Parliamentary Debates
(HANSARD)

FORTY-FIRST PARLIAMENT
FIRST SESSION
2022

LEGISLATIVE COUNCIL

Tuesday, 22 February 2022

Legislative Council

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The PRESIDENT took the chair at 2.00 pm, read prayers and acknowledged country.

FINANCE LEGISLATION AMENDMENT (EMERGENCY RELIEF) BILL 2021

Assent

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

HER EXCELLENCY MS FRANCESCA TARDIOLI — TRIBUTE

Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [2.02 pm]: Members, I know that last year a number of you met the Ambassador of Italy to Australia, Her Excellency Ms Francesca Tardioli, on the occasion of her first visit to Western Australia. It is with sadness that I inform you of Her Excellency's sudden passing. The ambassador was a greatly respected diplomat and I am sure all of you who met her would agree that she was an engaging and intelligent person. Her Excellency wrote to me following her visit, saying —

> I would like to sincerely thank you for the opportunity to meet you during my first official visit to Western Australia. Italy and Western Australia enjoy very strong bilateral relations and we are deeply committed in sparing no effort to explore new ways of strengthening such cooperation.
>
> In order to promote the Italian excellence and to seize the opportunities provided by your State, we are grateful for the dialogue with the authorities of WA and we rely on the support of the State Parliament.
>
> My first official visit to Western Australia was very fruitful and I look forward to future meeting opportunities.

For the benefit of those wishing to express their condolences, a condolence book will be open at the Consulate of Italy in Perth, and the Embassy of Italy has also opened a virtual book of condolences that will be available for e-messages. On behalf of the Legislative Council of Western Australia, I offer our condolences and express our deep sympathy to Her Excellency's family, friends, colleagues, the Italian diaspora and the state of Italy.

PARLIAMENT HOUSE — BUILDING WORKS

Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [2.04 pm]: Members, I wish to acknowledge the building works undertaken during the summer recess. The Building Services team have completed the largest ever air conditioning replacement and refurbishment project at Parliament House. Twenty-five rooms, nearly all on the first floor 1964 section, had significant work done during the replacement of the obsolete air conditioning equipment, which was not environmentally friendly, nor easy to control. In addition to the air conditioning, other works undertaken include furniture replacement, installation of motorised blinds and replacement of the Legislative Assembly and Legislative Council chambers' bell speakers, and improvements such as electrical upgrades, repainting and standardisation of equipment, carpet laying and corridor ceiling replacement. As most offices have more than one person working in them, this was a lengthy and challenging project with very tight time frames. The successful completion prior to the recommencement of sittings was due to the teamwork of all involved. I would like to thank Building Services, Security and Reception Services and Information Technology, and all others involved for their outstanding work. Thank you to the contractors and architect who achieved the project in a truncated time frame during very hot weather and the festive season. The construction, furniture and design costs were $1.4 million and funded from the budgets across the three parliamentary departments. We are the custodians of this magnificent building and do all we can to ensure its maintenance and conservation. Congratulations to all involved. I hope those in the refurbished offices enjoy the new facilities.

PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021

Committee

Resumed from 17 February. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

The CHAIR: Members, before I put the question, I bring to your attention that our clocks are malfunctioning today, so we will keep time from the chair. I alert members of that to hopefully avoid a point of order in due course.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon NICK GOIRAN: Thank you, Mr Chairman. We are resuming the Courts Legislation Amendment (Magistrates) Bill 2021. Last week, we spent some time not only merely agreeing to the policy of the bill and the second reading of the bill, but also considering some of the issues that have emerged. When we were last sitting on Thursday, 17 February we were interrupted in accordance with the standing orders for the taking of members statements. The parliamentary secretary moved that we report progress and be given leave to sit again. Regrettably at that time, the parliamentary secretary was mid-response to the last question I had posed. According to the uncorrected proof *Hansard*, that question was —

> With respect to the principle that is articulated in that letter—that this will enable the President of the Children's Court of Western Australia to remove a magistrate without recourse—is it a correct understanding by the Social Policy Practice and Research Consortium that this bill will enable that?

Before we move on to the next clause, Mr Chairman, I ask the parliamentary secretary whether he has anything further to say to conclude that response?

Hon MATTHEW SWINBOURN: Thank you, chair. The member's question was: can the President of the Children's Court of Western Australia remove a magistrate without recourse? The answer is: the recourse that would be available to any magistrate were the president to take any actions would be those that would be available against any administrative decision-maker, and they would be the prerogative writs that would be available through the Supreme Court in relation to those things.

Hon NICK GOIRAN: In response to the concern of the Social Policy Practice and Research Consortium that the bill will enable the President of the Children's Court to remove a magistrate without recourse, the government is saying that the bill will enable the president to remove a magistrate, but that to the extent that there is some contention around the phrase "without recourse", the government is indicating that the recourse that would be available would be that of judicial review. Is that the course of action that was taken in the case that was the genesis of this matter?

Hon MATTHEW SWINBOURN: I do not know what the course of action was in that matter. I do not have access to that material.

Hon NICK GOIRAN: Last week, the parliamentary secretary indicated that the genesis of the bill was the dispute between Magistrate Crawford and President Quail. I would be a little surprised if there was not now material available to the parliamentary secretary and the government given the passage of time. I think it is certainly uncontroversial to say that the matter ended up in litigation in the Supreme Court. I think it is also fair to say that the government is well aware of that particular course of action. Certainly, it is also fair to say that the Attorney General is aware of some of the allegations that have been made. We spent some time last week looking at what could be done with regard to those allegations and whether the Attorney General would do anything at all. But the point about this bill is that one stakeholder has expressed concern that the removal power that will be granted to the President of the Children's Court will be given without any recourse to the magistrate who is being moved on, and that that would be a new thing that is caused by this bill. I want to clarify whether that is indeed a new thing. One way in which we can test that is to ascertain whether the matter that we have discussed previously is actually an application for judicial review. As I say, I am a little surprised to hear that no-one in government has that information available. I wonder whether the parliamentary secretary might be able to take further advice on that point.

Hon MATTHEW SWINBOURN: I have covered many aspects of this bill. We are on a clause 1 debate, chair. The clause 1 debate is about the bill that is before the house. We have been very generous up to this point in relation to the areas that we have been willing to cover, but we have been in Committee of the Whole for four hours on clause 1, and this bill has 12 clauses. I have already indicated that I will not traverse the details of the Crawford v Quail case. I think I have probably been led into it more than I wanted to be; therefore, at this stage I do not have anything more to add on clause 1.

Hon NICK GOIRAN: Mr Chairman, parliamentary secretary, which clause in the bill will enable the President of the Children's Court to remove a magistrate?

The CHAIR: The question is that clause 1 do stand as printed.

Hon NICK GOIRAN: Deputy Chairman, for sake of —

Hon SANDRA CARR: On a point of order.

The CHAIR: Hon Sandra Carr, you need to speak from the podium.

Point of Order

Hon SANDRA CARR: I would just like to draw members' attention to "Chapter V: Conduct of Members" and standing order 30(1)(d), which states that when a member "persistently and wilfully disregards the authority of the Chair". The honourable member has been informed a number of times that the correct way to refer to the chair or the President is to be without "Mr", "Mrs", "Ms" or "Miss". I struggle to believe that he simply forgot at this point in time.

The CHAIR: Hon Nick Goiran, do you want to be heard on the point of order?

Hon NICK GOIRAN: Mr Chairman, I take on board what the honourable member said. I make just two points. First of all, I am aware a request was made at the start of this Parliament by the President. I certainly have made every best endeavour to adhere to that. Secondly, I was unaware that that might apply to you, Mr Chairman. If it is indeed the case that we are to address you by some other fashion, I absolutely assure the member that it has not been anything deliberate on my part. I am very happy to accept your ruling with respect to this matter.

The CHAIR: Thank you, member. I will just offer some clarity on this, because I understand there has been some confusion in the past. The President made a statement when she assumed the chair at the beginning of this term of Parliament. Her statement was in relation to her preference as to the title that should be used when addressing her as the President. That did not apply to other presiding members. I have sought the clarification of the President before, and members have sought advice with respect to this matter; that was not a ruling with respect to how you address other chairs or presiding members, but it was in relation to how you address the President. There is no point of order.

Committee Resumed

Hon NICK GOIRAN: I reiterate the point that honestly this is not something that I feel strongly about. I absolutely respect that other members do feel strongly about this and I will try to adhere to and deal with that in a cooperative fashion without seeking to invoke any concerns by members. Please understand the heart of what I am telling members right now. If it assists, I will try remediate my remarks in this respect. I might also make the point, Mr Chairman, that for those of us who are ensconced deeply in the task of reviewing legislation—we are the house of review and the final arbiters on the state of the law—sometimes when we are deeply ensconced on some highly technical matters, the addressing of the person in the chair, who might be in a different position in the chamber because it changes from time to time, is something that we can find difficult to keep track of. I will move on from that point, Deputy Chairman. I do hope that the honourable member understands the heart of what I am trying to say.

It appears that we are coming to the conclusion of the clause 1 debate for no other reason than the government, through its representative in this chamber, has indicated that it no longer wants to participate in the clause 1 debate. A question was raised originally by Hon Dr Brad Pettitt about some stakeholders, including the Social Policy Practice and Research Consortium. As I recall, the government indicated that it might not even be familiar with a piece of correspondence. Time has now passed—that was Thursday last week and here we are on Tuesday—and it appears that no work has been done by the government about that piece of correspondence. It is poor for the government to not only treat with disdain the issue raised by the honourable member, but also then many days later come unprepared to answer any questions on that matter, to the point of not even being prepared to identify the clause that the government asserts will give the President of the Children's Court the very power to remove a magistrate that the stakeholder indicated is a point of concern because it could be done without recourse. Again, the government is not prepared to respond on the genesis of this matter. It is concerning, Mr Chairman. I will read into the record at this time a piece of correspondence from the Law Society of Western Australia dated 18 February—that is, the day after we were last sitting. It is a communiqué that I understand has gone to all members of the society, and reads —

> Dear Members
>
> The Courts Legislation Amendment (Magistrates) Bill 2021 (Bill) was re-introduced to the Western Australian Parliament (Parliament) in the Legislative Council on Tuesday 15 February 2022.
>
> The Bill will make important changes to the operation of the Children's Court of Western Australia. The Law Society … has been urging the Parliament not to pass the Bill in its current form because creating this form of permissible interference with judicial independence does not reflect current community standards. This provision, and related supporting provisions, potentially imperil judicial independence of decision making by depositing power in one individual (whomever occupies the role of President of the Children's Court) to in effect override the granting of a Commission to another Magistrate at any time and for any reason.
>
> The Society considers the Bill may have consequences that are not immediately appreciated.
>
> Here are the two open letters the Law Society has sent to members of the Legislative Council dated 9 August 2021 and 14 February 2022 urging them not to pass the Bill in its current form and the responses from the Attorney General dated 15 February 2022 and 16 February 2022.

I pause there, Mr Chairman, to indicate to members that those letters are hyperlinked in the email so that members of the Law Society can access those pieces of correspondence. The statement issued by the president of the Law Society goes on to say —

> The Law Society appreciates that the Attorney General has responded to our letter dated 14 February, and advice from the Solicitor General on whether the Bill in its current form may be the subject of a legal challenge on the ground that it interferes with the operation of Courts, contrary to Chapter III of the Commonwealth Constitution has now been tabled in Parliament.
>
> Whatever the *intent* behind the Bill, the *impact* of the wording in the Bill must be considered. The Society has not (at any point) been consulted by the Government in relation to the Bill. It must be asked why parties like the Society have not been consulted on this Bill prior to its introduction in Parliament.

That ends the statement. That correspondence is from 18 February 2022. I think it is consistent with a theme that has emerged during the course of debate on this bill; the Law Society indicated that there has not been any consultation with it. I invite the parliamentary secretary to indicate whether anyone within government has reached out to the Law Society since we were last sitting on Thursday, 17 February.

Hon MATTHEW SWINBOURN: Chair, I made my position clear that I do not have anything further to add at clause 1. I will address one point that Hon Nick Goiran keeps making that the government accepts, or asserted, that there was a power to remove a magistrate. We do not say that there is any power to remove a magistrate. I do not want to keep going backwards and forwards over the very well traversed ground here; I do not have anything further to add at this point.

Hon NICK GOIRAN: We will move on to the other clauses of this bill. As far as the opposition is concerned, and I am looking forward to going back through *Hansard* to look at the remarks from earlier this afternoon, we are pretty confident that the government indicated earlier in response to a question on the Social Policy Practice and Research Consortium that this legislation does include a power to remove a magistrate but it is not without recourse and there will be an opportunity for a magistrate to go to the Supreme Court. I find it strange at the very least for the government now to suggest that the president will not have the power to remove a magistrate. That is all the more strange in circumstances in which the government is unable to identify a clause under which this matter can be ventilated. To simply say, "We've got nothing further to add", only underscores the point that the Law Society makes. It says that it has not been consulted by the government in relation to this bill, and invites us, as members, to ask the question: why are parties like the Law Society not being consulted on this bill?

Mr Chairman, members will be aware that during the lead-in to this bill concerns were also raised by the Magistrates' Society of Western Australia. The question then becomes: has it been consulted about this matter and have any further discussions occurred since last Thursday? If we are simply taking things from where we left off last Thursday to where we are now, that means we have a government that is not prepared to listen to anybody—the Law Society, the Magistrates' Society, the Greens, the Liberals, the Nationals WA or anybody else who is concerned about this matter. The government is not interested in any discussion whatsoever. It wants to supress and curtail the debate.

As I conclude my remarks on clause 1, I question whether that might be because the government has been caught out with an Attorney General unwilling to take any action about allegations of tampering of evidence and bullying—not prepared to do anything! So it is a political imperative to get this hot potato out of the chamber as quickly as possible, rather than to continue to have the farcical situation in which the state's first law officer is not prepared to do anything about major allegations by judicial officers. That is the only reasonable conclusion that I can draw at this time, Mr Chairman, and the government is not prepared to add anything further on clause 1.

Clause put and passed.

Clauses 2 to 6 put and passed.

Clause 7: Section 11 inserted —

Hon NICK GOIRAN: Parliamentary secretary, what is the usual mechanism for removing a magistrate in our state?

Hon MATTHEW SWINBOURN: The current process is dealt with under the Magistrates Court Act 2004, schedule 1, clause 15 —

> **Removal from office**
>
> A magistrate holds office during good behaviour but the Governor may, upon the address of both Houses of Parliament, terminate a magistrate's appointment.

I note that clause 7 does not deal with the removal of magistrates.

Hon NICK GOIRAN: Is it the government's view that no clause in this bill deals with the removal of magistrates?

Hon MATTHEW SWINBOURN: We are dealing with clause 7 of the bill.

Hon NICK GOIRAN: That is okay. I will tell the parliamentary secretary what will happen: I will ask that question at clauses 7, 8, 9, 10, 11 and 12. That means that the question will get asked many times in contrast to its being asked once and the government briefly standing and identifying the clause. It is absolutely no problem for me, if that is the government's preferred course of action, that is the course of action we will take. The government is very keen for us to consider clause 7 in detail. It includes the phrase "dually appointed magistrate". Is this a term that is being introduced for the first time on the statute books or is it a term that is otherwise used elsewhere?

Hon MATTHEW SWINBOURN: It is a new term, member, but all it does is describe an existing arrangement, which is described in the Children's Court Western Australia Act under the definition of "dually appointed magistrate". It says a "dually appointed magistrate means a person who holds office both as a magistrate of the Magistrates Court and as a magistrate of the Court". That arrangement, where those two things happen, already exists, and the term has been created to reflect the existing arrangement.

Hon NICK GOIRAN: Is it fair to describe this phrase "dually appointed magistrate" as an existing administrative term that will now be a statutory term?

Hon MATTHEW SWINBOURN: The member has described it as an administrative term. That is not quite the right way to describe it. For want of a better term, it is an existing practice that is now being reflected statutorily by the creation of a term for its use.

Hon NICK GOIRAN: Parliamentary secretary, clause 7, amongst other things, will insert section 11 into the Children's Court of Western Australia Act 1988. Did the concept of a dually appointed magistrate commence with that 1988 act or did it commence prior to or after that time?

Hon MATTHEW SWINBOURN: I cannot give the member a date as to when the dual appointments process commenced, but it might be of assistance to the member to point out the 2004 reforms.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: That practice of dual appointments existed before the 2004 reforms. We are not entirely sure at the table when it first commenced, because, prior to the 2004 reforms, a magistrate could have been appointed to the Court of Petty Sessions, the Local Court and the Children's Court. So those dual appointments, or commissions, if you want to call them that, existed before 2004. That is as opposed to post-2004, when every commission was a dual commission.

Hon NICK GOIRAN: Since 2004, has it always been a dual appointment?

Hon Matthew Swinbourn: That is the advice.

Hon NICK GOIRAN: For the purposes of consideration of clause 7, that is fine, because we can work effectively on the basis of the practice since 2004. It may well have been the practice prior to that, but at least we have the benefit of utilising some 17 years' or 18 years' worth of practice for consideration of this clause. The purpose of asking the parliamentary secretary that is that he will see at clause 2 an indication that the President of the Children's Court will be able to communicate with the Chief Magistrate by way of a written notice informing the Chief Magistrate that the President of the Children's Court considers that it is necessary or desirable for a particular dually appointed magistrate to perform Children's Court functions on a full-time or part-time basis. Is this a codification of an existing practice?

Hon MATTHEW SWINBOURN: The member asked whether it is a codification of an existing practice. My advice is that no, at the moment there is no established method.

Hon NICK GOIRAN: There is no established method. Once this bill passes, the establishment that is prescribed in the statute will be this written notice. Is the existing practice an indication that sometimes these things have been written and sometimes these things have been verbal?

Hon MATTHEW SWINBOURN: Currently, we do not know specifically whether it was done in writing or orally. We understand that the practice could have been any combination of those things. Obviously, it is a meeting of minds through all the different conceivable forms of communication.

Hon NICK GOIRAN: Under proposed section 11(2), will the written notice from the President of the Children's Court be restricted to the identification of a magistrate who is currently performing Children's Court functions?

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: Last week I think we identified that approximately 5.5 magistrates sit in the Children's Court in Perth and deal exclusively with Children's Court matters, if you like—Children's Court functions—and an additional full-time magistrate exclusively performs Children's Court functions outside of Perth, primarily based in Fremantle, I understand. The parliamentary secretary indicated that proposed section 11(2) will not be restricted to the identification of a magistrate performing Children's Court functions. That would imply that the President of the Children's Court could have a list of names of magistrates currently appointed in Western Australia. I do not readily have to hand my notes from last week indicating the number of magistrates.

Hon Matthew Swinbourn: It is 57.

Hon NICK GOIRAN: Does that 57 include the 6.5 or are there 57 "general" magistrates and then, in addition, we have the 6.5?

Hon Matthew Swinbourn: It is 57 plus the 6.5.

Hon NICK GOIRAN: That is very helpful. I thank the parliamentary secretary.

Once proposed section 11(2) becomes law, the President of the Children's Court could access this list of 57 magistrates, identify one of the 57 and write to the Chief Magistrate saying that it is necessary or desirable for that particular magistrate to perform Children's Court functions on a full-time or part-time basis. This is not a codification of an existing practice but there has been some form of practice. Has the President of the Children's Court ever identified a specific magistrate and requested that that magistrate be assigned Children's Court functions and had that request rejected?

Hon MATTHEW SWINBOURN: The advice I have from the advisers at the table is that they are not aware of it happening, but we would not necessarily be made aware of it ever happening because it is a matter that occurs between two heads of jurisdiction and is not necessarily a matter that is ever referred to outside of those rarefied environments.

Hon NICK GOIRAN: The government is not aware that this has ever been an issue in the past, but, understandably, indicated that it does not know what it does not know. It is not completely impossible that either the existing President of the Children's Court or a former President of the Children's Court has requested that the Chief Magistrate assign what I referred to as a magistrate on general duties to the specialist task of performing some functions in the Children's Court. No information is available to the chamber to suggest that that type of request, if it has been made in the past, has been rejected. Nevertheless, this will set out and codify the process—the mechanism—by which this might be able to take place.

I now turn to proposed section 11(3), which is sought to be inserted by the seventh clause in the bill. It indicates that if the president were to give a notice under proposed subsection (2)—the proposed subsection that we have just considered—in relation to a dually appointed magistrate, two things could happen. It identifies scenarios in which the Chief Magistrate may either consent to that request or not consent. The lack of consent is the first of the two scenarios. It states —

> (a) the Chief Magistrate may consent, or refuse to consent, to the magistrate for the time being performing Children's Court functions on the basis specified in the notice; and
>
> (b) if the Chief Magistrate consents—the Chief Magistrate must, in giving any directions to the magistrate under the *Magistrates Court Act 2004* section 25, take into account that for the time being the magistrate is required to perform Children's Court functions on the basis specified in the notice.

Can the parliamentary secretary indicate to the chamber why section 25 of the Magistrates Court Act must be taken into account when the Chief Magistrate provides this consent?

Hon MATTHEW SWINBOURN: I am going to work my way through this to get it as correct as I possibly can. We have the scenario that has been described in proposed subsection (2), in which the president has made the request to the Chief Magistrate and the Chief Magistrate has consented to that request. Let us, by way of example, say that that request was for a magistrate to sit part-time in the Armadale Magistrates Court and work exclusively during that period on Children's Court matters. If the Chief Magistrate consents to that, that magistrate will perform 0.5 FTE Children's Court functions and the other 0.5 FTE as general Magistrates Court functions. Obviously, if the Chief Magistrate issues a direction to that magistrate under section 25 of the Magistrates Court Act, he must—I have to be careful with my wording—take into account, when giving that direction, the fact that he has consented to that magistrate sitting in the Children's Court. That is so that the magistrate does not effectively work at cross-purposes with what the Chief Magistrate has consented to by issuing a direction that is, as I say, in conflict with that particular part. For example, a direction might be that the magistrate needs to sit in the Joondalup Magistrates Court five days a week, and, plainly, that will not be possible. They must continue to have regard to that to manage the workload between the two courts and what we are describing here. I hope that answers the member's question; I am obviously open for him to push me further on that.

Hon NICK GOIRAN: I thank the parliamentary secretary; that is helpful. Let us say that the Chief Magistrate consents to a request by the President of the Children's Court for a particular magistrate—he has looked at the list of 57 magistrates, selected one, and identified that person. The parliamentary secretary gave the example of a part-time magistrate, which was helpful, but let us say it is a full-time magistrate. The President of the Children's Court says, "I would like Magistrate X to come and perform these Children's Court functions on a full-time basis", and the Chief Magistrate agrees. If that magistrate is currently working in Perth—this is a general magistrate, one of the 57—and the President of the Children's Court says, "I would like X to come and do Children's Court functions for the Children's Court in Broome on a full-time basis", and the Chief Magistrate consents, would it be the case that that magistrate, who is currently based in Perth, would be required to relocate to Broome without recourse? Again, I hesitate to reintroduce that word—recourse. Can the parliamentary secretary take us through the practice that would unfold in this situation?

Hon MATTHEW SWINBOURN: We are talking about magistrates here, and if we look at section 25(1) of the Magistrates Court Act, which we spoke about before, we see that the Chief Magistrate may, by direction given from time to time to a person who is a magistrate, specify where, when and at what times they are to deal with cases or perform those functions or duties. Under subsection (3), a magistrate must comply with such a direction, so if push comes to shove, the Chief Magistrate has the power to direct a magistrate to sit in Broome, as the member described in his example. The practice of the current Chief Magistrate and other Chief Magistrates has been to consult before making that decision; but, ultimately, as I say, when push comes to shove, it is a power that the Chief Magistrate has. I suppose if I wanted to be particularly harsh, the choice a magistrate generally has in those circumstances would be between complying, because that is the direction they have been given and they are required to do so, and resigning their commission. Obviously, that does not happen often; it may have happened, but I am

not aware of it having happened. But that is no different from a situation in which an employer gives a lawful direction to an employee; the choice the employee has is to either follow the direction or end their employment contract. That is by way of an analogy; magistrates are not employees, of course, but those sorts of things happen.

Just to bring this back to the Courts Legislation Amendment (Magistrates) Bill 2021—this is jumping ahead a little—proposed section 12A reflects that for the President of the Children's Court. I am sure we will get to that, but the provisions are almost identical to those in section 25 of the Magistrates Court Act.

Hon NICK GOIRAN: I thank the parliamentary secretary. That was a very helpful and comprehensive explanation. The point is that if any of the 57 magistrates in Western Australia are concerned about this proposed subsection—at least the first half of it; we will get to the second half in a moment—they really need not be, because at the moment they can be subject to a direction from the Chief Magistrate to move anywhere in Western Australia. This legislation will not change that. At the moment, Chief Magistrate Heath has the final say on whether those 57 magistrates will move location. As the parliamentary secretary said, and as I understand it, this will just codify the request process by the President of the Children's Court. It may well be the case that these types of requests have been made in the past. They may have been consented to or refused. In any event, this will not change any of that. Chief Magistrate Heath currently determines whether a person who is not currently performing Children's Court functions will be moved elsewhere, whether that includes Children's Court functions or otherwise.

I guess that takes us to what could be argued is the more controversial provision of proposed section 11, which starts at line 14 on page 5. Proposed subsection (4) starts to deal with the situation in which the President of the Children's Court —the parliamentary secretary is welcome to contest this—will be able to remove a magistrate from Children's Court functions, whereas the earlier provisions refer to the President of the Children's Court bringing in additional resources. The earlier provisions contemplate a scenario whereby the President of the Children's Court makes an assessment that the workload of the court is such that he desires or finds it necessary that additional resources be brought to bear on the Children's Court functions, but proposed section 11(4) on page 5 seems to contemplate a different scenario. It states —

> If a particular dually appointed magistrate has performed Children's Court functions on a full-time or part-time basis or has been the subject of a notice under subsection (2), the President may, by written notice, inform the Chief Magistrate —
>
> (a) that the President considers that, to deal with the workload of the Court, it is not necessary or desirable for the magistrate for the time being to perform Children's Court functions at all; …

I am just going to stop there and deal with that scenario. Earlier, I believe in our clause 1 debate, we talked about general magistrates having to take on some Children's Court matters from time to time. They do not exclusively deal with Children's Court matters. They are not one of the 6.5 full-time equivalent magistrates; they are part of the 57. Would they be captured by this proposed section insofar as if they had ever taken on a Children's Court case, they would be considered to have performed Children's Court functions on a part-time basis?

Hon MATTHEW SWINBOURN: I thank the member for his forbearance. The answer to his question is yes.

Hon NICK GOIRAN: Consequently, all magistrates in Western Australia at the moment would potentially be captured by this provision. The only magistrate who would not be captured would be a magistrate who has never handled a Children's Court case.

Hon Matthew Swinbourn: By way of interjection, I think it is, yes, all magistrates in Western Australia.

Hon NICK GOIRAN: Right. Are there any magistrates at the moment in Western Australia who have never had to take on a Children's Court matter?

Hon MATTHEW SWINBOURN: Member, there are conceivably magistrates who have never dealt with Children's Court matters. By the nature of where they do their work, they just deal with a particular list. I could not give the member numbers or anything like that, but there are some who do that. There is one magistrate whose commission is only as a Children's Court magistrate. That is the 0.5 FTE person. They are not dually appointed. That was not the member's question, but I am providing that information so that he understands that the 0.5 FTE person is currently commissioned only as a Children's Court magistrate.

Hon NICK GOIRAN: Just dealing with the part-time person, they would not be captured by this provision because they are not dually appointed. If we park that particular magistrate to one side, we are talking about the 57 magistrates who I have referred to as general magistrates, plus the six full-time magistrates who currently deal exclusively with Children's Court matters, so we are looking at a group of 63 magistrates who might be captured by this provision. Certainly, the six full-time magistrates will definitely be captured by this provision, and it appears highly likely that a large proportion of the other 57 would also be captured by this provision. The parliamentary secretary mentioned, however, that it could well be the case that one or more of the 57 general magistrates have never handled a Children's Court matter. What is the process by which these general magistrates receive Children's Court matters at the moment? Do they receive those matters via an interaction with the Chief Magistrate or the President of the Children's Court?

Hon MATTHEW SWINBOURN: I will play out what is, essentially, a practical example for the member. A prosecuting authority such as the police will commence a proceeding against a juvenile by lodging a prosecution notice at the nearest court to the event. This is the current practice. That could be at Broome, Armadale or Joondalup—those sorts of areas. The presiding magistrate will then exercise the Children's Court jurisdiction. That matter will be allocated to the presiding magistrate because the presiding magistrate will deal with it there. That magistrate will be subject to the practice, directions and powers of the Children's Court president when dealing with that matter, depending on what the practice directions are, how serious the accused's crime might be and any other number of matters. The matter may be moved from a court in a regional or outer metropolitan area to the Children's Court in Perth. Alternatively, the president himself may go and sit in a regional area if the matter dictates that that is the more appropriate thing to do and assume responsibility for the case as it progressed. I hope that answers the member's question.

Hon NICK GOIRAN: At the moment, the instant the police bring some form of charge against a juvenile, it triggers the magistrate sitting in the court, wherever they are in Western Australia, being captured by proposed section 11(4) of the Children's Court of Western Australia Act 1988. Given the example the parliamentary secretary gave, I think it further confirms the likelihood that most, if not all, of the 57 magistrates will have handled at least one matter and, consequently, will be captured by this provision, but it is not necessarily pertinent whether or not it is the full 57. I think we can at least agree that a very large number of magistrates will be captured by this, with the exception of the one part-time magistrate who has not been dually appointed. Some of the magistrates perform functions under the Coroner's Court. Are they part of the 57?

Hon MATTHEW SWINBOURN: My advice is that currently only regional magistrates exercise the coroner's functions that all dually appointed magistrates are able to exercise, but there are justices, for want of a better word, who are appointed exclusively as coroners who do not fall within the 57. I am told that there are three currently. It is a bit uncertain because I think it is in motion at the moment. There are a couple of them, but they are not magistrates; they are coroners—full stop.

Hon NICK GOIRAN: Again, the point is that they are not captured in our list of 57. The Children's Court president has access to this list of 57 general magistrates, most of whom, if not all, will be captured by this provision. The president will be able to indicate, by written notice to the Chief Magistrate, that he considers it not necessary or desirable for that magistrate to perform Children's Court functions at all for the time being. A situation could arise in one of the regional courts in a country town in which the magistrate needs to deal with charges that have been brought against a juvenile by the police, but the magistrate is subject to this new written notice by the Chief Magistrate. Currently, they are not subject to it because the process is that the written notice goes from the president to the Chief Magistrate, who will then send a direction, which I will get to in a moment. How will those matters be dealt with in places where no sitting magistrate can handle Children's Court matters?

Hon MATTHEW SWINBOURN: The member is inviting me to speculate somewhat on the management of the court, which is the responsibility of the presiding officer. I can only give a general comment about what would happen in the circumstance in which a magistrate, for whatever reason, was not able to perform a Children's Court function. The practice would be to send someone to that location who was able to do that. My advice is that if it was for a serious matter, it is likely that one of the full-time Perth Children's Court magistrates would be sent to that location to deal with the matter. Also, videoconferencing facilities are available so that the Perth Children's Courts magistrate could sit in Perth and the matter could be dealt with via video link to the location where it was happening.

Hon NICK GOIRAN: Proposed section 11(4) of the Children's Court of Western Australia Act 1988 contemplates a scenario in which the president says that he does not need or desire a particular magistrate to handle any Children's Court functions at all. It also contemplates a second scenario in which the president considers that it is not necessary nor desirable for the time being for the magistrate to perform those functions on the basis that previously applied and, rather, that it is necessary or desirable that the magistrate should instead perform Children's Court functions on a part-time basis, as specified in the notice. The provision goes on to state, by way of a supplementary explanation —

> … (which must, in the case of a magistrate who previously performed those functions on a part-time basis or was the subject of a notice under subsection (2)(b), be a reduced part-time basis).

Again, I want to concentrate on those 57 magistrates who are not exclusively dealing with Children's Court matters. If they are in a country town, from time to time they will handle Children's Court matters by virtue of the fact that the police will bring before them a matter against a juvenile. How will this proposed section function in that scenario? They will be considered to be acting in some kind of part-time capacity, yet they will now be working on a reduced part-time basis. Is there a possibility that that could happen? It seems that they will be handling such a small part-time load that it will become infinitesimal, if you like, and somebody could be even further reduced beyond that. What type of basis would exist for that, or is this proposed section not intended to apply to those persons and it is the case that the earlier provision deals with a magistrate not performing the functions at all that is intended to apply to those general magistrates?

Hon MATTHEW SWINBOURN: I am advised that it can apply in the scenario the member described. I have been given an example to explain it further. I hope I do not do a disservice to my colleague here. He gave the example

of a magistrate sitting in Bunbury whereby there has been an agreement, with the Chief Magistrate's consent, that a number of Children's Court matters are coming on and there is an increase in the workload. The Chief Magistrate and the president agree that the position needs to increase from one day to two days to address that workload issue. That workload issue will then be addressed. Over time, that workload may drop off for whatever reason, and a magistrate will subsequently deal with Children's Court issues on only one day a week. Therefore, the provisions of proposed section 11(4) would come into effect when the president notified the Chief Magistrate that there was a reduction in the workload. I am advised that the practical benefit of that to the administration of courts is that, from a listing perspective, it helps the court because it is then able to know that the Children's Court requires only the one day, and, if it is a full-time magistrate, the magistrate will be available for the remaining four days to perform those other duties. It works in that regard.

Previously I referred to the President of the Children's Court as a presiding officer. That was a bad mistake on my part, so I hope Hansard picked up and corrected it for me!

Hon NICK GOIRAN: The example the parliamentary secretary gave is helpful. I note that proposed section 11(5) reiterates, almost in mirror fashion, what was referred to in an earlier provision in this proposed subsection; that is, if the Chief Magistrate is required to go down this particular path, he must then proceed to give due consideration to section 25 of the Magistrates Court Act 2004. The parliamentary secretary previously explained the relevance and significance of that, which was perfectly understandable and necessary; otherwise, the entire process would be unworkable. I thought it would go without saying and without having to mention that; nevertheless, this is just putting those matters beyond doubt. I will group the provisions as proposed subsections (2) and (3) and proposed subsections (4) and (5). I said "almost mirrors" because one curious part of this proposed section is that the earlier provisions—that is, proposed subsections (2) and (3)—seem to indicate that ultimately it is a matter for the Chief Magistrate whether he will consent to the request. However, the latter group—proposed subsections (4) and (5)—seem to indicate that there is no capacity for the Chief Magistrate to consent; he simply must comply, if you like, with the notice given to him by the president. Why would it be appropriate for the President of the Children's Court to, in effect, give a direction to the Chief Magistrate?

Hon MATTHEW SWINBOURN: Thank you, deputy chair, and welcome to your shift.

I think that the member has separated the two things quite rightly into proposed subsections (2) and (3) and proposed subsections (4) and (5). If I were to characterise proposed subsections (2) and (3), they relate to an increase in the workload of the Children's Court. In that instance, the president would make a request—I use the word "request", but the president would "give a notice" to the Chief Magistrate—and the Chief Magistrate would be entitled to either consent or refuse to consent. Essentially, that is because there is a pool of magistrates and the Chief Magistrate is responsible for those magistrates. The Chief Magistrate, obviously, would understand that none of those magistrates is surplus to the requirements of the Chief Magistrate and, typically speaking, that would involve an issue about how to manage the workload between those two courts. Therefore, I think it is entirely appropriate that it would require consent so that the President of the Children's Court would not be in a situation in which he would just pluck resources out of the general pool of people in the Magistrates Court and be damned for any consequences. I do not mean to reflect in any way on the Children's Court president or suggest that that would happen.

The flip side happens with proposed subsections (4) and (5), which are about the Children's Court no longer requiring the level of resourcing at a particular location, or wherever, to deal with its workload. In that regard, the Children's Court president must do something with that magistrate when dealing with the excess workload. It is entirely appropriate, as a resource of the state, for that magistrate to then be returned, in terms of that extra capacity, to the general pool. The consent of the Chief Magistrate would not be needed for that to occur. We do not accept that there must be, effectively, a direction; it would just be about making sure that we do not end up with a possible dispute in which the Chief Magistrate would say, "No, I am not taking back that workload issue. You must keep that in your court." It is hard to imagine any of these courts not having enough work at times, but, as I said, it depends on the location in the state. We gave the example of Bunbury and how there might be an increase in workload in that location applying to a specific magistrate and then a drop-off of that demand. Some other area of the state, of course, may need resources, but we think that it will be appropriate in those circumstances for the president to return that resource without having to get the consent of the Chief Magistrate.

Hon NICK GOIRAN: The parliamentary secretary indicated that he does not think that the government thinks it is a direction. I still think that if the president is giving notice to the Chief Magistrate, and he must abide by the notice, then it is, in effect, a direction from the president to a magistrate of the Children's Court. Regardless of our difference of opinion on that point, proposed section 11(6) indicates —

> In determining whether to give a notice under subsection (2) or (4) in relation to a dually appointed magistrate, the President has absolute discretion and is not required to take into account the seniority or length of service of the magistrate or any other matter.

Must the president take into account the workload of the Children's Court?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: How can the parliamentary secretary come to that conclusion when the proposed section currently reads that the president has absolute discretion and is not required to take into account any other matter?

Hon MATTHEW SWINBOURN: I think the member used some wording to describe whether some action will be available to the Supreme Court to deal with it. I do not want to paraphrase the member because I do not want to do him a disservice, but I understood what he said. We have already established that workload is the key issue here. If an administrative decision-maker—that is what the head of jurisdiction is doing; they are making an administrative decision without a proper lawful basis for doing so—takes into account irrelevant considerations, as a general matter of administrative law, the judicial review functions of the Supreme Court remain in place for these kinds of things. A cause of action could be available to an aggrieved magistrate if, in the circumstances, the powers in this bill are exercised in a manner that is not a lawful manner provided for within the powers of the act. I hope that answers the question the member was asking.

Hon NICK GOIRAN: I think it does. For example, if the workload of the Children's Court increases and the President of the Children's Court invokes proposed section 11(4) to remove a full-time magistrate from working on Children's Court matters, notwithstanding the fact that the workload of the Children's Court had increased—I am not asking for the parliamentary secretary to draw a conclusion or to determine what the outcome of that matter might be; that would ultimately be a matter for the Supreme Court—that might be the type of matter in which a magistrate would say, "With all due respect to the head of jurisdiction, it is, in my view, as the magistrate being moved on, not reasonable to conclude that the president has considered the workload of the court in those particular circumstances, so I will apply to the Supreme Court to review that administrative decision."

Hon MATTHEW SWINBOURN: As the member knows, all cases turn on their own facts. I take what the member is saying in the broadest sense, like A plus B equals C: it is probably within the realms of possibility if there was not that lawful purpose for doing that. Workload management of the Children's Court is not an inconsiderable matter; it is not as simple as one plus one equals two, as there are obviously issues to take into consideration, like location, where police might be instituting prosecution notices and all those sorts of things. I do not want to give a yes or no response to the member's question—and I think he would appreciate why I would say that and that each case will turn on its circumstances.

Hon NICK GOIRAN: The parliamentary secretary mentioned earlier that the President of the Children's Court is a head of jurisdiction and that the Chief Magistrate is a head of jurisdiction. Is there another scenario currently under Western Australian law whereby a head of jurisdiction can give a notice to another head of jurisdiction and they must comply with that? I have referred to that as a direction, and I appreciate that the parliamentary secretary contests the use of the word "direction", but the point being is whether there is another scenario whereby one head of jurisdiction can—this will not help—compel another head of jurisdiction to take a particular course of action? Can they issue a notice and the other head of jurisdiction must comply with that notice?

Hon MATTHEW SWINBOURN: The member alerted me to the differences between our positions on directions so I will frame the response this way: proposed subsection (4) contemplates a scenario we have already described whereby the Children's Court president can issue a notice to the Chief Magistrate to return resources to the Magistrates Court. If I can extend that to the honourable member's question, is such a circumstance contemplated or arranged between two other heads of jurisdiction? The answer to that is no, not that we are aware of in the way that is described in proposed subsection (4).

Hon NICK GOIRAN: The parliamentary secretary used the word "resources" but I am mindful of the fact that we are talking about human beings. I am not saying this as a criticism of the parliamentary secretary because I know that he shares my respect and admiration for the judicial officers who take on these tasks. I do not use the word "resources" because we are talking about individuals who have had very extensive tertiary education and legal experience and have decided, probably in most instances, to put a more financially profitable career pathway on hold to take up service as a magistrate and perform a role in the justice system. That is why I am not enthusiastic about the use of the words "returning resources". Regardless of how we describe it, we are talking about returning a magistrate to another head of jurisdiction. That scenario does not otherwise exist in Western Australia at the moment; it will exist once this bill passes. Is it something that exists in Australia?

Hon MATTHEW SWINBOURN: Member, I accept your characterisation that referring to judicial officers as resources may seem a bit—what is the word?—impolite. That is not what is meant in any way. I am not suggesting that the member did that, but I definitely respect the role that they perform.

Moving on, we have to understand that there is an existing arrangement for the President of the Children's Court to move a magistrate but it has not been set down. Obviously, we are very well aware of the dispute on that. There is already movement of—my term—resources between the courts in practice. We do not know how that is done in other jurisdictions within Australia. I think most courts within their jurisdictions have developed their own idiosyncrasies, for want of a better word, but we are not familiar with that. I think a question was asked last week about what other jurisdictions do, and we said that we did not have information on that. It is not something that was looked out in the development of this bill.

Hon NICK GOIRAN: I understand the benefit of codifying a system that says that one head of jurisdiction can request another head of jurisdiction provide additional resources—in this particular case, the addition of one or more magistrates—to assist the other head of jurisdiction to fulfil their duty because of their workload. I can understand the desirability of having a very clearly defined mechanism for that request. What troubles me is that we will be bringing in for the first time this idea of one head of jurisdiction directing another head of jurisdiction to take back a resource—a magistrate—that does not exist currently for any other head of jurisdiction in Western Australia, and the government has indicated that it is unaware whether it is the case in any other Australian jurisdiction. It is in that general context that the opposition remains troubled by the fact that the government has not yet indicated whether the Chief Magistrate is in agreement with this newly codified regime. When I asked about the heads of jurisdiction last week, the government was not in a position, or perhaps not in a mood—however one might describe it—to provide that information. Is the parliamentary secretary in a position now to indicate whether the Chief Magistrate agrees with this new provisions set out in clause 7? I am less concerned about proposed section 11(2) and (3) under which the Chief Magistrate will retain consent. I am more concerned about the new provision that will impose an obligation on the Chief Magistrate. I would like to think that the house of review will be concerned about imposing obligations on any person, least of all the Chief Magistrate, and that it would like to hear their view on that. Is the government in a position to indicate what the Chief Magistrate thinks about this provision?

Hon MATTHEW SWINBOURN: The position on consultation with those heads of jurisdiction remains the same as last week. I do not have that information and we will not be providing it to the chamber.

Hon NICK GOIRAN: I thank the parliamentary secretary. It does not surprise me to hear that is the government's position; it disappoints me immensely. I believe the Auditor General needs to look into this. It is just not satisfactory that the government, the executive—it does not matter whether it is a Labor government or any other flavour of government, it is simply not satisfactory for the executive to refuse to provide to the Parliament information that it has. We know as a matter of fact that the government has this information because, in its own words, it has consulted with these heads of jurisdiction. We know the information is available, but the government is choosing not to release that information to the Parliament. I would like the Auditor General to look into this matter, because in the absence of that information, legislators, that is the Parliament, and in this case, the house of review, the Legislative Council, is expected to make a decision blindfolded without the benefit of what the judiciary has to say about this matter. It is no trivial matter, because the government conceded in debate on this clause that this is a new regime, a new arrangement, whereby a head of jurisdiction would be providing this type of notice to another head of jurisdiction, who, in accordance with the language in this bill, "must comply". There is no discretion given to the Chief Magistrate, he simply must comply with this notice provided by the president. Parliamentary secretary, in debate on an earlier provision, proposed section 11(3), in which the Chief Magistrate retains the power to consent or refuse the request, when the Chief Magistrate makes that decision to consent or otherwise, does he need to take into account the seniority or length of service of the magistrate?

Hon MATTHEW SWINBOURN: There is no express obligation on the Chief Magistrate to take those matters into consideration, nor is there anything that prevents the Chief Magistrate from taking that into consideration.

Hon NICK GOIRAN: My question is: why do we specify this at proposed section 11(6) for the President of the Children's Court but not for the Chief Magistrate?

Hon MATTHEW SWINBOURN: It is a recognition of the differences between what the president does and what the Chief Magistrate does in the circumstances. The Chief Magistrate receives from the president a request for a particular dually appointed magistrate, so the president has already identified that particular person to the Chief Magistrate. In those circumstances, the question for the Chief Magistrate is whether that particular dually appointed magistrate is transferred, for want of a better word, or the workload component is transferred to the Children's Court, whereas the president is dealing with a much different circumstance whereby the workload of the court, for any number of reasons, has changed over time, and the president no longer has the workload requirement for the current cohort of magistrates who are exercising those functions. In those circumstances, because it is a specialist court with specialist functions, it is appropriate to give the president the express discretion to decide who the appropriate person is to return back to the general Magistrates Court, and to do that without necessarily having to have regard to those attributes that are defined at proposed section 11(6). I might add it says "not required to"; it does not mean a particular President of the Children's Court will not take into consideration those things in making the decision, so we have not mandated it in those circumstances. It is not a "must not"; it is a "not required to". The difference is the functions that are being performed by the Chief Magistrate vis-a-vis the president.

Hon NICK GOIRAN: At page 6, line 20, both the scenarios in proposed subsections (2) and (4) are captured. Whilst what the parliamentary secretary has said might arguably be the case in respect of subsection (4), how does it apply to subsection (2)?

Hon MATTHEW SWINBOURN: I take the member's point about proposed subsections (2) and (4). Proposed subsection (2) allows the president, when identifying a particular magistrate—I am reading out what is in here—does not have to have as a deciding factor both seniority and length of service. Of the pool of magistrates that might be available for the president to identify, there will be more senior magistrates and those who have longer

length of service, but when the president identifies that, the president is not compelled to put those two matters as matters that he must take into consideration, or take into consideration at all, in terms of who he has identified. It is conceivable that the president will identify a magistrate who is junior and has a short length of service the most appropriate for the Children's Court to have. There could be some very compelling reason for that; for example, that particular magistrate may have practised exclusively in the Children's Court jurisdiction; they may be a 20-year or 30-year practitioner and may have specialist skills in child psychology, social work and those kinds of things, which is more applicable than perhaps a magistrate who has been there for 40 years, has the most seniority and has the most length of service, but really has no affinity with and could have been from practising in a civil jurisdiction, an employment law jurisdiction or something along those lines and, really, is not suitable for those particular purposes.

Hon NICK GOIRAN: That is an excellent response from the parliamentary secretary. I agree with him wholeheartedly. That makes perfect sense in a scenario in which the President of the Children's Court is trying to identify which of the 57 magistrates he might like to request join him in performing Children's Court functions. As the parliamentary secretary indicated, this provision also applies to subsection (4). That includes a scenario in which the president is trying to divest himself of a magistrate, for workload reasons. In that scenario of the Children's Court president making that determination, this provision states says that he has —

> … absolute discretion and is not required to take into account the seniority or length of service of the magistrate or any other matter.

Would not that divesting of a resource of a magistrate also follow with respect to subsection (3), under which the Chief Magistrate then considers whether to divest himself of a resource in the general pool?

Hon MATTHEW SWINBOURN: No, because they are performing a different function. The president would have already identified the particular magistrate that they want to be invested into the court. The Chief Magistrate will not make that qualitative or subjective determination because the president would have already made it. We think the President of the Children's Court is in the best position to make that decision as opposed to the Chief Magistrate.

Hon NICK GOIRAN: I can understand what the parliamentary secretary is saying about the decision of the President of the Children's Court, saying, "In my view, person X on this list of 57 is the best qualified" for the reasons that the parliamentary secretary gave earlier. Notwithstanding, potentially, their lack of seniority or length of service, they are the most qualified person. Should the Chief Magistrate be taking those factors into account when determining whether to release one of the magistrates from the list of 57? Yes, the president might well have identified person X. The scenario that the parliamentary secretary gave was that they were a more junior magistrate. What happens if the Chief Magistrate identifies somebody who is very senior? Maybe it is the most experienced magistrate in Western Australia, the magistrate with the longest service and the greatest seniority. Why would the Chief Magistrate not take those things into account? The parliamentary secretary might say that he might take those things into account. If that were the case, should we not just say the same thing here—that he is not required to take these things into account?

Hon MATTHEW SWINBOURN: The Chief Magistrate, in exercising his consent in this matter, may take into consideration any number of issues when providing that consent. Obviously, the nature of the consent—it is outlined in the bill—is such that the Chief Magistrate may consent or refuse to consent. The Chief Magistrate can say that he does not think someone is the appropriate person to move into the court. That could be for any number of what we always hope and expect to be legitimate reasons. We did not think it was necessary to provide a similar provision in subsection (6) to require the Chief Magistrate to do that. That is mostly because we expect that when the President of the Children's Court has identified a particular person to the Chief Magistrate, there would have to be some very compelling reasons for the Chief Magistrate to not agree to that particular person if the Chief Magistrate was of a view that the workload justification of the court was such that it needed somebody to sit in the Children's Court in those circumstances. We all expect comity from our senior judicial officers and for them to work together and satisfy those particular things. In this particular instance, we did not think it was necessary to spell out all those things. We wanted to put beyond any doubt the powers of the Children's Court president, which, as we all know, have been the subject of dispute before the Supreme Court.

Hon NICK GOIRAN: Notwithstanding the fact that subsection (6) does not expressly refer to the Chief Magistrate, is it the government's contention with respect to interpreting this clause—I take members to the wording in subsection (6)—in determining whether to give consent under subsection (3) to a dually appointed magistrate, that the Chief Magistrate has absolute discretion and is not required to take into account the seniority or length of service or any other matter?

Hon MATTHEW SWINBOURN: We will not accept the member's characterisation that if we substitute the word "president" for "Chief Magistrate", the Chief Magistrate's powers would effectively be what is set out in the subsection. The Chief Magistrate has the powers that are provided to him or her, if that ever happens—I am sure it will—as outlined in section 25 of the Magistrates Court Act. Those powers are broad. Also, section 25(3) provides that a magistrate must comply with such a direction. The Chief Magistrate, when making a decision on whether to give consent, should take relevant matters into account. He should not take into account irrelevant matters, and he has discretion as to whether consent is given.

Hon NICK GOIRAN: What confuses me a little is why the equivocation on it. Perhaps this is a better way to consider this: does the Chief Magistrate have absolute discretion as to whether to consent under proposed section 11(3)?

Hon MATTHEW SWINBOURN: Yes, the Chief Magistrate has an absolute discretion, subject to all the same administrative law decision-making constraints, judicial reviews and all those sorts of things.

Hon NICK GOIRAN: I think that was worth putting on the record because as we indicated earlier, these things could end up in a dispute, which we all hope does not happen, but if that were to be the case, the last thing we would want would be the Supreme Court saying "Well, Parliament had the opportunity to insert a provision in like terms to proposed section 11(6) with respect to the Chief Magistrate. It elected not to, so we deem it that therefore Parliament must have intended that there be a difference between the two." I think it is helpful that we are putting on the record that that is not the intention. Quite apart from my general concerns about how this whole matter has been handled, at the end of the day, the statute that will pass this chamber will provide the President of the Children's Court an absolute discretion, and it is intended that that absolute discretion will also apply to the Chief Magistrate with respect to proposed subsection (3), albeit subject to the ordinary lawful restraints and remedies that might available to any aggrieved party. I think it was worthwhile putting that on the record.

The parliamentary secretary also indicated earlier—I do not think there is any disagreement on this—that both the President of the Children's Court and the Chief Magistrate are heads of jurisdiction. That being the case, a magistrate is dually appointed, but if magistrates were to find themselves the subject of a proposed section 11(4)(a) notice—that is, the complete removal for the time being from performing Children's Court functions—it would seem that that would be a power to remove a magistrate from that particular jurisdiction, the Children's Court jurisdiction. The parliamentary secretary indicated earlier that it is not the view of the government that clause 7 provides for the removal of a magistrate. If a notice under proposed section 11(4)(a) does not remove a magistrate from the Children's Court jurisdiction, what does it do?

Hon MATTHEW SWINBOURN: The member used the word "remove". I think that term is problematic when we are talking about magistrates, judges or anything else like that, because that has a specific meaning, and I think we referred to it previously in respect of clause 15, schedule 1 of the Magistrates Court Act. For want of a better word, that is a for-the-time-being clause, if I can use that; I do not think it is a technical term, but it in effect means that they are no longer performing the function for the time being. In fact, the term "for the time being" is actually in there. It does not affect their commission at all; they still remain commissioned as a Children's Court magistrate and a magistrate in the Magistrates Court. Over the course of their commission they may, or in fact absolutely will, exercise the jurisdiction of the Children's Court across their commission. Of course, that depends; someone might be subject to this provision and have only six months left on their commission and therefore may never exercise that jurisdiction again because of those particular circumstances, but I am talking in a general sense. If we are going to drill down into some of those, for want of a better word, ridiculous examples, then of course they would never exercise that, but that is not what we mean. We are just talking generally.

Hon NICK GOIRAN: Does the President of the Children's Court have a commission for a set period of time? As I understand it, the President of the Children's Court is always a District Court judge. I appreciate that a commission as a District Court judge does not have a finite limit, but does a commission as the President of the Children's Court have any such term of tenure?

Hon MATTHEW SWINBOURN: The appointment of the President of the Children's Court involves consultation between the Chief Justice, the Attorney General and the Solicitor-General, prior to appointment by the government. The tenure of the president is not set out in statute; however, in the case of the current President, Judge Quail, and former President Wager, the tenure has been set at two years in the instruments of appointment. I think the answer to the member's question is that the tenure of the President of the Children's Court is set out in the instrument of appointment and, of course, they are District Court judges, so once that tenure expires, if they are not retiring, they return to the District Court.

Hon NICK GOIRAN: The parliamentary secretary mentioned a two-year period for the current President of the Children's Court. Has that two-year period already expired?

Hon MATTHEW SWINBOURN: It has not yet expired.

Hon NICK GOIRAN: That is quite interesting. I am not going to go down into the —

Hon Matthew Swinbourn: That's my advice.

Hon NICK GOIRAN: Yes, and I accept it without equivocation. The reason I say that it is interesting is if we consider for a moment some of the information that was revealed in the transcript that I tabled last week, it would almost seem to suggest that the instant the president was appointed, all this commotion seems to have emerged. I will leave that to one side; I just find the timing quite interesting.

That said, this clause refers to dually appointed magistrates. I refer to industrial magistrates. I appreciate that the parliamentary secretary will have a great deal of experience in this area. Do any industrial magistrates in Western Australia also hold office as a magistrate of the Magistrates Court?

Hon MATTHEW SWINBOURN: This question is a little bit more complicated than I think the member might anticipate, because we passed the amendments to the Industrial Relations Act last year. If I recall correctly—I was not as involved in it as the member was—there were provisions that related to dually appointed commissioners being industrial magistrates as well. I am advised that that act has not yet been proclaimed, so there is no issue there. But putting that aside, the general answer is that all magistrates are also industrial magistrates. If a person is appointed or commissioned as a magistrate, I think by virtue of what was 81B of the Industrial Relations Act—it comes under that act, in any event—my understanding is that all magistrates can exercise jurisdiction in the Industrial Magistrates Court.

Hon NICK GOIRAN: I am just trying to ascertain whether any of these industrial magistrates are then part of this list of 57 magistrates that the president can select from?

Hon MATTHEW SWINBOURN: Currently, one magistrate is effectively performing the functions of the Industrial Magistrates Court. The Industrial Magistrates Court workload is not that of other courts, so it may be a long time between drinks, but effectively it is one magistrate. When I was practising, Magistrate Cicchini was often the person exercising that role. I do not know who it is now—I have not been in there for a while—but all 57 can actually exercise those Industrial Magistrates Court functions. For example, if a matter was commenced in a regional area, under the industrial magistrates' jurisdictions, it is possible that a magistrate sitting in Kalgoorlie or Broome or those sorts of areas could exercise those functions, but typically, at the moment, it is one magistrate who does that work.

Hon NICK GOIRAN: At the moment, there is typically one magistrate in Western Australia who is performing the functions, role and duties as an industrial magistrate, but whoever that is at any given time is one of the magistrates in this list of 57 magistrates.

Hon Matthew Swinbourn: By way of interjection, yes.

Hon NICK GOIRAN: The bill refers to a dually appointed magistrate, and that is defined in proposed section 11(1) as —

> … a person who holds office both as a magistrate of the Magistrates Court and as a magistrate of the Court.

That is a reference to the Children's Court. Is it the case that it also means a person who holds office as a magistrate of the Industrial Relations Court?

Hon MATTHEW SWINBOURN: We need to make the distinction between "commissioned" and "appointed". Someone is commissioned as a magistrate; they are then appointed to the courts. I do not think it is called "articles of commissioning", but the papers issued or signed by the Governor will state the Magistrates Court, the Children's Court, the Industrial Magistrates Court and the Warden's Court. I am not 100 per cent sure about the Coroner's Court. It does not say the Coroner's Court, because that is specifically dealt with under the Coroners Act.

Hon NICK GOIRAN: The parliamentary secretary says that is there is a distinction between commissioning and appointing. Who does the commissioning and who does the appointing?

Hon MATTHEW SWINBOURN: I think the Governor does the commissioning and the appointing.

Hon NICK GOIRAN: In the case of an industrial magistrate, the person who is performing that role is subject to directions from the Chief Magistrate that might be issued from time to time under section 25 of the Magistrates Court Act. Is there also a head of jurisdiction for that court that the industrial magistrate must have some form of liaison or interaction with?

Hon MATTHEW SWINBOURN: Member, we are not certain of this. I do not think there is a head of jurisdiction like there is a President of the Children's Court. There is the President of the Western Australian Industrial Relations Commission, who is a commissioner under that body, and the industrial relations commission sits as a commission in court session, but they are not the head of jurisdiction for the Industrial Magistrates Court. I think we are about to be interrupted, and we might be able to get some more specific advice, noting that we are now talking about the Industrial Magistrates Court rather than the Children's Court. We might try to get a better answer.

Committee interrupted, pursuant to standing orders.

[Continued on page 445.]

QUESTIONS WITHOUT NOTICE

CORONAVIRUS — HIGH CASE LOAD ENVIRONMENT

71. Hon Dr STEVE THOMAS to the Leader of the House representing the Premier:

I refer to the Premier's media release of Monday, 28 February that announced the online registration process for critical workers and identified the rules for workers who meet critical criteria for when "WA reaches a very high case load environment."

(1) What is the definition of a "very high case load environment"?

(2) How many cases of COVID-19 per day or per week will be considered a very high case load environment?

(3) If the Premier will not identify the specific parameters of a very high case load environment, why not?

(4) Does the government not trust the Western Australian community with the definition of a very high case load environment?

Hon SUE ELLERY replied:

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

(1)–(4) The very high case load environment is a trigger for considering the activation of additional measures to manage the transmission of COVID-19 in the community. This is a decision that will be based on health advice at the appropriate time.

CORONAVIRUS — MANDATORY VACCINATION POLICY
CORONAVIRUS — VACCINATION — THIRD DOSE

72. Hon Dr STEVE THOMAS to the Leader of the House representing the Minister for Health:

I refer to answers to questions without notice 1072 and 1151 last year confirming that the Department of Health is responsible for compliance and to the answer to question without notice 14 answered last week on 16 February.

(1) Which key agencies at the federal and state levels is the Department of Health working with to carry out investigations into compliance issues as per the Premier's answer to part (2) of question without notice 14?

(2) Has the Department of Health conducted any compliance-based activities with Western Australian businesses; and, if so, how many?

(3) Has the Department of Health asked or instructed the WA Police Force to conduct any compliance-based activities with any Western Australian businesses; and, if so, how many?

(4) Did the Department of Health have any involvement in, or prior knowledge of, the much publicised police actions at St Bernadette's church in Glendalough or Topolinis Caffé in Warwick; and, if so, what involvement or advanced notice did the police have?

Hon SUE ELLERY replied:

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

(1) The Department of Health is working with the following key agencies to carry out investigations in relation to noncompliance with vaccine mandates under the Public Health Act 2016: the WA Police Force, the Australian government's Department of Health, the National COVID Vaccine Taskforce and the Australian Health Practitioner Regulation Agency.

(2) The Department of Health is currently investigating over 30 reported business-related noncompliance issues reported by members of the public and referrals from the WA Police Force.

(3) The Department of Health has formally instructed the WA Police Force to conduct compliance-based activities at one venue.

(4) No.

CORONAVIRUS — HEALTH MODELLING — OMICRON VARIANT

73. Hon NICK GOIRAN to the Leader of the House representing the Minister for Health:

I refer to the Minister for Health's commitment last week to release the Omicron modelling when it is complete.

(1) On what date was the request made to the Chief Health Officer for this modelling?

(2) Who made the request?

(3) Will the minister table a copy of the request?

(4) When is the requested task expected to be complete?

Hon SUE ELLERY replied:

There are a few questions in the honourable member's name. Can the member give me a number?

Hon Nick Goiran: It is 090.

Hon SUE ELLERY: I thank the honourable member for some notice of the question.

(1)–(4) The Department of Health has been collating data to inform modelling of the impact of Omicron since the variant was detected in Australia. The modelling is now complete and has been uploaded to the WA government webpage.

CORONAVIRUS — COMMUNITY KINDERGARTENS — VENTILATION

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

I refer to the minister's press statement titled "Western Australian schools to safely open for learning in Term 1", dated 25 January 2022, which states that all 900 public education facilities in Western Australia have been inspected to check the ventilation of every classroom.

(1) Were community kindergarten sites included in the ventilation inspections that were conducted by the department?

(2) If yes, were any community kindergarten sites identified as being required to have an air purifier fitted; and, if so, how many?

Hon SUE ELLERY replied:

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

(1) Yes.

(2) One community kindergarten was required as requiring one air purifier.

PERDAMAN UREA PROJECT

75. Hon Dr BRAD PETTITT to the minister representing the Minister for State Development, Jobs and Trade:

In the last state budget, the state government set aside $250 million of funding for infrastructure upgrades to support the proposed Perdaman urea project on the Burrup Peninsula. This funding has since been backed up with a loan from the Northern Australia Infrastructure Facility, with the federal government stating that the urea project will be for domestic use. This is in direct contrast with the state Environmental Protection Authority having assessed this project as being for export.

(1) Can the minister advise whether the proposed Perdaman urea project will be available for the domestic market rather than for export?

(2) Can the minister advise what percentage of the urea from the proposed Perdaman project will be for export and available for the domestic market?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(2) Perdaman has advised the department that in the early stages of production, the urea produced will be sold into both domestic and overseas markets, but that in time it intends its entire output to be used to displace exports. In initial stages Perdaman has advised the department that it expects 50 to 55 per cent of its product will be exported and 45 to 50 per cent of its product will be available to the domestic market.

CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS

76. Hon WILSON TUCKER to the Leader of the House representing the Premier:

In response to the media questions about the delayed border reopening, the Premier is quoted as having said that by delaying by months we saved scores, if not hundreds, of lives.

(1) Was this assessment provided to the Premier or did he make it up himself?

(2) What data was his assessment based on?

Hon SUE ELLERY replied:

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

(1)–(2) If Western Australia proceeded on the original transition plan, which was developed for the Delta variant, Western Australia's border would have opened in full at the height of the east coast outbreak with low third-dose vaccination rates and low vaccination rates among children. This would have resulted in hundreds or thousands of cases entering the Western Australian community at once, which would have spread significantly when WA's third dose vaccination rate was much lower. On 20 January, when the decision was made to delay the full border opening, Western Australia's third dose rate was about 25 per cent. We expect that the rate will now reach 70 per cent on or around 3 March when Western Australia's border will now open. As the Chief Health Officer has explained in his health advice dated 18 February 2022, the double dose vaccine effectiveness against hospitalisation with Omicron falls to about 52 per cent. In his advice, the Chief Health Officer goes on to explain that the third dose increases vaccine effectiveness against hospitalisation to 88 per cent. This clearly shows how giving Western Australians more time and opportunity to get their third dose, unlike other jurisdictions, means that hospitalisations will be significantly

lower compared with opening borders when third-dose rates are much lower. By the nature of COVID-19 and the Omicron variant, particularly amongst older Western Australians, this has saved hundreds of lives. It is also expected that by 3 March, 65 per cent of children aged between five and 11 will have received their first dose. This puts Western Australia in a strong position and allows for the safest transition possible.

JOBS, TOURISM, SCIENCE AND INNOVATION — PROJECT APPROVALS — FRONTLINE OFFICERS

77. Hon TJORN SIBMA to the minister representing the Minister for State Development, Jobs and Trade:

I refer to the 2021–22 state budget allocation of $120 million to recruit 150 frontline officers to speed up project approvals across five agencies, including the Department of Jobs, Tourism, Science and Innovation.

(1) How many additional officers has JTSI been funded to recruit for this purpose over the estimates?

(2) How many of these officers have been recruited to date?

(3) How much of the additional funding has been spent on the above purpose to date?

Hon ALANNAH MacTIERNAN replied:

(1)–(3) I thank the member for the question. I have been advised by the department that further time is required to answer this question. The information will be provided by 24 February 2022.

CORONAVIRUS — PCR TESTING — GERALDTON

78. Hon MARTIN ALDRIDGE to the Leader of the House representing the Minister for Health:

I refer to an email sent to the minister on Saturday, 19 February 2022 relating to the difficulty in obtaining PCR testing in Geraldton.

(1) What are the locations and operating hours for PCR testing in Geraldton?

(2) Was a COVID-19 testing clinic open at Geraldton Health Campus on Saturday, 19 February; and, if so, during what times?

(3) Did Geraldton Health Campus staff direct a suspected COVID-19 positive patient to attend the emergency department instead of a COVID-19 testing location? If so, is this in line with COVID-19 protocols for Geraldton Health Campus?

(4) What action has the minister or her department taken to ensure that patient received a PCR test and result in a timely manner?

Hon SUE ELLERY replied:

I thank the member for some notice of the question.

(1) A COVID-19 testing facility is located on the Geraldton Health Campus and is normally open from 10.00 am to 3.00 pm seven days a week. Testing at the Geraldton hospital is available via the emergency department, 24 hours a day, seven days a week. Batavia Health Geraldton is a primary care facility that also provides a respiratory clinic seven days a week.

(2) The COVID-19 testing facility was open from 12.30 pm to 3.00 pm on Saturday, 19 February and testing was available 24/7 in the Geraldton hospital emergency department.

(3) The Geraldton hospital emergency department is an appropriate testing location. The testing facility operates alongside the emergency department and is not a 24/7 facility. It is designed to complement the emergency department by diverting testing away from the emergency department during key hours.

(4) The patient will have received a test and subsequent turnaround time relevant to their clinical and epidemiological factors.

CORONAVIRUS — VACCINATIONS — PRISONERS

79. Hon PETER COLLIER to the minister representing the Minister for Corrective Services:

For each of the prisons in Western Australia —

(1) What is the current prisoner population?

(2) How many prisoners for each prison are vaccinated for COVID-19—one dose, two doses and fully vaccinated?

Hon ALANNAH MacTIERNAN replied:

(1)–(2) I thank the member for the question. The Minister for Corrective Services has provided answers to both questions, in tabular form. I seek leave to have these incorporated into *Hansard*.

[Leave granted for the following material to be incorporated.]

Custodial Facility	Current Population as at 22 February 2022
Acacia Prison	1,438
Albany Regional Prison	298
Bandyup Women's Prison	**191**
Banksia Hill Detention Centre	126
Boronia Pre-Release Centre	84
Broome Regional Prison	57
Sunbury Regional Prison	485
Casuarina Prison	1,139
Eastern Goldfields Regional Prison	199
Greenough Regional Prison	187
Hakea Prison	819
Karnet Prison Farm	326
Melaleuca Women's Prison	182
Pardelup Prison Farm	78
Roebourne Regional Prison	166
Wandoo Rehabilitation Prison	51
West Kimberley Regional Prison	191
Wooroloo Prison Farm	**329**

As at 22 February 2022

	Single Dosed		Second Dosed		Booster Dosed		Total Prisoners
Adult Prison	**Persons**	**%**	**Persons**	**%**	**Persons**	**%**	
Acacia	161	11.0%	518	35.9%	408	28.4%	1438
Albany	8	2.7%	213	71.5%	3	1.0%	298
Bandyup	23	12.0%	24	12.5%	136	71.2%	191
Boronia	1	1.2%	79	94.1%	0	0.0%	84
Broome	13	20.4%	23	36.0%	20	31.3%	64
Bunbury	39	8.0%	400	82.3%	4	0.8%	486
Casuarina	189	16.6%	634	55.7%	7	0.6%	1139
Eastern Goldfields	24	11.6%	109	52.6%	56	27.1%	207
Greenough	24	12.8%	115	61.5%	0	0.0%	187
Hakea	135	16.5%	399	48.6%	21	2.6%	819
Karnet	18	5.5%	299	91.7%	2	0.6%	326
Melaleuca	16	8.7%	93	51.1%	0	0.0%	182
Pardelup	1	1.1%	83	93.2%	0	0.0%	89
Roebourne	19	10.3%	108	58.6%	1	0.5%	184
Wandoo Rehab.	3	5.9%	39	76.5%	3	5.9%	51
West Kimberley	46	24.1%	63	32.9%	50	26.2%	191
Wooroloo	32	9.3%	247	71.6%	3	0.9%	345
Adult Prison Total	**752**	**12.0%**	**3446**	**54.8%**	**714**	**11.4%**	**6281**
Youth Detention	**Persons**	**%**	**Persons**	**%**	**Persons**	**%**	
Banksia	20	15.6%	15	11.9%	0	0.0%	125
Youth Detention Total	**20**	**15.6%**	**15**	**11.9%**	**0**	**0.0%**	**125**
Total	**772**	**12.0%**	**3462**	**54.1%**	**714**	**11.1%**	**6407**

CORONAVIRUS — VACCINATIONS — BOTTLE SHOPS

80. Hon JAMES HAYWARD to the Leader of the House representing the Premier:

I refer to the now abandoned vaccine requirement to enter bottle shops.

(1) Did the Premier receive specific health advice explicitly stating that bottle shop vaccination requirements should be lifted?

(2) If yes, will the minister read out the specific section of the health advice that states that bottle shop vaccination requirements should be lifted?

(3) Is lifting the bottle shop vaccination requirement an admission that the requirement was not accepted as being logical, reasonable or fair by many Western Australians?

(4) Is the Premier considering removing other unpopular COVID-19 restrictions?

Hon SUE ELLERY replied:

(1) Yes.

(2) The Chief Health Officer's written advice to the Premier states that while there is evidence that this proof of vaccination in bottle shops has assisted in encouraging people to be vaccinated, particularly in regional and remote areas, the risk of transmission in this setting is small due to the limited interaction with staff and the limited times in the store, which is more analogous to the risk from collecting takeaway food. With the requirement for masks indoors across the state, this risk is now well mitigated and the restriction can be removed.

(3) No. The change was made on the advice of the Chief Health Officer.

(4) The Premier will continue to make decisions based on health advice, not popularity.

DRUG TRAFFICKER DECLARATIONS

81. Hon Dr BRIAN WALKER to the parliamentary secretary representing the Attorney General:

I refer the Attorney General to the report by Hon Wayne Martin, QC, on the Criminal Property Confiscation Act 2000, submitted to him in May 2019.

(1) How many drug trafficker declarations have been —

(a) sought by the Director of Public Prosecutions; and

(b) granted by the courts since the Martin report was tabled here in Parliament?

(2) How much revenue has been generated for the government and/or any of its agencies by way of this mechanism over the same time period? Which departments or agencies benefited, and by what amount in each case?

Hon KYLE McGINN replied:

I thank the member for some notice of the question. I answer on behalf of the parliamentary secretary. The following answer has been provided by the Attorney General.

(1) (a) The Office of the Director of Public Prosecutions does not keep statistics on the number of drug trafficker declarations that are sought. However, as it is rare for a declaration not to be made when sought, it is likely that the number of declarations made reflects the number sought.

(b) For the period 1 June 2019 to 31 January 2022, 488 drug trafficker declarations were granted by the courts.

(2) Figures for the last two completed calendar months have not yet been entered into the recording system, but for the period 1 June 2019 to 1 December 2021, $12 045 716.92 was paid into the confiscation proceeds account due to the realisation of assets that were the subject of declarations of confiscation against the property or persons who had been declared drug traffickers. Funds stemming from the drug trafficker declarations is just one source of proceeds from confiscated property paid into the CPA, which also receives funds stemming from, for example, unexplained wealth declarations during the period from 1 June 2019 to 1 December 2021. CPA funds were dispersed to agencies comprising the Office of the Director of Public Prosecutions, Western Australia Police Force and Legal Aid Western Australia, as well as grants to over 40 non-government organisations. It is not possible to say how much of each dispersal was made up from funds stemming from the drug trafficker declarations because the Department of Justice does not account for the revenue into the CPA by each individual mechanism.

METRONET — ARMADALE RAIL LINE

82. Hon NEIL THOMSON to the Leader of the House representing the Minister for Planning:

I refer to the Minister for Planning's media release on 20 February announcing another $2 billion spend on Metronet.

(1) When were the people of Armadale consulted on the closure of their rail line for 18 months?

(2) Did the minister receive advice from her department about the cost and benefits of keeping the Armadale line open for a longer period; and —

(a) if yes, is a cost–benefit analysis available to the public; and

(b) if not, why not?

(3) Has a cost–benefit analysis been undertaken by the government on the impact of the closure on the efficiency of urban transport more broadly; and —

(a) if yes, is that cost–benefit analysis available to the public; and

(b) if not, why not?

Hon SUE ELLERY replied:

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

(1)–(3) As announced in the media statement dated 20 February 2022, a number of different shutdown options were considered. However, it was determined that other options, such as shorter, more frequent shutdowns over a longer period would be more disruptive to the community over the longer term. The announcement of the closure was made one year before it was planned to occur, in order to allow for extensive consultation with the community.

CORONAVIRUS — GENERAL PRACTITIONERS

83. Hon STEVE MARTIN to the Leader of the House representing the Minister for Health:

I refer to the preparedness of general practitioners to deal with the growing number of COVID-19 cases in WA.

(1) When will the guidelines for GP furloughing and the risk matrix for GPs be announced and communicated?

(2) Will the McGowan government deliver a COVID hotline for GPs who are seeking direction and advice regarding antivirals and COVID treatment throughout WA, including in regional and remote areas?

(3) When will the WA protocols for antivirals be adopted and communicated to health professionals working in general practice?

Hon SUE ELLERY replied:

Before I answer this question, I point out that it refers to two websites, but it is not in breach of the conventions of the house because the member did not ask for documents to be tabled.

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

(1) The *WA COVID-19 healthcare worker furloughing guidelines* have been published and are available at ww2.health.wa.gov.au/~/media/Corp/Documents/Health-for/Infectious-disease/COVID19/COVID19-Healthcare-worker-furloughing-guidelines.pdf. The WA COVID-19 guidelines for healthcare practices in the community, which contain the risk matrix for GPs, will be announced and communicated this week.

(2) GPs seeking direction and clinical advice should follow normal processes of accessing specialist advice. Each tertiary hospital has a consultant who can be contacted for access to antivirals for general patient escalation. GPs should contact their local hospital in accordance with their patient's clinical needs.

(3) The WA protocols for antivirals have been developed and are due to be adopted and communicated to clinicians in the next week. They will be located under the clinical guidelines on that same website.

NATIVE FOREST — LOGGING — PROCESSORS

84. Hon Dr STEVE THOMAS to the minister representing the Minister for Forestry:

I refer to the minister's answer to question without notice 1177, asked in December, which identified that 12 timber mills received letters at 2022 timber contract levels, and to question without notice 25, asked on Thursday, 17 June 2022, which avoided answering in detail. Again I ask about those 12 sawmills with current Forest Products Commission contracts.

(1) What is the current contracted annual volume by species and growth for each sawmill in cubic metres or metric tonnes?

(2) What is the volume of the timber in cubic metres or metric tonnes that the FPC has identified for each sawmill as a 2022 block supply volume, as stated in the FPC letters identified in question without notice 1177?

(3) If the minister cannot specify these amounts, why not?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information has been provided by the Minister for Forestry.

(1)–(3) The Forest Products Commission is seeking legal advice on this question. The Minister for Forestry will endeavour to answer by the first sitting date in March, being 15 March 2022.

ATTORNEY GENERAL — UNFAIR DISMISSAL CASE

85. Hon NICK GOIRAN to the Leader of the House representing the Premier:

I refer to the unfair dismissal case brought by a former electorate officer of the member for Kwinana and Public Service Appeal Board matter 31/2020.

(1) Is the Premier aware that external counsel has been used to oppose the case?

(2) What has been the cost to WA taxpayers for this case to be defended?

(3) Was it the Deputy Premier or the Attorney General who first alerted the Premier about this case?

(4) When was the Premier last briefed about the status of this case?

Hon SUE ELLERY replied:

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

(1)–(4) As this matter is currently before the board, it would not be appropriate to respond.

ASSOCIATIONS INCORPORATION ACT — REVIEW

86. Hon DONNA FARAGHER to the minister representing the Minister for Commerce:

Coincidentally, I think the minister put out a release today on this matter, but I am going to still ask my question.

I refer to the Associations Incorporation Act 2015.

(1) Can the minister advise whether the Department of Mines, Industry Regulation and Safety has undertaken a review of the act since it came into force on 1 July 2016?

(2) If yes to (1) —

(a) when did this review commence and when was it completed; and

(b) what was the outcome of the review?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question. I provide the following answer on behalf of the minister representing the Minister for Commerce.

(1) A review of the Associations Incorporation Act 2015 is currently underway.

(2) (a) The consultation period is from 21 February 2022 until 4 April 2022.

(b) Not applicable.

HOUSING — INTERNATIONAL STUDENTS

87. Hon Dr BRAD PETTITT to the Leader of the House representing the Minister for Housing:

I refer to the thousands of international students to be allowed back into Western Australia, which shows the imminent return of 6 000 students to WA as well as the fact that Perth now has the lowest vacancy rate of all states at 0.6 per cent ahead of the border reopening.

(1) What is the expected net increase in WA's population once the borders reopen and where will these people live?

(2) Has the state government done any modelling on the impact of the population change upon the border reopening on WA's 0.6 per cent vacancy rate; and, if yes, can the minister please table the modelling?

(3) What will the impact of (2) have on —

(a) services that are already overwhelmed;

(b) impacts on evictions; and

(c) impact on homelessness?

(4) What measures is the government putting in place to prevent an influx of returning Western Australians creating a wave of homelessness?

Hon SUE ELLERY replied:

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

(1)–(3) The Department of Treasury undertakes a range of economic forecasts on an ongoing basis. Projections relating to population growth in the housing market will be published in the 2022–23 state budget papers.

(4) The McGowan government is investing more than $2.5 billion in social housing and homelessness initiatives over the next four years. This includes a recently announced record investment of $875 million as part of the 2021–22 state budget. This is the single largest one-off investment into social housing in the state's history and will provide an immediate boost to social housing.

DIGITAL STRATEGY ROADMAP FOR THE WESTERN AUSTRALIAN GOVERNMENT: JANUARY 2022

88. Hon WILSON TUCKER to the Minister for Innovation and ICT:

I congratulate the government on the publication of the *Digital strategy roadmap for the Western Australian government: January 2022*. The road map states that the digital inclusion in WA blueprint is still under development. I note that the road map time line ends in 2025. Can the minister advise when the blueprint is expected to be completed?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question. I provide the following answer on behalf of the Minister for Innovation and ICT.

I can advise that the blueprint is anticipated to be published in the second half of 2022.

CARBON CREDITS

89. Hon TJORN SIBMA to the minister representing the Minister for Climate Action:

Throughout the 2021 calendar year I asked —

(1) How many carbon credits were purchased by Western Australian government departments, agencies and trading enterprises, and at what overall cost?

(2) Of the above, what proportion of these units were purchased domestically and how many on foreign markets?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question. I provide the following answer on behalf of the minister representing the Minister for Climate Action.

Can I please ask that the honourable member place that question on notice?

GERALDTON HEALTH CAMPUS — REDEVELOPMENT

90. Hon MARTIN ALDRIDGE to the Leader of the House representing the Minister for Health:

I refer to the delay in construction of stage 2 of the Geraldton hospital, as reported by *The Geraldton Guardian* on 4 February 2022.

(1) Why did the state government not accept a tender for stage 2 of this project?

(2) When will construction of stage 2 works begin?

(3) What is the expected completion date of stage 2?

(4) What was the total cost of stage 1 of the Geraldton Health Campus redevelopment?

Hon SUE ELLERY replied:

Sorry; I was distracted by a fracas occurring at the back of the chamber!

I thank the honourable member for some notice of the question. The Minister for Health cannot answer the member's question in the allotted time, but will provide an answer on the next sitting day.

BANKSIA HILL DETENTION CENTRE

91. Hon PETER COLLIER to the minister representing the Minister for Corrective Services:

I refer to the Banksia Hill Detention Centre.

(1) What is the total of males and females currently accommodated at Banksia Hill?

(2) What is the approved full-time equivalent for principal officer, senior officer, prison officer, vocational support officer and other at Banksia Hill?

(3) What vacancies currently exist for each of the approved FTE referred to in (2)?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information has been provided by the Minister for Corrective Services.

(1) The total number of detainees at Banksia Hill Detention Centre as of 22 February 2022 is 126—110 males and 16 females.

(2) The total approved full-time equivalents for BHDC is 328.1. This consists of 18 senior officers, 213 youth custodial officers, 22 unit managers and 75 other, including public servants and youth detention and vocational teachers. The total approved FTE is not dependent on the number of detainees.

(3) Vacancies in relation to FTE referred to in (2) are 43.5 FTE as of 22 February 2022. This consists of two senior officers, five unit managers, 29 youth custodial officers and 7.5 other public servants and youth detention and vocational teachers.

NURSE RECRUITMENT

92. Hon JAMES HAYWARD to the Leader of the House representing Minister for Health:

I refer to the recruitment of nurses from interstate and overseas.

(1) Following the announcement that Western Australia will open its borders on 3 March, what action has the McGowan government taken to ensure nurses are recruited expediently to reduce the strain on our current workforce?

(2) Has the McGowan government devised a plan to ensure additional nurses are able to be deployed to regional areas?

(3) Considering the severe housing shortages in regional areas, does the McGowan government have a plan to provide accommodation to nurses who can be recruited to live in regional areas?

(4) What other actions are being undertaken to relieve the strain on WA nurses?

Hon SUE ELLERY replied:

(1)–(4) The McGowan government has taken action to boost the number of nurses working in our health system. Actions taken include introducing relocation incentives for eligible international health professions, adopting a fast-track initiative allowing newly qualified nurses and midwives to facilitate early employment and launching the Belong recruitment campaign. These actions have resulted in an overall increase in the nursing and midwifery workforce. Between January 2021 and January 2022, nursing and midwifery staffing levels have increased by 1 018 FTE.

COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 7: Section 11 inserted —

Committee was interrupted after the clause had been partly considered.

Hon MATTHEW SWINBOURN: In terms of who is the head of jurisdiction of the Industrial Magistrates Court of Western Australia, on the best advice available to us at this stage, there is no specific head of jurisdiction for the Industrial Magistrates Court, and it would therefore be the Chief Magistrate. The Chief Magistrate would have the powers available to him under section 25 to direct those magistrates exercising industrial magistrate powers in that regard.

Hon NICK GOIRAN: I am just trying to finalise who will be captured by this provision. The parliamentary secretary's response on the Industrial Magistrate Court helps—the head of jurisdiction in the absence of anything else is the Chief Magistrate. Is that also the case for any magistrate exercising jurisdiction in the Warden's Court?

Hon MATTHEW SWINBOURN: Yes, it is the Chief Magistrate. There are apparently two magistrates who exercise the Warden's Court functions. It is not a big jurisdiction.

Hon NICK GOIRAN: No. But it is bigger than the Industrial Magistrates Court —

Hon Matthew Swinbourn interjected.

Hon NICK GOIRAN: — where there is one magistrate fulfilling those functions. There are two with the Warden's Court and we have 6.5 fulfilling duties in the Children's Court. Then the last group, as I understand it, that potentially will be captured by all of this is a magistrate in the Coroner's Court of Western Australia. Does the parliamentary secretary have any information on how many of them are in place? Secondly, is it not then the head of jurisdiction in that area—that is, the State Coroner?

Hon MATTHEW SWINBOURN: The Coroner's Court, member, is somewhat different from the other areas in that there is the State Coroner, the Deputy State Coroner and currently two other coroners, one of whom is a magistrate who went to the Coroner's Court. We do not know whether that particular coroner still has a commission as a magistrate because we do not have that information available to us. For the sake of being correct, I am highlighting that. In relation to those coroners, the State Coroner has powers as the head of that jurisdiction. When magistrates are commissioned, they are automatically coroners under the Coroners Act. Section 21 of the Coroners Act provides that the Coroner can issue—I think the word is—directions to those magistrates performing the functions of a coroner with the consent of the Chief Magistrate. I think that is under section 21. In that instance it is with the consent of the Chief Magistrate. In terms of how that applies practically, obviously, within the metropolitan area, the State Coroner and the Coroner's Court deals with most matters, but magistrates sitting in regional areas, I am advised, regularly deal with coronial matters as well, so there will be circumstances in which regional magistrates exercising those powers will be subject to the directions of the coroner. Those directions have not been consented to by the Chief Magistrate.

Hon NICK GOIRAN: To the extent there is similarity in the regime, the State Coroner can provide some form of direction to a magistrate but is subject to the Chief Magistrate consenting to that, so there is a degree of similarity with the first half of clause 7 that couples together proposed section 11(2) and (3). But I take it there is a difference with respect to the second group, which is the provisions coupled as proposed section 11(4) and (5) in that under this regime in the bill, the president can, in effect, issue a direction in the sense of moving a magistrate away from that specialist jurisdiction, and the Chief Magistrate must accept that. Does that also exist in the Coroner's Court, where the State Coroner can move a magistrate from exercising some form of jurisdiction under the Coroner's Act and effectively send them back to the Chief Magistrate and the Chief Magistrate must accept that?

Hon MATTHEW SWINBOURN: In relation to coroners, there is an obvious distinction, because a number of coroners are just coroners, but with the Children's Court, all magistrates in the Children's Court are general magistrates, except for the one specialist, who is the president. There is that different element.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: That is right—the part-time commissioner as well. The Chief Magistrate retains his power in relation to those coroners who are exercising coronial inquest powers, so they remain subject to the direction of the Chief Magistrate and those matters that arise under section 25 of the Magistrate's Court Act which states —

> (1) The Chief Magistrate, by directions given from time to time to a person who is a magistrate, may —
>
> …
>
> (b) specify which class or classes of the judicial functions that the person has under written laws, whether as a magistrate or otherwise, the person is to perform for the time being; and the chief magistrate by direction from time to time may specify which class or classes of judicial functions or otherwise this person is to perform for the time being.

In relation to those regional magistrates in coronial districts, I am told that a death in the district will be notified through the administrative processes to the coroner and then the police will conduct their part of the investigation, and the matter will be listed in the Magistrates Court that sits within that district, and then that magistrate will sit as the coroner on those particular matters. Obviously, there are deaths all the time across the state, but as we know, not all of them give rise to coronial inquiries. That work could be characterised as ad hoc, so it is not the same as the Children's Court in relation to workload, listings and things of that kind. When there is a death in the coronial district that a Magistrates Court sits within, that particular magistrate will exercise those powers subject to section 21 of the Coroners Act, "Directions by State Coroner" —

> (1) With the prior approval of the Chief Magistrate of the Magistrates Court, the State Coroner may give to a coroner directions about investigations into deaths generally and the manner in which they are to be conducted.

I suspect that is things like practice directions and things of that kind. The section continues, and, importantly it states —

> (2) The State Coroner may give to a coroner directions about an investigation into a particular death, including a direction to cease to investigate that death or a direction to make such findings as are possible under section 25(1) in relation to that death by a day specified in the direction.

The coroner has specific powers to direct a magistrate sitting as a coroner on specific cases. One is the more general direction, which I suspect relates to practice directions and things of that kind.

Hon NICK GOIRAN: I thank the parliamentary secretary. As we conclude our consideration of clause 7, it seems relatively clear at this point that what is happening here is unique under Western Australian law and no other Western Australian provision constrains or obligates a head of jurisdiction because of what another head of jurisdiction has determined. If there is a case for that to be made because, allegedly, the genesis of this matter is a high profile dispute, the point that I would make is that it would be improper for it to be considered by the chamber in the absence of that person who is being constrained or obligated by the other head of jurisdiction to have a voice that is heard in the Parliament. That is what we have here. We do not have it in any other provision in Western Australia. The government is not aware of it being the case in any other Australian jurisdiction, yet it is happening in the context of a high profile dispute.

As I indicated earlier, I have no problem with the request mechanism, as set out in proposed sections 11(2) and 11(3). But, in my view, it is improper to do what is provided for in proposed sections 11(4) and 11(5), at least in the absence of the chamber being informed of what the Chief Magistrate has to say about this. If the Chief Magistrate were to provide information to the Parliament, there would be nothing particularly strange about that; members of the judiciary are quite entitled to give their views on matters, though they generally restrict themselves when it comes to policy matters. I have certainly been in many committee hearings in which judicial officers have elected not to provide a view on a policy matter. On a significant matter that directly impacts them and the way in which they manage things and now this new obligation to adhere to a notice given by another head of jurisdiction, information should be provided to the Parliament. That is not the case. It has not been provided. The government has indicated that it will not provide it. I think that is wrong but I do not think we can take it any further.

Clause put and passed.

Clause 8: Section 12A inserted —

Hon NICK GOIRAN: Clause 8 seeks to insert a new section 12A into the Children's Court of Western Australia Act 1988. We have just dealt with the provision that deals with the request process by which the President of the Children's Court can make a request to the Chief Magistrate. The request can be consented to or refused by the Chief Magistrate, with absolute discretion. We have also dealt with the provision that can see the President of the Children's Court send back or transfer a magistrate on either a part-time or full-time basis to the Chief Magistrate and that Chief Magistrate will have no say in that matter, notwithstanding the fact that it is conceded by all that the Children's Court is a specialist jurisdiction. It is no different from the Industrial Magistrates Court, the Warden's Court or the Coroner's Court. All of these particular areas are specialised jurisdictions. That is the provision in clause 7, which we just passed.

Under clause 8, we see that the president will have the power to assign duties to magistrates. To what extent does this power to assign duties differ from the power that exists at the moment for the President of the Children's Court?

Hon MATTHEW SWINBOURN: There were no express powers of this kind, hence why we are now moving to express them. The member asked how the powers in this clause differ from the powers that the President of the Children's Court currently has. The President of the Children's Court does not have any express statutory powers. The president's powers would be those that we would consider necessary to perform the functions of his commission, having regard to common law practices of courts and those sorts of conventions. In substance, the powers of the president are, in effect, no different. What we are doing here is putting those powers beyond doubt. As we know, in Supreme Court proceedings, some of these issues are live issues between the parties in dispute. We want to put it beyond doubt what those powers are by putting them into the act. The member might well jump up and ask whether it is a codification of the existing powers of the President of the Children's Court. I cannot go as far as to say that it is a codification of those powers. There could be powers. It is beyond my contemplation that they might be "reserved" in situations that all heads of jurisdiction might have. Courts have a long storied history that goes back beyond the establishment of this colony. I am not trying to be glib but I do not want to say that it codifies all the powers within that sort of thing because that would not be accurate.

Hon NICK GOIRAN: One of the elements in this clause sees the President of the Children's Court able to give a direction to a magistrate to specify where, when and at what times to deal with those cases and perform those duties. What happens with the part-time magistrates who are undertaking Children's Court functions if that location—I am specifically thinking about where they are undertaking these functions—conflicts with where they are to undertake cases in their other part-time role under the directions of the Chief Magistrate?

Hon MATTHEW SWINBOURN: I do not think there is anything in this bill that manages the particular issue that the member raised. If, for example, a magistrate was sitting part-time in Armadale, exercising Children's Court functions, and the Chief Magistrate said, "I want you to use the other part of your time to sit in Broome", or whatever, it is to reconcile those two things. I have never been to Broome; I do not know why I keep picking Broome, but anyway! I have been to Port Hedland; I lived there when I was an infant.

In any event, we expect those two judges to reach comity on that issue, so that does not give rise to a situation in which the Chief Magistrate issues a direction that makes it impossible for a Children's Court magistrate to exercise Children's Court functions according to how they have been engaged.

Hon NICK GOIRAN: I understand that. The parliamentary secretary has answered my original question, but my follow-up question is: what is the circuit breaker there? What will occur in the event that the president issues one of these directions under proposed section 12A and the direction is in conflict with the Chief Magistrate's section 25 direction? Further to that, for the benefit of the magistrate who receives these two competing directions, what could he or she do? Obviously there will be certain common sense steps that the magistrate would take, but when push comes to shove, what are they to do? I note that proposed section 12A(4) states —

> A magistrate must comply with a direction given under subsection (1).

I assume there would be a live provision under the Magistrates Court Act, so they now have this dilemma. How does the government propose that a magistrate deal with that dilemma?

Hon MATTHEW SWINBOURN: It is hard to contemplate a situation in which the two courts became so dysfunctional that they would be in the situation that the member has described. It is possible —

Hon Nick Goiran: Will you take an interjection?

Hon MATTHEW SWINBOURN: Sure.

Hon Nick Goiran: I am mindful of the fact that we've just got this Supreme Court matter. I know it wasn't two heads of jurisdiction, but effectively that was what happened.

Hon MATTHEW SWINBOURN: Yes, I appreciate that, member, but as I say, I have acknowledged that it is a possibility. It would be a possibility of a kind existing now because of the relationship between the two courts. In terms of what we are proposing in this bill, we are not addressing that to say that one has primacy over the other. I suppose what I can do is to take the member back to the provisions of what will be new section 11(3)(b). It states —

> (3) If the President gives a notice under subsection (2) in relation to a dually appointed magistrate —
>
> …
>
> (b) if the Chief Magistrate consents—the Chief Magistrate must, in giving any directions to the magistrate under the *Magistrates Court Act 2004* section 25, take into account that for the time being the magistrate is required to perform Children's Court functions on the basis specified in the notice.

To put that into context, once the Chief Magistrate consents, he or she is required to have regard to the consent that has been given in the way that the Chief Magistrate exercises his or her powers under section 25 of the Magistrates Court Act.

Hon NICK GOIRAN: That is interesting. Really, the implication is that a direction by the president under proposed section 12A would, at one level, have greater primacy than a direction by the Chief Magistrate under section 25 of the Magistrates Court Act 2004 because of proposed section 11(3)(b) of the Children's Court of Western Australia Act 1988. It is not really a question, but I will just make this observation: this, once again, emphasises why the house of review should get to hear what the Chief Magistrate has to say about this, because we now potentially have a second situation in which there is some form of imposition or restriction on the Chief Magistrate that does not currently exist. Under the previous provision the President of the Children's Court could tell the Chief Magistrate, "I want to send you back this magistrate, either on a part-time or full-time basis. I am sending you back this magistrate." The Chief Magistrate must accept that notice. That is a new provision that exists because of clause 7, which we have just passed. Now we have an addition to that scenario whereby the Chief Magistrate on a second occasion is now going to be constrained by something that the other head of jurisdiction—in this case, the President of the Children's Court—has directed. If I were the Chief Magistrate, I would be very, very circumspect in this situation about consenting to anything under proposed section 11(3) unless I had probably, as an ancillary document, some form of memorandum of understanding between myself and the President of the Children's Court as to exactly how we are going to operate with the consent that has just been provided, because otherwise I can see multiple instances in which a conflict could emerge. It could potentially be a conflict that emerges through no fault of either of the two heads of jurisdiction, but because of the view of the magistrate who is affected by these notices.

I move to another provision in clause 8. At proposed section 12A(3) there is an insertion that a direction given by the president to a magistrate under proposed section 12A(1) "does not limit the functions of the magistrate." Why was it thought necessary to insert that? What are we trying to address there?

Hon MATTHEW SWINBOURN: I take the member to the Magistrates Court Act 2004. I am sure he has a copy in front of him. Section 6, titled "Magistrates: functions of", deals with the functions of magistrates when not, for want of a better word, exercising their judicial functions in the sense that they are dealing with a case before them. I am advised that proposed section 12A(3) is necessary to ensure that essentially the powers of the president under section 12A(1) will be directed to administrative matters and not to judicial matters. That is why it is necessary. That wording is in the Magistrates Court Act at section 25(2). The provision we are looking at refers back to proposed section 12A(1), but the reason is that proposed section 12A(2) deals with the particularity that is the Children's Court that we are talking about here. That has been picked up here. It is a reflection of the wording in section 25(2) and it relates to those judicial functions.

Hon NICK GOIRAN: The last thing pertinent to clause 8 relates to those categories of matters set out at proposed section 12A(1). One thing set out there is that the president will have the power to direct a magistrate about which case or cases, or class or classes of case, the person is to deal with. Proposed section 12A(2) means it can be a reference only to Children's Court cases. Is that not the case at the moment?

Hon MATTHEW SWINBOURN: I think the answer to the member's question is yes, but we have already covered off the difference here between essentially the powers of the president to administer the court, which arises under section 37(1) of the Children's Court of Western Australia Act, which states —

> Subject to this Act and to the rules of court, the President is responsible for the administration of the Court, the disposition of the business of the Court and for its practice and procedure.

As I said before, proposed section 12A(1)(a) is putting beyond any doubt what those particular powers are.

Hon NICK GOIRAN: Yes, putting things beyond doubt, I understood, was proposed section 12A(1)(c); that is where, when and at what times to deal with those cases or perform those duties. I did not appreciate that it might also apply to proposed section 12A(1)(a). It is not the case that the Chief Magistrate specifies which children's cases or classes of case a Children's Court magistrate can deal with at the moment, I do not think.

Hon Matthew Swinbourn: I am sorry; are we talking about proposed section 12A or section 25 of the Magistrates Court Act?

Hon NICK GOIRAN: At the moment, I am referring to clause 8, proposed section 12A(1). There it states that the president can give a direction specifying which case or cases, or class or classes of case, the person—the magistrate—is able to deal with. My understanding is that is what is happening at the moment anyway. The President of the Children's Court, if you like, is distributing the case load amongst the Children's Court magistrates.

Hon Matthew Swinbourn: By way of interjection, yes, member.

Hon NICK GOIRAN: Yes, so proposed section 12A(1)(a) is just a statement of the existing practice. There is nothing controversial about that for any party, and I certainly have not received any advocacy that that is a point of concern. Having established that, what is the situation with proposed section 12A(1)(b), "specify which administrative duties the person is to perform for the time being"? Has that been a point of contention, or is that again existing practice, there is nothing new here, and it is therefore only 12A(1)(c) that is potentially introducing something new that might be contested? I am just trying to establish which ones are really without doubt a statement of the existing practice, and which ones have been inserted just to put it beyond doubt.

Hon MATTHEW SWINBOURN: I am advised that there is nothing particularly controversial about proposed section 12A(1)(b) in terms of existing practices in the court, and proposed section 12A(1)(c) is really to put beyond doubt the powers of the president in relation to where, when and at what times to deal with those cases or perform those duties.

Hon NICK GOIRAN: To conclude on this point, then, if I can use a very, if you like, alive albeit sensitive case, in the situation with Magistrate Crawford and President Quail, there really is no dispute by anybody, as far as I know—I am just seeking the parliamentary secretary's confirmation that he understands the same thing—that President Quail has always had, irrespective of this bill, the capacity to distribute Children's Court cases to Magistrate Crawford, and that that has been the practice for a period we now know to be less than two years. Over the course of approximately the last two years, President Quail has been directing Magistrate Crawford on which cases she will take on. There is nothing particularly controversial about that. That is consistent with the practice that would have been there with the previous Presidents of the Children's Court, whether it be then Presidents Wager or Reynolds. Similar to that, there were certain administrative duties that Magistrate Crawford was required to perform from time to time. I am assuming those administrative duties would have included the completion of some reports and the like. Whatever those administrative duties were, President Quail was, from time to time, directing Magistrate Crawford to undertake those duties. There has never really been any dispute about that.

It is the third category over which a dispute emerged. Although I hear loudly and clearly that the government's position is that, in effect, a dispute need not have occurred because the practice has been consistent with past practice and the common law understanding of the powers of the president and so on and so forth, nevertheless, for the purposes of putting it absolutely beyond doubt, proposed section 12A will now certainly say that President Quail can direct Magistrate Crawford where, when and at what times she is to deal with Children's Court cases. At the moment, of course, we understand, because it is on the public record, that the court will be based primarily in Fremantle, but I believe there are another couple of regional courts where this is undertaken. Is that a fair and accurate summary of how this clause intersects with the dispute between those two judicial officers?

Hon MATTHEW SWINBOURN: I prefaced to the member that I did not want to get caught up in the dispute between President Quail and Magistrate Crawford. The member has framed his question and asked whether it is a fair characterisation. I will not answer that directly because I think I can talk about it only in a general sense. We are trying to solve the future purposes for any dispute that might arise on these matters regarding what the president's powers are. We are putting it beyond doubt. President Quail, or any future Children's Court president, whoever that might be, will have those powers that are listed under proposed section 12A(1) for magistrates who exercise the Children's Courts jurisdiction and come within the president's ambit. I think that is as specific as I can be without relating it back to the case of Crawford and Quail, which was never finally decided. As we have indicated before, notwithstanding that it is the genesis of this matter, this legislation was not meant to resolve that dispute, whatever it is and wherever its limits rest. I do not know where the limits of that dispute rest—that is me speaking as the parliamentary secretary—and whether such things will be resolved. There are no more legal proceedings and so we need to—sorry, someone is deep sighing in the background—deal with this regarding the future purposes of the president.

Hon NICK GOIRAN: Parliamentary secretary, because of clause 8 and proposed section 12A(1)(c), once this bill passes, it will be possible—although, I will say politically crazy—for President Quail to direct Magistrate Crawford that she is to perform her duties in Esperance or Kununurra. He could do that by virtue of proposed section 12A(1)(c), without a shadow of a doubt. I appreciate that the government will say there is a strong argument that that can be done already. I take it that the government is now saying that the extent to which there was ever any dispute about that, proposed section 12A(1)(c) means that—if the parliamentary secretary wants to take the personalities out of it, that is fine—the President of the Children's Court can move a Children's Court magistrate anywhere around Western Australia with or without their consent.

Hon MATTHEW SWINBOURN: The president will have the power to give directions to a magistrate to specify where, when and at what times they are to deal with those cases or perform those duties. The president will have that power under this bill and for future purposes that will apply to all magistrates who come within the scope of this provision.

Clause put and passed.

Clause 9: Part 8 inserted —

Hon NICK GOIRAN: This is the transitional provision. Has the president given the Chief Magistrate any such notice that would be captured by this transitional provision? I appreciate that there is also a prospective period of time because a notice could be given tomorrow, for example, or at any time between now and when part 2 comes into operation. I am seeking to clarify that no such notice has been given that is applicable to new part 8 at this time.

Sitting suspended from 6.00 to 7.00 pm

Hon MATTHEW SWINBOURN: Before the break, the member inquired whether any notices have been issued.

Quorum

Hon NICK GOIRAN: Deputy chair, I draw your attention to the state of the chamber.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Quorum required, ring the bells. I am sorry. I forgot to count myself—not a usual thing for me to do! Quorum present; there is no point of order.

Committee Resumed

Hon MATTHEW SWINBOURN: The member inquired before the break whether any notices had been issued under proposed section 54(3) of the Children's Court of Western Australia Act. To clarify for the member, the transitional provisions proposed at section 54(3) will not provide for the issue of notices prior to the commencement of the act. The provisions are to clarify that the powers in proposed section 11 may be exercised by the president for dually appointed magistrates who performed functions in the Children's Court prior to the commencement of the act. Once the act commences, the president may issue a notice under proposed section 11(2) or (4) when the circumstances in proposed section 54(2) apply. Proposed section 54(4) will effectively provide that when no previous notice has been given, the president and Chief Magistrate are deemed to have agreed to the magistrate performing functions in the Children's Court on the basis that they have been performed prior to the commencement. This will avoid the need for the president to issue notices immediately upon the commencement of the act for every dually appointed magistrate who performs Children's Court functions.

Clause put and passed.

Clauses 10 and 11 put and passed.

Clause 12: Schedule 1 clause 12 amended —

Hon NICK GOIRAN: Clause 12 seeks to amend the first schedule in the Magistrates Courts Act 2004 and, in particular, to insert two new subclauses in clause 12 of that first schedule. It appears that if a magistrate were to resign, purportedly from one of their appointments—I think we discussed earlier that there is a distinction between a commission and an appointment and the parliamentary secretary indicated that the Governor gives a person a commission and will then appoint them to a particular court—they will automatically be taken to have resigned from the other position. Evidently, that is not the case at the moment, otherwise there would be no need to insert these provisions into the bill. Why is this seen as necessary?

Hon MATTHEW SWINBOURN: We say it is necessary because currently there is no provision that deals with this. It would be possible for a magistrate to resign from their appointments and, therefore, be restricted in terms of where they act. The point of the whole magistrate's scheme, as it was envisaged in 2004, was to provide for a flexible magistracy, not to provide for specific specialist magistrates who could sit in only a particular jurisdiction, whether that is the Industrial Magistrates Court, the Children's Court, the Magistrates Court itself, the Warden's Court or the Coroner's Court. Effectively, this is necessary because all magistrates are now appointed to all those particular areas so that they have the maximum degree of flexibility for the purposes of the state; therefore, this is necessary to ensure that no particular magistrate frustrates that by resigning and effectively being able to sit in only that one jurisdiction.

Hon NICK GOIRAN: But does that not then fly in the face of the discussion that we had previously about the importance of the Children's Court being a specialised jurisdiction?

Hon MATTHEW SWINBOURN: I do not think so in that regard, member, because all magistrates, except for the one who is engaged part time, are magistrates across the board. Some of the magistrates who sit full time in the Magistrates Court at the moment have come from the magistrate's jurisdiction into the Children's Court jurisdiction, and it is possible that they might come and sit in another jurisdiction. How that operates over time is that individual magistrates themselves, I suppose—coming back to the specialised thing—may work in the Children's Court for a long period and find that environment difficult to stay in because of the nature of the work that they are dealing with. I am contemplating here. They could be there for 20 years and then say to the Chief Magistrate and the president, "I want to move on into another area." The specialisation of the Children's Court is important in terms of the mix, but people will come in and out of that over the course of their career in the judiciary.

Hon NICK GOIRAN: Parliamentary secretary, let us confirm whether, at the moment, a magistrate who resigns one of their appointments would not automatically lose their commission. If any one of the magistrates—I think we said that there are 57 general magistrates and six who are currently fulfilling duties exclusively in the Children's Court, so that is 63 magistrates—were to tender a resignation from their appointment with the Children's Court, they would still continue to maintain a commission as a magistrate.

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: Clause 12 will change that so that such a resignation will trigger a complete loss of the commission. I particularly note that proposed paragraph (7), which is to be inserted into schedule 1 of the Magistrates Court Act 2004, seeks to apply this new regime, this loss of commission, based upon a resignation of one office retrospectively. Why has it been deemed appropriate to apply this provision retrospectively? Is that an indication that somebody has already tendered a resignation from one position?

Hon MATTHEW SWINBOURN: No-one has resigned. As the state of affairs currently sit, the advice is that no-one has resigned so proposed paragraph (7) will have no practical effect unless somebody resigns between the passage of this bill and it coming into force.

Hon NICK GOIRAN: Has this clause been added to somehow protect the policy decision that has been made here from any advantage being taken by somebody between now and when the bill comes into effect?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: It is definitely the case, parliamentary secretary, that the government is very clear in its advice to the chamber that no magistrate in Western Australia, according to the words at page 10 of the bill, "held office both as a magistrate of the Court,"—this is, of course, a reference to the Magistrates Court—"and as a magistrate of the Children's Court" has tendered a resignation from one of those offices; that is, no such resignation exists.

Hon MATTHEW SWINBOURN: The advice at the table is that there is definitely nobody. One of the advisers said that if somebody had resigned, he would have been advised of that and he would have no knowledge of that. I do not want to sound like I am qualifying it but I have to qualify that the best available advice is that it definitely does not affect anyone.

Hon NICK GOIRAN: The parliamentary secretary would definitely be aware of this because when we started debate on clause 1—we are now on the final clause of the Courts Legislation Amendment (Magistrates) Bill 2021—the very first question that I asked was: what is the genesis of this bill? The parliamentary secretary indicated that it was the Crawford v Quail matter. The parliamentary secretary will be aware of this because during the second reading debate, I took some time to take the house through case CIV 1037 of 2021, Catherine Patricia Crawford and His Honour Judge Hylton Quail, in the Supreme Court of Western Australia, which took place over three days, albeit the third day was really about the parties informing the court that the matter had been resolved and was essentially seeking, as I understand it, orders by consent. On the second of those days, Tuesday, 12 October 2021, proceedings began at 9.59 am. The parliamentary secretary would definitely be aware that Magistrate Crawford was represented on that day by Mr Donaldson, Senior Counsel. We had some interaction about that earlier. The parliamentary secretary may or may not be aware that His Honour Judge Hylton Quail was represented on that day by Mr Grace, QC. In the transcript of the second day, Mr Grace told Justice Allanson, who, of course, was presiding over the proceedings in the Supreme Court—this is at page 257 of the transcript that I have just identified—"She resigned." The only reasonable conclusion that I can draw from this at this point, not having obviously the same level of information at my disposal as the parties themselves—the parliamentary secretary and I are perhaps at some form of disadvantage at this point—is that it seems to be an indication from the senior barrister representing His Honour Judge Hylton Quail that Magistrate Crawford had resigned. That is why I am seeking absolute confirmation from the government at this time that there is no doubt in the mind of the government that Magistrate Crawford has never at any stage resigned from one of her offices and will not under any circumstances fall foul of the new provision that will be inserted into the act at clause 12, which would see, if retrospectively applied, her effectively moved on from her commission because of this clause before us. That is why I am taking the extra time now to make sure we get this 100 per cent right. I acknowledge that, as he always does, the parliamentary secretary is working to the best of the information that is made available to him, but the information that was earlier provided to the chamber through the parliamentary secretary on behalf of the government was pretty clear—I did not mention Magistrate Crawford; I asked about magistrates generally—that it does not apply to any magistrate and that all the government is seeking to do is to make sure that no magistrate quickly puts in a resignation, for example, tomorrow, and avoids the clause 12 provision. But given that this information appears to have occurred on 12 October 2021, can the parliamentary secretary assist the chamber by confirming that it is government's position that Magistrate Crawford has not tendered a resignation at any stage with respect to any office?

Hon MATTHEW SWINBOURN: I can only be clear as the advice that is given to me at the table, as Hon Nick Goiran acknowledged. Schedule 1, section 12 of the Magistrates Court Act deals with resignations and my advice is that no resignation has been perfected or otherwise from Magistrate Crawford that would mean that she would fall within the ambit of that particular provision. I cannot say what the resignation reference is in the court transcript. My advice is that no magistrate, and that would include Magistrate Crawford, would be affected by the provisions that we are debating.

Hon NICK GOIRAN: The question, of course, that then arises is: why would Mr Grace say that she resigned when he is representing President Quail, who is involved in a very high profile—I think I have referred to it previously as an unprecedented—type of dispute, which includes an allegation, as I understand it, by Magistrate Crawford that she has been bullied by Mr Quail and also allegations from Mr Quail against Magistrate Crawford of evidence tampering? That is certainly my understanding of the materials that are on the public record. It is in those circumstances that we then have the government, the Attorney General in particular, pushing this bill through both houses of Parliament as a very high priority in the legislative calendar for 2022. This is not some kind of bill that has been tacked on at the end of the legislative agenda. No; it has been elevated to number 2 in circumstances in which the court record seems to suggest, on a prima facie basis as least, that Magistrate Crawford might be captured by this rather unique clause tacked onto the end of this bill. It seems that it is not the government's intention that

Magistrate Crawford would be captured by clause 12 of the bill. I accept that without equivocation. If the parliamentary secretary tells us that it is not the government's intention for Magistrate Crawford to be captured by clause 12 because of any purported resignation that might have been issued prior to this debate, I accept that without equivocation. But just because it is not the government's intention that this occur does not mean that it is not going to happen. That is why, at some earlier stage last week—probably around exactly a week ago—I suggested to the chamber that it might be good if this matter went to the Standing Committee on Legislation so that we could get to the bottom of the various issues. Here is another classic example, because it would have been possible for the legislation committee to inquire into this matter and find out whether Magistrate Crawford has resigned; and, if not, why does President Quail's advocate in the court suggest that that might well be the case?

I do not know that I am going to be able to assist the parliamentary secretary in this matter, and it is probably not really my job either, but I will highlight for the benefit of members that it appears that the court record says one thing and the government's understanding is another; they cannot both be right. I would like to know exactly whom Mr Grace was referring to when he told Justice Allanson that she resigned. The full quote is at page 257 of the transcript. I will introduce the information by referring to what Justice Allanson was asking at the time. He says —

> **ALLANSON J:** If I were to find that the purpose of the direction is to facilitate the administration of the court, you would say that that is not an improper purpose?
>
> **GRACE, MR:** Yes.
>
> **ALLANSON J:** It's just that going into the details of people's conduct can, really, lead in both directions, can it not?
>
> **GRACE, MR:** Well, no, your Honour, because there was never any request made by the President directed towards the plaintiff. She resigned.

I should indicate to members that I think it is pretty uncontroversial to say that Magistrate Crawford is female, President Quail is male and when Mr Grace is speaking to Justice Allanson and says, "She resigned", it is very difficult to draw any other conclusion than that it is a reference to Magistrate Crawford, particularly given all the context. Mr Grace goes on in his ongoing submissions to Justice Allanson to say —

> What was revealed by all the correspondence, including the correspondence to and from the plaintiff—sorry, the defendant to the executive government and also involving Chief Magistrate Heath, was there has to be a way of resolving the problem that exists within the Children's Court by reason of the plaintiff's presence there.

The dialogue continues. The parliamentary secretary can see, at least in the portion of this transcript that I have drawn to his attention from 12 October 2021, that it is difficult to draw any other conclusion than the fact that it is a reference to a resignation of Magistrate Crawford. That is what troubles me before we speedily pass clause 12, given that we are now going to be retrospectively applying a new mechanism that would see any magistrate captured by it holding no offices at all. It states —

> If a person holds office both as a magistrate of the Court and as a magistrate of the Children's Court, and the person resigns from only one of those offices, the resignation is taken to be a resignation from both of those offices.

That is what we are about to pass. We are passing it in the context in which the government says that it does not apply to any Western Australian at this time, as no magistrate has resigned, yet it appears that the court record suggests otherwise. It is no passing matter; it is in a court record in which there was a massive dispute between a magistrate and the President of the Children's Court. It is not something that we can just gloss over. Magistrate Crawford has either resigned or she has not. If what the government says is true and Magistrate Crawford has not resigned, and I accept that without equivocation, what is Mr Grace up to—Mr Grace, QC, representing, presumably on instructions from President Quail? What is going on there? Are Mr Grace and Mr Quail 100 per cent correct and Magistrate Crawford has resigned and the government has provided, unintentionally, some misleading information to the chamber this evening? That is what we cannot seem to get to the bottom of. Has the parliamentary secretary had any further information provided to him that might assist us to resolve this dilemma; and, if not, what mechanism might be available to him at this point to put this matter beyond doubt?

Hon MATTHEW SWINBOURN: We are not in any doubt. No magistrate has resigned according to the provisions of the Magistrates Court Act such that they would be affected by proposed subclause (7). I cannot be any more emphatic in that advice. I cannot speak to what Grace, QC, was talking about in the transcript. That would have been his submission. I doubt it was the subject of evidence. I cannot go any further on that. We have been as unequivocal as we can be on this issue. The people I am receiving advice from would know whether she had resigned, so that is the position.

Hon NICK GOIRAN: I want to conclude by thanking the parliamentary secretary for making that position abundantly clear. For anyone who reads *Hansard*, there was no equivocation. The parliamentary secretary was not trying to provide any. He was making the position very clear on behalf of the government.

It is my considered view that Magistrate Crawford certainly cannot, under any circumstances, by executive government or otherwise, at this point in time be captured by clause 12. I accept that a sequence of events might occur between now and commencement day that would capture the magistrate, or any other magistrate for that matter, with respect to clause 12. But the advice on the judiciary that the executive has provided to the chamber tonight is without equivocation. I think that as a separate matter, a bit of work needs to be done to get to the bottom of what Mr Grace was saying, but so long as the position of government is that Magistrate Crawford continues in her commission notwithstanding the passage of this bill, I think we can pass clause 12.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, and passed.

POSEIDON NICKEL AGREEMENT AMENDMENT (TERMINATION) BILL 2021

Second Reading

Resumed from 28 October 2021.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [7.31 pm]: I am the lead speaker for the opposition on the Poseidon Nickel Agreement Amendment (Termination) Bill 2021. I say at the outset that the intent of the opposition is to support the bill and to run through a few of the issues, which I suspect will not take an inordinate amount of time. For the information of the government, at this point, unless something interesting happens in debate, I do not intend to go through to the committee stage of the bill but simply run through some of the general issues as we go. Having said that, if the debate gets interesting, we never know where we will end up, but that is the intent at this point. I do not intend to take an inordinate amount of time to deal with this.

This bill effectively terminates a state agreement act and that will allow the activity that occurs on this site to simply occur under the Mining Act. I think it behoves us to examine the role of state agreement acts. In this sort of debate, it is almost a shame that our good friend and erstwhile member of this chamber Hon Robin Chapple is not with us to discuss his view and the Greens' view on state agreement acts because they do play a pretty important role in what the state does. It is interesting that both the government and the opposition are supporting, effectively, the termination of a state agreement act to allow a mining activity to return to being under the auspices of the Mining Act. I suspect if he were here, Hon Robin Chapple would take a degree of delight and present us with a long speech in that regard. At one level, I understand that perhaps we can go through that without his contribution, but I always found the contributions of Hon Robin Chapple incredibly useful. In this circumstance, I think he would take some due satisfaction from the fact that the bill before the house today will do precisely that.

Why do state agreement acts exist? State agreement acts exist to allow significant projects to proceed because they provide a degree of tenure and certainty that is not available under other legislation. Under the Mining Act, there are constant reviews, and the proponent's capacity to deliver its outcome is more certain under a state agreement act. The question becomes which projects and proponents should be put under a state agreement act, and about the level to which we support industry development by providing them with their own special legislation. There have been a few examples recently, and I do not need to go through them in a lot of detail, but most of the supporting legislation—the Environmental Protection Act and the Mining Act and the interaction between those two, and a few other acts—for the most part manage the state development of Western Australia in a pretty efficient manner.

We could debate around the edges whether the outcomes are what we want and we can get bogged down, if we are not careful, in whether development should be approved. Those who are supportive of development versus those who consider all development something of an anathema. If we take those two groups aside, the legislation around these things generally operates to a reasonable level. It is interesting to encounter a state agreement act for which even the proponent, the Labor government and the state opposition agree that removing it will provide a reasonable outcome. According to the government and the opposition, coming under the Mining Act will provide the proponents with more flexibility to operate than it has under its own specific state agreement act, whereby everything is effectively an issue of contract law.

Hon Dr Brad Pettitt was out of the chamber on urgent parliamentary business but I was reflecting that our erstwhile friend Hon Robin Chapple would have loved to make a contribution on this legislation. I do not know whether Hon Dr Brad Pettitt is planning to make a contribution tonight, but he would have been in his element with this debate, and he would have lectured us to no uncertain end about the advantages of the other legislation above state agreement acts. Hon Robin Chapple spent many hours in this chamber in debate telling us of the plagues that state agreement acts provide.

I think the major parties on both sides of the chamber agree that state agreement acts are incredibly important to provide long-term certainty for industry. But in this circumstance we are seeing a shift away from a state agreement act to allow development to occur simply under existing legislation. I do not consider that this will be a regular event in Western Australia, but I think it is a little momentous in its own right. This legislation will pass. It passed through the lower house very quickly and it will pass through this house in a reasonably rapid manner. We should reflect that we are removing a state agreement act to allow a proponent greater flexibility in terms of the activities that will occur on a particular site. In its own way, it is important and, at a time, to be noted.

Obviously, this bill deals with the Poseidon Nickel Agreement Act, which was first enacted in 1971 for the ratification of a nickel mine that started at Mt Windarra. After that, in 1974, a second nickel mine commenced in South Windarra. We have heard of the two Windarra projects, but it is effectively two ends of the same beast, if you will. Nickel was first discovered in that region in 1969. It did not take a long time for the first discovery, according to the minister's notes here, about 18 kilometres north west of Laverton, which is not that far out of town. Nickel is obviously a highly prized mineral. What are we using nickel for? The first and most obvious use for nickel is to turn iron ore into stainless steel and that obviously has a huge range of benefits. Funnily enough, nickel is a common element—would you believe? My understanding is that nickel is actually very common. Unfortunately, most of it sits in the earth's core, which is a little bit hard to get to and it is a little bit warm down there. It is a bit warmer than Perth is at the moment, which I know feels like it is hot enough! There is plenty of nickel inside the earth but not much of it is easy to get to, so it becomes a very valuable mineral. Nickel is used in a range of things, generally alloys. Turning iron ore alloy into stainless steel is probably the most obvious one, but there are a range of other alloys. It is also used in batteries, so it has a range of uses.

Nickel is a highly valuable and very important mineral, and when I say highly valuable, of course the price varies a bit, and it is not always the case that nickel miners make a fortune; there have been plenty of times when it has been a bit tight. But it is a mineral that has an important range of uses. It is one of those minerals that you basically cannot run a modern economy without. Security in nickel is one of those very important things that this country, along with a lot of others, is looking at. It is very widely distributed. The nickel reserves in Australia are similar to those in a range of other countries, like Canada for example. Even the Philippines and Indonesia have relatively solid nickel reserves. Worldwide, of course, it is a very sought-after material, so we want to be supportive of this industry. We want to see nickel development, as we do a range of other minerals in Western Australia. I know that not only Australia, but also other countries are looking at that security of nickel, and so these areas are to be looked after.

Nickel was first discovered in 1969. The mine started off in the early 1970s. By the time we got into the 1980s and 1990s, there was a fair variation of how much nickel these two mines were pulling out of the ground and delivering. A processing centre was developed at Mt Windarra, and that also processed an amount of gold from nearby tenures. As I understand it, the mining itself ceased in 1990 and 1991, according to the minister, but processing continued at least until 1994. Then there was a gap as the resource was looked at and moved around. In 2005, BHP, which was previously Western Mining Corporation, sold its interests to—apologies for the pronunciation—Niagara Mining Ltd, which later became Poseidon Nickel Ltd. It ended up being named after the god of the sea. At that point it was still operating under a state agreement act.

It is interesting to me that Poseidon itself instigated the termination of the state agreement act; that is, it recognised that what was in the state agreement act, which clearly and rather rigidly defined the outcomes that were supposed to be developed out of this mining sector, restricted its future. Again, that is the section that I think the Hon Robin Chapple would be incredibly interested in. Therefore, Poseidon requested the termination of the state agreement act to give it the freedom and flexibility to look at other parts of its business. To be honest, I think that that is something that all sides of politics will probably agree on, and I expect to see outrageous agreement from all parties in relation to the bill. I would be very surprised if any part of politics, the political system or government, would be opposed to the bill presented before the house tonight. It makes great good sense to allow a company the flexibility to proceed to develop and do what it needs to do, hopefully, to be profitable and employ people. To do that under the existing legislation without having to provide a restrictive individual piece of legislation to support it kind of makes sense. I am hoping, as other members make a contribution to this debate, that we see furious agreement between us all that this particular outcome is a good outcome.

Unless other members are interested in going into the committee stage on the bill, which I do not think is necessary, I am happy to take a little time to run through some of the clauses of the bill as we go. It is a very short bill of seven clauses. The first six clauses set up the bill for clause 7, which will insert schedule 3, "Termination Agreement". The termination agreement is important. It contains a few particular key clauses in this process. I take members to "Termination of Principal Agreement", which is clause 4 of schedule 3, inserted by clause 7 of the bill. The first thing clause 4(2) will do is this —

> With effect on and from the Operative Date the Company is released from its obligations under clauses 3.2(a) and 3.2(b) of the Deed of Covenant and, except as otherwise provided in this Agreement, the State shall not have any claim against the Company in respect of the performance of those obligations by the Company under the Deed of Covenant.

Effectively, that will release the company of its obligations. That means the obligations under the state agreement act will be replaced, as I understand it. The minister might like to confirm in her second reading reply that the obligations of the company under the state agreement act, under that clause, will be effectively replaced by the Mining Act and then supported by other legislation, like the Environmental Protection Act. That again makes sense. I think that is a very important part of that.

Clause 4(3) of the schedule states —

> Notwithstanding subclauses (1) and (2) the Company shall remain liable for any antecedent breach or default under the Principal Agreement or under the Deed of Covenant and in respect of any indemnity given under the Principal Agreement.

Once again, minister, under that clause, if the company has done the wrong thing in the past but there is a pre-existing breach of the previous agreement, the company will remain liable for any damage it might have done prior to the transfer of the operations of the company from the state agreement act to, effectively, operating under the law of the land. I will just get the minister to confirm that as well, if she will, because I think those two clauses are particularly important. We go along to clause 4, which I think is probably the most important part of what is not a particularly big bill. It states —

> (4) On and from the Operative Date:
>
> (a) the Mining Lease shall continue in force only under and, except as provided in this Agreement, subject to the provisions of the Mining Act and, for the avoidance of doubt, shall cease to have the benefit of the rights and privileges conferred by the Principal Agreement;

As I understand it, that simply confirms that this operation will occur under the Mining Act, which I again think is a positive result. I think that is important, and I ask the minister to confirm that.

Probably the next interesting part is clause 5 of the schedule, which is headed "Cessation of Bank Guarantee and provision of Security under Mining Act". Clause 5(1) of schedule 3, which will be inserted by clause 7 of the bill, states —

> Subject to subclauses (2) and (3), the Bank Guarantee shall cease to have effect on the Operative Date.

I also ask the minister to confirm this in her reply to the second reading debate. Bank guarantees have traditionally been put in place by the state to cover environmental damage. Effectively, a company does not provide a cash amount in case they fail to deliver the outcomes to which they have committed or breach some part of the environmental legislation. Instead, a bank guarantee is provided. The bank guarantee is not, itself, a cash deposit that the government holds to be used to pay for reparations, for example; a bank guarantee is simply a letter from the bank that says that the company will be provided with that money if required. It is not a bad measure, but it is obviously not as good as having cash in the bank. I understand that under the legislation we are debating at the moment, the guarantee will be removed. Instead, under clause 5(2) of the schedule —

> Upon execution of this Agreement the Company shall deliver to the department of the State responsible for the administration of the Mining Act —

The Department of Mines, Industry Regulation and Safety —

> an executed security in a form according with section 84A(2) and section 126 of the Mining Act and in the amount of $3.5 million for compliance with conditions imposed …

I ask the minister to indicate the form that that security might take, as that will be useful in reassuring us that the company will be forced to deliver the sort of security that it kind of did under a bank guarantee, but perhaps with a little more security. What form will the $3.5 million take? It will be an executed security. Can the minister give us an idea of what the structure of that might be? Are we talking about, effectively, a deposit of $3.5 million or a guarantee of $3.5 million; and, if so, what form will that guarantee take? I would be pleased if the minister could provide that, as I think it would be useful for the debate. Those are the critical points about the bill that I am interested in. If the minister can answer the questions about those key parts of the legislation, I suspect that will remove the need to go into committee on the bill. I think that would be a reasonable outcome.

That was a fairly brief contribution, but I will be interested to hear what other members of the house have to say about this bill. From my perspective, I think this is a good piece of legislation. As I say, I am intrigued that we are debating the removal of a state agreement act, which is supposed to be the top end of security for resource companies to deliver long-term projects in particular. It might perhaps be argued that this particular resource, nickel, might not be as long term as a lot of the other projects seem to be, but it is absolutely the case that this is an interesting time for us as we are seeing a state agreement being taken out of commission and normal legislation being applied.

As I close, I reinforce that the range of minerals that are available in Western Australia are critical resources, and the state needs to do everything it can to try to make use of them. It is not just nickel and lithium—a whole pile of other rare earth materials are important. I suspect that vanadium might ultimately be even more important than some

of the others. I am a bit biased because we have the world's best lithium resource in the south west, but things like vanadium might have a longer term future than lithium. I hope that lithium will stay up there for another 15 years or so until we deplete that resource a bit and make a good dollar out of it on the way through, but all these resources are critically important. I am pleased that the government has recognised that. I think this is a very good piece of legislation. The opposition is highly supportive of the bill, because I think it will provide a good outcome for both industry and resources development. I hope that we will see some widespread agreement across the chamber that this is the sort of legislation—that was a funny look; I said that there was widespread agreement across the chamber and the member thought that was a bit weird! There is lots of agreement across the chamber, member. I think this is a good piece of legislation and I am looking forward to supporting it. At this point, it is not my intent to take the bill into committee unless parts of the debate take us to places that I was not aware of. With that, I commend the bill to the house.

HON DR BRAD PETTITT (South Metropolitan) [7.56 pm]: I stand to speak very briefly on the Poseidon Nickel Agreement Amendment (Termination) Bill 2021. Following on from the comments of Hon Dr Steve Thomas, yes, the Greens will be supporting this bill. As Hon Dr Steve Thomas said, Hon Robin Chapple will be watching this very closely. In fact, I wanted to rise to speak because he kindly sent me all his correspondence on this from over many years, so I will read it all out!

Several members interjected.

Hon Dr BRAD PETTITT: I will not do that; I will do the complete opposite! I thought it was quite amusing reading through it all, but there was a nice paragraph in a letter that he wrote to the Premier just before he stepped down. Obviously, he did not run for his seat again in 2021, but in late 2020 he wrote to the Premier and said —

> As you are no doubt aware, my personal stance on State Agreement Acts is mirrored by my party on the grounds of anti-competition … I do not intend to discuss the particulars of Poseidon's future endeavors however; I find myself aligned with the Proponent on the issue of terminating the existing State Agreement Act (1971). As I understand it, Poseidon Nickel has worked closely with DJSTI to facilitate this termination however … we are at the whim of COVID-19 …

He went on to say that he really hoped that this would happen before he left Parliament. It did not quite happen before he left Parliament, but the Premier did say that the bill would be introduced to the Parliament in 2021, which of course did happen, and we are now dealing with it in 2022. I want to thank my former colleague for the amount of work he did on this and everyone in this place for bringing forward a bill that I think we can all agree is very rational, offers some flexibility to the proponent and aligns very much with the Greens' view around winding back some of these state agreements where appropriate. On that basis, I am very happy to support this bill.

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [7.58 pm] — in reply: I thank the members of the house for their support for the Poseidon Nickel Agreement Amendment (Termination) Bill 2021. We are all well-acquainted with Hon Robin Chapple's concerns about state agreements. I ask Hon Dr Brad Pettitt to pass on the best wishes of all of us here to Hon Robin Chapple and I hope he is travelling okay. He made an exceptional contribution over many years in this place and is a truly delightful human being.

We know that the Greens have opposed state agreements for a long time, but if we understand the history and the struggles of Western Australia to get mining development in this state, we understand why state agreements were put on the table. In 1960, Robert Menzies finally had to stop the lie that there was not much iron ore in Western Australia. That showed the power of BHP, which at that stage was entirely based in the eastern states. The absolute central power that the Big Australian had back then, in particular with the blue team, was perhaps the cause of the continuing great lie that we deliberately started in 1937, so that we did not have to export iron ore to Japan because it was occupying China. We sexed down the iron ore figures and said, "Oh gosh; sorry, we can't export very much because we because we don't actually have very much iron ore." Everyone knew that that was a fib, but it was an appropriate response to a diplomatic situation in around 1937 and 1938. But in Western Australia, everyone thought that certainly by the 1950s, after we had won the war and we were working with Japan on reconstruction, we would be honest about how much iron ore we had. But, of course, BHP, with its steel-making facilities, did not want competition from Japan, so we kept talking about that and banned the export of iron ore from Australia. When the credit squeeze of 1959 came along and we had real problems with our exchange and our terms of trade, the truth finally had to be told. Finally, we were given approval. I think the first year's export quota might have been 100 000 or 110 000 tonnes. It may have reached one million tonnes of iron ore, but over time that figure grew in order to attract the development.

We cannot underestimate how undeveloped this state was north of Geraldton, how little infrastructure there was, and how capital-depleted we were. We simply did not have the capital to do the development of ports and roads. There was nothing there. This whole idea of having state agreements was to enable these companies—the Utah mining company and Goldsworthy—to come in with their big balance sheets and develop all that infrastructure and build entire new towns. This could not have been done under the Mining Act. Port Hedland port had to be built. These things effectively were not there. A few cows were going out from Port Hedland or Dampier. This was a massive exercise that just simply could not have been done without the security of a state agreement. We must

understand that that is the context in which state agreements arose, and, much later in the piece, they also applied to companies like Fortescue Metals Group, as it was battling hard to be the third force in iron ore, not just leaving it to BHP and Rio. A state agreement was absolutely essential for it to do the capital formation to allow that project to go ahead. I think with this ideological view, we must understand the practical reality of getting some of those massive projects up for which, largely, government does not provide the common-user infrastructure; all the infrastructure has to be provided by the resource company. I think there has been a very important reason for going down the path of state agreements.

Hon Dr Steve Thomas: We agree. That was under Charlie Court and David Brand, so we agree.

Hon ALANNAH MacTIERNAN: That is right, and long oppressed by Robert Menzies. We should have been there 10 years earlier. So I think we need to address that.

Hon Dr Steve Thomas: I bet Sir Charles would agree.

Hon ALANNAH MacTIERNAN: He would!

We need to address that. In this case, we have a state agreement predicated on a nickel project. Although this legislation will allow the operators to continue working in nickel operations, there is very clearly an opportunity for them to make this a much more worthwhile and viable project by extracting gold from the three or four tailing dumps there. Reading the annual report for 2021, I note the chairman said that he thought there was a sizeable gold resource of around 180 000 ounces, from the three gold tailings dams at Windarra, and the ability to also treat tailings from the nearby Lancefield. The project has changed since its conception. That is just one reason why it is no longer relevant to have this project under a state agreement as it was at the very early development of this mine as a nickel facility.

I think Hon Dr Steve Thomas talked about the name of the company. It was named after the god of the sea. Of course, he will know that the state agreement was initially with a company named Poseidon—the very famous Poseidon Nickel Ltd. That company was then bought out by Western Mining and, in turn, these interests were acquired by a company called Niagara, which appears to have decided that it wants to rebrand and take that famous historical name. We all remember the Poseidon nickel boom, which was absolutely massive news, even in the eastern states, about what was going on in Western Australia in the late 1960s. The company sought to recapture some of that history by changing its name to one very similar to that of the original participant.

I know that Hon Dr Steve Thomas raised a couple of issues in his analysis of the way the legislation works, and they are very accurate. He specifically asked about the operation of the clause 7 provisions—the termination agreement. I will just make sure I am dealing with both issues. I think he raised this issue of retaining liability for past actions. Transferring from a state agreement to a mining operation, an indemnity is effectively provided. This provision—I think it is clause 4(3)—requires that the company shall remain liable for any antecedent breach or default under the principal agreement or under the deed of covenant. Some of these obligations tend to be found in state agreements and not more generally. I am advised that they managed to get this in some of their early state agreements, and when subsequent proponents have balked at this, they have been able to refer back to those early state agreements that contain those clauses and have generally been able to do it. Very skilful negotiation ensured that, as we transition to this new arrangement under the mining legislation, nevertheless that liability for antecedent breaches remains. I am advised that this is not generally expected to cover environmental matters, but other liabilities might conceivably arise to a third party that perhaps generally are not considered and not intended. The primary focus is not to protect environmental matters.

Hon Dr Steve Thomas: Do you know what a liability might be?

Hon ALANNAH MacTIERNAN: The example given to me—I must say I find it a bit hard to see how this could arise—could be someone who suffers an accident or injury on the property. It is a personal injury matter that they might seek redress for in some way. There might be some way that it could be conceived as something for which the state is responsible. That was the example we were given. For example, someone might fall down a mine and claim the state was liable because it had not ensured that the mining company was exercising due diligence or something like that. It can be quite convoluted but theoretically it is possible. We have managed to ensure that, in this transition, that set of obligations will remain.

Then there is the question of the bank guarantee. As Hon Steve Thomas pointed out, under the state agreement, there was a $3.5 million bank guarantee. Under this new arrangement that same obligation for $3.5 million for mine restoration remains. The instrument that delivers this to the state is called an unconditional performance bond provided to the state by the banker for the mining company. It is a guarantee.

Hon Dr Steve Thomas: Is it an actual payment?

Hon ALANNAH MacTIERNAN: No. It is a bond. It has the same purpose, but we do not have $3.5 million sitting in the bank. That would not be a terribly commercial proposition for anyone, but rather, it is the instrument entitled a conditional performance bond.

Hon Dr Steve Thomas: But it's really just a guarantee with another name.

Hon ALANNAH MacTIERNAN: Yes; exactly. There might be some fine points of difference between a guarantee and a bond, but effectively it is the same. It is an instrument that sits with the bank, which has the obligation to pay should the company fail to deliver on its mine rehabilitation.

Hon Dr Steve Thomas: That is the same as most rehabilitation funds that operate under the various other acts. That's reasonable.

Hon ALANNAH MacTIERNAN: That is right. One of the advantages that comes from this new arrangement is that it is covering the past, so that obligation has transferred over, but it now comes under the mining legislation and the company will now be compelled to contribute $180 000 a year to the mine rehabilitation fund. I understand that that is an actual payment as opposed to a bond. We have the historic obligation that will exist as a bond and then the annual contribution to the mine rehabilitation fund that will exist as an actual payment that goes into that fund.

Hon Dr Steve Thomas: Minister, one of the issues is that the mine rehabilitation fund is a bit like Canadian superannuation—by the time it pays out all the things it is expected to pay for, it will be broke. I like the intent, but it's a problematic exercise.

Hon ALANNAH MacTIERNAN: All I can say is that at least we are getting $180 000 a year, and that payment, as I understand it, does not remove the obligation that they have to rehabilitate. They still have their obligation to rehabilitate, but that is just a bit of a buffer and I think it is not intended that the state takes on the liability for a mere $180 000 a year.

Hon Dr Steve Thomas: It is an effort without necessarily being a guarantee that it is completely rehabilitated, but that applies to projects across the entire state.

Hon ALANNAH MacTIERNAN: I guess the logic of it is that it is expected that most companies will actually be able to comply and will have the resources to comply, but there will be an insolvency from time to time. There will be a company that disappears and no longer has that ability. Therefore, that fund almost operates as an insurance for the entire system in the case of an insolvency of a mining company.

Hon Steve Thomas also commented on the range of minerals available in Western Australia. I think they really are truly amazing, particularly looking at the lanthanides—dysprosium, praseodymium and ytterbium. These are incredible things. We had—which we have sort of lost for the time being—the only dysprosium mine outside of China, yet dysprosium is an amazingly important additive to steel to hold magnetism. Many twenty-first century battery operations will need dysprosium. Unfortunately, the federal government played some pretty cheap politics around that company, and it disappeared after a couple of setbacks. I just hope it is now trying to go forward and rebuild and get reinvestment. That project at Browns Range, out of Halls Creek near Ringer Soak, is pretty incredible.

The other one I thought the member would be interested in, because it takes in the south west or perhaps more the wheatbelt, is the high-purity alumina, which is also an incredibly important resource. The recent discovery of platinum will be very important in electrolysers and other catalytic converters. We have a major deposit 100 kilometres or so from Perth.

Hon Dr Steve Thomas: With alumina, minister, as a south west member you would be very pleased to know that it's because of the alumina industry that the mining industry in the south west is as big as it is in Kalgoorlie. We match the goldfields for production, thanks to alumina.

Hon ALANNAH MacTIERNAN: I am talking about a slightly different product, but I agree in terms of alumina. When we first got into government and were looking at how to drive advanced manufacturing, we had a forum down in Bunbury. One of the things I found incredible was that around 14 companies based in and around Bunbury qualify as advanced manufacturing. Many of those companies, as indeed companies such as Hofmann Engineering in Perth—extraordinary, biggest private engineering company in all of Australia—certainly had their genesis from the mining industry. Those in the south west very much grew up on working and providing mining services then getting into manufacturing through the south west bauxite and alumina operations.

Hon Dr Steve Thomas: Just as an aside, when you talk about advanced manufacturing, you don't have to sterilise the port by using that land for that. There is other land available, just in case that debate comes up. The Australian Manufacturing Workers' Union pushed its barrier.

Hon ALANNAH MacTIERNAN: We are looking at these things in a very rigorous way and our advanced manufacturing study being led by the South West Development Commission is underway.

Members, I think this is a positive step forward for this project, and old, historic Poseidon Nickel rises to live another day. This time, the legislative vehicle under which it is operating will change. This just continues to show the very positive and constructive relationship that governments in Western Australia have with our mining sector, because we know that that creates jobs and pathways to prosperity for many, many Western Australians. I thank members for their support and we look forward to passing this bill tonight.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

Third Reading

Bill read a third time, on motion by **Hon Alannah MacTiernan (Minister for Regional Development)**, and passed.

TRANSPORT LEGISLATION AMENDMENT (IDENTITY MATCHING SERVICES) BILL 2021

Second Reading

Resumed from 23 June 2021.

HON NEIL THOMSON (Mining and Pastoral) [8.23 pm]: There are only five minutes for an introduction, but I will use the time to effect. In starting, the opposition will not be opposing this bill. In saying that, we will, however, be taking the matter into the Committee of the Whole stage. We would like to raise a number of questions regarding the 134th report, the *Standing Committee on Uniform Legislation and Statutes Review: Transport Legislation Amendment (Identity Matching Services) Bill 2021*. For the government's notice, we would like some detailed discussion around the findings and recommendations of that sterling piece of work, chaired by Hon Donna Faragher, MLC, in August 2021. We support the broad intent of the bill, and we know that we are seeing the increase of technology in the identification of individuals and the use of that for a whole range of purposes, particularly in and around law enforcement and border control. The primary source of identification that is often used is through our licence system, which is a very important identification system for this state. We know that technology is increasing at a rapid rate.

The Transport Legislation Amendment (Identity Matching Services) Bill 2021 was brought about because the Premiers and first ministers signed an Intergovernmental Agreement on Identity Matching Services at the special Council of Australian Governments meeting on counterterrorism on 5 October 2017. The intent has been there for some time. Of course, this particular bill will result in amendments to three pieces of legislation: the Road Traffic (Administration) Act 2008, the Road Traffic (Authorisation to Drive) Act 2008 and the Western Australian Photo Card Act 2014. The opposition acknowledges that this legislation is important. We will not oppose it and will outline those reasons, probably at another time after we move on to other business in this place. The caution with which we are approaching this is probably reflective of some of the bipartisan caution that occurred in federal Parliament. When I get to speak at another time, I will bring forward some of the positions that have been brought by members of the Australian Labor Party in the federal government on the Identity-matching Services Bill 2019 and the Australian Passports Amendment (Identity-matching Services) Bill 2019. I think that the debate, discussion and matters that were raised are very much sympathetic or analogous with the issues of concern within the community around the use of technology and they are worthy of being aired. Certainly, the benefits that will arise are also well and truly acknowledged, particularly around the protection of people's identification and ensuring that their identification is appropriate.

An important point to make, in the minute or so that I have left, is that technology is moving quickly in this space. We are seeing that the privatisation of identification technology is also moving, so it is an inevitable force and an inevitable outcome. The technology that we have on our phones today—probably even more so than when this was mooted on 5 October 2017, or maybe a year or so before when this matter was considered in the policy stages—is moving at such a rapid rate there is a certain air of inevitability. I will conclude my comments for now and come back to that. I seek leave to continue my remarks at a later stage.

[Leave granted for the member's speech to be continued at a later stage of the sitting.]

Debate adjourned until a later stage of the day's sitting, on motion by **Hon Pierre Yang**.

BIODIVERSITY CONSERVATION (EXEMPTIONS) AMENDMENT ORDER 2021 — DISALLOWANCE

Motion

Pursuant to standing order 67(3), the following motion by Hon Dr Brad Pettitt was moved pro forma on 10 November 2021 —

> That the Biodiversity Conservation (Exemptions) Amendment Order 2021 published in the *Government Gazette* on 15 October 2021 and tabled in the Legislative Council on 26 October 2021 under the Biodiversity Conservation Act 2016, be and is hereby disallowed.

HON DR BRAD PETTITT (South Metropolitan) [8.30 pm]: Thank you, Deputy President. Did I get that right? No?

Hon Sue Ellery: Acting.

Hon Dr BRAD PETTITT: One day someone will explain this to me and I will remember it!

Hon Sue Ellery interjected.

Hon Dr BRAD PETTITT: That is a good idea. Thank you.

Today, we are scrutinising the Biodiversity Conservation (Exemptions) Amendment Order 2021. I put it to members that in its current form, this amendment order should be disallowed. It is worth stepping back and starting with the purposes of the Biodiversity Conservation Act 2016, which describes itself as —

> **An Act to provide for —**
>
> - **the conservation and protection of biodiversity and biodiversity components in Western Australia; and**
> - **the ecologically sustainable use of biodiversity components in Western Australia** …

This state clearly has an obligation as expressed in the Biodiversity Conservation Act to protect biodiversity that we know is threatened. What concerns me and key people and groups in the conservation sector is that introducing the amendment order that is before us is likely to facilitate inappropriate fire regimes and result in the loss of biodiversity. This is significant because Western Australia is home to unique biodiversity. Western Australia's south west ecoregion is only one of the world's 36 internationally recognised biodiversity hotspots and one of only two in Australia that is recognised globally. About half of WA's south west 8 000 plant species are found nowhere else, as are many endemic species of wildlife, including the numbat, the western swamp tortoise and the honey possum. Being a biodiversity hotspot recognises not only the richness, uniqueness and diversity of a place, but also that that place is under threat. The Biodiversity Conservation (Exemptions) Amendment Order 2021 before us today is sadly adding to that threat. The amended exemption order has the effect of removing all liability for offences of taking or disturbing threatened species or threatened ecological communities for private landholders and occupiers, local governments and the Department of Fire and Emergency Services in undertaking activities relating to bushfire mitigation and bushfire suppression.

I understand that The Wilderness Society, the WA Forest Alliance, the Conservation Council of Western Australia and The Beeliar Group—Professors for Environmental Responsibility have all expressed serious concerns to the government about the implications of these amendments for conservation and the survival of specially protected fauna, threatened flora and fauna and threatened ecological communities.

One of the reasons for this disallowance can be found in an answer that the government gave to a question I asked last year. I asked the government why it had implemented the amendment order and I was told —

> It was identified that the legislation placed an added administrative burden on landowners and occupiers seeking to undertake bushfire mitigation activities to reduce fuel loads, including planned burning.

It seems odd to me that this government would use the excuse of a mere administrative burden for introducing an exemption that directly contradicts the core purpose of the act, which is to provide for the conservation and protection of biodiversity. I am not denying that Australia has experienced one of the most challenging bushfire periods in recent memory; in fact, this year in Western Australia has been especially tough. I often stand in this chamber and talk about the need for greater climate action, acknowledging that catastrophic bushfire conditions are aggravated by climate change, which threatens both human safety and biodiversity conservation. This decision should not be about safety over biodiversity conservation; we can do both. Fire management must maintain and protect biodiversity as well as people and property and be implemented by all sectors of government and community throughout the state. I need to ask: why the sudden need to enact these exemptions now? The act has not prevented bushfire mitigation activity and bushfire suppression activity from occurring until now, but it has ensured that private property owners, local governments and DFES employees have been careful to protect and not disturb threatened species and threatened ecological communities in the process, lest they be liable for offences.

The government has assured me and the various stakeholders who have expressed concern that the Department of Biodiversity, Conservation and Attractions will continue to work with local governments, DFES and private property owners to provide advice on best practice and practical measures to minimise the impacts on threatened species and ecological communities. What does that look like? The DBCA webpage has fire information notes and a series of guidelines for landowners, but when I drilled down, I found a page that has links to seven single-page documents—two for flora and five for fauna—each with a few dot points about what people should consider when undertaking fire mitigation activities. I am concerned that without a proper authorisation process and any risk of penalties for modification, what reason is there for landowners to seek this information, as limited as it is, or take it into consideration and go beyond?

In trying to understand the volume of authorisations that were granted in the last three years as part of the BCA 2016, at the end of last year I asked the government the following questions on notice: How many authorisations were granted under the Biodiversity Conservation Act 2016 to take or disturb threatened species in the course of, or as a result of, prescribed burning or wildfire suppression in the last three years? How many authorisations were granted to modify threatened ecological communities in the course of, or as a result of, prescribed burning or wildfire suppression in the last three years? The answers were quite illuminating because in the last three years there have been 178 authorisations to take or disturb threatened species. However, of those, 134 were for DBCA, which, of course, is not exempt. Only 44 other authorisations were granted. This biodiversity conservation exemption will,

over a three-year period, apply to 44 authorisations, which is about 15 a year. We are going through this process to relieve the administrative burden for, on average, 15 landowners per year, but it could have serious consequences for biodiversity. I do not think that that is a particular administrative burden.

A letter sent to the Minister for Environment on 28 October 2021 by The Beeliar Group—Professors for Environmental Responsibility stated, according to my notes —

> We wish to know why you did not develop a program or provide additional advisory services aimed at specifically supporting those landholders to manage those values while also achieving appropriate fire regimes.

That is a really good question. That is what should have happened rather than taking away the need at all. It should have been about working with the 15 landowners a year, which is not a lot, to make sure that we do this well and do it better. I am happy to table the letter. The minister did not give that question an adequate answer; in fact, it was avoided altogether. It certainly would have been better to support the landowners to protect biodiversity rather than just remove any obligation to protect it at all. Why is it not possible for the Department of Biodiversity, Conservation and Attractions to support and work with local governments, the Department of Fire and Emergency Services and private property owners to navigate the authorisation process, and, if need be, simplify it? I think just getting rid of it would get rid of an important safeguard for biodiversity conservation. I also asked who was consulted and provided advice on the exemption order. I will quote again from the Minister for Environment, who said that the government —

> sought advice from the Department of Biodiversity, Conservation and Attractions prior to the publishing of the Biodiversity Conservation (Exemptions) Amendment Order 2021. DBCA consulted with the Department of Fire and Emergency Services and the Department of Water and Environmental Regulation on the preparation of the amendment order.

We were also told of —

> … concerns raised by stakeholders ... that the legislation placed an added administrative burden on landowners and occupiers seeking to undertake bushfire mitigation activities.

This greatly concerns me. It appears that the decision was a reaction from government to feedback from the very group of stakeholders who are now exempt in the amendment order. Yet, based on the response from the government, I assume it did not consult with the Threatened Species Scientific Committee or Threatened Ecological Communities Scientific Committee when that is the very role of these committees. Just to be clear, the role of these committees is to provide advice to the minister on the listing of threatened species, extinct species, threatened ecological communities, collapsed ecological communities and key threatening processes under the Biodiversity Conservation Act 2016; and to review and make recommendations annually to the minister on threatened species—plants and animals—and threatened ecological communities. It amazes me that, when considering this exemption order, the minister did not consider seeking advice from or consult with either of these committees. There was no consultation with independent ecologists outside of the government and no consultation with non-government conservation and environmental organisations prior to making this decision. These organisations were briefed following concerns being expressed in the conservation sector after the introduction of the amendment order, but not consulted before the decision was made.

This decision was also made prior to the conclusion of consultation on the *Native vegetation policy for Western Australia*. The government has said the timing of the gazettal is not related to the public consultation phase of the state native vegetation policy. I ask the government why consultation feedback and this draft policy is not considered relevant to the amendment order, because it seems pretty clear to me that it is? Neither did the state government consult with the Australian government's Department of Agriculture, Water and the Environment despite its responsibility under the Environment Protection and Biodiversity Conservation Act 1999—EPBC act—to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Again, obviously the south west of Western Australia is one of those areas.

The Department of Agriculture, Water and the Environment has also just closed submissions as part of its consultation process to consider "'Fire regimes that cause biodiversity decline' as a key threatening process under the EPBC Act"—very relevant. I understand that the Western Australian government made a submission as part of this consultation process, but again has decided to introduce and implement an amendment exemption order that may likely facilitate inappropriate fire regimes and result in loss of biodiversity. Again, it feels like this decision from the government prioritises cutting so-called green tape and reducing an administrative burden, instead of fulfilling its obligation to protect threatened species and ecological communities and conserve biodiversity in Western Australia. I was also told, in response to questions I asked of the Minister for Environment, that prior to considering the amendment order, DBCA assessed the number and spread of threatened flora populations and threatened ecological communities across different tenure types and where that could intersect with activities that may be exempt under the order. In two tables provided by DBCA, the number of threatened ecological community occurrences per tenure type and the number of threatened flora populations per tenure type were listed. They show 57 per cent of the number of threatened ecological occurrences recorded were on tenure types covered in the exemption amendment order—LGA, private and pastoral—while 46 per cent of the number of threatened flora populations were recorded on LGA, private and pastoral land.

The DBCA admits that although —

> … most threatened flora species (73%) and communities (74%) have populations or occurrences that are located on conservation lands managed by DBCA ... Fauna is often poorly surveyed on private property and other non-DBCA-managed lands.

This means 27 per cent of threatened flora species and 26 per cent of threatened communities do not have populations or known occurrences that are located on DBCA-managed lands. Yet, the safeguards provided by authorisations and penalties in the Biodiversity Conservation Act to protect and conserve these threatened species and threatened ecological communities located on LGA, private and pastoral lands no longer exist because these landowners and land managers are now exempt. The WA government has been consistent in its messaging that this new exemption amendment order and its consequences is considered low risk. I have been told that DBCA considered that by exempting activities such as to permit burning that occurs during the cooler parts of the year when fire behaviour is milder and burn outcomes are likely to be patchy, that it was unlikely to pose a significant risk to threatened species and communities and that DBCA considers that low intensity planned burning at intervals of six years or greater is unlikely to have impacts on threatened species or ecological populations. However, despite requests from myself and environment and conservation groups to see the risk assessment undertaken, we have just been assured that the above, along with promised DBCA liaison with landowners and land managers, means any risk to threatened species or threatened ecological communities is "unlikely". Could the minister please table the risk assessment that was completed? It is entirely reasonable that the public and the scientific community have access to the risk assessment that led to this exemption amendment order. What criteria and long-term monitoring system is DBCA using to ensure that no negative consequences occur to threatened species and threatened ecological communities as a result of the changes under the exemptions?

This connects to the way that burning happens in this state. The exemption amendment order allows a landowner or land manager to undertake planned bushfire mitigation and suppression burning every six years without needing to obtain authorisation. In 2018, Bradshaw et al. wrote, in the *International Journal of Wildland Fire* —

> … numerous studies show that the impact of burning on a 6-year cycle would be catastrophic for many species of plants and animals that are unique to the south-west biodiversity hot-spot and will have a deleterious cascade effect on the entire ecosystem, increasing the 'extinction debt'.

Without an authorisation process, what is there to stop landowners and land managers from burning every six years with potentially some serious consequences for biodiversity? In the past, south west Australian forests had been burnt at intervals that were more like 80 to 100 years, and longer in the case of karri. As Bradshaw et al. point out —

> … it seems intuitively obvious that burning at a 6-year interval would engender substantial changes in the ecosystem.

The EPBC's draft listing assessment, "'Fire regimes that cause biodiversity decline' as a key threatening process" confirms —

> If populations are to persist through a sequence of fires, there must be sufficient time between successive events to enable population recovery through reproduction or immigration of new individuals, as well as recovery of habitat suitability for species that depend on resources that become scarce after fire. Subsequent fires may disrupt these recovery processes causing population declines or extinctions if fire intervals are short relative to the timing of life history processes. In some species, these recovery processes occur rapidly, while others have inherently slow rates of growth, maturation, reproduction or movement, or are contingent on slow recovery of suitable habitats.

The exemption order essentially gives landowners permission to burn every six years without regard for the types of biodiversity that might be present or the burning interval that might be best suited to the landscape. This is at the heart of why we need a proper process. We are asking these landowners to be experts on the types of biodiversity that exists on their property.

In conclusion, increased scientific oversight and a higher degree of sophistication in burn planning can develop improved outcomes for wildlife and biodiversity and hazard reduction. The Greens support hazard reduction burns to reduce the impact of bushfires guided by the best scientific ecological and emergency services expertise. We have that expertise in our state and I think it should be available to landowners to do that. However, I am voicing my concern and the concern of others about the implications of the Biodiversity Conservation (Exemptions) Amendment Order 2021. I am worried that this exemption will reduce the degree of oversight and protection, and the amendment order will likely alter fire regimes on a designated area, affecting the patterning, frequency and intensity of bushfires on private and local government authority–controlled lands, and thus lead to species lost and ecological community collapse, and could cause weed infestation and the introduction of feral species.

I am not convinced that this government appropriately considered the risk to threatened species and threatened ecological communities; it instead chose to prioritise cost-cutting and so-called red-tape reduction to reduce administrative burden, ultimately to the detriment of the biodiversity of this state. It is for this reason I ask the house to support the disallowance before it.

HON SUE ELLERY (South Metropolitan — Leader of the House) [8.51 pm]: I thank the member for raising the issues that he raised and for his commitment to the fabulous diversity in our Western Australian environment, but the government will not support the disallowance motion.

The government gave careful consideration to this matter before the decision was made to gazette the Biodiversity Conservation (Exemptions) Amendment Order 2021. I note in his contribution the honourable member I think put it this way when he said that it is not about biodiversity or safety; we can do both. The government could not agree more with the honourable member. Of course, we can do both and it is about the balance. We say that the amendment order is necessary to address an unintended consequence that had an impact on that balance.

The amendment order provides an exemption for owners and occupiers of land from the requirement to gain an authorisation under the Biodiversity Conservation Act 2016 for the taking and disturbing of threatened species and modifying a threatened ecological community when undertaking bushfire mitigation or a bushfire suppression activity. The act introduced new protections for biodiversity across the state from 1 January 2019 and replaced the really outdated Wildlife Conservation Act 1950. This resulted in authorisation being required to undertake certain bushfire mitigation activities that would involve the take or disturbance of threatened species or modification of a threatened ecological community. However, it became evident when the legislation came into effect in 2019 that there may be unintended implications for well-developed and established bushfire mitigation activities.

In addition, a number of stakeholders raised concerns that the requirement for an authorisation under the Biodiversity Conservation Act would hinder bushfire mitigation activities and place an unnecessary administrative burden on landowners and occupiers seeking to undertake planned burning to reduce fuel loads. The amendment order reduces that administrative burden on landowners and occupiers, local government, and the Department of Fire and Emergency Services employees who undertake the bushfire mitigation activities specified in the order; and it clarifies how the defences in the Biodiversity Conservation Act apply when a person undertakes a bushfire mitigation or bushfire suppression activity.

The amendment order will enable landowners and occupiers to undertake planned burning over the same area at intervals greater than six years without an authorisation under the Biodiversity Conservation Act. If landowners and occupiers want to undertake planned burning more frequently over the same area, they must apply for an authorisation from DBCA. This approach will help to ensure that the threatened species and communities are not unnecessarily or inappropriately impacted by a more frequent fire regime. Low-intensity planned burning at intervals of six years or greater provides the environment time to regenerate before further burning occurs and, in contrast, bushfires burning through long unburnt fuels can have devastating impacts on ecosystem health and resilience for decades.

The amendment order does not exempt the Department of Biodiversity, Conservation and Attractions from the requirement for authorisation under the act for planned burn activities on DBCA-managed lands. When threatened species and ecological communities are identified within planned burn areas, DBCA will continue to meet the requirements of the act through the strategic and operational planning processes that support the development of the annual burn program and associated fire mitigation activities. DBCA will continue to use best practice in its fire management activities and work within the requirements of the act given the responsibility it has to manage for both community protection from bushfire and conservation of threatened species and threatened ecological communities. To help ensure that biodiversity values are maintained, a series of fire management guidelines for key threatened species and ecological communities has been developed to assist landholders to manage fuel loads while recognising the requirements of threatened species and ecological communities when undertaking planned burning on their properties.

DBCA will continue to work with local governments, the Department of Fire and Emergency Services and private property owners to provide advice on best practice and practical measures to minimise impacts on threatened species and ecological communities. When managed properly, planned burning can maintain ecosystem health by assisting the regeneration of plants, providing food and habitat for animals, and reduce the risk of catastrophic bushfires impacting on communities and the environment. This is a sensible and balanced approach that will reduce that administrative burden and ensure a consistent approach for landowners and occupiers when undertaking bushfire mitigation activities while still making provisions for the state's important biodiversity values.

The recent experiences across Australia of summer bushfires in long unburnt fuels have reinforced the importance of low-intensity planned burning to reduce the risk of catastrophic bushfires impacting on communities and the environment. This government supports planned burning as the primary means of reducing combustible fuel and, therefore, the risk of bushfire to our community and the environment.

I reiterate that the government stands by its decision to introduce the amendment order as it supports a balanced approach that considers the potential impacts of reducing fuel loads through bushfire mitigation activities against protection of the community and the environment from low impacts of the bushfires. The government will not be supporting the disallowance.

HON TJORN SIBMA (North Metropolitan) [8.57 pm]: I was sitting there on false pretences so I have come to the despatch box to make my contribution.

I think this has been an informative debate on the disallowance motion, and I want to sincerely pay my compliments to Hon Dr Brad Pettitt for his passion and advocacy for his cause. I think he has moved this disallowance motion with the best of motives. That notwithstanding, I am in wholehearted lockstep with the government on this matter and we will be opposing the motion that this new regulation be disallowed. The issues have been extensively and well canvassed, so my contribution will be a brief one; hopefully, it gets to the nub of the issue and articulates properly the principle why the opposition opposes the disallowance. There are a couple of elements here.

First of all, we live, despite our modern comforts and sometimes our insulation from threat, in a hostile place. Western Australia is a hostile environment irrespective of the georegion that we might reside in, whether it is the Kimberley, the Pilbara, the midwest, the Gascoyne, south west, great southern or the Perth metropolitan area. We are sometimes awed and overawed by our exposure to natural threat and calamity. We need to make judgements based on science and based on the consideration of public health and other factors when we draft regulations. No regulations are of themselves perfect and they are always subject to a process of continuous improvement.

Though it is not often the case with my contributions in this chamber, I do want to pay compliments when they are due. I think that the amendment to the exemption order that is being considered here is a very pragmatic and prudent step, and I compliment the government for changing the regulations to allow for a far more pragmatic, realistic approach to pragmatic fire mitigation and bushfire suppression. As much as we need to recognise and protect and add to the welfare and the future flourishing of threatened species and threatened ecological communities, we are also obligated to do all that we can to ensure the protection of life, property and livelihood. Fundamentally, I think this is what this updated exemption order, which has been amended and gazetted, attempts to do.

The honourable member mentioned a series of well-respected groups and articulated their concerns about the implications of the regulation proceeding again untrammelled. Their contribution to the debate is to be respected and is to be argued on the facts. From my perspective, they make some interesting points, but I am unconvinced that this particular regulation will increase the risk threshold to such a magnitude for already threatened species and ecological communities that the regulation should be automatically disallowed. I do not believe that that is the case. Equally, we can cite in defence those organisations and esteemed members of our community, be they in local government or the Department of Fire and Emergency Services or be they private property owners, who also have a right for their perspectives to be heard and, when possible, articulated and operationalised, and I think that that is what has happened here.

To rearticulate and amplify the point, we will be opposing the disallowance motion, although it does raise an important point that was not made tangentially or in essence. I will share with the honourable member a concern about a lack of accountability or understanding and awareness of the state of threatened species, be they flora or fauna, and threatened ecological communities throughout the state of Western Australia. There used to be a mechanism—it was probably not perfect and there were probably reasons for and against it—whereby the Environmental Protection Agency used to publish a state of the environment report, maybe a decade or so ago. I decry the lack of having an objective—as much as we can; insofar as possible—rendering of the state of the natural environment of Western Australia. I think that would be a really helpful scientific baseline —

Hon Dr Steve Thomas: About 15 years ago.

Hon TJORN SIBMA: It was about 15 years ago. I think that would help to guide debates such as these.

In the course of estimates hearings last year when we had members in from the Department of Biodiversity, Conservation and Attractions, both Hon Dr Brad Pettitt and I asked a series of questions about, I thought, fundamental service lines within the department as they related to the management of these communities and the resourcing of the conservation estate. I found that to be a slightly frustrating process because there is no clear line of sight of how effectively a principal environmental delivery agency such as DBCA is performing its task. I think the honourable member has highlighted this interesting internal tension within the DBCA of, effectively, operating prescribed burns on the one hand, which have an obviously dangerous component, and managing the condition of our state's biodiversity on the other. Sometimes these tensions are resolved in ways that are not particularly elegant, but they are resolved.

There was a point during the hearings when I think the department took on notice the sheer number of management plans that are written up to guide the conservation efforts as they relate to an ever-expanding group of threatened flora and fauna and ecological communities. If there is one benefit that we can perhaps take away from this evening, which might not satisfy the member's intent in moving the disallowance motion but perhaps improve the quality of debate, it would be to start applying more scrutiny to how these endangered flora and fauna and their communities are actually being managed. What is happening to the—I will use a colloquialism—buckets of money that are poured into DBCA to manage the conservation estate and what kind of ecological return are we getting from that investment? I am not in a position to make an educated assessment one way or the other because there is an absence of clear-headed factual information. I think it is to the state's detriment that we do not have this information.

To round this out, from my perspective and from the opposition's perspective, and there may be colleagues of mine who wish to speak on this as well, I think the government has got the balance right with the amendment that

it has made to this exemptions order. We need to tool up our communities to undertake proper bushfire suppression and fire mitigation activities without unnecessary administrative encumbrances. I support the regulation that the government has moved. Once again, I articulate our opposition to the disallowance.

HON DR BRIAN WALKER (East Metropolitan) [9.06 pm]: I have to say from the very start that the notes I had written had to be rewritten because so many valid points have been made. I thank all members for that. I would also like to appreciate what was said earlier. One of the areas that we need to be careful about is what we are actually dealing with. What are the facts? What is the science behind this?

I also take on board the fact that everybody here has a passionate interest in the flora and fauna of our state and, indeed, how well we are looking after it. It has to be said—I think we all agree—that we have not done a great job in comparison with all other parts of the world. We are sensitised, I am sure, but the problems that we are facing worldwide with the loss of species, flora and fauna should trouble us all.

I thank Hon Dr Brad Pettitt for bringing this disallowance motion forward. I appreciate that it will not be carried, but I wanted to have my voice out here supporting this disallowance motion for the simple reason that I am not absolutely certain that the balance, as the honourable member said, has been found. It would be wise to take time to look at this again, because it could be possible that we are undermining this act by its very good design, and I appreciate that, to impose requirements upon business, agriculture and development by ensuring that we do not destroy the environment but we bring species to the brink of extinction when we should not be doing this.

I recall reading just recently how rich our flora and fauna are. Dr Paul Vogel, then chairman of the Environmental Protection Authority of Western Australia, noted —

> "WA has about half of the total flora for Australia, 141 of Australia's 207 mammal species call WA home and there are more plant species in the Fitzgerald River National Park than in the entire United Kingdom."

This amazed me. That quote is from 2013, and things certainly have changed since then. From my point of view in the electorate of East Metropolitan in the Perth hills, all the natural beauty is also at risk from bushfires but are also home to flora and fauna, which deserve protection. I have a level of concern that this exemptions amendment order could tip the balance even further with bushfire mitigation. We have all seen the recent catastrophe with fires ripping through. Yes, we can be happy that lives have not been lost, even if property was destroyed, but my heart breaks when I consider the damage done to the fauna, not just the sheep and cattle, but also the natural fauna. They have suffered tremendously. Anything we can do to reduce this risk would be a good idea.

One thing that I would look at, of course, is the benefit to be gained from the 40 000 to 60 000 years of experience of our Indigenous population. Have we adopted the practices that have kept this state and nation of ours in a relatively stable form? Have we consulted widely with those who have borne, over generations, the experience of ensuring that their food resource needs, both flora and fauna, were met and that a balance was kept? I think there is an untapped resource there. I am happy to be educated otherwise—that this resource has been tapped—but, if not, I encourage that we look even further into that.

Clause 7 of the Biodiversity Conservation (Exemptions) Order 2018, and particularly subclause (2), provides exemptions that clearly indicate that bushfire mitigation trumps environmental protection. I can appreciate that, but my heart tells me that we ought to have a closer look at this. Is the balance quite correct? We may be giving free slather to people to modify a threatened ecological community or take or disturb fauna or threatened fauna in an area. This could in fact be seen as a get-out-of-jail-free card. I would much rather the present laws be applied and that we look at individual needs on a case-by-case basis. The checks and balances need to be retained.

It could be argued that it may be just too hard. I appreciate that there may be issues with the administrative burden of this, but I am not certain that that is an argument I would care to take too far. Is our state worth looking after properly and putting energy, costs and expenses into? I think it is; we have a beautiful state. I am not certain that exemptions are the way forward. I understand that good intent is being shown on all sides and that effort is being made, but I simply caution that it would be wise to have a closer look at this.

Disallowing this order would give us more time to look at this in more detail. It would not be a forever, "No, we are not going to do this." I agree that changes could well be made, but have we made them in the right manner? I suggest that we should not use the act that was designed to protect our native flora and fauna to do the opposite of what we hope to do, simply because it might be too much work. I apologise for trivialising this. I wish to take up only a short time of the house, so I will summarise. I would like to see effort put into establishing that we are using the knowledge of our Indigenous brethren, and that we are able to take that knowledge and put it into practice in our lives so that we can more naturally manage our native animals and plants, help recover endangered species from extinction and do our best to reclaim our state as a place that could be a jewel in this world.

HON MARTIN ALDRIDGE (Agricultural) [9.12 pm]: I rise to make a brief contribution to this motion moved by Hon Dr Brad Pettitt, and recognise the contribution of Hon Tjorn Sibma as the lead spokesperson for the opposition on this issue. I want to put some comments on the record, particularly in my capacity as the shadow Minister for

Emergency Services, as I think this motion intersects the environment and emergency services portfolios. I am sure that if the Minister for Emergency Services were not away from the chamber on urgent parliamentary business, he would probably also have an interest in the motion before the house.

Hon Sue Ellery: He would have done it; I am just doing it.

Hon MARTIN ALDRIDGE: Right; there we go. He would have had an interest in this motion in both a representative capacity and as Minister for Emergency Services.

I heard some contributions tonight, particularly from Hon Dr Brad Pettitt and Hon Dr Brian Walker, about the need for these regulations to be disallowed in the interests of protecting biodiversity. The other aspect of that is understanding the benefit of bushfire mitigation and suppression activities in the interests of protecting biodiversity. That is certainly a point that I want to talk about. It is wrong to assume that bushfire mitigation, in whatever form it might take, is only about the protection of life and property, because it is not; it is also about the protection of the environment and, particularly, threatened species within the environment. I will speak a little more about that in a moment.

Speakers before me dissected the regulation quite well, so I am not going to repeat what has been said, but I did want to point out that the regulation, as crafted by the government and which the opposition supports, does not provide the unfettered or unrestricted ability for somebody to engage in these activities in the interests of bushfire mitigation. I draw members' attention particularly to clause 7(3) through to (5), which will clearly place some restrictions in terms of not only the six-year rule, which has been mentioned, but also the types of activities that are prescribed. Subclauses (4) and (5) cover some other anticipated scenarios in which people might try to use this for a different outcome.

I heard during the debate that there is a risk of over-burning—that, effectively, the environment will be burnt every six years and that that will be a potential risk to the environment. I think the opposite is true. We are so far from the point of reducing the risk in our environment every six years that I am struggling to see that that will be a real threat any time soon. There are a number of reasons for that. In years gone by, the approach taken in using fire as a primary mitigation method was on the basis that the greater the number of hectares burnt a year, the more successful it was. The thinking around that approach has changed significantly in the last decade. A much more scientific approach is now being taken to reducing risk. It is not just driven by the number of hectares; it is about the quality of the hectares that are burnt. A greater emphasis is placed on risk around critical infrastructure and communities as well as the environmental risk, as opposed to simply being driven by how many hectares have been burnt this year as a key performance indicator, as perhaps occurred in years gone by. Having said that, taking a more strategic approach to risk mitigation means that burning or mitigating risks in these environments becomes significantly more challenging, because it is a higher risk environment as opposed to burning some crown land in the middle of the goldfields and adding that to the annual tally.

The other impact is the seasonal conditions. Western Australia once had a very clearly defined northern fire season and a very clearly defined southern fire season. In my view, those lines have become much more blurred over the last decade, so the windows of opportunity to undertake risk mitigation, particularly involving fire, are much smaller than they used to be. One of the learnings from the 2011 Margaret River bushfire is that our agencies now take a much more thorough approach to planning and undertaking risk mitigation exercises than they once did. In my view, and I think the view of others, all these things are compounding in smaller windows of opportunity in which to conduct these types of activities.

It is important to note that under the Wildlife Conservation Act 1950, which was replaced by the Biodiversity Conservation Act 2016, I am advised that authorisation was required only in relation to the taking of threatened flora, so there has been a change in the transition from the previous act to the current act. It is not entirely true to say that by disallowing this regulation we would simply be enforcing the status quo, because that is not the case, as we are now dealing with the Biodiversity Conservation Act 2016 rather than the Wildlife Conservation Act 1950, which it replaced.

Hon Tjorn Sibma made some comments around this threshold question, and I think his concluding comments were that, on balance, the government had landed on the right settings of this regulation in terms of balancing the risks to the environment, to the citizens of Western Australia, to property owners and to others. I fully support that view. It might not have always been the case, as I said, many years before when different approaches might have been taken in risk mitigation, particularly by fire. I do not think that that is the case anymore.

I also wanted to talk about the impact that regulations like these are having on other aspects. For example, not related to this regulation, I can give another example that I think the government should give some consideration to—that is, the impact of environmental regulations on land clearing involving road projects, particularly road projects that improve road safety. I think some similar parallels can be drawn in respect of some administrative difficulties faced by road managers, whether they be state or local governments, with respect to improving our road network, particularly improving road safety outcomes on our road network. I think some similar parallels can be drawn with regulations like this—obviously, this regulation relates to mitigating the risk of fire rather than road safety.

I conclude on this. Some interesting observations were made by the Royal Commission into Natural Disaster Arrangements, which was a royal commission that handed down its findings in 2020. It reported on the 2019–20 bushfire season, which, as members will recall, largely impacted the eastern states. In fact, we had a fairly mild bushfire season in 2019–20.

I quote page 335 of this report —

> The Royal Commission into National Natural Disaster Arrangements was established on 20 February 2020 in response to the extreme bushfire season of 2019–20 … and identified significant damage caused by uncontrolled bushfire.
>
> The 2019–2020 bushfires have been described as an 'ecological disaster'.
>
> …
>
> Over 330 threatened species and 37 threatened ecological communities protected under the EPBC Act were in the path of the bushfires.
>
> …
>
> … no bushfire on record has burnt more forest and woodlands habitat within a season.
>
> …
>
> Over 24 million hectares were burnt. The number of animals killed 'greatly exceeded' 1 billion, and wildlife and ecology experts have predicted serious long-term adverse effects on biodiversity.

I am glad that this debate has taken the course that it has and, as Hon Tjorn Sibma said, government regulations have struck the right balance. I think governments in recent years have significantly improved their practices with respect to fire mitigation in the planning and understanding of fire mitigation. I will not be able to support the disallowance motion before the house.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [9.24 pm]: I will try to make a fairly short contribution and not go over the ground very well covered by Hon Tjorn Sibma and Hon Martin Aldridge. Obviously, as has been said, the opposition cannot support the disallowance before the house.

I just want to add a couple of pieces to the contributions made thus far. I have been around long enough to remember the targets of 200 000 hectares a year of burning. It is easy to jump out there and try to hit a target, and when you do so, because it is the most cost-effective and cheapest way to do it, you end up doing large swathes and you do them not infrequently compared with what is a much more targeted and what we used to refer to as "mosaic" burnings. Focus is placed on protection of assets, both biological–ecological and, on the other side, social. That is obviously a much more expensive process to do, and all governments have struggled to some degree to protect environmental assets and social and human assets at the same time.

Interestingly, there have been so many reviews on major bushfires in Australia that I think we averaged one every second year over the past six decades. They always come back with the same recommendation: control in advance is a much more important process than trying to catch up afterwards. That applies whether we are dealing with the ecological or social aspect. I know that there is a group of people, particularly down south in my direction, that have been opposed to controlled burns for a long period that do not believe they offer protection. As Hon Martin Aldridge just pointed out, controlled burns done well absolutely protect environmental and species assets as well as human assets. We could argue that we should perhaps put more money into that process to do a greater number of smaller areas. That obviously requires more manpower—person-power; whatever the right word is today—and more cost. More human resources are required to do that. It is a complicated argument. But to not do it would be a disaster for the state of Western Australia.

The regulations that were promulgated by the government allow a degree of protection—not total protection, but a degree of protection—for people trying to do the right thing and mitigate the risk of fire in their immediate environment. I introduced a private member's bill in the last Parliament and debated this in the Environmental Protection Act amendments a couple of years ago. I think the capacity for people to protect themselves should be automatic. Therefore, in my example, within 20 metres or 25 metres of someone's residence, no-one should be able to prevent them from protecting your house and your family. I actually think that is more important. Because of that, I do not think people are out there deliberately or wilfully destroying ecosystems and destroying protected species, for example. That is not the outcome.

Now, occasionally, even in the larger controlled burns that the government engages with, some native animals are hit. If they are not managed, obviously an impact will be felt. All the old foresters will tell us that wildfire that gets out and escapes, particularly where there has been no control, is far more damaging to the native environment than multiple controlled burns. I agree with Hon Martin Aldridge. The theory is that they are control burning areas every seven years, but very few areas get anywhere near it. History reveals that the only areas that get anywhere near every seven years are big open patches where it is possible to effectively burn through aerial dropping and get a big area to get the numbers up. Those are the areas that probably get burnt more frequently. Where we use the true and genuine mosaic protection burns, there are places out there that have not been burned for 40 years. An enormous number of places have risk that is absolutely diabolical.

Regrowth is interesting. If members want to have a look at this in action, I suggest they have a look at some of those areas where the wildfires went through, particularly in that Waroona–Yarloop area. The regrowth of the forest there has completely changed the ecosystem. That wildfire got into an area that had not been burnt for a very long

period, and it killed all the big trees down to the ground and they then suffered. It looks like a bamboo jungle. It is so unnatural compared to the forest that was there 100 years ago, and it is the traditional forests of the south west. Bigger jarrah trees were interspersed by, in my area, the occasional marri or red gum, and horses could be galloped through there because trees were a significant distance apart. That was a natural-looking forest. Look at the regrowth with the Yarloop fires: it looks like a bamboo jungle that would be a struggle to get through. What does it mean? It means an enormous fuel load is sitting there right now of unusable saplings that will sit there until the next wildfire goes through, because it will not necessarily be managed.

It is absolutely the case that the proper use of controlled burns is critical to prevent that sort of damage. The regulations that are presented offer a degree of protection for those people who are trying to do the right thing. Well done to the government for actually putting those in place. I think Hon Tjorn Sibma said that these regulations offer the average citizen a degree of protection, and most of them are trying to do the right thing. There are not too many people out there deliberately trying to burn endangered species, and those who are are probably arsonists rather than landowners. It is the case that most of these people want to do the right thing. Most of these landowners want to encourage endangered species in their area, but they want a fuel load that can be managed, and the best way to do that is by what we call cool burns. We are getting into the argument of whether spring burns are better than autumn burns. I think we would love to do a lot more autumn burning, but the seasons have shifted a bit and there is fire risk out there. Spring burns potentially have a slightly bigger impact, but, as Hon Martin Aldridge said, we are going to have to use basically all the time frame that is available to us to provide even an inadequate level of protection. The truth is that we probably have an inadequate level of protection for most of the state. The last time I drove through some of Perth's eastern suburbs hills—I am a former shadow Minister for Emergency Services and shadow Minister for Environment—I saw patches that I would be too frightened to send a fire crew into if I were the emergency services minister. The fuel load is enormous and it is just dangerous; there are no escape points. It is not just the Perth hills; Margaret River will burn again at some point. When that area that is not so much in the Dunsborough–Yallingup patch, but in the low hills that exist on the southern side of the highway, which the Acting President (Hon Jackie Jarvis) will know all about, burns, those people will be toast as much as those in the Perth hills will be.

We probably have an inadequate management system. To do it properly, it would probably bankrupt the state. It is not a criticism of this government or previous governments; it is very hard to get that level of protection in place. But it has to be done. Surely there can be some protection for those people who are trying to do that through both preventive burns and, under some circumstances, back-burning while a fire is happening. The work that is being done, mostly by volunteers, is to protect the community, and a lot of it is also to protect the environment. I have heard comments made previously that if we wait long enough, all our native forests will turn into rainforests and they will not burn. That has been around for a long time; I have heard those arguments floating around in the deep south of the state, if you will. Of course, that completely ignores what used to happen with Aboriginal fire management. Those forests always burnt because they are temperate, not tropical. Either we want to protect both the community and the environment or, ultimately, if we provide no security, we must be prepared to sacrifice both to some degree. I certainly do not want to do that on practical or ideological terms.

I think it is critical that this motion, unfortunately, not succeed. The work of protecting all those things, including native species, is far too important for that. I will not be supporting the disallowance motion either. This is an important set of regulations that deserve to be supported.

HON DR BRAD PETTITT (South Metropolitan) [9.33 pm] — in reply: I apologise for not jumping up, Acting President; I was not quite sure of the process. I will be very quick in response and thank everyone for their contributions. Although I appreciate that the disallowance motion will not be supported, I think it was useful for Parliament to have this discussion.

A few issues have been raised. One of the themes that came through from multiple speakers was that, in reality, we do not get to burn anywhere close to every six years, so we should not be too worried about that. The point that I and many of the experts who have raised serious concerns about the exemptions make is that that is exactly what the order proposes. Members are absolutely right; many places are being burnt maybe every 20 years, but I do not know.

A member interjected.

Hon Dr BRAD PETTITT: Or 60 years, as was noted in the interjection.

The point is that this order allows for six years. That is the threshold; six years is the threshold at which people do not need to go through any process to make sure that this is being done in the best, most professional way. I think that is the point; if the threshold were higher, I suspect that some of those concerns would be very different. If we are going to have that kind of threshold, it is quite wise that we use the expertise that exists within the Department of Biodiversity, Conservation and Attractions to advise on the best way to burn in particular locations. The fear that I and the experts in our community have in this space is that all that expertise and those checks and balances are being taken out of the process, and, instead, we will have people whose job is not to be experts determining the best way to do fire management in a particular area. That is why we have a state department that has experts who can assist in that. But I think we are losing that for a very large chunk of our land.

I agree with parts of what was said. I stated in my initial remarks that we all agree with prescribed burning. That is not the debate. Everyone acknowledges that controlled or prescribed burns are a rational part of how to deal with fire in this state. The argument for putting forward this disallowance motion was about how that is done and the kind of expert input, regulation, and checks and balances that are in place. Again, I agree with the comments made about balance. I fear, though, that this balance will not be right in some cases and, as a result, there will be unnecessary impacts on biodiversity, threatened species and communities because that expertise is not there.

My final comment is that I think there are smart ways forward on this. We are seeing around Australia and in this state increased use of some emerging expertise. I note the comments by Hon Dr Brian Walker about using First Nations people and some of the expertise on burning at lower temperatures in key areas. I think there is great expertise there; it fits with some of the cool burns that Hon Dr Steve Thomas was talking about. There are smart ways of doing fire management that we will need to get good at to reduce fire risk while also protecting very vulnerable communities, which will be increasingly vulnerable to fire through climate change. We will need more burning, and we will need to get better and smarter at it and have greater expertise in it, and not just let it be a bit of a free-for-all because government has vacated this space. That is my fear and that is why I put forward this disallowance motion. Although I appreciate that it is not going to get up—I will not put members through the pain of a division—I am proud to have raised it on behalf of the community that is very much an expert in this space. I want to thank those people for bringing it to my attention and for the opportunity that we have had to discuss it in this place.

Question put and negatived.

TRANSPORT LEGISLATION AMENDMENT (IDENTITY MATCHING SERVICES) BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

HON NEIL THOMSON (Mining and Pastoral) [9.39 pm]: Just to clarify, I think I have five minutes. To continue on from where I left off at the last point, I was talking about the role of the Intergovernmental Agreement on Identity Matching Services as being the motivation for this bill. I was recapping and discussing how technology is at the centre of all this and how it is moving at such a rapid rate. We are seeing change in the world of identification, and one would even suggest that some of these private entities, such as Google, Facebook and others, probably even some foreign actors, would have a lot more information on the identification of individuals within the Australian population than we might otherwise know about. The intergovernmental agreement was set up with the purpose of providing a tool for the better management of some of our security risks and the matter around the identification of individuals for those purposes that we use in our day to day lives, in particular, the management of licensing.

The intergovernmental agreement underpins the national facial biometric matching capability. This is outlined in the explanatory memorandum. A central interoperability hub is managed by the commonwealth Department of Home Affairs, of which the national driver licence facial recognition solution is part. It is important to note this, because at the heart of this is some of the other work that needs to be occurring within the federal arena. I referred, for example, to a parallel piece of work that was going on around the Identity-matching Services Bill 2019 and the Australian Passports Amendment (Identity-matching Services) Bill 2019. That provides a useful basis to outline some of the general issues raised. Some material is available through the commonwealth that looked across various jurisdictions and comments made by lawmakers in different jurisdictions with regard to similar types of legislation being proposed. We see, for example, that New South Wales passed the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018, which amended the Road Transport Act 2013, to authorise certain government agencies to share information through the identity matching scheme.

This is a national effort, one that is to be commended, and I note some of the issues raised at various times through debates in other Parliaments across Australia. A considerable amount of material has been raised about privacy and data security concerns, and they have been discussed with regard to this legislation. Going as far back as 2008, a number of general privacy concerns were raised arising from the use of biometric technologies, and they include the widespread use of biometric systems that enable extensive monitoring of the activities of individuals, particularly with the same form of biometric information as used to identify individuals in a number of different contexts. Biometric technology, such as facial recognition technology, may be used to identify individuals without their knowledge or consent, and biometric information can be used to reveal sensitive personal information such as information about a person's health or religious beliefs. There was also a concern that the security of biometric systems could be compromised and the accuracy and reliability of biometric systems would remain unknown, potentially resulting in serious consequences for an individual falsely accepted or rejected by such a system. These concerns were raised by the Australian Law Reform Commission. This is material from the commonwealth Parliament. I suggest that some of those concerns might be lessening in terms of the general acceptance across the community. My observation is that as people become more used to operating within a ubiquitous technology framework, which is what we are seeing as we move more and more to the ubiquitous use of smartphones and a whole range of technologies in our hands, their concerns about the idea of surveillance or use of information, which is very extensive, is probably lessening.

Debate adjourned, pursuant to standing orders.

CRIME RATES — KIMBERLEY

Statement

HON NEIL THOMSON (Mining and Pastoral) [9.46 pm]: I would like to raise a couple of things very quickly. One is about Hon Alannah MacTiernan's comment about Northern Minerals, which I am happy to take offline. However, I think that her comment about Northern Minerals might not be entirely accurate because I understand that as recently as 23 February, the project was ongoing and the pilot project was still underway. I am happy to take the matter offline, but I wanted to make that comment without interjecting, obviously, out of respect for her. However, I needed to make that clarification.

Today, I also provide a little clarification about some of the discourse around crime matters in the Kimberley. There has been a considerable amount of discussion about crime in the Kimberley in recent times and I welcome that discussion. Without doubt I think that there has been an increased focus on crime. However, the important thing, as we move forward, is not to get overly self-congratulatory about the outcomes of any effort in the very most recent times of the increasing policing effort. I refer specifically to a comment made in the other place today by the Minister for Police in response to a question put by my colleague Divina D'Anna, the member for Kimberley, about the most recent data. I have said in this place that December had the worst crime data in the Kimberley ever on record for almost every class of crime. There probably were a few exceptions, including a vehicle theft, which occurred in September; that was the highest month. It was not exactly a point, I suppose, that the government would want to commend itself for. The government says that there has been a 16 per cent reduction in crime as a result of increasing policing effort, but I need to point out that this is quite normal in January. In fact, the January data is yet to be published online in a public sense. Obviously, the government has that data. If we extrapolate that data for a normal January, this would still be the highest crime rate on record for January. I look forward to that data being presented. But it is important not to get carried away with a reduction in the rate because seasonality is a key point. I raise this because I still contend that the Minister for Police waited too long before deploying additional police to that place.

A government member interjected.

Hon NEIL THOMSON: I still contend that the Minister for Police should not have authorised—whether or not he had the power to—the removal of the canine unit from that town.

A government member interjected.

Hon NEIL THOMSON: I note that the Minister for Police has suddenly become a convert to the usefulness of canine units, which is very good. We saw considerable community pressure and objection to the loss —

A government member interjected.

Point of Order

Hon Dr STEVE THOMAS: I do not mind a bit of interjection, but the consistency of it needs to be addressed, in my view. By all means, make the odd comment, but the constant running commentary is both unparliamentary and unhelpful.

Several members interjected.

The PRESIDENT: Order! The Leader of the Opposition has called a point of order. There is some interjection and I invite members to allow the member on his feet to continue for the following five minutes. I take the Leader of the Opposition's point, although there is no point of order.

Debate Resumed

Hon NEIL THOMSON: I thank the President.

My point is that we are now seeing the canine unit going to the Kimberley. I hope that it stays in the Kimberley. I think it is important that we do not have fly-in fly-out arrangements for these units. Additional resources are also important, and I noted and watched with interest the minister's response on this. He talked a lot about Broome. I reinforce the fact that this is a problem throughout the Kimberley; it is not just an issue for Broome. I know Broome is often the port of call for many of our ministers who go to that nice town—my home—but it goes beyond Broome. We must deal with this issue across the Kimberley.

I am pleased that there is greater attention on this. I also want to clarify a comment made on ABC 720 on 14 February. We heard the minister comment that he had written to the Minister for Communications, Urban Infrastructure, Cities and the Arts about the impact of social media on crime in the Kimberley. The comment implied that the minister for communications was somehow to blame and that the federal government needed to act. It is very clear—there is a memorandum of understanding between the state and federal governments—that law enforcement issues are raised with the federal government and it then provides advice and support through the Office of the eSafety Commissioner, I believe it is.

It is very clear from the response to my question on 16 February that the minister had not actually written to the federal minister until 4 February. This issue has been going on for over a year. I just want to make it very clear and I am very pleased that the Premier has intervened and dealt with this issue. The Premier had to intervene to put some focus into the police minister's actions.

Several members interjected.

The PRESIDENT: Order!

Hon NEIL THOMSON: I hope that the Premier keeps a very close eye on the performance of the minister and ensures that, over the coming months, we see a genuine change in the data, seasonally adjusted. We should not focus on just the headline reduction; we should we look at a seasonal adjustment of the data and see a genuine improvement for the good people of the Kimberley.

House adjourned at 9.55 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

457. Hon Nick Goiran to the minister representing the Minister for Police:

I refer to notice given on 7 December 2021 during the Committee of the Whole House's consideration of the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*, and I ask:

(a) what is the total number of declared drug traffickers recorded in the Western Australia Police Force incident management system; and

(b) what is the total number of section 557K(4) *Criminal Code* warnings issued by Western Australia police to a child sex offender under 18 years of age?

Hon Stephen Dawson replied:

(a) The Western Australian Police Force advise 2 815 declared drug traffickers are recorded in the Western Australia Police Force's Incident Management System, as at 8 December 2021.

(b) 58 convicted child sex offenders who have committed offences as a juvenile under the age of 18 years, have been issued warnings by the WA Police Force pursuant to section 557k of the *Criminal Code (WA)*.

Notes

(a) Figures are provisional and subject to revision.

Figures are based on a 'Declared Drug Trafficker' warning being recorded against a person's profile in the Incident Management System. If a warning has not been recorded against a person's profile, it will not be included.

Figures may include persons who have died since being declared a drug trafficker.

URGENT CARE CLINICS — DATA COLLECTION

463. Hon Martin Aldridge to the minister representing the Minister for Health:

I refer to the state government's urgent care clinic trial and question without notice 793 asked on 13 November 2021, and I ask:

(a) did the evaluation program on the GP urgent care network pilot take place, with the formal analysis and will the Minister please table this review;

(b) if no to (a), why not;

(c) can the Minister table 'The end-of-pilot analysis and report' that was reported to be completed in the fourth quarter of 2021;

(d) if no to (c), why not;

(e) has the Government progressed the models to support urgent care in Geraldton, the Pilbara, Albany, the Kimberley and Kalgoorlie;

(f) if no to (e), why not; and

(g) if yes to (e), can the Minister provide an update on the status of urgent care in each of these areas?

Hon Sue Ellery replied:

(a) Yes. An evaluation of the GP Urgent Care (GPUC) Network pilot, including a formal analysis and report has been drafted in the fourth quarter of 2021.

(b) Not applicable.

(c) No.

(d) The report has not been finalised.

(e) No.

(f) As health care needs are unique across regional locations, the WA health system has not settled on a single urgent care model for implementation across all named regional areas.

Opportunities to address regional area needs will be developed based on ongoing strategic alignment with the Sustainable Health Review and further health planning activities, including the Emergency Access Response program.

(g) Not applicable.

HOSPITALS — MODULAR CONSTRUCTION

467. Hon Martin Aldridge to the minister representing the Minister for Health:

I refer to the State Government's media release of 23 November 2021 titled "Four sites confirmed for new inpatient modular hospital beds", and I ask:

(a) how were the four sites that are to receive the modular hospital beds identified as the priority;

(b) has the Government identified where the remaining 150 beds from the Government's additional 270 beds announced in November 2021 are to be located;

(c) will the remaining 150 beds be modular beds; and

(d) how does the Government intend to staff the increase in beds at these sites, given that most hospitals are currently experiencing severe staff shortages?

Hon Sue Ellery replied:

(a) These hospitals have been identified as they will ensure state-wide support in the event of a significant COVID-19 outbreak in Western Australia.

(b) Yes. The remaining beds will be located at Royal Perth Hospital, Bentley Hospital, Fremantle Hospital, Fiona Stanley Hospital, Perth Children's Hospital, Hollywood Hospital and South Perth Hospital.

(c) No, they are a combination of general beds and ICU beds.

(d) The additional 270 beds will be supported by 410 extra nurses and more than 180 extra doctors working in our hospitals.

As at 1 February 2022, 400 graduate doctors joined the WA health system with a further eight due to start soon. At the same timeframe, 50 overseas-trained doctors have commenced work in the system.

An additional 1,200 graduate nurses are expected to be employed in 2022. A $2 million local, national and international advertising campaign is underway to recruit more healthcare staff.

HEALTH — SYPHILIS

469. Hon Martin Aldridge to the minister representing the Minister for Health:

I refer to the ABC News Article of 7 November 2021 titled "Health workers struggle to stay on top of rising syphilis rates in remote WA", and I ask:

(a) has the State Government committed extra resources to combat the rising syphilis rates in remote Western Australia;

(b) if no to (a), why not;

(c) if yes to (a), what has been committed and what has been spent to date;

(d) will the Minister please table any information relating to the government's plans to combat the rising syphilis rates in remote Western Australia; and

(e) what has been spent in each of the following periods to combat the rising syphilis rates in Western Australia and on what programs:

(i) 2021–22 to date;

(ii) 2020–21;

(iii) 2019–20;

(iv) 2018–19; and

(v) 2017–18?

Hon Sue Ellery replied:

(a) Yes.

(b) Not applicable.

(c) $4,928,000 of dedicated funding has been committed to the Western Australia (WA) syphilis response for 3 financial years, from 2019/20 to 2021/22. This funding is additional to recurring funds targeted at sexually transmissible infection and blood-borne virus prevention and control across the state.

(d) A list of programs and activities can be found in the WA Syphilis Outbreak Response Action Plan. Since commencement of the implementation of the Syphilis Action Plan, the frequency of testing for syphilis during pregnancy has been strengthened in response to the rise in number on congenital syphilis cases. Three syphilis tests during pregnancy are now recommended for all women, in addition to the five tests recommended for pregnant women in the Kimberley, Pilbara and Goldfields regions. This Plan will be reviewed and updated in 2022 to ensure contemporary strategic direction.

(e) (i)–(v) The following table outlines the funding expended on the state-wide syphilis response. This is inclusive of recurrent core funding for broader communicable disease control and dedicated syphilis funding.

Activities	(i) 2021–2022 (to Dec 2021)	(ii) 2020–2021	(iii) 2019–2020	(iv) 2018–2019	(v) 2017–2018
Prevention, education and community engagement	$45,000	$640,000	$470,000	$470,000	$450,000
Workforce development	$100,000	$85,000	$165,000	$145,000	$160,000
Testing, treatment and contact tracing	$165,000	$315,000	$185,000	$45,000	$30,000
Surveillance and reporting	$70,000	$60,000	$110,000	$20,000	$30,000
Community based grant funding	$250,000	$1,685,000	$350,000	$460,000	$395,000
WACHS	$644,304 (YTD figure to 30 Nov 2021)	$1,478,848	$532,857	–	–
Total	**$1,274,304**	**$4,263,848**	**$1,812,857**	**$1,140,000**	**$1,065,000**

CORONAVIRUS — HEALTH SERVICES — REGIONS

473. Hon Martin Aldridge to the minister representing the Minister for Health:

(1) I refer to the State Government's commitment to "make every day count" between 13 December and the reopening of State borders on 5 February 2022 and I ask, how many additional negative pressure rooms will the State Government provide to regional hospitals between now and 5 February 2022?

(2) How many additional ICU beds will the State Government provide to regional hospitals between now and 5 February 2022.?

(3) Will the State Government establish any additional permanent mass vaccination clinics in low vaccination uptake regions of the Goldfields, Kimberley and Pilbara between now and 5 February 2022?

(4) Will the Minister please detail any other new regional health measures the State Government will implement to make every day count between now and 5 February 2022.?

Hon Sue Ellery replied:

(1)–(2) Nil. There are existing Negative Pressure Isolation Rooms in every WACHS region.

(3) The State Government has been making "every day count" by continuing to vaccinate Western Australians at fixed clinics in the larger towns including Broome and Kununurra, South Hedland and Karratha, Kalgoorlie and Esperance and in-reach to smaller towns and remote Aboriginal Communities, along with pop up clinics in towns across country WA. Smaller pop up clinics are arranged at locations more accessible to vulnerable populations (including soup kitchens; breakfast for homeless).

(4) The State Government has been making "every day count" by preparing communities to live with COVID and making arrangements to ensure service continuity. This has included ongoing service continuity preparation related to living with COVID deployment of patient care equipment (e.g. filters and home monitoring) remote community transport and accommodation preparation. Targeted vaccination programs in the regions remain the priority.

CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — TESTING

479. Hon Martin Aldridge to the minister representing the Minister for Police:

(1) I refer to an article in the Countryman of 2 December titled "Truck driver turmoil at COVID test 'chaos'" and I ask, which Western Australian border checkpoints can provide PCR testing?

(2) Which Western Australian border checkpoints can provide rapid antigen testing?

(3) Is the State Government considering additional measures or support to ensure truck drivers can enter Western Australia safely and without unnecessary delays and, if so, please provide detail?

(4) How many commercial truck drivers have been denied entry into Western Australia since 1 October 2021?

Hon Stephen Dawson replied:

(1)–(2) All transport, freight and logistics drivers from Australian jurisdictions are approved to enter Western Australia subject to drivers complying with the Transport, Freight and Logistics Directions.

If entering at Eucla, you must:

show proof of having returned a negative Rapid Antigen Test (RAT) in the 48 hours prior to entering WA, or undertake a RAT test in the vicinity of the border crossing – this requirement also applies if you are entering within 100kms of Eucla or Kununurra.

undertake a RAT or PCR within 24 hours of entering WA if you have not had a RAT at the border, unless you leave WA within 24 hours of entering.

undertake a PCR test on or after day 6, or a RAT on or after day 7.

If entering at Kununurra, you must:

show proof of having returned a negative Rapid Antigen Test (RAT) in the 24 hours prior to entering WA, or undertake a RAT test in the vicinity of the border crossing – this requirement also applies if you are entering within 100kms of Eucla or Kununurra.

undertake a RAT or PCR within 24 hours of entering WA if you have not had a RAT at the border, unless you leave WA within 24 hours of entering.

undertake a PCR test on or after day 6, or a RAT on or after day 7.

(3) The Western Australia Police Force regularly communicate with transport, freight and logistics industry stakeholders to minimise impacts on operations while ensuring compliance with the Transport, Freight and Logistics Directions (No. 8). The requirements for entry are also listed on the Western Australia Government website.

(4) Between 1 October 2021 and 17 December 2021, 59 freight, transport and logistics operators were refused entry at Western Australia road entry points. All applications are assessed against the Transport, Freight and Logistics Directions in place at the relevant time. Reasons for rejection included not producing evidence of having undergone a COVID-19 test within 72 hours of entry as required by the Directions.