EDUCATION AND CARE SERVICES NATIONAL LAW (WA) AMENDMENT BILL 2018

Second Reading

Resumed from 28 August.

HON TJORN SIBMA (North Metropolitan) [3.20 pm]: I am speaking to this Education and Care Services National Law (WA) Amendment Bill 2018 a little earlier than anticipated, but that is all for the good. I believe when I left off my remarks yesterday evening, I was saying that when I looked at this bill, I looked at it through three distinct but overlapping lenses. The first lens is as a parent—as someone who uses the facilities, organisations or institutions dealt with in this bill. Although not all legislation lends itself to this thinking, as some is abstract or a little obtuse, foremost in my mind is the need to extract the very best legislative outcome for members of this community—for working families. I think this bill deals with that. With some indulgence, I think that is germane to this bill, because we want to give parents a sense of confidence in the family day care centres to which they entrust the care of their children. This was new territory for me and my wife earlier this year, and I have to say that it was probably one of the most wrenching emotional experiences of my adult life.

Hon Sue Ellery: Who cried more?

Hon TJORN SIBMA: I do not think anyone in our family can cover themselves in glory on this!

I must say that thousands upon thousands of years of evolutionary experience has set our cells to a certain degree, and I found it a complete and utter wrench to entrust the care of my child to a stranger in what is really a commercial transaction—to effectively dump young Freddie and run.

Hon Alison Xamon: He was not dumped!

Hon TJORN SIBMA: But that is exactly how it felt.

Integral to all of this is a sense of trust and reassurance. Not every family has a suite of options available to them to choose from, but my wife and I, and the grandparents, were involved in evaluating the various centres and the best option for our son. To a large extent that is what many families go through, and they go through this because the composition, the very fabric and nature, of family life evolves, and it has largely evolved for the good. Both my wife and I work full-time; that is an option that suits us both well, but for many families it is an economic necessity. People facing that situation want to be assured that their child is placed in the very best care. I have to say that this has been a learning experience for me. Before I had to put my child in care, I did not give much consideration to early child care and education as a profession and a calling. I just had not considered it. However, having been a stay-at-home dad before I entered this place, my level of respect and appreciation for the workers—the professionals—in this field cannot be calculated. I must say that they are largely women, and I do not think it will be a surprise to some members in this chamber that they are not particularly well paid for the job they do and the responsibility with which they are entrusted. The people who work in this field are largely self-selected. I have made similar observations about the aged-care and disability services sectors. They are not attracted to these professions by large salaries; they go into these professions as a calling or service. These people need to be supported by way of practice, procedure and policy. Therefore, it is integral to their professional performance that the community give them the respect that they well and truly deserve. One way we can give them that respect is by treating their industry and daily practice seriously, looking at the benchmarks to which they are required to perform, and giving consideration to their particular issues. I also want to acknowledge that next Wednesday, 5 September, is Early Childhood Educators Day. Therefore, it is with some serendipity that we are dealing with this legislation now.

In the brief time I have been involved with this sector in any meaningful way, I have been impressed by the standards that I have seen at our child's childcare centre. I have been impressed with the staff's attention to each individual child's social, emotional and cognitive development. When I walked into the centre to deliver my son on the first day, I was a largely unreconstructed male. I have come out of it a little more refined and sophisticated in my understanding of what goes on. For me, the principal objective was to ensure that my son was in safe hands. I did not give much consideration to the kind of development or structure that he might be given in care. It was good enough for me that he was clothed and fed and treated kindly. However, the level of attention, action and support that he is being given is far more comprehensive than that. That was not a matter to which I had given much consideration. However, these kinds of considerations are, if not explicitly, certainly implicitly, addressed by way of this amendment bill.

I do not think my responses as a parent are too dissimilar from the experiences and expectations of other parents and guardians who place their children in a centre for their care and development. However, that is only one lens through which we can look at this amendment bill. The other lens is the general policy desirability of this amendment bill. I believe that in the main, the amendments proposed in this bill have a strong policy foundation. Realistically, Australia does not have a large domestic market in any industry or service line. Therefore, it is important, and achievable, that we provide a degree of consistency and focus in our expectations of service delivery

in this area. Therefore, the concept of a national quality framework that can evolve and is dedicated to continuous improvement and refinement is a sound one. As I mentioned, the decision to place your child or any child in care is one of the most difficult early decisions for new parents to make. They want to ensure that they are putting their child in the very best of care. I was a little frustrated and harried for time in making an objective assessment about where we would put our son, so I acknowledge and support clarification around the certification of excellence in performance and achievement. I will quote from the minister's second reading speech, because I think it is important. It states —

> … strengthening the eligibility criteria for an application for the "excellent" rating as part of implementing the national quality standards. The standards set a benchmark for assessing and rating the performance of education and care services. It is critical that ratings provide accurate and meaningful information about service quality and that the assessment and rating system is sustainable and comparable across services.

I could not agree more with that. I think this is fundamental to the decision-making that any parent or guardian makes. It continues —

> Strengthening eligibility requirements for "excellent" rating: The standards will be complemented by the proposal in the bill to strengthen the eligibility requirements for the excellent rating. The purpose of the excellent rating—the highest possible rating—

We should expect that to be the case —

> is to celebrate highly accomplished practice, innovation and sector leadership in the delivery of education and care to children.

Yes, we should celebrate those things, but they should also be an aspiration to work towards and we should be reassured that when we say something is "excellent" it well and truly is and that excellence in the delivery of service to our children can be expected.

That said, an inner bean counter in me screams for attention and focus. I was somewhat alert to the potential for an additional and unnecessary cost impost to be related to this legislation, but I cannot find one. I do not see increased cost profiles emerging from this and I do not see anything in the way of price increases washing down, through to the parent, which is reassuring. However, there are savings or efficiencies to be gained in the regulatory space from the adoption of the amendments proposed to this bill. It was put to me during the briefing that these are effectively not realised or realisable, necessarily, at the level of the state government and, in particular, at the Department of Communities level. I might seek clarification from the minister when she has the opportunity to advise whether this bill has any consequences on the state budget allocation. I think it is normally under service summary 8, the "Regulation and Support of the Early Education and Care Sector" within the Department of Communities' budget. There does not seem to be much fluctuation in the estimates provided in budget paper No 2, volume 2 of the 2018–19 budget. It is roughly around $13.7 million to $13.8 million. I do not know whether I should see any change in that figure.

Hon Sue Ellery: There is none.

Hon TJORN SIBMA: That is good to be clarified. I wanted to know how that budget line related to this Education and Care Services National Law (WA) Amendment Bill, if at all. I am also interested in the anticipated savings to sector operators themselves. That has not been made clear to me. It might be a minimal amount but I expect there to be some change if an encumbrance is placed on them by their perhaps having to abide by dual regulatory systems. I imagine they are largely consistent with one another but there may be some divergences that create a bit of frustration and agitation. It is in zeroing in on what is the advantage in this and to whom those advantages accrue that I refer to two documents; one is appendix 1, a letter from Minister Simone McGurk dated 12 July, written to my colleague the Chair of the Standing Committee on Uniform Legislation and Statutes Review. It appears within that committee report. I do not want to traverse the findings of that report and pre-empt the contribution my colleague is likely to make to this, other than to say I have sought to see what is driving the anticipated progress of this bill and what is driving the expectations of the government and the minister for its passage. I will use this opportunity to read into *Hansard* a portion of that letter of 12 July, which goes some way to explaining why we are where we are. It may then lead onto my reflections on this bill as a piece of legislation.

The minister writes —

> The Amendment Bill relates to a national regulatory system for education and care services that has been in place since 2012. One of the major benefits of a national system, particularly in safeguarding the safety, health and wellbeing of children, is the ability to pool relevant licensing, operational and compliance information from all states and territories.

> The information system is known as the National Quality Agenda Information Technology System (the National IT System) which is hosted and maintained by the national regulator, the Australian Children's Education and Care Quality Authority.

This has an acronym of ACECQA. "Assequa" might be the most elegant way of putting it together, although the consonants do not really lend themselves to elegance of expression, but there you go! The letter continues —

> The amendments to the National Law that are the subject of the current bill, including changes to information sharing arrangements, commenced in all jurisdictions, except Western Australia, on 1 October 2017.

We are nearly 12 months down the track. To continue —

> Consequently, ACECQA,

It is A-C-E-C-Q-A for Hansard's benefit —

> has been operating two versions of the National IT System —

Hon Sue Ellery: Honourable member, "Asecwa" is what those in the know say.

Hon TJORN SIBMA: "Asecwa"; that is better. It was not Huawei, so we are coming along. There is no prospect of Huawei operating in the system anyway. It continues —

> Consequently, ACECQA has been operating two versions of the National IT System and intends to merge the two systems subject to the passage of the Amendment Bill through the State Parliament.
>
> ACECQA has been working on an indicative timeline of 1 October 2018 to merge the two versions together. If the Bill receives royal assent prior to 1 October 2018, the first commencement provision will apply.

I think the minister is referring to clause 2(b)(ii) of this bill, from memory. I might be wrong, but I think it is largely in the vicinity. The letter continues —

> If this timeline is not met, the merge of the two databases will occur on the first day of the next available month, following Royal Assent and system readiness, for the shutdown of the system to occur and the merge to take place.

The second option, which was inserted as a backup, is in clause 2(b)(ii), which reads —

> if assent day is on or after 1 October 2018 — on a day fixed by proclamation.

I understand all that. There is a system, and a system merger of data needs to take place, and the ACECQA is effectively awaiting the passage of this bill to undertake that system change. I would like some clarity on whether the state government in any way pays a licence fee or service fee to ACECQA to operate a piece of regulatory licence software that is germane only to the Western Australian jurisdiction, and also pays some fee to operate a national system, and whether some cost savings or efficiencies may accrue to the state government as a result of permitting the set of arrangements that would allow for those systems to merge. Nevertheless, it has been my practice as a public servant and as a person working in private enterprise to always be a little wary of having deadlines set for me—this is no disrespect to the hardworking men and women in this sector—by the IT nerds of any organisation, effectively asking me to set my operation and priority around their preferences.

Hon Sue Ellery: They never meet their deadlines.

Hon TJORN SIBMA: That leads me to the next point. I do not intend this to sound hypothetical, but what if we meet this anticipated deadline, and we are still "unserviced" because of an unforeseen technical glitch? Do we lose anything in that process? That might sound trivial, but it is not intended to be so. I cannot help but categorise the undeclared but implied urgency in dealing with this legislation as meeting the requirements and working to the convenience of effectively faceless IT operators based in Canberra. To me, that speaks of the tail wagging the dog. Nevertheless, I fully comprehend the need to facilitate the transition that requires the passage of this amendment bill, but I want to be reassured about whether commitments have been entered into by the state government to ACECQA. Has a commitment been made to this body that, all things going well, we should meet this deadline? If so, I would like evidence of that commitment to be provided. I would also be interested in the substance of conversations between the minister or the department and the operators of these centres about when they should anticipate these changes, and what remedies there might be if, for example, this happens a month or two months later. What would be the material effect of that? I think they are straightforward questions; there are no traps laid in there. We have a deadline to reach. Why do we have this deadline and what commitments have been entered into that seem to be compelling the attention of this house?

Despite the fact that I reflected on the serendipity of us discussing this amendment bill today, a week out from the national day recognising early childhood educators and the fact that Father's Day is only a few days away, I would like an explanation of why Western Australia is the outlier jurisdiction. Although I recognise that the principal

decision driving these amendments and the adoption of the amendments was made by the ministerial council at the end of January last year, why has this bill not been prioritised? This is a complicated bill. I find it strange that we are probably close to 12 months behind the rest of the nation. I thought there would have been ample opportunity to deal with this legislation. I am sure that it has its complications because of its technical and operational focus. Nevertheless, it does not appear to present significant policy or political challenges; the intent is largely sensible.

I want to reaffirm that the Liberal Party supports this bill but I believe that some questions of substance need to be answered. Again, I do not want to steal the thunder of others who might wish to speak to the 115th report of the Standing Committee on Uniform Legislation and Statutes Review other than to draw attention, while I do not mean to trivialise, to a fly in the ointment. Finding 2 of that report, which I will quote and others will no doubt elaborate upon, states —

> The Committee finds that clause 2(b)(ii) —

The one that I mentioned earlier in my contribution —

> of the Education and Care Services National Law (WA) Amendment Bill 2018, in providing that the Executive determines commencement dates, erodes the Western Australian Parliament's sovereignty and law-making powers.

I have not been in this place long but I doubt very much that that committee did not give due consideration to that finding. A number of learned people were on that committee. I would be intrigued to know how the government intends to deal with that not insignificant procedural problem.

HON ALISON XAMON (North Metropolitan) [3.48 pm]: I rise as the lead speaker of the Greens and indicate from the outset that the Greens will be supporting the Education and Care Services National Law (WA) Amendment Bill 2018. I also have a number of questions that I wish to ask during my second reading contribution. It is my hope that the answers to those questions may be given in the minister's reply, in which case, hopefully, there will be no need to go into Committee of the Whole. I thought I would put that on the record from the outset.

This bill will ensure that WA catches up with other Australian jurisdictions to implement reforms to the national quality framework, otherwise known as the NQF. The NQF was implemented in 2012 and reviewed in 2014. Indeed, I stood in this place in 2012 and supported the Education and Care Services National Law (WA) Bill, as it was then, and spoke about that. I expressed some concern about the wages and conditions of childcare workers, in particular. I will say a little more about that in a moment. As I said, the national quality framework was implemented in 2012 and was subsequently reviewed again in 2014. The review identified that the NQF had broad support and appeared to have successfully improved quality—which is what had been hoped when the bill was first introduced—but that there still needed to be better consistency in assessment and ratings, and reduced administration.

In 2017, the Education Council's "Decision Regulation Impact Statement for changes to the National Quality Framework" identified preferred options for changes to the national quality framework. Last year, starting with Victoria, Australian jurisdictions legislated to implement those reforms, and this bill is faithful to the DRIS and the Victorian legislation, which has been the model for the reforms in each jurisdiction.

The changes made include for the highest rating—which is "excellent"—to be made available only to services that are rated as exceeding standards in all areas assessed, which makes sense; tighter provisions relating to family day care services, including where they can operate; a minimum number of coordinators to oversee educators; and improved monitoring. Again, that is another sensible reform. The changes also include repealing the supervisor's certificate process so that providers will now assess staff suitability, overseen by the regulatory authority; and increased use of enforceable undertakings by the regulatory authority as an alternative to suspension or prohibition. I note that only yesterday in this place we were discussing the value of enforceable undertakings as a mechanism for ensuring improvement of services. It also does other things and a fair bit of tidying up, including ensuring consistency of language; removing duplication; increasing flexibility, such as allowing more than one supervisor to be nominated by a provider; providing more clarity, particularly in situations in which responsibility lies with the commonwealth government as opposed to the state government; increasing effectiveness, such as the power to enter without consent; and allowing flexibility where needed, such as the capacity to waive prescribed information requirements in contexts in which they are not actually needed, or in exceptional circumstances, such as a temporary relocation of a service due to flood or fire, which unfortunately happens.

I want to focus on a couple of the issues. As I have mentioned, one of the provisions included within this legislation relates to enforceable undertakings. The Education and Care Regulatory Unit's "Compliance and Enforcement Framework" is currently published online, and enforceable undertakings are one of the compliance tools available within it. The regulator's acceptance of an enforceable undertaking can be withdrawn at any time, at which point

alternative options are reactivated. An enforceable undertaking is really important because it provides flexibility in dealing with contraventions. It is a familiar concept from other legal matters. The Greens have no objection to it in principle, but the DRIS report provides little further information about its use in this context. In the briefing, I asked some questions about it, and it would be really helpful to get the answers on the record. I asked a number of questions about its relationship to the regulator's other compliance tools. I understand that an enforceable undertaking does not preclude the police bringing about criminal proceedings if an offence has been committed, such as assault. It would be good if the minister could, indeed, confirm that this is the case. I also understand that WA would use civil disciplinary proceedings, not an enforceable undertaking, for a one-off, very serious incident, the cause of which has been addressed, such as leaving a child unsupervised. Again, it would be good to have it on the record from the minister that this is the case.

I understand that WA has used an enforceable undertaking once to date. That was when a family day care educator breached a regulation, but said that they were leaving the sector and undertook to refrain from working in the sector. This was on the basis that if they later wished to return, they could apply to have that undertaking withdrawn, upon providing evidence that they had subsequently attended the appropriate training. I understand that another example of when WA might use an enforceable undertaking is for minor noncompliance that does not impact on child safety—that is, by a first offender with an otherwise good compliance record. Again, it would be helpful if the minister could confirm for the record whether my understanding is correct.

I also asked at the briefing about oversight of compliance tool decision-making to ensure that we are not pursuing soft options when a stronger option is potentially more appropriate. I understand that the final decision on whether to take compliance action—and, if so, what kind—is made by the assistant director general informed by the regulatory unit staff. It would be useful if the minister could confirm whether my understanding is correct.

The department also publishes online all enforcement action that it is legally permitted to publish, and it stays online for 24 months. I also understand that noncompliance information is likely to be shared between interstate regulatory authorities. Again, could the minister confirm whether this understanding is correct? I also asked about monitoring to ensure that the terms of an enforceable undertaking are complied with, and I am satisfied that monitoring occurs.

I will make some comments about the disclosure of information under the legislation. Clause 82 sets out that information can be disclosed by the national authority, the regulatory authority, government departments, public authorities or local authorities. For the most part, it seems to be suitably practical and narrow. However, it is also proposed that the information may be disclosed when —

> (a) the disclosure is reasonably necessary to promote the objectives of the national education and care services quality framework;

This seems rather broad, but I understand from the briefing that the intended purpose is to share information to ensure children's safety, health and wellbeing if disclosure is not already covered by the other proposed subsections. For example, it was explained to me that Queensland has shared information on discussions with councils, emergency services, planning bodies and building standards bodies about early childhood education and care services in high-rise buildings. WA has shared information on water hazards in family day care residences. Members would be aware that this has come about because of a tragic incident that occurred in this state. I am hoping that the minister can please confirm for the record that this is the intended meaning of proposed section 271(4)(a).

I will make a few comments about transitional provisions and the "excellent" rating. The bill raises the bar for a service to be rated excellent, which was one of the recommendations that came out of the review. However, the transitional provisions provide that services that are already rated excellent or that have applied for the old excellent rating will not lose it. Potentially this will be quite confusing to parents because effectively it will create two meanings of "excellent" until the transitioned excellent ratings are reassessed in three years, unless they are revoked in the meantime. Can the minister please confirm that WA currently has no services that hold or have applied for the excellent rating under the old regime? If that is the case, the confusion will not arise. Any WA service with an excellent rating will meet the new criterion of exceeding the national quality standard in all seven quality areas. There are issues associated with the loss of federal funding for compliance assessments. Once again, the federal government is bailing out from its responsibilities. The Parenthood is concerned that recent cuts in federal funding will reduce the state's ability to monitor compliance and, hence, parents' confidence that their children are attending high-quality and safe early learning facilities. I note that in the estimates hearings in the other place on 24 May 2018, Minister McGurk indicated that there is no expectation that this reduction will change the very good service delivery of the early childhood regulatory unit. A month later in estimates on 20 June 2018 in this place, Minister Ellery said that analysis was being undertaken to assess the exact impact on the education and care regulatory unit. I hope that the minister can update the house on the stage that analysis has reached and

also on the expected impacts of the regulation. I hope that the reduction in funding does not result in a reduction in the quality of particular services.

I now want to make some comments that replicate what I said in 2012 about the inadequacy of childcare workers' wages. Hon Tjorn Sibma has also commented on this. I raised this matter six years ago when the national scheme was first introduced, but the problem has still not been resolved. Presently, childcare workers earn about $22 an hour. The house will soon be debating the Administration Amendment Bill 2018. It notes that average weekly Australian earnings are $1 632—that is around $43 an hour and is double what childcare workers earn. Wages of childcare workers simply do not reflect the level of responsibility that we rightly expect of them, and they have not done so for far too long. Low wages force childcare workers to take the only action that is left available to them; that is, to withdraw their labour—their internationally recognised right. This continues to cause centres to struggle to get and maintain staff and managers, and workers have undertaken a number of walkouts. All of this is disruptive for children and inconvenient for parents, but most of all it is inconsistent with the whole point of childcare centres—that is, to set children on a strong educational course for life. I do not blame the workers because they are only exercising their rights. They are on appalling wages, but at the same time families cannot necessarily bear to pay more for child care. Child care is a hugely prohibitive cost for far too many families. For many families, childcare costs already are a substantial proportion of their household budgets and they cannot afford them to increase.

The recently published annual statistical report of the HILDA survey—the Household, Income and Labour Dynamics in Australia survey—shows a clear trend in increasing expenditure of families on child care. The median proportion of household income spent on child care increased the most for low-income households. Even for those in high-income households, the increase was substantial. I am talking about a 107 per cent increase from 2002 to 2016 for households in the lowest third of income distribution, a 59 per cent increase for households in the middle third, and a 19 per cent increase for those in the top third—a massive impost on family budgets. It is a real problem balancing the need for affordable and accessible child care and making sure that childcare workers are paid adequately and appropriately. It is difficult to achieve, but we have to keep trying, particularly as we rightfully have high expectations about the standard of qualifications and, indeed, responsibilities of these very important workers.

I want to make some comments about the activity test, which is a federal issue. The federal government's new childcare subsidy is estimated by the Parenthood to make 160 000 families worse off. As I understand the new arrangement, eligibility depends on families meeting a new activity test that requires both parents to work, study or volunteer for at least eight hours a fortnight. Those with a family income of less than $66 958 per annum do not have to meet the activity test, but their subsidised child care per week is reduced from 24 hours to 12.

We know that investment in early childhood education reduces costs associated with poor school attendance and social disengagement in later years. I am concerned that the new federal rules around the childcare subsidy will lead to some of the children who probably most need to access it missing out on early childhood education and care, even though their need for it is at least as great as that of other children. They, too, should have the chance to benefit from the positive, interactive learning that is available in our childcare centres. Extraordinary educational and socialisation opportunities are offered by child care and they help to offer a very smooth transition to formal education.

I note that there have also been media reports of problems with the transition to the new regime, with 32.5 per cent of centre operators saying that the transition went terribly and 34 per cent saying that it went not so well. They are not great numbers. A common theme was the IT problems and not being able to determine the correct subsidy and not being able to invoice families correctly. This is causing delays in the cash flow of childcare centres. I note that in one of the articles, the Australian Childcare Alliance commented that that is making it difficult to determine ongoing viability. Indeed, some centres have already reported that they have had to cut staff hours accordingly.

There are some real challenges and pressures within our childcare system at the moment. I do not think the federal government has done much good in this space and it has not helped the situation at all. But I applaud the work that is being done within the sector itself to try to always strive to ensure the best possible standards in our childcare centres. Childcare centres these days are a far cry from where they were several decades ago. For many children, it can be an extraordinary opportunity to be exposed to early childhood education. There are some highly skilled, diligent and caring people. We need to ensure that we are providing more support to this area. It is necessary for many new families.

Again, the Greens indicate that we welcome the legislation. It is good to see that we are trying to ensure that we have national consistency. These reforms have been widely consulted on and they are important steps to achieving an even better system.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [4.08 pm]: I rise to make some comments on the Education and Care Services National Law (WA) Amendment Bill 2018 in two capacities: firstly, as the Chair of the Standing Committee on Uniform Legislation and Statutes Review and, secondly, to make a brief comment about the progress that this bill has made to get to this place. Indeed, in my capacity as chair of the standing committee and commenting on the report that was tabled on 14 August, there are two elements that I would like to comment on to inform the house. The first is the Education and Care Services National Law (WA) Amendment Bill 2018 itself. The remit of the Standing Committee on Uniform Legislation and Statutes Review is to consider legislation that falls within standing order 126 to examine whether the bill before Parliament has an impact on the parliamentary sovereignty of this place. In respect of this bill, we considered that matter within the time frame assigned to us under the standing orders and concluded that there was no such impact, except potentially in one respect. I should say that one of the matters we consider as a matter of course is whether there is an intergovernmental or intranational agreement that underpins the bill. The report makes plain that although there was something to that effect for the original legislation passed by this place in, I think, 2011, there is none for this bill. This bill arose out of a review of the Education and Care Services National Law scheme commenced in 2014. An outcome of that review was that these changes—the reforms, if you like—will be incorporated into Western Australian law and given effect by this bill.

In fact, the only element of the bill that may have an impact upon parliamentary sovereignty is clause 2, to which Hon Tjorn Sibma has already made reference. That clause provides that the act will come into operation in two stages. The first is that part 1 of the bill, dealing with preliminary matters like the short title and the commencement, will come into operation on the day it receives royal assent. The rest of the act, if the assent is before 1 October 2018, will come into operation on that date. So far so good. The only part left to the discretion of the executive is if the rest of the act is assented to on or after 1 October 2018, and the government then needs to find a date to proclaim the operation of the rest of the legislation. I note also that the clause does not provide for different parts of the act to come into operation at different times, so it is all or nothing. The advice the committee received on the reasons for the two options contained within clause 2 for the commencement of the bulk of the bill is provided as an appendix to the report. Essentially, that is because it is expected that a database—an IT system—will be merged. If it is successfully merged and Western Australia is able to take advantage of that, the act will take effect from 1 October; otherwise, it will have to take effect from the first of some month chosen by the government as suitable for that purpose. Having said all that, the committee found there was an erosion of parliamentary sovereignty, but concluded that in its view there are acceptable reasons for the commencement clause being structured the way it is.

The other element I will briefly address, because there is a greater exposition of it in the report, is the manner in which this bill came before the committee. Members might recall that at the time the bill was second read in this chamber, the minister advised that in her view the bill was not a uniform legislation bill. At the time, I raised the issue that the manner in which the standing orders are structured provides that certainly the member introducing the bill has to indicate to the chamber whether or not the bill is, in the opinion of the member, a uniform legislation bill within the meaning of the standing orders. If the member says that it is, the bill is automatically referred to the Standing Committee on Uniform Legislation and Statutes Review to be dealt with within its terms of reference, and otherwise to report back within 45 days. However, if the minister or member introducing the bill says that it is not a uniform legislation bill, the situation is very different. Then, of course, the debate would stand adjourned and a member can refer it to the uniform legislation committee if there is a resolution of the house to that effect. If the house orders that, notwithstanding the member's advice, it is a uniform legislation bill, or considers it to be one, it will stand referred.

In this case there was no such resolution of the house. The minister gave some brief reasons for her thinking that it was not a uniform legislation bill, but considered that it should be considered by the committee in any event. That did not fall within the scope of the operation of standing order 126. I should stress that this is not a new development; it picks up on the old processes under standing order 230A before the standing orders were revised in, I think, 2010. Nevertheless, the available mechanism was to have a member refer the bill in accordance with standing order 128.

Debate interrupted, pursuant to standing orders.

[Continued on page 5391.]

Sitting suspended from 4.15 to 4.30 pm