary secretary what the government's position on this concern is. Has it been addressed in the bill currently before us? If it has not been addressed, what is the reason it has not been addressed? With this parliamentary secretary, I know we will get an answer. I might add that he is unlike the Deputy Leader of the House, whose response yesterday was simply that it is because it is the decision of government. That is no response whatsoever. The government needs to be able to provide a rational, logical basis for the decisions it makes. This parliamentary secretary and some others understand that, and I am confident that we would get those kinds of answers, but we cannot get answers if the Attorney General continues to keep secret all the consultation process. Fine—do not tell us the name of the person; do not tell us whether it was the Chief Justice, the Information Commissioner, the Public Trustee, the Western Australian Bar Association, the Law Society of Western Australia or any one of the other 14 stakeholders. We do not need to know the name, but the government should tell us what the concern was. I would like the Minister for Regional Development, who has suddenly shown a great deal of interest in the Charitable Trusts Bill 2022, to explain to the house when she makes her second reading contribution why the Parliament should not be told what the concerns were. We are not asking who gave the concern but what the concern was. Why would it be inappropriate for the Parliament, the house of review, to have kept secret from it what the concern was? What could possibly be the problem with that? It would be good for lawmaking.

The very experienced Minister for Regional Development, who has done the global circuit of chambers and Parliaments—local government, state government, federal government, the whole lot—should be coming to the party on this. The Minister for Regional Development should be knocking on the door of the Premier and saying, "We should be lifting our game here. I am not satisfied. I have done the circuit. I have done the global tour of Parliaments, and I have worked out what the gold standard is, and it is not secrecy." That is what the Minister for Regional Development should be doing. But, no, she usually goes for a little nap on Tuesdays and Wednesdays. Suddenly, on Thursdays, she rises to the occasion and, all of a sudden, we hear from her. I am looking forward to her second reading contribution on the Charitable Trusts Bill 2022.

In passing, I might say quickly to the honourable parliamentary secretary that this bill probably had a good chance of passing by the end of today, but I am not sure whether the minister has provided any assistance whatsoever. It would be far better on this occasion if the Minister for Regional Development—who, as I acknowledged earlier, likes to take on board the concerns of the opposition—just stuck to her lane and did not try to delve into other matters.

There is no need for the minister to audition. I do not think that she will be appointed Attorney General, although I have previously suggested that we need a replacement in that area. Although the Minister for Regional Development would be most qualified because of her tertiary qualifications, her admission to practise and her experience as a parliamentarian, I do not think it would be the best move going forward. Other candidates would be considered for that.

Several members interjected.

The ACTING PRESIDENT (Hon Dr Brian Walker): Order! I would like to hear what the member is saying.

Hon NICK GOIRAN: One of the concerns I raised on the last occasion was about the capacity for the Ombudsman's office to deal with investigations of charitable trusts as and when it needs to. I ask members to pause for a moment and acknowledge that the Sefton report—this massive report that the Minister for Regional Development is obviously an expert in and has probably read all 641 pages of—dealt with just one charitable trust. The website of the Ombudsman of Western Australia tells us the scope of duties that he already has before we introduce extra duties as a result of this bill. He already has all these other duties, and I would be interested to hear from the Minister for Regional Development whether she thinks that it is appropriate for us to give yet another set of duties to him rather than another officer. This is from the Ombudsman's website —

> The Ombudsman is an officer of the Parliament. The Ombudsman is impartial and independent of the government of the day. The Ombudsman receives, investigates and resolves complaints about State Government agencies, local governments and universities, undertakes major investigations with all the powers of a standing Royal Commission, reviews child deaths and family and domestic violence fatalities and undertakes a range of other functions, including oversighting telecommunications intercept laws and consorting laws.

These are the things that the Ombudsman currently has to do. As a result of this bill, we will add another thing for him to do. We will be adding the investigation of charitable trusts to the Ombudsman's already significant workload, but we are doing it under the guise or the branding of a new name: the Western Australian Charitable Trusts Commission. This bill will establish this commission but, in effect, despite the title and the branding, it will be the Ombudsman. The Ombudsman will be the commissioner; he will be the Western Australian charitable trusts commissioner, so we will be giving him another thing to do. This is not to suggest that the Ombudsman is not up to the task. The question that should be asked by members as we hold the government to account and ask the questions that need to be asked is: Is it the right place? Is the Ombudsman the only person who could perform this function?

The reason that members should give this some consideration is that it is my understanding—the parliamentary secretary will not hesitate to correct me if I am wrong—that at no point did Mr Sefton suggest that the Ombudsman

should take on this task. No. He suggested that it should be the Auditor General. There are other options. No doubt the hardworking parliamentary secretary will provide a response in due course—or he might get the Minister for Regional Development to do it—as to why the government has chosen to give this task to the Ombudsman and not the Auditor General. That is a genuine question for the parliamentary secretary. There clearly needs to be a response to that question. Mr Sefton wanted us to make sure that the Auditor General would be able to perform these types of investigations into the future. The government has said: "No. We are not going to give that job to the Auditor General. We are going to give that job to the Ombudsman." The government can, of course, make that decision. The government is entitled to deviate from that recommendation, but it then has a duty to provide an explanation.

I draw specifically to members' attention recommendation 54, which reads —

> 1. The *Charitable Trusts Act 1962* and/or the Auditor General Act be amended to enable the Auditor General or a delegate to be appointed by the Attorney General to make an inquiry or examine under section 20 of the *Charitable Trusts Act 1962* or to assist in such process.
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> 2. Consideration be given to also amending those Acts to confer power on the Auditor General or a delegate generally, or by arrangement with the Attorney General, to perform audits or audit like services in relation to trustees of charitable trusts. The powers of the Auditor General or a delegate be at least as extensive as those conferred upon him with reference to the auditing of public accounts by the Auditor General Act.
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> 3. Additionally, or in the alternative, the Attorney General, or an examiner or inquirer appointed under section 20 of the *Charitable Trusts Act 1962* be empowered to require that the trustee of a charitable trust:
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>   - cause the accounts of the charitable trust be audited by an appropriately qualified auditor (including the Auditor General); and
>   - provide the audited report to the Attorney General, examiner or inquirer.

I note that the Auditor General can be appointed by the Attorney General to carry out investigations of charitable trusts. I certainly see that as appropriate. However, why she—as is currently the case; the Auditor General—is not at the forefront of such investigations is somewhat perplexing.

I ask members to also consider page 622 of this massive report that the Minister for Regional Development is an expert in. The Sefton report states also —

> It seems to the Inquiry that a person who in an appropriate case may (either directly or through his or her staff) be a suitable appointee to conduct an inquiry or examination, or assist in that process, would be the Auditor General.

I pause there. The Sefton report does not say that would be the Ombudsman. It says that would be the Auditor General. Why under the bill before us will we give this job to the Ombudsman and not to the Auditor General? It continues —

> That is particularly so having regard to the nature of the functions, powers and expertise of the office of the Auditor General. For example, the Auditor General:
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>   - under the *Charitable Collections Act 1946* may inspect, examine and audit accounts of moneys raised or collected for charitable purposes and report to the Minister for Commerce and may use powers conferred upon him or her by the Auditor General Act with respect to the auditing of public accounts to do so; and
>   - under section 22(1) of the *Auditor General Act 2006*, may enter into an arrangement with any person or body to carry out an audit for or in relation to the person or body or to provide services to a person or body that are of a kind commonly performed by auditors. The arrangement may provide for the payment of fees to the Auditor General. If such an arrangement is entered into then the Auditor General may carry out those audits and provide those services.

Why has recommendation 54 seemingly been largely ignored by the government? Why was the Auditor General not consulted about this bill? The Minister for Regional Development would be expert in this. Remember that 14 people were consulted on this bill. This is information that was provided by the government. On this point, the government decided not to be top secret. It has at least let us know the names of the 14 people who were consulted. They were, first, the Department of the Premier and Cabinet's Aboriginal policy and coordination unit. Remember, members, that we are going to get a second reading contribution from the Minister for Regional Development to let us know how the opposition can break open the doors of that particular unit. They were also the Ombudsman; the Australian Charities and Not-for-profits Commission; the Office of the Registrar of Indigenous Corporations; the Law Society of Western Australia; the Western Australia Police Force; the Information Commissioner; the Chief Justice of the Supreme Court of Western Australia; the Public Trustee; the Department of Mines, Industry

Regulation and Safety; the Western Australian Bar Association; the Charity Law Association of Australia and New Zealand; Senator Pat Dodson; and last, but definitely not least, Alan Sefton, Senior Counsel, who of course authored the report. They are the 14 people whom the government consulted on the bill that is before us.

The Sefton reports recommended that the Auditor General be front and centre in these inquiries, yet the Auditor General has not been consulted by the government. Why is that, Minister for Regional Development? I hope there will be some response. It seems inappropriate that there has been no consultation with the Auditor General. Perhaps in the meantime someone has decided to contact the Auditor General and get her view on these matters. In any event, we need an explanation of why the government wants to give this job to the Ombudsman and not the Auditor General. I hasten to add that there may be a rational, logical and reasonable explanation. We simply want to have that on the record so that it is clear why this job should be given to the Ombudsman.

I note that following this report from Mr Sefton, the Attorney General said that he had—past tense—referred these matters to the Australian Securities and Investments Commission for appropriate action as a matter of urgency. I would be grateful if the government would update the house on the outcome of that referral. The source of that is a media statement dated 4 December 2018.

It has also come to my attention that subsequent to the Sefton report, there were further behavioural issues with the functioning of this charitable trust. I refer to Alan Sefton's confidential letter to the Attorney General dated 8 November 2018. What, if any, action has been taken by the Attorney General as a result of those further behavioural issues?

I am aware also that, more recently, there was an inquiry by the State Solicitor's Office, at the request of the Attorney General, into the Kimberley Sustainable Development Charitable Trust. Members may be aware of that. On 10 August this year, I asked the following question without notice of the parliamentary secretary representing the Attorney General —

(1) Is an inquiry into the Kimberley Sustainable Development Charitable Trust underway?

(2) If yes to (1), who is undertaking that inquiry and when did it commence?

(3) Further to (2), what is the current status of the inquiry and when is it expected to be completed?

The response was —

(1) No. In accordance with usual practice, the Attorney General, with the assistance of the State Solicitor's Office, has communicated with the trustee of the trust regarding certain issues that have been raised with the Attorney General by members of the community. No inquiry has been established under section 20(1) of the Charitable Trusts Act 1962.

Therefore, the response to the other two parts of the question was "Not applicable".

My question to the parliamentary secretary remains: what is happening with respect to the concerns or issues that have been raised with the Attorney General by members of the community? The Attorney General recognises and acknowledges that certain issues have been raised with him, but no inquiry has yet been established. What is happening with that matter? More particularly, is it intended that the issues that have been raised with the Attorney General will be actioned by the Ombudsman as a result of the passage of this bill?

In conclusion, it would appear that there is much work to be done in the area of charitable trusts to ensure that they are fit for purpose and administered and managed appropriately. Subject to the answers that will be provided in reply to the second reading debate or during further examination of the bill during Committee of the Whole House, I indicate that the opposition will support this bill.

HON KYLE McGINN (Mining and Pastoral — Parliamentary Secretary) [3.20 pm]: It is a pleasure to get up and talk on the Charitable Trusts Bill 2022. As members would be aware, I am a member for the Mining and Pastoral Region. Charitable trusts have had a long history in my electorate and a massive effect on it, and not all good. Hon Nick Goiran touched on some of the things that have happened, particularly more recently, but this issue has been ongoing for a very long time. I, for one, am very happy that the Attorney General took on this issue, put his shoulder to the wheel and is reforming the 1962 act, which is definitely a little outdated.

As all members would be aware by now, I am not a lawyer, so they should not expect as technical a discussion as the one we just heard from Hon Nick Goiran. I will talk probably a bit more from the coalface.

Hon Dan Caddy interjected.

Hon KYLE McGINN: I am only just firing up, Dan! I will talk more from the coalface about what I have seen and heard on the ground. Moving forward, I think we need a better space for traditional owners and native title holders to operate in. If we look back to 100 years ago and at where we are today in terms of the rights of First Nations people in this country, significant steps have been taken—referendums on the right to be included and the right to vote, and

native title. Is all that perfect? A lot of people would have different views about native title, but I believe it is a step in the right direction for ownership of their land.

I had the absolute honour of being close mates with a guy called Brian Manning up in the Northern Territory. Brian was a wharfie who worked on the wharf for most of his life. He used to drive out to the Gurindji strike, or the Wave Hill walk-off, every week in his old Bedford truck to drop off food supplies, like flour and water; he did everything he could to help support their fight for land rights. We all know what happened with that dispute; they sat down at Wattie Creek, I think, for more than eight years. This was the first real opportunity for First Nations people to get rights to their own land. From then on, there has been an expansion of that process. Then came the charitable trusts and the royalties that flow through them from major mining companies. We are talking about massive amounts of money. To put it in context, they deal with companies like BHP, Rio Tinto and Fortescue Metals Group, and sometimes all of them in one area. Millions and millions of dollars can potentially go through these charitable trusts. It can sometimes be very difficult, particularly when there is no agreement within that organisation. If I were to think about some land rights issues, I would look straight back to the Muckaty dispute in the Northern Territory. A decision was made by the federal government after it spoke to one of the five TOs in that area. Four said no and one said yes to an area becoming a nuclear waste dump. When I say that, I mean that literally—it was just a concrete hole in the ground, and people had no real understanding that the waste would leak into the water system and create major issues. Rum Jungle was another land rights issue in the Northern Territory. That area is just out of town near Batchelor. The company never cleaned up its mess and the community suffered with tumours and all sorts of things because of that. This goes back to what I think is the fundamental issue with First Nations rights in this country—they do not have a voice.

I mentioned earlier this morning how passionate I am about seeing our First Nations people creating their own voice, treaty, truth, or Makarrata, in this country, which I understand the new federal government will put to a referendum. I want to put on the record that I believe that everybody in this chamber and everybody listening to this debate should sell that message; they should get educated about what the voice is and about the Makarrata. Thomas Mayor, a leader of the Maritime Union of Australia in the Northern Territory, has written a couple of books about the Uluru statement and about his journey with elders with the actual document, the Uluru Statement from the Heart, which was signed by 1 200 Indigenous leaders around this country. He has been travelling nonstop for five years now to try to get support. We are now in a position in which we will have a referendum to give our First Nations people the opportunity to have a voice in this country, so that they can tell the truth and reflect honestly about what happened when this country was invaded. Only then will we be able to move forward as one. On Australia Day, I love to hear the stories about the massacres and about what happened when communities were driven out of areas.

Hon Rosie Sahanna is on urgent parliamentary business today, but she has a real view on charitable trusts and I know that she was looking forward to putting some comments on the record. One thing I am really proud about is that during this term we are in the chamber with the first Indigenous woman to be elected to the upper house. The election of the first Indigenous woman to this chamber in 2021 was seriously overdue. I have to say that I am quite lucky to share the electorate with Hon Rosie Sahanna. I am sure she will not mind me saying this, but she has one massive story to tell about where First Nations rights have come for TOs and charitable trusts, but she also has a really sad story to tell around the stolen generation and the truth around what happened. I believe she is writing a book. I think every member in here should get hold of that book, because her story about her life, her father and the stolen generation is really touching.

Going back to the issue of charitable trusts, I think there are TOs and prescribed bodies corporate that have native title royalties running through them that do work in a decent way, but then we also heard the example that Hon Nick Goiran spoke about. I think it would hurt Hon Nick Goiran's back to carry that report around!

Hon Matthew Swinbourn: Has he read every page?

Hon KYLE McGINN: I have no doubt that Hon Nick Goiran has read every single page of that report. I am surprised that I have not seen the multicoloured stickers on the side. There they are! I normally do that to make it look like I have read something.

Hon Matthew Swinbourn: You are not supposed to admit that.

Hon KYLE McGINN: If I am anything, I am a man of truth. My missus would laugh, but I have street smarts and not so much lawyer smarts. To touch back on the bill, and not just my uneducated experiences, I would like to get back to where it all came from. It came from the Njamal report and its recommendations. The background and history is that on 6 December 1962, the current act came into operation. That was a very long time ago. There have been some changes in that time. In 2018, the Attorney General tabled the *Report on Njamal people's trust*, referred to by Hon Nick Goiran. It contained 21 recommendations and sub-recommendations for improvements to the law on charitable trusts. On 5 October 2020, cabinet approved the drafting of the bill to repeal and replace the current act. In June 2021, a consultation draft paper of the Charitable Trusts Bill was sent to 14 stakeholders for comment including the Department of the Premier and Cabinet Aboriginal Policy and Coordination Unit; the Ombudsman; the Australian Charities and Not-for-profits Commission; the Office of the Registrar of Indigenous Corporations;

the Law Society of Western Australia; the Western Australia Police Force; the Information Commissioner; the Chief Justice of the Supreme Court of Western Australia; the Public Trustee; the Department of Mines, Industry Regulation and Safety; the Western Australian Bar Association; the Charity Law Association of Australia and New Zealand; Senator Pat Dodson; and Alan Sefton, SC. Senator Dodson is an amazing member of federal Parliament. I cannot talk highly enough about the work the senator does in the Kimberley and across Australia as a whole. The man is known for reconciliation. I can see why Hon Nick Goiran would be interested to know what the submission was. I think I could go up and have a good chat with the senator.

Hon Nick Goiran: Can I correct the record there, because I know the member is doing this genuinely? I do not necessarily need to have the submission of Senator Dodson. I just want to know whether concerns were raised by any of the 14 stakeholders.

Hon KYLE McGINN: I will correct the record. The member said he did not want to know who raised concerns, just what the concerns were. I know that someone could probably go up there and knock on Pat's door and have a chat with him because he is a pretty open guy. I am heading up to Broome tomorrow, actually.

Several members interjected.

Hon KYLE McGINN: I know the Attorney General has been in the Kimberley quite a bit. I have seen the Attorney General in Kununurra and in Broome. He gets up there quite often.

Hon Nick Goiran interjected.

Hon KYLE McGINN: I am just saying that I know the Attorney General has been up there and talks with stakeholders. I think even the parliamentary secretary has been up to Broome.

Hon Matthew Swinbourn: I have, yes.

Hon Nick Goiran: I think the whole Labor caucus has been up there, haven't they?

Hon KYLE McGINN: That was Karratha, I think.

Hon Nick Goiran: Oh, right.

Hon KYLE McGINN: I think the Liberal Party went to Rottnest, but that was a few years ago.

Hon Nick Goiran: It was quite a few years ago.

Hon KYLE McGINN: Yes. It was a good year.

Hon Alannah MacTiernan: I think it was Garden Island. They only needed a small amount of accommodation.

Hon KYLE McGINN: I was not going to go that far. I was trying to be genuine! Sorry about that, honourable member.

Hon Nick Goiran: If Sue were here, you wouldn't behave like this.

Hon KYLE McGINN: I am sure that the leader, who is on urgent parliamentary business, will read the transcript.

Hon Alannah MacTiernan: No, she is listening online.

Hon KYLE McGINN: She is probably listening right now and I am probably going to get a text message in a minute saying, "Get on with it!"

Several members interjected.

The DEPUTY CHAIR (Hon Dr Brian Walker): If the chair could bring you back to the topic, that would also be very much appreciated.

Hon KYLE McGINN: Deputy chair, please draw me back in! The unruly interjections are getting to me.

There are four key parts to this bill. Firstly, there will be schemes for property held for charitable purposes, which is in part 3 of the bill. Secondly, there will be the investigation of charitable trusts by the Attorney General and a newly established Western Australian Charitable Trusts Commission. It is constituted by the Ombudsman and is in part 4 of the bill. Parliamentary secretary, I would be interested in knowing more about how that newly established commission is going to be constituted. Obviously, it will be by the Ombudsman, but I would be interested to know what the make-up will be. Thirdly, proceedings on charitable trusts in the Supreme Court will better regulate individuals involved in the administration of charitable trusts. I think the point here is that people who are not even involved with the traditional owners or have any stakeholder rights in the native title are involved in charitable trusts. Correct me if I am wrong, parliamentary secretary. For example, they can be brought in from outside and are not connected to the native title.

Hon Matthew Swinbourn: Yes, a trustee might be if it is a corporation or something of that kind.

Hon KYLE McGINN: That has caused a lot of difficulty, particularly with prescribed body corporates. The fourth part of the bill will permit certain trusts to make tax-deductible gifts to eligible recipients for philanthropic purposes

when those recipients have a connection to government, such as public hospitals, museums and art galleries. That is in part 6 of the bill. The bill will also preserve the charitable trust status of certain recreational facilities and provide protection from liability for people performing functions under the law. These parts will differ from the current act and there are obviously going to be a lot of changes. I am intrigued to hear the second read response from the parliamentary secretary to give us a proper understanding of all the changes that will take place.

I can assure members that Hon Rosie Sahanna is watching as well and wants to put some comments on the record when she comes back from urgent parliamentary business, maybe in the next sitting week.

I am looking forward to the enactment of this bill and some changes happening within charitable trusts. I would like to put on the record that I want to see some changes within native title as well, particularly the lack of native title determination in the goldfields. After five years of working out in the goldfields, I can tell members than not having a native title determination has caused a lot of angst and issues, particularly failing to let us move forward. That is the case in the Murchison as well. There are a couple of other areas. I speak of the goldfields because I know there are four or five native title groups. It was really disappointing that the Goldfields Land and Sea Council, which had determination rights for native title, was stripped of that right. I understand that there were reasons but no focus was put on the goldfields, with the new determinant, to get determinations done on native title. Some mining companies have been working there for years and years with totally backdated royalties that would add up into the billions, if we were to put it all together from the goldfields region. Even mining companies now, believe it or not—it shocked me—are lobbying federal government for a determination because there is genuine want to work together on progressing the First Nations economic values, voice and culture within the goldfields. That cannot be done without a determination. We have only to look at the Kimberley as a prime example.

I am sure everyone in this chamber, including Hon Nick Goiran, has heard of Yawuru. Yawuru does a fabulous job. If Hon Nick Goiran has not been up there before, I strongly suggest going up and meeting with Yawuru in Broome because it is an amazing corporation in what it does, how it looks after its people and how it utilises the royalties that come in. If there is an example of what I would like to see happen, it would be very similar to that. We had the Noongar determination as well, which I have seen rolled out across to Esperance. What is the name? It is unbelievable what the Tjaltjraak are doing down there, including looking at housing, for example, and how it can invest in housing to ensure that generations of Noongar people can own their own houses in the Esperance region. It is absolutely amazing. That came from native title determination. Up towards Norseman is the Ngadju, then moving up from the goldfields there has not been a determination. I hope the parliamentary secretary is listening to me very closely as I speak on native title. I know it is a very big federal issue but I think it is definitely a disadvantage to the goldfields not having that voice enshrined out there. This bill will go a long way in ensuring transparency back to the system. I thank the Attorney General for taking the time to work hard on getting this bill before us in the upper house today.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [3.39 pm] — in reply: I thank Hon Kyle McGinn for his contribution to the debate on the Charitable Trusts Bill 2022 and for his interest in this matter. He raised a number of interesting points that I am sure we will deal with as we go along. I thank Hon Nick Goiran, not for his entire contribution to the second reading debate, because there were elements that I did not quite appreciate, but in general I accept the good faith in which he has engaged on this bill. Hopefully, in my reply I can address to his satisfaction a number of the matters that he raised; however, as is always the case in a reply, I am not necessarily going to be able to drill down to the detail that he needs, and there were things that he raised at the end of his contribution that we are somewhat scrambling to get answers to, so they might be better off being dealt with in committee. Unfortunately, we probably will not resolve the bill today, but there might be opportunities for advisers to take those matters on notice so that we can come back to him. Again, I thank him for his contribution to the second reading debate.

I appreciate the opposition indicating its qualified support for the bill. I think that is a positive thing. Obviously, we will be able to compare the nature of the Committee of the Whole House debate with that of some other matters on the notice paper that were dealt with earlier this week, but the opposition alliance's support for this reform gives reassurance to those who will benefit from this significant reform.

The bill will provide for the most comprehensive legal framework in the nation for regulating and responding to concerns relating to charitable trusts. In reflecting on the history of charitable trusts, the 1962 act was based on a New Zealand law, and there has not been a lot of law reform around charitable trusts in Australia or New Zealand since then. There have been a number of amendments to the 1962 law but nothing of a radical nature. It is well beyond time that this was revisited, as has been done. This bill is one that this Parliament and, ultimately, the state as a whole can be proud of.

I can let the house know that the Attorney General has been fielding inquiries from other jurisdictions about the bill, which may well serve as a useful blueprint for other states and territories to consider adopting. Obviously, Western Australia, being as large as it is and having the Indigenous population and the native title issues that it has, is quite rightly leading the way. As I say, other states are looking to us to see how we proceed. Further to that, I can let the house know that on 23 September this year, the Attorney General, together with a representative of

the State Solicitor's Office, attended a public hearing conducted by the South Australian Legislative Council's Aboriginal Lands Parliamentary Standing Committee and responded to various questions about the bill, particularly the creation of the Western Australian Charitable Trusts Commission. We obviously welcome the interest from that state and our counterpart Legislative Council committee.

The Attorney General is responsible for the protection of charitable trusts. That is the genesis; it is a historical one, and it will continue to be the state of affairs under this bill. It is reflected in the supervisory powers conferred on the Attorney General by law, including powers to conduct an inquiry under our Charitable Trusts Act 1962. However, the severe limitations of the current act were brought to the fore as a result of the inquiry initiated by the Attorney General in May 2017. Not that we are allowed to have props, but that inquiry was used almost as a prop by Hon Nick Goiran. The Sefton inquiry, or the Njamal inquiry as it might be more formally known, was conducted by Mr Alan Sefton, Senior Counsel, and now State Counsel at the State Solicitor's Office, to examine the Njamal People's Trust. As was observed by Hon Nick Goiran, not only did the now State Counsel make recommendations that specifically related to that trust, but also he valuably made a broad range of recommendations about legislative change that would modernise our charitable trust laws in Western Australia and bring more rigorous oversight of those entrusted with the management of charitable trusts. I can advise the house that Mr Sefton is supportive of the bill, which will give overwhelming effect to his recommendations.

During Hon Nick Goiran's contribution, he inquired about the extent to which recommendations 55 and 61 will be implemented by the bill. I am pleased to advise the house that, in our view, both recommendations will be implemented by the bill. Starting with recommendation 55, this recommendation will be given effect by not only clause 40, as noted by the member, but also clause 36. Clause 40(4) provides that a person may object to complying with the requirement to provide an investigator with a document or other information, or any other assistance that is reasonably necessary, by specifying a reasonable excuse in writing.

Under clause 40(5) of the bill, it is not a reasonable excuse to assert a privilege against self-incrimination or, if the person is a trustee of the relevant charitable trust, legal professional privilege. A series of safeguards in relation to the use of the otherwise privileged documentation or information have been built into the bill consistent with recommendation 55, and these safeguards can be found at clause 36, in particular subclause (5), which provides that any documentation or information compulsorily disclosed is not admissible into evidence in criminal or civil proceedings except when the disclosure is for the purpose of certain specified proceedings where the public interest in the protection of charitable trusts is considered paramount. Those are proceedings for an offence of providing false or misleading information to an investigator under the legislation, and I refer the member to clause 39; or an offence of failing to comply with a requirement, and I refer the member to clause 40(2); as well as civil proceedings for directions to remove the trustee or otherwise in respect of breach of trust. Subclauses (1) and (2) of clause 36 provide that when privileged documents or information are given to an investigator, legal professional privilege that relates to a trustee is abrogated only in relation to the administration of the trust. The subclauses otherwise protect legal professional privilege by confirming that provision of the information to an investigator does not amount to a waiver of that privilege.

Turning to recommendation 61, I am also pleased to advise the house, and the member in particular, that clause 47(3) of the bill will give effect to recommendation 61. The subclause provides that in charitable trust proceedings in the Supreme Court, the court is not bound by the rules of evidence and may be informed and conduct the proceedings in any manner the court thinks fit. In doing so, the subclause will ensure that information based on information or belief can be admissible in evidence, as can the decisions and findings of other regulatory bodies such as the Australian Securities and Investments Commission.

An overhaul of the current framework is essential in a state like ours, where millions of dollars in native title benefits are held in charitable trusts intended to benefit the native title holders' communities. I note that Hon Kyle McGinn made reference in his contribution to Hon Rosie Sahanna, who is out of the chamber on urgent parliamentary business. I am aware from my discussions with Hon Rosie Sahanna that she wanted to make a contribution to the debate on this matter. If we are still on clause 1 of the bill by the time she is able to return, I hope that she might be granted the leeway to make a contribution at that time, because she has stuff that she wants to say. Particularly given her personal circumstances and background, it might be of benefit to the house to hear what Hon Rosie Sahanna has to say.

Of course, the extensive reform encapsulated by this bill will benefit many forms of charitable trusts in this state, not just those that relate to native title. One of the cornerstone features of the Charitable Trusts Bill is the creation of the Western Australian Charitable Trusts Commission. The commission will be equipped with extensive investigation powers akin to those of a royal commission to ensure that charitable trusts are managed in accordance with the objects of their trust deed.

I might just make a bit of an aside comment here for members who might be getting confused. Charitable trusts are in effect a private matter; they are not a public instrument. Therefore, it is unusual for the government to intervene

to the level that we have with charitable trusts, in what is otherwise a private arrangement. We do not obviously involve ourselves in the management of other trusts to the same degree. However, it is the unique nature of charitable trusts that really drive that necessity to have these reforms, and the previous matters, because, obviously, the nature of a trust is that we have the person who creates the trust—the donor, if I remember rightly—then we have a trustee who holds the property, and then we have the beneficiaries. Of course, in charitable trust interests, the beneficiaries are not technically individuals; they are purposes. A charitable trust is a trust for purposes and not individuals. It therefore gives greater rights for an interest for the state to be involved in their administration and to help address any defects.

The bill will create the Western Australian Charitable Trusts Commission. It will be equipped with extensive investigation powers—I have already said this—akin to a royal commission, to ensure that charitable trusts are managed in accordance with the objects of their trust deed. The powers will ensure that the commission is able to require the production of documents or information and to compel the attendance of witnesses at any required hearings. These powers do not exist under the current act.

Hon Nick Goiran also identified that the government has elected for the Ombudsman rather than the Auditor General to constitute the Western Australian Charitable Trusts Commission. The Ombudsman performing this investigatory role is an improvement on the current situation in which either the State Solicitor's Office undertakes an investigation or an external consultant is appointed. This is no reflection on the State Solicitor's Office in terms of its capacity, but it does not exist for the purposes of investigating charitable trusts. It obviously has another role, but that is essentially what it has been tasked to undertake under the existing regime.

The Ombudsman has the resources and experience to deal with a variety of complaints. It routinely visits regional and remote communities; we are getting to the heart here, member, of why we have chosen the Ombudsman rather than perhaps the Auditor General. The Ombudsman has a particular set of attributes that we think are most apposite with the kind of role we will be creating in the Western Australian Charitable Trusts Commission. The Ombudsman routinely visits regional and rural communities, including Aboriginal communities, which we know will be significant beneficiaries of this reform because of the native title issues that particularly apply to them. The Ombudsman's role includes educating people about their rights. It also has experience with assisting people whose first language is not English. We think the Ombudsman is well-placed to assist Aboriginal communities, in particular, with the problems involving charitable trusts. The Ombudsman is very much a public-facing organisation when compared with the Auditor General who has a different role. Therefore, in terms of public interaction with the Auditor General or the Ombudsman, we see it is more advantageous for the Ombudsman, in terms of the objects of the bill, to perform that role than the Auditor General.

I have also heard and wish to address the concern raised by Hon Nick Goiran about the capacity of the Ombudsman and his office to undertake these additional functions when he is acting as the Western Australian charitable trust commissioner, particularly the other tasks and functions that will be performed by this commission. The office of the Ombudsman was consulted during the preparation of the bill and that consultation enabled it to consider closely the functions that are to be performed by the Western Australian Charitable Trusts Commission. Having considered those functions—I am reflecting here on the Ombudsman's views, but we have a foundation for this—the Ombudsman remains happy to take on those additional functions and, more generally, he is supportive of this bill.

To support the office of the Ombudsman in undertaking these new functions, the office will receive a 0.4 FTE of a senior legal officer and a 0.2 FTE of a senior investigations officer. That is the commitment we have made to resourcing the Ombudsman at the outset. With the aim of addressing the member's concerns that the bill will confer yet more significant functions on the Ombudsman, I can say that as recently as late last month, the office of the Ombudsman confirmed that with the additional resources that I mentioned, the office will have the resources and the capacity to take on these functions, in addition to the Ombudsman's existing functions as well as the functions that have recently been conferred on the Ombudsman by the passage of the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021 and the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. We have, therefore, engaged very directly with the Ombudsman about, first, giving him the role and, second, what resources will be needed, ensuring that we will provide the resources that, at this stage, the Ombudsman has asked for.

As an aside, it is contemplated by government that for the Ombudsman to take on this role, it may be that over time there is a need for additional resources, because there might be a flurry of complaints about a particular charitable trust that might lead to the necessity of an inquiry like the Sefton inquiry that the member referred to, and then the Ombudsman is, of course, available to come back to the government to let us know about those demands and then the consideration of those normal processes will be given to that sort of thing.

Hon Nick Goiran: In fairness, I think the resourcing issue is a question irrespective of who had it.

Hon MATTHEW SWINBOURN: Yes, I wanted to make —

Hon Nick Goiran: It has been addressed.

Hon MATTHEW SWINBOURN: Yes. But I also want to reflect on the fact that the nature of inquiring into these charitable trusts might be a feast or famine kind of issue, and rather than creating a standalone charitable trusts investigative body that sits outside, it is more appropriate to give it to an existing powerful and confident investigative body.

Quite apart from the creation of the commission, the bill will also expand the Attorney General's power to apply to the Supreme Court to seek orders to remove a trustee or, more broadly, any person involved in the administration of a charitable trust in certain circumstances. In doing so, it will put the Attorney General in a better position to fulfil his role as the protector of charitable trust property. I think that a deficiency with the current law is the inability to remove the trustees when they are not doing the right thing because naturally we do not want somebody continuing in that role.

I might, at my peril, move to the issue of consultation. I do not think anything I am going to say is going to satisfy the member. We have been through this dance a number of times, as the member often points out to me. It is not a defence of government's position or my position, but I am the parliamentary secretary, I do not make the decision in respect of that. It is not an excuse; it is just context, and I think the member understands that anyway. The member alleged that there was a lack of transparency by the government regarding the consultation process embarked on for this bill. I note that, as shadow Attorney General, the member correctly observed that during the briefing of the opposition on the bill the names of the 14 stakeholders who were sent a consultation draft of the bill was provided. The opposition was informed that the consultation process was undertaken on a confidential basis and that stakeholder feedback was taken into account in finalising the bill now before us. As the member noted, he has no issue with the government undertaking confidential consultation with stakeholders, and we agree that there is no issue with such consultation, and in fact that is precisely what occurred here. We have already confirmed that State Counsel Mr Sefton, Senior Counsel, is supportive of the bill.

Hon Nick Goiran: In some respects that is then disclosing the confidential feedback. You are passing on that he is supportive of it. That is good for us to note, particularly given his status. But I fail to understand why it is okay for the government to disclose the feedback of one of the stakeholders and not the other 13.

Hon MATTHEW SWINBOURN: I cannot get into that. We can have a philosophical debate about whether that is appropriate. The member has made very, very clear his position on consultation, and what he expects from consultation and disclosure by government. I am limited by the materials given to me that I have in my hand. I can disclose to the member only what I know. Having said that, the member pointed out we have disclosed the position of Mr Sefton, Senior Counsel, in relation to his support of the bill. I accept that one cannot just go to Mr Sefton and ask his opinion, because he is the State Counsel. His obligation is to the government; any advice the government seeks from him is protected by legal professional privilege, and he cannot disclose that to the opposition. I accept that, and I accept it with respect to the other government agencies. However, as I said, there is probably another debate to be had about how useful consultation will be if we have to disclose all the elements of it, because that may have a chilling effect on some public servants in terms of what they are prepared or not prepared to say to elected government decision-makers, and vice-versa. There are probably tomes that have been written by political scientists on what is and is not appropriate. As I said, this is a dance we have danced before, member. I cannot take the arguments further. My instructions are that the consultation was in confidence. To give the member what he has asked for would be a breach of that confidence. I am sure we will —

Hon Nick Goiran: Except for Mr Sefton.

Hon MATTHEW SWINBOURN: Except for Mr Sefton, yes, and the Ombudsman, because as I indicated, the Ombudsman was supportive. Having said that, the member is in a position to go and talk to the Ombudsman. He is an independent officer of Parliament, so he is free to express his views without any restraint from government. Whether the member does that or not is entirely a matter between him and the Ombudsman.

Hon Nick Goiran: I may have indeed consulted some of the other 14 stakeholders.

Hon MATTHEW SWINBOURN: The member may very well indeed have done so.

Hon Nick Goiran: I might have gone out into the community, as the Minister for Regional Development suggested.

Hon Alannah MacTiernan: Oh, my God. Climbed out of the basement?

Hon Nick Goiran: We'll find out a bit more when we get to clause 1.

Hon Alannah MacTiernan: Into the daylight!

Hon MATTHEW SWINBOURN: I thank the Minister for Regional Development for her help.

Hon Nick Goiran: I'm helpful as always!

Hon MATTHEW SWINBOURN: Yes. But in this instance, I think Hon Nick Goiran goaded the minister into that. Moving on!

Hon Alannah MacTiernan: No, I enjoy it!

Hon MATTHEW SWINBOURN: I know that; that is part of the problem!

As indicated, Mr Sefton is supportive of the bill and has confirmed that it implements the recommendations of his inquiry into the Njamal People's Trust. The Ombudsman has reviewed the bill and is supportive, and he is able to take on the new functions conferred upon his office. Stakeholders were generally supportive of the bill; however, we do not propose setting out in detail the nature of the confidential feedback on the bill.

I move now to some further questions asked by the shadow Attorney General regarding the minor amendments to the bill that were put and passed in the other place. These amendments were made to clarify the intended operation. As the member would probably be aware, there were a number of amendments, and some of those were consequential on the passage of the Legal Profession Uniform Law, so they are understandable amendments; it just needed to be updated. The more significant ones related to the operation of part 6, and I will deal with each of the amendments in turn. For ease of reference, I have grouped them into three bundles of amendments.

The first amendment corrected a drafting error in the definition of "property held for a charitable purpose" in clause 4, with the addition of the word "for". The definition now reads that such property —

> means property that is held on trust for, or is otherwise to be applied to, a charitable purpose.

As I have mentioned, the second set of amendments were consequential in nature, arising from the assent of the Legal Profession Uniform Law Application Act 2022 on 14 April of this year, being a short time after this bill was introduced in the other place. The amendments involved replacing the redundant reference to the Legal Profession Act 2008 with the equivalent references to the Legal Profession Uniform Law Application Act 2022. The third and probably more critical set of amendments clarified part 6 of the bill. Part 6, for those following at home—I am sure there are thousands of them —

Hon Stephen Dawson: I am following here, so I would appreciate the guidance.

Hon MATTHEW SWINBOURN: Part 6 relates to gifts by certain trusts for philanthropic purposes. The amendments were made in response to stakeholder feedback—this was after the bill was introduced—from Professor Ian Murray, and —

Hon Nick Goiran: Presumably this was not confidential feedback.

Hon MATTHEW SWINBOURN: No, because the bill had already been tabled in Parliament. Let me get through my stuff, and then you can make —

Hon Nick Goiran: I am not helping.

Hon MATTHEW SWINBOURN: In your own way you are, member, as always.

That feedback from Professor Ian Murray and Herbert Smith Freehills on behalf of the Charity Law Association of Australia and New Zealand was received after the bill had been introduced and the second reading speech given in the other place on 7 April this year. The amendments do not address new issues but rather clarify the intention that trustees of certain trusts can continue to make tax-deductible gifts to eligible recipients and maintain their charitable status under commonwealth law. Clauses 53(2) and (3) were amended to refer to "former prescribed powers", rather than just "prescribed powers". Given the definitions of the various terms, the remainder of each of these clauses makes clear that the initial reference to a prescribed power is incorrect. The subclauses instead refer to a former prescribed power—that is, a prescribed power under the current Charitable Trusts Act 1962. The amendments correct this error.

The final amendment saw clauses 53(4) and (5) replaced with one new clause 53(4), which reads —

> The former prescribed power is, on and after new commencement day, taken to be a power for the purposes of section 51.

This change has been made to avoid any mismatch between the commonwealth and state legislation, and is consistent with the policy of the changes in this part to align the state and commonwealth charity legislation. In its place, new clause 53(4) will operate as a deeming provision that will ensure that a former prescribed power is taken to be a prescribed power for the purposes of clause 51. In doing so, the subclause will ensure that the existence or exercise of a former prescribed power, like a prescribed power, will not affect the validity of the charitable trust as a charitable trust, or the application of property of the trust as allowed by a power.

I think I have covered a lot, but I do not know that I have covered everything.

Hon Nick Goiran: I am not expecting it to be done off the cuff, but perhaps it will assist in preparation for clause 1, whenever that might be. The only other thing that seems to me to perhaps have not been touched on yet is that—you might remember—I referred to the media release by the Attorney General and those referrals to ASIC, and what might be happening with regard to that.

Hon MATTHEW SWINBOURN: I do not currently have any information to provide to the member. I just do not have that at hand. I think I indicated that we are effectively taking that on notice.

Hon Nick Goiran: We'll deal with it under clause 1.

Hon MATTHEW SWINBOURN: It would be nice to pass the bill in the next 22 minutes, but, realistically, I understand that that is not going to happen.

Hon Nick Goiran: If it hadn't been for the unruly interjections, then it might have been a possibility! Let's proceed while the member is away on urgent parliamentary business.

Hon MATTHEW SWINBOURN: In summary, member, we both agree that this is an important reform of a very important area of law. I think that, upon the passage of the bill—I presume, given the numbers in the house and also the indication from the opposition—it will be something that we will be able to be proud of as a particular law. I suppose we do not normally talk about being proud of laws, but I think this will create a new regime for accountability within the charitable trust environment. It will help to give effect to those members of the community who wish to gift property to charitable trusts and make sure that the gifting of the property is consistent with their wishes. That is probably something that we have not touched on very much, but it is an important reform. It will make sure that when Ms Smith wants to donate her property to the south metropolitan cat home when there is no south metropolitan cat home, but there is an east metropolitan cat home that, effectively, that gift will not fail, for want of specificity in the creation of that gift. For example, if someone wants to donate money to a hospital, but they create a trust that makes it nowhere near possible to do that, that money can still be appropriately applied to what they intended, and that sort of thing. The bill will simplify and also bring about those matters. It is quite important because it is quite different from the native title stuff that we have talked about, but it is actually something that happens out there. Gift giving through wills is becoming more common, so it is important that we make sure that the laws that relate to those sorts of things work for people.

With those perhaps longwinded comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon NICK GOIRAN: We are considering clause 1 of the Charitable Trusts Bill 2022, which, amongst other things, will repeal the Charitable Trusts Act 1962. Was consideration given to amending the current act rather than repealing it and substituting it with a new act?

Hon MATTHEW SWINBOURN: The advisers at the table were not present at the very beginning of the institution of that so the advice I have been given is somewhat qualified. That was considered, but as to why and who made the decision to repeal and replace the existing act rather than amend it, I do not have that person at the table, if I can be so straightforward. What I will say is that moving on from that, the rationale is that, given the extensive changes, and in consultation with Parliamentary Counsel's Office, drafting a new act was considered much more appropriate than trying to amend the 1962 act, which, as I understand it, was amended once in 1998 and is substantially drafted in the way that 1962 acts were drafted, not in the manner in which we draft legislation in more modern times. There was also an amendment act in 2011, but substantially the act had not changed from the time it came into force. I am not sure when it came into force, but it was dated 1962.

Hon NICK GOIRAN: Noting that clause 56 repeals the Charitable Trusts Act 1962, perhaps that question could be taken on notice and we could get some more advice by the time we get to clause 56.

Hon Matthew Swinbourn: I think we will get more advice for you on that.

Hon NICK GOIRAN: I will foreshadow where I ultimately want to go with that. Are there any elements within the 1962 act that are being repealed as a result of this bill and not replaced in the bill before us—some type of special provision or special power of which there is no equivalent provision here? Obviously, the general purpose of this bill is to have an enhanced, modern scheme. There are many elements in this legislation that plainly do not exist in the current act. Are there any special provisions in there? That is where I would like to go when we get to clause 56.

In the meantime, with respect to the consultation process, the parliamentary secretary mentioned that two of the individuals—Mr Sefton and also the Ombudsman—expressly indicated their support for the bill, notwithstanding the fact that it was a confidential stakeholder engagement process. The parliamentary secretary mentioned that Mr Sefton and the Ombudsman indicated their support for the bill. Did they express any concerns?

Hon MATTHEW SWINBOURN: At the risk of regretting this at a later date, I will indicate to the member what was said in relation to those two individuals, but on the understanding that it does not open the door for everybody else.

Hon Nick Goiran: Also to be clear on this ongoing dance, shall I say, I accept that on a case-by-case basis, this can happen. The fundamental problem for me is when the government says, "We're not even going to ask the person if they're prepared to have the information revealed." If the Ombudsman, who I have always found to be an extremely transparent individual and all of his feedback says, "No, I've got no problems with you saying it", then I think it should be provided to Parliament, so there is context.

Hon MATTHEW SWINBOURN: I take on board what the member has said. What I can say about Mr Sefton, Senior Counsel, is that he supported the bill, notwithstanding the departures from his recommendations. He was clear on the rationale for that and took no issue with why we had done that.

In relation to the Ombudsman, again, he was extremely supportive—I will be careful with my words—of the bill but picked up a particular drafting issue. He supported the bill in its entirety, but he raised an issue with clause 29(2), saying that it did not include reference to the deputy commissioner when acting in the office of the parliamentary commissioner. That was a drafting issue that was addressed by Parliamentary Counsel's Office. That was the only issue that he took with the bill.

Hon NICK GOIRAN: For the sake of this ongoing discussion, because this will not be the first or last time it happens, I want to identify that that is precisely what we are talking about. There has been consultation with two key people, and one of them will inherit the whole job—the Ombudsman. He has indicated he is happy with the bill. He is satisfied he has the resources to do the job. At one stage he raised an issue with the drafting and it has been addressed by the government. We moved on very quickly as a result of that. I feel that the opposition has done its job. It has asked a question that needed to be asked. The government has responded satisfactorily and we moved on swiftly. To the extent it is possible for that to be replicated in the future, I encourage that for not only on this bill but also others. It is also helpful to note that somebody like Mr Sefton, who authored this mammoth report—which I think Hon Kyle McGinn has gone away to read at length—has been expressly consulted about it, including on whether it should be with the Auditor General or the Ombudsman and has not raised any concerns with the government.

Hon Matthew Swinbourn: Perhaps by way of interjection, I give the member further comfort. The agency with carriage of the development of this bill has been the State Solicitor's Office, rather than in other circumstances when it has been the Department of Justice. The member knows that Mr Sefton is within the State Solicitor's Office as State Counsel.

Hon NICK GOIRAN: That is good. This is the only mechanism by which we can find out that information. We would not be able to, as someone has suggested, get out into the community and find this information by going and speaking to Mr Sefton.

This will be the new regime for all charitable trusts in Western Australia. Does the government have a register of these trusts?

Hon MATTHEW SWINBOURN: No. There is not a state register of charitable trusts. I will give the member an insight into why that is an impossible task. Every will that seeks to gift a property for a charitable purpose effectively creates a charitable trust; therefore, that is largely a private matter between the person who has created the will and whoever the beneficiaries might possibly be. That might not be disclosed, because it could be a matter subject to privilege between a lawyer and their client. We could not practically create a list that registered all those charitable trusts. However, the Australian Charities and Not-for-profits Commission has on its register trusts that are charitable trusts if they have registered to be a charity for the purpose of gift giving and tax deductibility and those sorts of things. To benefit from those sorts of things, they are required under the commonwealth regime to register as a charity. There is, in effect, a public register of a certain number of charitable trusts but it does not capture all of them.

Hon NICK GOIRAN: There is no WA-specific register but there is a commonwealth register, albeit a part register; it is not an exhaustive register. The only other question I have on clause 1 that we cannot take up in other clauses is whether there is a list or table that sets out which provisions in the bill give effect to the Sefton recommendations. Perhaps as a helpful starting point, the parliamentary secretary might recall that I mentioned during the second reading debate that it seems to me that recommendations 48 through to 61 in the Sefton report are what would probably be described as legislative recommendations, not inquiry specific or specific trust recommendations. Assuming that the government agrees with that, is there a convenient table that could be tabled that sets out which provisions give effect to recommendations 48 through to 61?

Hon MATTHEW SWINBOURN: We do have a table. We are pretty close to tabling it. However, I think given where we are at, I will just take advice. If we intend to table it, I might give it to the member in advance so that he has the benefit of it. We just want to be sure that it does not contain anything privileged. I do not think it does.

Clause put and passed.

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