

PROCUREMENT BILL 2020

Second Reading

Resumed from 13 May.

Declaration as Urgent

MR B.S. WYATT (Victoria Park — Minister for Finance) [4.56 pm]: In accordance with standing order 168(2), I move —

That the bill be considered an urgent bill.

I will be very brief but I want to make a couple of points. The Procurement Bill has been worked on for some time, but, of course, as we move into the recovery and growth phase post the coronavirus, all governments are now bringing forward as a matter of urgency legislation that will allow us to stimulate the economy by getting activity happening at a much more rapid rate. This is a challenge that the national cabinet has given to ministers around Australia. To quote the Prime Minister in his press conference of 23 April, he stated —

We are looking afresh —

The royal “we” being the national cabinet —

at all of the work that has been done over the past decade, but we are looking at all of those important reform documents that have been prepared by groups like the Productivity Commission, the Shifting the Dial Report which went well beyond issues that relate at a Commonwealth level and significantly to reforms that can be achieved at a state and territory level.

That is why we bring forward this procurement reform as a matter of urgency. We have a significant stimulus spend that effectively sits behind this bill. It will certainly allow us to ensure that we move beyond what we can do in the goods and services space and bring in the work space to ensure, particularly in regional Western Australia, that we get an opportunity for much more local contracting and much more local content in those places. I am therefore very, very keen to have this bill go through the Parliament as soon as possible and be implemented. As I said in my second reading speech, many small to medium enterprises are frustrated with government because they are finding that even though they may be providing an identical service or product to government, they have to go through a range of procurement processes for different agencies. Once implemented, this bill will enable much more efficiency and, therefore, much more economic activity. With those few words, I thought I would make some comments to justify my motion of urgency.

MR D.C. NALDER (Bateman) [4.59 pm]: In pursuing the urgency motion, the opposition wants a little more detail on why this bill is urgent. The government is again trying to circumvent due process in Parliament, which I am always worried about. We understand that the coronavirus has created extraordinary times and that there may be good arguments for this bill to be declared urgent. There could be something in the legislation that would benefit small business if we got through the bill three weeks quicker by making it an urgent bill, but there is a lack of clarity about the merits of the motion. I checked with the chamber about some of the rules and was told that the minister has the opportunity to respond if we stay within the 20-minute time limit for this debate. The opposition is not opposed to this being an urgent bill, but we seek clarification about why we should remove the three-week period that the bill would normally sit. We know that this is enabling legislation and there is not necessarily a lot of detail around it, and we will talk about that during our consideration of the bill. There are obviously concerns about how this legislation will be utilised by the government if there is a lack of scrutiny of the regulatory changes by the Parliament. We want to make sure that we are giving this bill the proper focus and attention that it deserves and that we are doing the right thing by the broader Western Australian public by allowing this motion to pass and accept this as an urgent bill. I will not take this any further, other than to say that we would like some assurance about the specific benefits that will be gained by the community from us treating this as an urgent bill. By that I want to know exactly what outcomes the government is looking to achieve by having this bill treated urgently, such that it gets through the Parliament more quickly.

MR D.T. REDMAN (Warren–Blackwood) [5.01 pm]: I also want to talk to the urgency motion. The first and second reading of this bill were done last Wednesday. We now have sittings this week and next before we have a little time off before the June sittings. We have three weeks of sitting in May, of which one week has already gone. The Legislative Council will sit for three weeks in June; I think the Legislative Assembly will sit for only two weeks in June, but that is almost irrelevant if this bill goes off to the Legislative Council by then. We then will not sit again until 11 August, when there will be some two sitting weeks. If we let this bill play out in terms of its natural progression, we could expect it to be well and truly passed, with some comfort I would have thought, by the end of the two sitting weeks in August. I do not think that would be unreasonable for a bill that is largely uncontroversial in its intent. There is certainly a range of things that the opposition wants to talk about, but the bill

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will not get too much of a fight from the opposition. The government wants to bring the bill on as an urgent bill. Therefore, the government must make a case to say that there are provisions in this bill that are essential to getting something on the ground and workable by the end of the two weeks of sitting in August. If the government cannot do that, this bill is not urgent. The way I read the bill, a lot of complexity needs to be worked through in putting together frameworks, coordinating how government agencies work and pulling together some common themes across agencies to make sure that everything is coordinated in how that happens. Some provisions, such as the debarment provisions, require regulations, so there are processes that need to be worked through. I put the challenge to the minister that in putting this bill on an urgency platform—I fully understand why he wants to get this bill through in response to COVID-19—I ask him to outline in his response one or two things that this bill will enable and would be in place and active before the end of August. I think that is a reasonable request. If the bill is urgent, the legislation will go through quickly and the government will get those things in place. If the government will not have anything on the ground and running by the end of August, this bill is not urgent. A lot of the background work could be done concurrently with the legislation going through the Parliament to ensure that when it finally lands, a lot of the work has been done. I would be surprised if work is not happening within agencies now—I would have thought that it would be.

I had a briefing on the bill yesterday. There is quite a bit of complexity. There are some fairly global, or motherhood, statements. I will read one of the motherhood statements provided in the briefing. I agree with it, but again it comes down to actions on the ground. It states —

Local Small and Medium Enterprises must be provided with opportunities to win work with government. Importantly, the framework enables measures to be implemented to remove red tape, reduce tendering barriers, and the costs to businesses in doing so.

I agree with that, but a lot of work has to happen to get that to its end, and it is not just legislation; work also has to happen behind the scenes. The minister will need to convince me that elements of this will be in place before the end of August; otherwise, quite frankly, the bill is not urgent and can run through the normal process. I am going from a briefing on the bill that I got yesterday; I was not able to get one late last week. I came up from Denmark yesterday. I will now try to make a meaningful contribution to the debate in the chamber today.

MR W.R. MARMION (Nedlands — Deputy Leader of the Opposition) [5.06 pm]: I want to build on what the member for Warren–Blackwood just said. I totally agree with him. This bill does some good things. The briefing demonstrated the complexity of the current process. I happen to have some experience with this. I have probably done some work in every single box on this piece of paper, both as a government operator and in tendering for work. The government has to fix it. The member for Warren–Blackwood said that this is enabling legislation that will require regulations. It is quite a long process. The question I ask is: are there things that the government can do right now? I know that there are. I could give the minister some ideas, which I might do during the consideration in detail stage.

Mr B.S. Wyatt: Please do.

Mr W.R. MARMION: I will not do it now because I do not have time. The government could do lots of things right now to make sure that small businesses could benefit. It does not have to go through this process. I agree that the bill will make it better in the long term, but the government could do things right now. The minister could change the rules. The Minister for Transport could do stuff. The Minister for Finance could do stuff. Something could be done with the rules of the State Supply Commission, but the government would have to be a bit careful there. I would like a practical example of the benefit that a particular business would get from this bill being declared an urgent bill. I cannot see anything specific that will come out of this very quickly.

The ACTING SPEAKER: Minister, would you like to respond?

MR B.S. WYATT (Victoria Park — Minister for Finance) [5.07 pm] — in reply: I would; however, I seek some clarity. Do I have some time to respond?

The ACTING SPEAKER: Yes, you do.

Mr B.S. WYATT: I thank my colleagues for their contributions. I suspect that the constituents of the member for Warren–Blackwood would be some of those who would benefit the most, directly and immediately, from the passage of this bill, and I will outline why in just a minute. The member was right; there are some parts of the legislation—the member referenced the debarment regime—that will take a bit of time. We are doing a lot of industry work on that anyway, so we are very close to the public components of that. That will follow the passage of this bill, hopefully in August but maybe in September. Either way, that is coming.

What the bill will do immediately is allow me, as minister, to lift the minimum amount of money for works to allow local contracting. I want to emphasise this point. The table that the member for Nedlands held up highlights

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the nightmare. I am hoping that we all agree that the general red-tape arguments around the bill are a good thing. My understanding is that we are all supportive of that. The State Supply Commission Act was passed in 1991 and is well past its use-by date. That act limits what I can do, as Minister for Finance, to goods and services provided by what is defined as public authorities. The 1991 act defined “public authority” as a limited group of government agencies. This will allow me, as Minister for Finance, immediately to do what we have done with goods and services under the State Supply Commission Act—that is, to allow agencies to directly purchase from local suppliers. I lifted that from a minimum of \$50 000. For anything under \$50 000, they could do local purchasing. I have already lifted that to \$250 000. Again, at the next level, at \$250 000, historically one had to go to public tender. We have all heard those stories of small organisations that just do not have that administrative capacity to go to public tender. Between \$250 000 and \$500 000, written quotes from local suppliers are needed, and it is now for above \$500 000 that agencies need to go to public tender for goods and services.

At the moment, I cannot do the same for works. That is really the value that, on the passage of this legislation, I will be able to change immediately. I suspect that is the one thing that we are all keen to see. For example, we are bringing forward, and I suspect there will be some more money for, the refurbishment and maintenance of public housing and schools, and, indeed, health will have a maintenance spend. Bear in mind this is not rebuilds; this is your classic tradie kind of work. Refurbishments are slightly bigger, so it is not just a lick of paint; it is bigger work. If I am limited to 50 grand, I will not be able to have all that done at the local supplier level. If it is up at \$250 000, it is much better. That is immediate. Although the debarment and some other areas might take us a little bit of time, that will be an immediate outcome. I am keen for that to happen because that spend is going to be coming through soon—before August is the plan. I am keen for that happen soon, and that is why I am trying to have the legislation brought in urgently.

The member for Nedlands asked for an example. Cooperative procurement is another live area that will come into play fairly quickly. In the last little while, we have had buy a lot of personal protective equipment. The Department of Health can purchase for the Department of Health, but it cannot make purchases of PPE for other agencies; that has to come through the Department of Finance. Similarly, the health department cannot say to health department of South Australia, “Let’s do a combined procurement and buy a huge amount of PPE.” That is simply not available to us under the legislation. Other examples would be state agencies wanting to do local cooperative procurement with local government entities. It cannot happen now, but the legislation will allow that to happen. A lot of efficiencies and good outcomes will happen fairly quickly. I am very keen to do that, particularly on the works side. I like maintenance spend because it is usually pretty quick—we give the money and they will spend it—but I am always slightly frustrated that it gets to a level pretty quickly at which it has to go to public tender, even when we know there are local organisations that can do it. Hopefully, I have convinced members of the bill’s urgency.

Question put and passed.

Second Reading Resumed

MR D.C. NALDER (Bateman) [5.13 pm]: I stand to make a contribution to the second reading debate on the Procurement Bill 2020. Leading on from the declaration of the bill as urgent, I want to say up-front that the opposition will support this legislation and its passage this evening; however, we want to raise a few points. As touched on in the urgency motion, our concern is that there is very little detail in enabling legislation, so there is very little on which the opposition can critique the government about how it will use this legislation. In some ways, we are showing good faith that the government will use this legislation appropriately. Obviously, we will observe that over time. The Liberal Party will see that this urgent legislation goes through Parliament on the basis that more local small and medium-sized business will be awarded contracts as a result. The opposition has to accept that this legislation will be better, again because we do not have the ability to critique the bill in this place.

Legislation designed to standardise and harmonise the process of government procurement is important. I think these are the sorts of things that governments should undertake. I have one question, minister: why does it exclude government trading enterprises? The Minister for Finance and I have talked about GTEs and a lack of transparency around them, so it begs the question sometimes when they are left out. I look forward to the minister’s response on why they cannot be included. GTEs are important. Every Western Australian views Synergy, Western Power and the Water Corporation as state entities and they do not really see the difference. I think most Western Australians do not realise that they do not form part of the general public sector, or that when we are talking about operating surpluses and deficits, their activities are not included in that. I think most Western Australians do not really appreciate that; therefore, I believe that the community would expect that any legislation the Parliament is looking at to drive better processes would pick up those GTEs.

The bill will also allow for the introduction of a department integrity regime to level the playing field for law-abiding businesses, and provide adverse incentives for corrupt and illegal behaviours. Again, we are okay with that. We think that is a responsible action to take and see no problems with that. We understand that the Department of Finance

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will take over the coordination of procurement processes, and, therefore, additional resources will be allocated to the department. I assume there will be additional resources. I imagine that if the government is putting up this type of legislation that requires the Department of Finance to undertake further work, some modelling will have been undertaken to demonstrate that there is an understanding of the resources required by the department. It would be good for us to understand whether there will be a financial impact to the bottom line as a result of this legislation.

They are the questions that we are asking on this legislation. Our understanding of the purpose of the bill is that it will modernise the process of government procurement of goods and services and works. The changes will make it far easier for business to work with government to support the state's economic recovery. Again, we are taking that in good faith. The bill's introduction of procurement directions provides a consolidated mechanism to move all state agencies in a unified direction, but, again, we highlight that it does not include GTEs. The bill will remove legislative barriers within government; for example, it will enable cooperative procurement arrangements. The bill will replace the State Supply Commission Act 1991 and streamline the tender process and documents across government to make it easier for businesses to work with government. Again, we support that.

I made the comment recently—or will be making; it will be seen tomorrow—that the streamlining of processes is long overdue. From my perspective, when industry talks about state bureaucracy, it is often not the dealing with individual departments that is the problem; it is the fact that it has to deal with multiple departments and there is no streamlined process through that. Industry tends to have to find its way and deal with all the different departments. I know that issue does not necessarily apply here because we are dealing with procurement, but it is an observation I have made over time about bureaucracy—that there is a lot of frustration out there that we make it very difficult for people to get on and do what they want to do. When we talk about larger sums and people in industry interacting with the state government, coming from a financial background, I understand that capital does not sit around for three, four or five years waiting for government approval processes. If we want industry in Western Australia to succeed, we need to ensure that we streamline these processes such that businesses can get on with it. Proposals are floated in Western Australia but, more often than not, particularly in the CBD, when we talk about office towers being built, nothing ever happens. It just seems to take too long. Anecdotally, a developer said to me that they had been trying to build something in the Perth CBD and the approval process took three years, yet in Singapore it took them three weeks. My view is that we would never aim for a three-week process, but I would love to aim for a three-month process. If we had a proper master plan over the CBD, developers would not need to undertake transport plans, services plans and so forth. All that work should be done under a master plan. The only thing we should be debating is architectural design.

Nonetheless, to get back to the procurement process—I digressed for a bit—I look forward to seeing how this will simplify procurement processes for governments to support the objectives of the Western Australian Jobs Act 2017. I have always been a little cynical about the WA Jobs Act 2017, because we know that it is unconstitutional to show bias to Western Australia over the other states in Australia and New Zealand. We know that the WA Jobs Act is an Australia–New Zealand act. It has to be under the Constitution. If this will make it easier to fulfil the objective, it begs the question: how will that be fulfilled over and above businesses operating in New South Wales, Queensland or New Zealand?

Another objective is to improve flexibility to apply economic and social policy objectives across all areas of procurement. Again, that is a little bit loose. I would love to know the specifics and how that may be portrayed. Another objective is to improve the integrity of public sector procurement with greater audit and investigation powers. Again, I take that at face value.

Minister for Finance, we support the bill. We believe that reforming and streamlining processes and making it easier for industry and businesses to interact with government is a good thing. We have to remove as much red tape as possible. We have concerns about the fact that this is enabling legislation and therefore we in this chamber do not get to see the workings of that and how it will roll out in the regulations. There is always a little bit of good faith in oppositions supporting enabling legislation. Nonetheless, we look forward to the passage of this bill. I look forward to getting into a little bit of detail. Again, as I say, it is not easy in the consideration in detail stage when there is not a lot of detail in the bill. We look forward to its passage through this house.

DR D.J. HONEY (Cottesloe) [5.22 pm]: I rise to contribute to the debate on the Procurement Bill 2020. As has been indicated by our lead speaker, the shadow Treasurer, we support the bill. Procurement is an interesting area; it is an area that I have a keen interest in. Certainly, proper management of the procurement process is a key activity of all businesses, including government. Perhaps there is a hint there in how we can look at best practice for this process. I do not think procurement is not a complex process; certainly, some parts of it can be complex. Overall, in looking at the proper management of a procurement process, the first thing is that a procurement process should be simple in two ways. The process should be simple for not just the government agency in this case, but also the suppliers. The complexity of government processes drives the costs for private enterprise and, ultimately, that drives up the cost of the services and goods that are procured.

Certainly, there is a big carrot here. Reducing the cost of procurement is pretty important. The discussion papers tell us that there is a \$27 billion annual spend. If best practice procurement processes were applied, I would be very surprised if there was not a 10 to 20 per cent reduction in the cost of procurement of services to government. I say this based on extensive experience in my life before I entered Parliament. Both mining companies that I worked for, Western Mining Corporation and Alcoa, but particularly Alcoa, saw dramatic reductions in the cost of procuring goods and services, particularly the cost of capital projects. I think the way that government manages capital projects guarantees almost a worst outcome for taxpayers. There are substantially better practices that are best practice for guaranteeing substantial reductions in capital costs. Reducing that cost should involve reducing not only the cost of departments to procure, but also the cost of goods and services. There should be intrinsic mechanisms that drive those to the lowest reasonable level. I do not think any business should be in the business of driving suppliers out of business. That, in the end, does not make good sense, particularly if we have a focus on local agencies. They need to be able to make a profit, but, equally, government needs to facilitate them providing a good service at the lowest possible cost and, critically—I did not see so much focus on it here, but perhaps it is implicit—ensuring the quality of goods and services and that they meet an appropriate standard. One aspect that has very clearly been a failure of government processes—obviously, they are the processes of both sides of politics—over a period is making sure that expenditure is properly authorised. The last point is making sure that there is no corruption in that procurement process.

The key aspects of this bill seem to be steps in the right direction. This was in the overview that was provided. Part 3 deals with the procurement functions of the minister and the department CEO administering the act; part 4 deals with the general agency-specific ministerial procurement directions, which is perhaps something that could be in the hands of government right now, but, in any case, it will be enabled in this bill; part 5 deals with the coordination of procurement arrangements; and part 6 deals with investigation and audit. They are absolutely critical parts. I know that we have the Office of the Auditor General, but I think that office will probably be swamped by the dimension of the task. We have a tremendous advantage in Western Australia, and that is that there would be three or four businesses on St Georges Terrace that have a budget the same size as that of the state government and they have to do all these things. Based on my experience and from what I have seen, they do those things much better than the government does. That is a good thing in the sense that the Treasurer and the departmental people would have some wonderful templates if they just walked into those offices and asked them how they manage these functions. They would get very clear and explicit direction. Certainly, investigation and audit is a critical independent part of those businesses. On the debarment of suppliers, obviously, if people are bad actors, they should not participate in the process. Anecdotally, it seems that sometimes we can have suppliers that act in bad faith in one part, yet appear as an actor in another procurement process elsewhere. It is a very powerful message that government can send to say, “No; if you don’t act in good faith or if you do the wrong thing, you don’t get to participate in these processes in the future.” I think that is a good preventive measure.

We have been told that this will improve the ability of local contractors to participate in procurement processes, especially for larger contracts. During debate on the matter of public interest today, we heard the member for Vasse give an excellent description of some of the issues with contracts going overseas. I will not dwell on that point in great detail, but certainly Australian Owned Contractors is very concerned about the Metronet projects. The first paragraph of its press release on 24 April 2020 states —

Australian Owned Contractors (AOC) is disappointed in the Public Transport Authority’s ... procurement process for the Metronet Morley–Ellenbrook line, which will once again result in a foreign tier one contractor delivering the project.

The point that was being made in the discussion today was that we do not need a new law to prevent that from happening. In fact, the previous government made sure that local contractors could participate in certain contracts by dividing the project into some subparts. Some very basic things can be done to prevent the types of corruption that we have seen in the North Metropolitan Health Service and, more recently, in other parts of government. The government can look to some good processes to manage those aspects of procurement. I already mentioned that I believe there are some very good procurement models.

Sometimes we do not know what occurs within private companies, but I doubt that any of the major companies based on the Terrace—certainly our big miners BHP, Rio Tinto, Woodside Energy and Chevron—have experienced such levels of corruption. The budgets of these mining companies are the same size or bigger than that of the state government. That type of corruption has not gone on because of the good processes they follow. There are some simple rules to follow. The first rule is budget control. I am dumbfounded that the government’s departments or sections appear to go over budget. When I was a manager in my previous life before I came to Parliament, if I spent money that was not authorised, I lost my job; it was pretty simple. It was not a question of being told, “Don’t do it next time.” I had no authority to do so, and that is a simple process. It has to be clear to every level, down to the most junior officer in government, that they have no authority to procure a service that is above budget. Obviously,

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there are levels of authorisation. There needs to be severe penalties for individual officers, including departmental heads or others, who exceed their authority in terms of expenditure. I have not seen it in this legislation but I am sure it is elsewhere. A reference at the end of the bill looks into misconduct. We cannot just say, “Oh, shucks! We will tidy that up and there’ll be some post approval.” It is very much a cultural aspect of controlling procurement right at the start.

The absence of multiple tiers of approval seems to be very clear. Again, I will go to my own experience. The company that I used to work for—Alcoa—had sophisticated local and global standards. In any part of that organisation, exactly the same processes were followed around the world. I understand from talking to others that if we look within the government sector here, we may find different processes in different areas. Clearly, the intent of this bill is very much to make sure that we have one way of doing it. I absolutely applaud that. At Alcoa, one of the key processes was having more than one level of approval. I could not order something and approve it; again, I would lose my job if I did that. Approval and review of expenditure on an item went to four levels. Someone would procure an item, and it could be approved only by the next manager up. It then also had to be approved by the manager above them. The manager above, on a monthly basis, reviewed every single procurement in the department. As a more senior manager in the organisation, I did that and I took it seriously. I managed significant budgets and I did not approve a single expenditure if I was not absolutely aware of what it was. I think this level of rigour has to be used by government agencies. It is a formal process, and it is tracked. If the process is not followed, the order cannot go forward.

This is a deficiency in government and that is clearly a collective responsibility of past governments. Our electronic systems for this process seem antiquated, to say the least. There should be one system across government. The Treasurer or his Treasury offices should, on any day, know how much money the government has spent. All the companies on the Terrace could tell us how much money they have spent today and they could tell us tomorrow how much they have spent. My understanding is that this procurement process can cost a considerable amount of money. I know it is not part of this bill, but I think in parallel with this bill a fundamental look at the computer systems needs to be undertaken. Again, I do not think the government needs to develop something novel. If the government talks to our good friends down the Terrace, it could get plenty of insight into adequate procurement systems that allow for the financial management of something as sophisticated as the government of Western Australia. Certainly, the multiple levels of review and approval are important.

Routine audit, which I know is covered in the bill, is also critically important. The audits must be independent. Sections in the bill relate to how audits can be carried out. It is very important that an audit is independent. It is an opportunity for functions within government to have some accountability outside of departments. It is true for all major corporations that a departmental accountant reports and is responsible to their manager, but they will also have a dotted-line report to a commercial manager outside their department, which covers all departments. These checks and balances make sure all departments are following the correct procedures. We do not rely on an email to go to the chief executive officer and then be passed down through the system. A person in government—I think it is very appropriate that the person sits in Treasury—has a dotted-line function to the relevant parts of the department. That allows for a check and balance to guarantee everyone is following the correct procedures. It is extremely worthwhile and critically important to have that central oversight of procurement as part of this bill.

Debarment is not covered in the bill, and perhaps the Treasurer intended this as another way of looking at it with a rigorous qualification process for any suppliers. Before companies become suppliers of goods and services to government, they have to go through a qualification process. It is managed as a separate function. The beauty of that qualification process is that all the backgrounding checking is done before any company can even be considered as a supplier to government. It sounds daunting but, in fact, with the right supporting systems, the process can be done very thoroughly. Those companies that are not qualified contractors simply cannot be suppliers. Under this process, a debarred contractor would not be a qualified contractor but the process takes out the complexity of agencies or parts of government procuring goods because they can choose from a list of qualified suppliers and then use whatever process they use to get the best possible price from those qualified suppliers.

Capital project management is not in the detail of this bill but I think it is worthwhile to take a few moments to talk about it. When I started working in the mining industry, the company I worked for used a very similar sort of process for capital projects to the one we use. That process inevitably ends up as a cost-plus process. Even though we say there are limits and so on, one of the skills of capital contractors is triggering the processes that allow them to increase the cost of a job. I know that the state government is having a fight with a contractor at the moment over that sort of process. The way that capital projects are done now means we essentially come down to one contractor before we have all the detailed design and a cost that is plus or minus five per cent. First, a contractor is narrowed down and then we go into detailed design, so we end up with this cost-plus. I am happy to talk to the Treasurer separately, so I will not tie up discussion in this debate, but to say there are very good ways of avoiding that type of process. A competitive process allows for two potential capital suppliers to go to detailed design. In fact, they are

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paid to do that. It is relatively low cost, especially when it is competitive. When two potential suppliers are paid to do that, because the project has gone to detailed design already, firstly, the company owns the intellectual property.

[Member's time extended.]

Dr D.J. HONEY: Secondly, the company has a very accurate cost estimate for that project and it can look at the other aspects of that contractor. The beauty of it is that because of the detailed design process, the company has to work intimately with that contractor and knows that organisation's safety culture and whether it delivers on what it says it will deliver or whether it is all talk and no action. The best aspect of both proposals can then be leveraged. Once the contractor for the job is chosen, an appropriate risk–reward type of contract can be negotiated. If a government agency wants to work intimately with a contractor, it requires its own experts. This is a very small investment compared with the cost of these capital projects when they blow out. When an agency has those experts, they can work together on ways to reduce the cost of those jobs.

That process was implemented by Alcoa, a company that I worked with immediately before I came into Parliament. My area had the largest capital expense in the company. In the very large capital projects that I was involved with not a single contract or project went over budget. In fact, most projects delivered substantial savings on that budget even though that budget was based on the detailed design. It is a very good process. If we look at government contractors going back some time, it seems that we accept very large variations on the initial budget, and then we end up with a process of poor estimates. Perhaps this is being a little unfair, but we heard that the original estimate of the Morley–Ellenbrook line was around \$860 million. Now I hear that the estimate is \$1.5 billion. Perhaps I would have been delivering pizzas had I told my previous boss about a blowout like that. As I say, perhaps I am being a little unfair in that that was just an estimate by someone. Nevertheless, from what I understand of the major capital projects that we have had delivered, it is very common for those projects, through one form or another, to trigger various clauses in the contract and end up costing substantially more than the original estimate. That should not be acceptable to us. There are some very good basic mechanisms that we—the royal we of government—can use to reduce the cost of those contracts.

In summary, I support the Procurement Bill 2020. The procedures are probably the most important part of this bill, which is something we are not going to see; that is just the nature of this enabling bill. But it is very clear that even now the Treasurer and the Premier could require departments to do things in ways that would substantially tighten up changes. I am sure that this bill will formalise the ability to do that. Once again and for the third time, I strongly encourage the Treasurer or his officers to spend some time with those major organisations and ask them that open question: how does an organisation ensure that it manages procurement so that it is not corrupt and it delivers the best possible product in a safe and timely way and at the lowest possible cost? I think that they would happily share with the government the experience they have had with their processes.

MR D.T. REDMAN (Warren–Blackwood) [5.43 pm]: I do not want to talk for a long time, only to say that the Nationals WA will support this Procurement Bill 2020. The intent is sound. I still maintain the position that we could have had a little longer to have a close look at it and talk to members of our constituency and all those engaged in the process of procurement. I think the Treasurer quoted \$47 billion worth of —

Mr B.S. Wyatt: I said \$27 billion.

Mr D.T. REDMAN: Sorry, he talked about \$27 billion worth of government funds that go into the marketplace and are used to support the economy of Western Australia. A number of speakers have already highlighted some of the challenges in our procurement process. I will use a really simple example that highlights a challenge with the process. I have a history of working in the Department of Education. I was the principal of the Western Australian College of Agriculture in Denmark for nearly 10 years. I remember that at the time a lot of work was done internally within the Department of Education to get appropriate processes clearly articulated down to a school level on how to go out and buy something. Obviously, some lines in the sand were drawn on how expensive the item could be and the rules surrounding the process. When the department finally came up with this work, it was like something that had been designed by a committee. The department put it in place but before it was enacted, someone was smart enough to ask the few people who put it together to go out and buy a video recorder using the set of drafted rules. Of course, they had to draft up the scope of the nature of the video recorder and the things that were essential to the bids coming from the people who would be trying to get the contract to supply the video recorder to the school. Of course, the bids came back. The cheapest bid met all the scope requirements articulated in the pitch to the private sector to supply a video recorder. Clearly, the best deal was not the cheapest bid; it was a slightly more expensive bid but it came with a heap of attachments that were outside the scope. Of course, the people who were assessing the purchase identified it as clearly the best deal, but they would have to choose the cheapest bid, which was within the scope of what they had defined. In order to get what they believed or assessed as being the best deal for taxpayer's money and for that school, they had to shut the process down, re-scope the rules, put it out to market and do it all over again. It was a bloody nightmare! That example highlights, albeit in a simple way, the

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challenge of procurement. We have to put in place processes to ensure an appropriate spend of taxpayers' funds, but, as highlighted by the member for Cottesloe, we also need good quality outcomes for the spend. That is not easy to do right across the public sector, which is complex across the range of different fields, in both goods and services, and involving, in many cases, quite high-level building contracts. It is not easy.

This reform is appropriate. A range of issues have dogged past ministers and are dogging the Treasurer right now in terms of limitations—he has highlighted them already. They might appear to be simplistic issues, but they have a level of complexity that limits what can be done. This bill is right and it is the smart thing to do. I had some issues with the urgency of it; nevertheless, that is what we have. We also have the challenge of competitive neutrality to ensure that everyone has a fair crack at the process. We who live in regional Western Australia regularly get frustrated, and the government would have heard our commentary on a number of contracts. One contract was based in Collie and the tender went out for a company to build or upgrade fire trucks. It ended up going to a company from Malaga, I think, yet a local business felt that it could have had that contract. There are numerous examples in which one would like to have a local outcome in a community. I know that government has a passion for Collie and would have loved to have an outcome like that, but that is not what landed. When we asked a question about it, the government said that it had to go to tender and the process identified this particular outcome. The process can be frustrating when we believe that something is fair and reasonable, but in the interests of competitive neutrality and an open and transparent process, the process lands a particular outcome. I think that the member for Bateman also highlighted that the Western Australian Jobs Act allows tenders to go interstate and to New Zealand, so we are also bound by some outside rules.

Giving one agency a leadership role over its interaction with all the government agencies that have procurement responsibilities is smart. There are some legacy issues including the head contractor model in the Department of Housing. I cannot say that I was big fan of the regional component of that. I thought that it made sense for metropolitan Perth, but for some of the more isolated parts of regional Western Australia it was a very frustrating process to get good outcomes for some of the local contractors that had been doing a damn good job in those communities, and the Treasurer would have seen that. A whole heap of goodwill had been built by local contractors, but the process seemed to cauterise that. I guess that the head contractor model processes are in place, so it will be interesting to see how this in fact applies to that. I know it does not extend to government trading enterprises. Recent decisions have been made by the Water Corporation to move away from the Aroona alliance and the Perth region alliance that were effectively government–private sector engagements in the alliance process to try to bring private sector efficiency to the table—the capacity that the government has in and around the technical aspects it can bring to the table. Of course, the Minister for Water has chosen to move away from those, but I know that is going a bit outside the scope of this bill. Examples of efficiencies that were brought to the table—I was the water minister at one time—are probably lost.

The other interesting area is getting some coordination on government policy guidance for procurement by agencies. The member for Nedlands held up a document that showed all the different bits and pieces; the complexity of all the different acts and all the different people who can make certain decisions, including Treasurer's Instructions and Premier's Circulars, which have influence on all this. That is a nightmare to work through. It makes sense for one department to have some leadership and control. It is a little unclear what the lines in the sand are. That will probably be teased out as we work through this bill in terms of where the influence starts and stops. When the policy might be for a regional purchase or when there is strong support for regional businesses and their capacity to come to the table to bid for something, often, as another member mentioned, they will take small bites, not a big contract bite. Provisions that allow some government guidance for a whole range of smaller purchases that fall into the capacity of particular regional businesses will mean that they will get a say in the game.

I am sure the minister would also be well aware of getting Aboriginal businesses to the table. In remote Aboriginal communities there is a history of key Aboriginal businesses playing a role in the provision of services to government for maintenance of houses and/or other services. Those things are really important. We need scope so that policy guidance can allow some outcomes that the government is chasing through its policy settings, and quite rightly so.

Mr B.S. Wyatt interjected.

Mr D.T. REDMAN: It has; I agree. There are other issues in the head contractor model too, but this is not the time to go into that. From a regional sense, it has not necessarily had a good outcome.

Some regulatory aspects still have to be put in place. I turn now to the debarment rules. The good people at the back of the room who gave us the briefing yesterday talked about government coming together with a blend of policy settings in Canada and the US. Other jurisdictions have taken different approaches. Government has not had visibility of who is in and who is out, and the threshold of what is considered to be a line in the sand for someone who might not be considered appropriate to be on the government's list. I think "conviction based" is one of the things I saw in some of my readings.

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The not-for-profit sector is another really important sector. It provides a lot of services to government. It does not necessarily have some of the governance arrangements in place but it brings a lot of passion to the table, particularly for the social services. I assume this applies to that. The minister may have some comments about the social services sector engaging with not-for-profit reps who bring a lot of goodwill to the table and can deliver some good outcomes.

A report by the Joint Standing Committee on the Corruption and Crime Commission was tabled last week. It contains some very publicised examples of corruption in the public sector. Some of those are still before the courts so I will not comment on too much of that. One example was someone allegedly operating just under the threshold of a requirement for someone else to sign off. If that is done enough times, it can amount to a hell of a lot of money. The committee recommended that the government look at processes that it could put in place, including building a culture within organisations to accept that these things are unacceptable. We need to find efficient ways to make sure that we do not have anyone doing the wrong thing. It is not a good line when we see the very, very publicised recent examples in the public sector—in the North Metropolitan Health Service and others—and the fairly large sums of money that are involved.

The minister has the support of the National Party. I got a pretty good response from yesterday's briefing in terms of feedback to some of the questions I had at the time. No doubt, some more issues will be teased out either during the minister's second reading response or, if the opposition decides to pursue it, during consideration in detail.

MR W.R. MARMION (Nedlands — Deputy Leader of the Opposition) [5.55 pm]: I begin by thanking the staff for the briefing we had yesterday on the Procurement Bill 2020. This happens to be an area that I love, unfortunately! In case I get through the bill, I have a few pages of all the things that have gone wrong in my life since 1978—in relation to contracts!

Mr B.S. Wyatt interjected.

Mr W.R. MARMION: They are only on procurement, but they are very entertaining! Members will be very surprised. Unfortunately, none will be fixed by this bill. They are all the things that have gone wrong in terms of corruption, mismanagement, naivety and all those sorts of things, including on some big projects. Hopefully, I will get to some of those because it will be more interesting than going through the bill. Believe it or not, I have read the whole bill.

Mr I.C. Blayney: You have read the whole bill?

Mr W.R. MARMION: I have read every single thing since the briefing yesterday. I have to say the way the bill has been put together is quite elegant. For such a small bill, it covers a lot. I wish I could say the same about some of the tenders I have done. I might have mentioned at the briefing the tiny jobs I have tendered on, including school reticulation. I got the job of writing tender documents, which involved just copying ones that were done some years before. They were about five times thicker than this bill. It might have been the department of housing and construction that was handling this contract for the education department. The department knew there were only two reticulation companies in WA that were going to tender. In fact, only one person would write the documentation. They rang our company and said, "Please, we want two people to tender this time; can you tender?" I think they gave us the job so that we got experience and there would be two people tendering. We had to copy a massive number of tender documents, knowing that only two suppliers would tender in WA. That is just one little story.

Tendering is actually a very difficult area. It needs to be value for money and fit for purpose for the particular project. Getting back to that example, only a thin document is needed. To cover yourself, public servants' documents grow and grow. If someone gets bitten for something, they cover it with a whole lot of contract documentation so they will not get bitten next time. Unfortunately, documentation grows. The people who tendered on that reticulation project did not read the document: "They are the areas we have to do, what are the areas, how much pipe do we need?" and they would put in a price based on that. They would take a punt that an officious government person would not give them a hard time because they did not follow page 527. Unfortunately, whether there is a good outcome on projects depends on how they are managed.

One of the more difficult areas to tender on is architects. How do you pick an architect? That has been going on for decades. The Building Management Authority had a lot of in-house architects when it outsourced things. It had a process of sharing it out. There was no way someone could really tender. The Australian Institute of Architects grizzled, so they had to have certain categories. The big architects could design certain sized buildings and they would share them around. How do you get value for money for that? They were making sure that each architect got their fair share of jobs. I was involved in the process of selecting the architect for the Bell Tower when I worked for Richard Court. I was the director of the capital city development unit; one of the many jobs that I had at that time.

Mr D.R. Michael: I protested on that.

Mr W.R. MARMION: This is before it was protested. That is another story, if the member has one hour!

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We decided to have a competition. We decided to have a small dollar prize. That was one way of trying to make it a bit fair; who could come up with the best design. Of course, we could not afford to build the one designed by the person who won. By the way, Hames Sharley got the job. It came up with a the very good idea of locating the spire so that it actually lines up with the dead centre of Kings Park Road and The Esplanade. However, it had to be very high so that someone driving down Kings Park Road could see the top of it, but it was not built high enough.

Sitting suspended from 6.00 to 7.00 pm

Mr W.R. MARMION: In summary, this bill will basically simplify the whole-of-government procurement structure and will provide opportunities for efficiencies and cooperation, and offer some consistency across government, principally by bringing in works and leases as part of the procurement of goods and services.

I will go through the parts of the bill very quickly, but before I do that, I will mention that some of the constraints on doing business in government are the contract panels that have been set up. In my day, to get on a contract panel for planning, for example, a person had to meet certain criteria. I do not know whether there is a contract panel for business cases, but we did business cases, and it was an ordeal to get on a panel. When a contract was for a certain size, the panel would be sourced to get three quotes and that would include the cheapest quote. To be on a panel was great but it was difficult to get on one. That is an area the government can look at. A project over a certain size has to be put to tender. It could take a week for a small company to put in a tender, and if the company did not get the contract, that would be a week's worth of work that it did not get paid for. If it was lucky, it might have got one out of three tenders it submitted, and if it was really unlucky, it would not get awarded any of the three contracts. If it was really lucky, it might get two out of the three and have to find more staff. It is quite tricky for small businesses.

I was Minister for Finance for a period. That was interesting because the Department of Finance had a policy role in procurement. There was some argy-bargy within departments about Finance's procurement policy over who paid for it. I think the Finance paid for the procurement for each agency and it would then all be paid back to Finance. The model in this bill is probably a good model because it will mean that one agency, which was the Department of Finance but could be another department to be created under this bill—that is for another debate—will be the central agency with policy expertise across the board. The danger of that, like in the olden days, is if the central department becomes so big and overbearing, approval is needed from it for everything. One thing I will pull out of my pocket of stories —

Mr B.S. Wyatt: Your book of mistakes.

Mr W.R. MARMION: My book of mistakes! When computers and IT were brought in, there was a government department for computers and technology. In 1988, I wanted to get a Microsoft project management software package at a cost of \$1 400. I went to the Auditor General, who said that it was no problem but that we had to fill in a form. It was just like the old Treasury department; a single department looked after certain agencies. We had a special officer who gave the form to the director general of the department to get approval for a piece of software that cost \$1 400. Only one person could use the software at a time. We could not do anything sneaky like copy it or have two people using it at the same time. The government has to make sure that that type of thing does not happen, and I am sure it will not. That can be a problem in government. That is a delegation of authority, which is covered in this bill. In the Minister for Finance's contribution, he mentioned that he raised the matter of delegation, which I think is very wise. Obviously, that puts the accountability back onto the responsible person in the department to ensure that the correct processes are in place and the system does not get abused.

The current system to develop policy involves cabinet decisions, Premier's circulars—I have written a couple of those for Premiers—Treasurer's Instructions—I have never done that—and a lot of other overlays. Of course, individual agencies have exemptions, even for goods and services. Main Roads had an exemption. The bill's objective is good. Basically, it will get rid of and replace the State Supply Commission Act. References to the State Supply Commission in existing legislation have to be amended. That is done at part 10, towards the end of the bill. The references to the State Supply Commission Act will be substituted with references to the new Procurement Act, which is sensible.

Part 1 of the bill sets up the act. The definition of "procurement" is important because it defines not only obtaining goods, but also disposing goods or works. People think that when they procure something, they are getting something. Under this bill, disposal also comes under the definition "procurement". That is a bit of useful information. The bill also defines which agencies are in and which are out. That is reasonable. I think other members have said that agencies such as the Water Corporation should be included. I read in the explanatory memorandum that mechanisms are being looked at for those agencies down the track. When I was Minister for Water for a brief period—I do not think it was at the same time as I was the Minister for Finance—and looked after leases, I got A3-sized pages of paper containing lists in micro-text of 500 properties that the government owned. I knew that they were not all there. I will use the Water Corporation as an example, because it is a good one. It was a lessee and lessor of properties. When looking at land that could possibly be disposed of—the Treasurer has probably done this—it was very tricky to find out what

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land the department had. In my electorate of Nedlands there is some useful Water Corp land. A lot of kids in Nedlands go to Revolution Sports. It is great for my electorate but the return on the land may not be good for the state.

Part 2 brings in the leases and the works and part 3 sets out in some detail the functions of the new department or CEO. Once the CEO is appointed, there will be a functioning department. It also outlines the function of the minister, which is fairly important. It is quite significant that the minister can issue procurement directions under part 4. Part 3 mentions that part of the minister is to issue procurement directions. I presume that a procurement direction would go right across the board, so there will be some uniformity across agencies in the implementation of policy, which we do not get at the moment. I will not go through all the functions of the CEO covered in clause 14(1)(a) to (m), but the CEO will be able to get data, and, interestingly, will be able to do investigations and audits. The CEO will also be able to get information from the department. In his reply, the minister might like to mention the information that the minister will be able to get from other departments or the information that will be available in an investigation. The role is similar to that of the Auditor General, who also has access to information.

I understand that under this legislation the department being audited will be able to request that information not be published in a document. I understand that, but it would be interesting to hear how far that will go. Access to documents that form part of a cabinet decision will have to be accessed, because those decisions would have gone to cabinet if it were a major procurement project, even if just for cabinet's information. I can understand that if a report is produced, that information may not be in the report. That is all outlined in the bill. It basically sets up the department. It will be able to borrow money and do everything a department can do. Presumably, it will come under the Financial Administration Act, and have an annual report.

Part 4 deals with procurement directions, which is probably the important part of the bill, to get consistency and some sort of direction in what departments can do. There is a role for the department to get inside each agency to investigate or give them advice, help them out and educate them. It also makes sure that the agencies comply with any directions.

[Member's time extended.]

Mr W.R. MARMION: Part 5 deals with coordination. As the minister outlined, the legality of coordinating or doing cooperative arrangements is not there at the moment. Under this legislation, cooperative arrangements could be formed with local governments and other state agencies, and, as the minister mentioned, agencies of other states, which will probably be useful on some occasions.

Part 6 deals with investigations and audits, which is important because there would not be much point in having a department if it could not investigate and audit what is happening. Recent corruption in some agencies suggests that it might be able to assist in that area, but, in reality, it is very hard to pick up corruption unless someone gives a bit of a tipoff. But the department will be able to make sure that the processes that agencies have in place are followed, such as having two people sign off on expenditure, and there is not just one person doing it, which was mentioned in our briefing. It will make sure that people go on annual leave, which is a pretty useful thing to do, and make sure that someone does not build up a lot of annual leave.

Mr B.S. Wyatt: It is amazing. I have since learnt how much corruption or how many mistakes are uncovered when someone goes on leave or goes on unexpected leave.

Mr W.R. MARMION: Correct. Absolutely.

Mr B.S. Wyatt: If someone dies, they take a week off, then someone comes in and thinks, "What is going on?" Governments have for years, both state and federal, been critiqued by various Auditors General for agencies that build up leave.

Mr W.R. MARMION: They have the excuse that, "Harry can't go. He knows everything. He can't go!" That is the issue. When Harry goes on leave, he only goes for one week and they leave the books until he gets back. That is a very important function.

This bill will bring in the debarment of suppliers, which is probably a useful thing to have. Main Roads, in essence, had an arrangement by which contractors were in categories A, B or C. If they did not perform, they were dropped down.

Mr B.S. Wyatt: That would be more of an internal thing, I would expect.

Mr W.R. MARMION: It was internal. Main Roads had its own system of penalising someone who was not performing. I think that is a good idea. Suppliers can appeal to the State Administrative Tribunal. The government has done all the things it has to do. That pretty well covers it. There are transitional provisions so that everything that is going on now carries forward.

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In my remaining minutes, I will mention a couple of contracts that I have been involved in and offer some insights. It is a bit like annual leave. When I was working on contracts in Derby, I spent the first hour in the Derby office sitting at someone else's desk. I did not want to waste a desk, because I was only there for an hour. I was supposed to do a report, but I had done the report on the weekend, so I basically had an hour of just sitting there staring at the papers in front of me. I remember staring at a document that was the result of a contract for doing three bathrooms in Main Roads' houses in Derby. I was just switched off, but I noticed that one was for just over \$70 000, another was about a hundred bucks above that and the other was a hundred bucks below. I was only a 24-year-old, but it was in my mind. I went down to the contractor and flew back on Friday. We got back at 3.00 pm and we went to tinnies, as you do on a Friday in the Kimberley. I remember talking to the divisional engineer. I said, "Gee, that was uncanny." I do not think I used the word "uncanny" because in the Kimberley you would probably use something else. I suggest that I used the word "uncanny". I said that it was amazing that three tenders had been put in and they were all within 100 bucks of \$70 000. I thought it was quite amazing. It was not only me, but also the divisional engineer who thought it was a bit more than uncanny. I do not remember his name, and it was a long time ago, but the person was gone within a month. A cartel was going on. The only three people who could do the jobs in Derby were sharing the work around. That is one of many experiences that I have learnt from.

While I am talking about Derby, Clan Contracting was a plant contractor there. It was frustrating for the assistant divisional engineer in Derby that his plant would break down. If Main Roads was doing a job that was three hours out of Derby building a road and a dozer broke down, it slowed down the job. All of a sudden, Clan Contracting had a brand-new dozer. At tinnies again on Friday I said, "That is pretty good—a brand-new dozer!" I was talking to the assistant divisional engineer, who looked after that. He said that he had got sick of delays and called him in. I will not mention who ran it. Jeremy O'Driscoll, that was his name—whoops! He said, "If I got continuous work, I will put a good dozer on." He got eight hours a day guaranteed for two years. I said, "I'd have done that. Anyone would have done that." He did not do that because it was a deal; he just wanted the outcome of owning a brand-new dozer. I was probably 24 and a half then and even I thought it was a bit dodgy to do that.

Those are the sorts of minor things—that was in the 1970s—that happened in the procurement process. Sometimes it is naivety and sometimes it is corruption. People needed education. A lot of it is about education and the principle of making sure everyone has a fair go—not naively giving someone the inside running by saying, "I'll give you two years' work if you buy a new piece of plant."

The other thing that can go wrong in procurement is if someone submits the lowest tender for a job but it is not given to them because after analysing the tender, it is found to be way below what the department thinks it can be delivered for. I cite Versteeg Contractors Pty Ltd when, probably in 1983, Main Roads gave work on a section of road between Willare and Fitzroy Crossing to the number two contractor. I think it was Henry Walker. I was not involved in this, by the way; it is just a legend in Main Roads that everyone knows about. Of course, Versteeg went and saw the Minister for Transport at the time, so the minister got involved and Versteeg got the job because Main Roads was overruled. Versteeg was a very good contractor in Perth. It built lots of subdivisions and moved into the big time but could not do it, so the contract fell in a hole and Main Roads had to pick up the pieces and relet it. Henry Walker got the contract anyway, but Main Roads lost lots of money. It is a very important and good lesson for ministers not to buy into contracts. I know of another one.

Mr B.S. Wyatt: On that, I know of a cranky tenderer, who was the cheapest tenderer, but so cheap that you would actually doubt they would deliver the job. Cranky did not win the job. I think the department had a view—I think, in the end, the correct view—that they wanted to be sure the job could be done to a standard.

Mr W.R. MARMION: That is a difficult one. I am talking about way back in the 1970s and 1980s. Now people get the tender and get their lawyers to do variations to make sure they can recoup what they did not put in their price. That has evolved, unfortunately. Then there is the one about not conforming to the tender process and lodging a tender in the wrong spot. I will not mention the tenderer, but in one case a minister got involved—I think it was a health minister—and the tenderer lodged the tender in the town where the hospital was. The tender document said to lodge it in East Perth. To get around it—I think the person was fairly influential—the health department killed the whole tender and started the process again. That is how they got around that. All these interesting things happening in procurement rely on having a very good system. The main outcome of this Procurement Bill will be to have a department, currently the Department of Finance, with expertise that assists departments to deliver the procurement process properly without getting too involved or only when they see a department is not doing it very well and providing assistance. I think that is the aim of the bill. If that is the case, it should work out well. Obviously, there are regulations to come. There is a lot to do. It is probably a fairly neat bill.

DR A.D. BUTI (Armadale) [7.24 pm]: Which side do I go?

The ACTING SPEAKER: Your choice.

Dr A.D. BUTI: I do not want to have my back to the minister. You need some numbers anyway.

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The ACTING SPEAKER: Member, I look forward to you beginning your contribution.

Several members interjected.

The ACTING SPEAKER: Thank you, members.

Dr A.D. BUTI: You have been saying that for years. It has not helped.

I want to make some brief comments on this Procurement Bill. The main reason I am standing is that the committee I chair, the Public Accounts Committee, tabled a report, not so long ago, in November 2019, titled “Knowing What Good Looks Like: Challenges in Managing Major Public Sector Contracts”. The member for Bateman is the deputy chair, and former chair, of that committee; and the member for Mount Lawley is also a member and will also speak to this bill. Some of the issues we looked at and some of the recommendations we made have found their way in one form or another into the bill before us, so that is pleasing.

As the minister indicated when he introduced the bill, the government of Western Australia spends around \$27 billion each year, most of which is to procure goods, services and works for the benefit of the community. That is a lot of money, so we want systems in place to ensure that we get the best value, that we seek to reduce complexities and fragmentation, and that we engage in the best ethical behaviour and increase accountability.

The inquiry the Public Accounts Committee conducted received 18 written submissions. We heard from 38 witnesses across 11 briefings in Perth, and seven agencies provided answers to follow-up questions. We also heard from 38 experts and petitioners in 12 meetings in the United Kingdom. In the report we made 30 recommendations and there were 42 findings. One of the things we found—the minister has recognised this in his second reading speech and in the bill before us—was that although the State Supply Commission Act has served its purpose, it is basically out of date. It is therefore good that this bill is before us. We knew that the government was working on such a bill but we wanted it to make it a priority, so we made recommendation 4. We are very glad to see the bill come before the house today to be debated and, hopefully, passed as soon as possible.

It is really important that we found in our report the complexities and fragmentation of the process when government engages in buying goods and services and in the management of projects. The objects of the bill are as follows —

- (a) to promote best value for money in government procurement so as to deliver sustainable economic, social and environmental benefits to Western Australians;

That is an interesting issue about social benefits that I want to talk about shortly. They continue —

- (b) to reduce barriers to the participation of small and medium businesses in government procurement by streamlining procurement procedures;
- (c) to strengthen integrity in government procurement and to promote ethical and accountable practices so as to provide confidence that government procurement is conducted fairly;

There are a couple of other objects. I think the bill puts those objects in a legislative framework that corresponds with many of the recommendations in our report.

The issue of best value is interesting. Chapter 6 of our report, is titled “More needs to be done to expand notions of value-for-money”. I personally find that to be a really interesting area—what we actually mean by “value-for-money”. The member for Nedlands in an exchange with the Treasurer pointed out that sometimes the lowest bidder is not always the best option. I think the member for Mount Lawley might have some comments to make in respect of the submission the Public Accounts Committee received from the Construction, Forestry, Maritime, Mining and Energy Union on that issue. In Queensland an automatic process comes into play if a bid is too low.

The committee’s first major inquiry was into the Perth Children’s Hospital. One of the problems there was that the winning bid was given to a contractor with whom, one could argue, there was no room for error. Although the contractor tendered at a value that was quite low, it did not allow for any errors to occur; there was no fat in the system. Going for the lowest bid is not always the best way to do things; it is not always value for money to go for the lowest bidder.

We also looked at the social benefit, which is one of the objects of the Procurement Bill 2020. The debarring provisions in this bill go to the ethical considerations that the committee was looking at. Obviously, we also looked at other issues, but the issue of local jobs also goes to the social benefit, and that has been picked up in this legislation; the member for Bateman made some comments about the Western Australian Jobs Act. The debarring provisions of this legislation go to the ethical values that the Public Accounts Committee mentioned in its report, “Knowing What Good Looks Like: Challenges in Managing Major Public Sector Contracts”, which I think are very, very important. We hope that other social benefit measurements are incorporated into the government’s contract management and provision of goods and services, because I think that is very important.

Mr B.S. Wyatt interjected.

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Dr A.D. BUTI: Very much so, and we mentioned that in our report. That is really, really important. The issue of Aboriginal components and factors needs to be considered; it is incredibly important. Local jobs and the Aboriginal component go towards looking at value for money not in purely dollar terms. Although that is very important when there is \$27 billion per annum at stake, value for money also has to have a wider effect than just purely a dollar value. We argued in that report that we probably will get better economic value for money if we allow Aboriginal corporations or groups to engage in the provision of the goods and services that governments purchase; there is also the local jobs component.

I am very happy, as Chair of the Public Accounts Committee that handed down this report, “Knowing What Good Looks Like: Challenges in Managing Major Public Sector Contracts”, that, although we had many recommendations and not all were pertinent to the legislation before us, some of them have been heeded and have found their way into this bill. We look forward to consideration in detail and the passage of the bill through this house and the other place.

MS L. METTAM (Vasse) [7.34 pm]: I would like to make a few remarks on the Procurement Bill 2020. The Liberal opposition and I, as shadow Minister for Transport, are particularly keen to ensure that our construction industry has an opportunity to compete and to provide procurement when the state government undertakes investment in this state. The member for Cottesloe spoke earlier about investment and procurement at the state level of about \$27 billion, so it is obviously an important area of government policy to get right. When there are savings, those savings can be quite significant and represent investment that can happen in other areas.

With regard to local procurement, it is fair to say that there is still a view in some sectors that going to the lowest bidder is the best outcome, but as a society and an economy, we increasingly are recognising that giving weighting to local industries to compete in projects delivers good outcomes. There is an industry-wide view in the transport and construction sector that when we implement local industry weighting for projects, it presents an opportunity for better outcomes in the ways in which the head contractors deal with the subcontractors and the fact that there is obviously a lot of investment in the local area in which the industry is operating. There are also issues around reputation.

The member for Nedlands pointed out that the government can undertake actions right now to ensure that local industries are supported. I touched on this during the matter of public interest earlier today when I spoke about local industry weightings. I referred in part to industry sustainability criteria. Some Main Roads projects, including the Bunbury Outer Ring Road, provide great examples of local procurement being given the same value as design and construction capability. Under that contract, Main Roads sought to grow the construction industry to sustain healthy competition in the delivery of infrastructure projects. There was reference to the fact that putting equal weighting against the other sets of criteria, such as design construction and capability, would increase the value of investment in the local skills of that area of the state.

The Treasurer touched on the fact that the State Supply Commission Act has already been boosted in terms of what can be procured locally from —

Mr B.S. Wyatt interjected.

Ms L. METTAM: I was getting to that. I understand that that is extended to works as well, which is something that the opposition obviously supports. We are taking on this urgent piece of legislation in good faith. There was a bit of discussion around how urgent it actually is, but in support of local industry and local procurement, the Liberal opposition certainly would not want to hear any suggestion that we are holding this process up, although I understand that, as enabling legislation, there is quite a process to come.

As the member for Nedlands pointed out, there are actions that the government can take straightaway. As I touched on during debate on the MPI today, I believe an opportunity has been lost. I talked about the industry sustainability criteria and there has been an opportunity lost in respect of the Metronet project. The Minister for Transport pointed out today that within the Department of Transport an office of major transport infrastructure has been created to oversee projects worth more than \$100 million. Those projects include the Thornlie–Cockburn Link, the Yanchep line, the Morley–Ellenbrook line and the Bayswater line. It is worth noting that all those projects, besides Byford, are yet to happen. Not only do they not have industry sustainability criteria attached to them, but also they are waiting for local procurement or local industry, and are all led, unsurprisingly, by tier 1 global contractors; local tier 2 or 3 contractors have not had an opportunity to compete fairly for them.

I think that there is probably some support for the new office within the department, which basically will see Public Transport Authority contracts being managed in part by Main Roads. However, it raises the question of how many offices or how many layers of bureaucracy are needed until we start asking why, three years into this government, this key transport program has stalled. The new transport office comes on the back of the creation of the Metronet Taskforce, chaired by the Premier. There is also a Metronet executive committee and, of course, an integrated Metronet office across government as well. That raises the question of how these projects are being managed. We know that there has been significant investment by the federal government in transport infrastructure

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in this state—to the tune of about \$13 billion. In Metronet alone, \$2.5 billion has been invested in infrastructure projects, contracts for which have gone to some large tier 1 foreign companies.

I will leave my comments there. There is a chance to put WA jobs and businesses first. I was disappointed that in his response to my matter of public interest today the minister responded by talking about politics and the past. There is a great opportunity to make sure that WA companies have an opportunity to compete in the investment pipeline of works that we have here. As a member of the Liberal opposition, I support the bill before us and the intent that the Minister for Finance is presenting in this enabling legislation.

MR S.A. MILLMAN (Mount Lawley) [7.43 pm]: I rise to make a very brief contribution and to add my voice to the chorus of people who welcome the passage of the Procurement Bill 2020. I congratulate the Minister for Finance for bringing the bill before Parliament. I want to talk about a couple of things. Firstly, I commend a number of the opposition speakers for their contributions. I will come to each of those contributions in a moment. They touched on matters canvassed in the excellent work done by the member for Armadale as the chair of the Public Accounts Committee when it handed down unanimous reports, not once but twice. The first inquiry was into the difficulties with the Perth Children’s Hospital contract and the second was the committee’s most recent inquiry into public sector contract management. We need to bear in mind when considering this legislation that it is directed towards procurement. The committee’s inquiries were directed not only towards procurement, but also capacity building in contract management. It is a two-stage process. The contracts, the goods and services, or the works, are procured and the contract is then managed throughout to ensure that people get exactly what public money is being spent on.

This is headland reform. It delivers a step change in the way that government does procurement. This is a reform that will change the way in which government interacts with providers of goods and services and what we spend—as many members have already said, \$27 billion per annum—and obtain on behalf of the citizens of Western Australia. The requirement for this reform has been identified in countless reports and has been identified by many members in their contributions this evening. But perhaps it is best summarised in the explanatory memorandum, at page 2, following the quote of the “Special Inquiry into Government Programs and Projects: Final Report”. It states —

The approach taken to this Bill and subsequent reforms to follow advances this recommendation.

The recommendation of the special inquiry states —

The procurement legislative framework should be streamlined into a single, cohesive Procurement Act under the delegation of authority for procurement to a single designated Minister.

It takes that recommendation and then states —

Initially progressed as part of a broader suite of public sector reform initiatives, ...

That makes sense. There have been conversations this evening about contract management capacity and whether these reforms should apply to government trading organisations and the rest of it. But it takes that reform and highlights, because of the circumstances in which we find ourselves in the face of COVID-19, that urgency—that urgent need. The explanatory memorandum continues —

Government’s significant spend must be harnessed more efficiently and effectively to promote WA’s economic recovery and continued growth.

It does that in a number of ways. I take members to a number of recommendations in the thirteenth report of the Public Accounts Committee. I will deal, firstly, with the recommendations made in that report, which this legislation gives effect to, and I think that this is a real testament to the way in which Parliament goes about its business. Recommendation 1 of the thirteenth report of the Public Accounts Committee report states —

Wherever possible, the Minister for Finance should seek to simplify the policy framework for procurement and contract management.

Recommendation 4 states —

The Government should ensure that the proposed Procurement Bill is given high priority in the Parliamentary timetable.

Recommendation 8 states —

The Minister for Finance should ensure that Finance’s procurement review ensures that existing compliance audit requirements for goods and services contracts are also applied to works contracts.

Members will see an expansion beyond the realm of goods and services and into works, which is an important consistency mechanism that will provide accountability and transparency in the way in which procurement is handled by the state. There is a really interesting and innovative aspect to this bill that I was pleased to see when I received an outstanding briefing from members of the minister’s department—that is, the debarment regime. We have seen the way that companies have behaved in the past when they have been given the privilege of contracting

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with the state. They have taken advantage of that. The public purse is not there for unscrupulous actors to take advantage of, particularly not now in these straitened circumstances when we have to be so careful about every dollar that we spend. The debarment regime is the stick. What a great piece of legislative reform that carries both the carrot and stick. I commend the minister for the outstanding work that he and his department have done to come up with this innovative and effective response to a really difficult conundrum.

The next thing I want to talk about are some comments the member for Cottesloe made in his contribution. In particular, he talked about the rigorous qualification process before someone becomes a supplier. I imagine that the debarment regime will work in concert with that and will ensure that a company ticks all the necessary boxes: What is its safety culture? What is its environment impact? What is its human relations and industrial relations record? Is it a good corporate citizen? Is it a good participant in the work of government? When we contract out our social obligation to the citizens of Western Australia there must be a competitive process. We need to continue to distil the benefits of a market framework to get good value for money for the citizens of Western Australia. We need to harness the efficiencies that are driven by that competitive process. The member for Cottesloe or the member for Nedlands talked about the need for the government agency to have its own experts to hold the contractor to account. That ossification of government expertise that has occurred over the last three decades has been to the detriment of the service of Western Australia, because we no longer have that capacity in the public sector to hold private contractors to account. If we can build that capacity, we can have the contract management in place to make sure that we get value for money for the people of Western Australia. The member for Warren–Blackwood gave an excellent example of work that was within scope and outside of scope. The value-for-money proposition that now becomes an object of this legislation allows the government to say that this is a contract that will deliver value for money, and it broadens that concept to give us the flexibility we need to make sure we get the right outcome for the public dollar.

Mr D.T. Redman: Someone has to stand by the justification, don't they?

Mr S.A. MILLMAN: Absolutely, member, but government procurement is a fine balancing act. To all members opposite who expressed the desire to perhaps be more prescriptive about how the government does this, I would caution against that. We need to allow the benefits of the free market to continue to operate. We need to allow those market mechanisms to continue to exist. This marries the importance of our past custodianship of the public finance with the benefits derived from that competitive market tension. Beware, members—do not advocate for too much government intervention or regulation. It is a fine balancing act, and that is why this bill, and in particular this Minister for Finance, does such a great job of achieving that balancing act.

Mr D.T. Redman: It sounds like you are on the wrong team!

Mr S.A. MILLMAN: A number of members opposite were contending for much greater intervention. If they are to be true to their principles, they should make sure they remember that.

We made a number of recommendations as part of the further public sector reform program that this Minister for Finance is embarking on that I want to allude to. One of them was already touched upon by the member for Armadale and the member for Nedlands, and the member for Nedlands took the interjection from the Minister for Finance about unusually low bids. We need to make sure that when a supplier contracts with the government to provide a good or a service or a work, it has the capacity to deliver it, but also that it has a capacity to deliver profit for its shareholders so that there is room in the scope of the contract for all aspects to work in concert. Unusually low bids need to be scrutinised. I accept that there would be occasions when a new entrant to the market will run a project or a program as a loss leader in order to grab market share, and that may be the case upon which they tender for the goods. The problem is that if we do not interrogate the basis upon which they have come forward with that price position, we do not know that, and we will not be able to see it and say to them that they will be squeezed on the contract and they will be responsible for the consequences of that squeezing. We need to be mindful of that as we go forward with the broader range of reforms, not confined to this piece of legislation. Consequent upon that, we need to assess contractor viability. We need to make sure that when we contract with a provider to government, they are capable of providing the contracted services over the life of the contract. This comes more into contract management. We need to be able to stress test those corporations, those private entities, that are contracting with government to provide services for the benefit of the people of Western Australia.

The fantastic reform that is presaged by this legislation is that we have a much better definition of what value is. The minister already talked to the member for Armadale about Aboriginal corporations, for example. I think there is much greater awareness of this, particularly as we put the interests of Western Australia first; we put the interests of Western Australia front and centre. What money can we spend from the public purse that will not just deliver us bottom-dollar price, but will really have flow-on effects throughout the economy? What is the local contractor in Mt Barker that can provide a service for Mount Barker High School and a farm? How is that going to generate jobs, economic activity and opportunity in that town? What about in Mt Lawley? What service can be provided

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by a local community there—or throughout Western Australia? It is a really fantastic opportunity. As said in the service priority review final report —

The amount of WA’s annual procurement expenditure means there is potential for its purchasing decisions to drive community benefits in other areas.

Mr W.R. Marmion: Will you take an interjection?

Mr S.A. MILLMAN: Sure, I am happy to, but bear in mind that it might be beyond my expertise.

Mr W.R. Marmion: It throws me an interesting conundrum. I will use my Versteeg example. There will be that and another example.

Mr S.A. MILLMAN: Yes.

Mr W.R. Marmion: Versteeg was a Western Australian company and Henry Walker was not, so one could argue that if Versteeg had had a slightly higher bid and there was some negotiation and they got the job—mind you, they did not know how to build a road up in the Kimberley, but that is beside the point—there would have been benefit for Western Australia if they had got the contract. It is not fair if a Northern Territory company that does know how to build a road in the Kimberley tenders with a good price and does not get it.

Mr S.A. MILLMAN: The member’s point is well made. In response I would say that the way that the conversation is evolving now puts us in a position in which the scrutiny of the government decision to spend money will no longer be, “You contracted with Versteeg to undertake the work and it was \$1 000. We criticise you because you could have undertaken with Henry Walker for \$800.” It will never be as simple as one being \$800 and one being \$1 000, so the \$800 should have been spent. It will now be, “We understand that you spent the \$1 000. Can you justify what are the benefits you got from that extra \$200 expenditure?” That is where the broader definition of “value for money” will come in.

Mr B.S. Wyatt: For example, local apprentices employed and things like that.

Mr W.R. Marmion: Yes, you put that into your qualitative assessment of your tenders.

Mr S.A. MILLMAN: It will still be subject to debate, analysis and criticism and all the rest of it, as it properly should, but the fact of the matter is that no longer will it be a simple equation of it being the cheapest price and therefore they got the bid. It will be a more holistic and comprehensive approach, and also, I think, a more accountable and transparent approach. There is a real benefit as a result of the philosophical change presaged by this legislation.

The final point I make is a suggestion to the Minister for Finance. A terrific amount of work was done by the member for Armadale and member for Bateman and in fact all members of the Public Accounts Committee on building capacity for contract management. It is all very well to get this part of the process right, which I think this bill unquestionably does, as is evidenced by the unanimous support in this chamber for it. It is unquestionably appropriate to get this part of the process right, but it is also important to make sure that as we manage these contracts through their life cycle we do not let ourselves lose that value for money. We have a fiduciary obligation to the people of Western Australia to make sure we look after their money appropriately and responsibly, and we need to do that both in procurement and over the contract management cycle.

Mr D.T. Redman: How do you do that?

Mr S.A. MILLMAN: It is funny that the member should ask. I commend to the member the outstanding unanimous report of Public Accounts Committee and a number of the recommendations contained therein, particularly chapter 7. On that, I will end my contribution. I thank members and congratulate the Minister for Finance for an excellent piece of legislation.

MR P.J. RUNDLE (Roe) [7.58 pm]: I am just going to make a very brief contribution to the debate on the Procurement Bill 2020, but I would like the Minister for Finance to make note of a couple of things and perhaps he could talk to them a bit later on. I quote a paragraph from the second reading speech —

We must procure in a way that maximises opportunities for local and small to medium businesses to work with government. We must also ensure government expenditure supports development in the regions, improves Indigenous outcomes and ensures the effective delivery of services to the most vulnerable in our community.

I think that sums up this bill in some ways.

One of the questions for me is about how to quantify some of these things, because it can be very difficult. Firstly, along with the member for Warren–Blackwood, I do not agree with the urgency of this bill. I know it is an urgent matter, but I believe we should have had a better opportunity to talk to our stakeholders. We have many stakeholders, including builders and contractors out in the regions, but we have not had the opportunity to talk to them. Secondly, I have a few examples of what has happened over the last two or three years that have left me in a slight state of

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shock. One example that really disturbed me was the tender for building fire trucks in Collie. It was given to a metropolitan company when a company in Collie had 25 employees who live locally. On top of that, \$2.5 million was given to the company to set up a business in Collie. I do not know how that fits in. Likewise, a business in Narrogin also built fire trucks and light vehicles. Both of these regional companies were left stranded. When we asked the Premier in question time about the \$2.5 million allocation to help the metropolitan company, he said it was an “elegant solution”. It was a solution to what? The tender process should be fair. Did the Premier add \$2.5 million to the tenders of the other two companies to make it an even playing field?

The TAFE in Esperance is another example. The announcement has just been made. In Esperance, a fantastic local building company is building the \$8 million sports stadium as we speak. It is doing a great job. All the workers and subcontractors are in Esperance. Those workers could have flowed on to the Esperance TAFE. I know there is a tender process but, once again, a local company lost out to a metropolitan company. We ask whether it is an even-handed tender process because this company covered every angle, got all the quotes and put in a very conscientious tender, as I understand it. Some of the other tenders from Perth companies were much more vague, would be my wording. What seems to happen is, although the metropolitan tenders come in several hundred thousand dollars cheaper perhaps, down the track these companies say, “Look, sorry, we need to put in variations. We didn’t foresee what was going to happen in Esperance with subcontractors, the weather and other problems.” All of a sudden, the cost of a building ends up being more than the original quote from the local company. I have seen these variations happen several times. Some of the larger companies are the masters of them.

Main Roads is another example, which I understand is covered by this procurement legislation. A lot of large companies use their market power in blue metal gravel, for example. It is about volume and using their market power. I have seen spreadsheets that show these large companies are dearer suppliers but because they have jobs here and there, somehow Main Roads decides they are more suitable and the local contractors miss out.

Infrastructure projects in the regions, such as bridges, are another example. Some of the companies that win tenders have gone into administration or liquidation at least two or three times previously. Lo and behold, they come in with a new format—the phoenix has arisen—and halfway through the job, they go into administration again. All the local suppliers miss out. Geraldton Health Campus is another example. The member for Geraldton put out a press release in the last couple of days. Once again, consultancy, earthworks and all those things seem to be going to companies from the metropolitan area and the locals miss out.

These are my concerns, briefly. I am curious to hear the Treasurer’s comments. I certainly understand that my colleagues are generally in favour of this legislation improving procurement, so I look forward to that. I also express my concerns about the committee report, put out by the chair, Margaret Quirk. Some of her comments on the radio the other day were in relation to people in certain bureaucratic areas getting football tickets and the like. Things like that happen, which may sway procurement decisions. I will leave it at that, but I wanted to make those few brief comments.

MR Z.R.F. KIRKUP (Dawesville) [8.06 pm]: I, too, rise to talk to the Procurement Bill 2020. I will not make a particularly long contribution but I would like to reinforce a number of the sentiments that have been previously raised by my colleagues. Obviously, our lead speaker was the member for Bateman, the shadow Treasurer. I also had the opportunity to listen to the member for Vasse earlier on.

I was most enthralled by three things in this bill: the investigation and audit elements that are being brought in and the debarment, which I think is a very important step. I was surprised to hear when we had our briefing from Hon Dr Steve Thomas in the other place that debarment operates in a number of other jurisdictions internationally. We have not really had the mechanism to deal with it in Western Australia.

Mr B.S. Wyatt: It’s amazing, isn’t it?

Mr Z.R.F. KIRKUP: Yes. I have the shadow health portfolio, and considering how many things have happened in health, I would have raised the ire of governments successive. The idea that we have not had debarment over this —

Mr B.S. Wyatt: This will be, on its passage and completion, the first one in Australia. Queensland has a form, but it’s not based in legislation.

Mr Z.R.F. KIRKUP: That is interesting. I wonder why —

Mr B.S. Wyatt interjected.

Mr Z.R.F. KIRKUP: Hon Dr Steve Thomas in the other place made the point that, of course, debarment operates quite robustly in the United States. I suspect there are perhaps often political overtures as part of different governments there and how they operate their debarment. It exists in Canada as well, but operates very rarely. In that case, perhaps when it comes to provincial governments, maybe here in Australia we have just not got around to it but I am pleased to see it is a strong element of the bill. If there is enough strength behind it, it will obviously ensure that the state has some other recourse when things go awry. I think it is a really important step.

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The crux of what I really want to speak about relates to Aboriginal procurement. I applaud the Treasurer and the government for the Aboriginal procurement policy they put in place, I think in 2018. That was a very important measure to help along the journey for our Aboriginal communities, their meaningful engagement and their ongoing involvement in our economy. The reality is that we have a very established system in place in Western Australia. Our government procedures and policies are often very slow to respond to requirements as they are needed, as we see contemporary changes. I was amazed that it took so long for us to come up with a supportive and engaging Aboriginal procurement policy. I personally think it was an important step forward. In more recent reports, I think only last year to 30 June 2019, some 179 contracts were awarded to Aboriginal businesses and 92 Aboriginal businesses were engaged. I think that is a really important step.

I take this opportunity to make a couple of points. I worry about the lower level of value. Nearly \$100 million of the \$167 million that was awarded went to the Kimberley dialysis service. I realise that this is only in its infancy. Over time, as more businesses come onto the national list and into the WA Aboriginal business directory, high-value contracts will be awarded. I do not know the composition of the list. To be perfectly frank, rightly or wrongly—unfortunately, sadly, perhaps this is a reflection of my inability—I have not asked questions about it and I have not requested freedom of information documents.

Mr B.S. Wyatt: But your point is a fair one.

Mr Z.R.F. KIRKUP: Yes. I have not gone through the breakdown in that case. When it comes to procurement of services, for example, we are not just talking about welcome and acknowledgements to country. Obviously, I am very much in support of this legislation. That is not from an executive government perspective because I think all sides are universally in support of the legislation, but some agencies want to make sure they reach the key performance indicators. I hate to use the phrase “window dressing”, but they are involved in easier contracts such as the acknowledgement and welcome to country. I do not enjoy the language of “cultural awareness training”, but that is sometimes what it is called when we refer to the types of programs that those agencies put in place. I think there will come a time when we start to see more businesses on that list as they become more experienced and more mature as Aboriginal entities. They will then start to play a large role in the provision of services to government and will also be, in this case, important players when it comes to major works and things like that. Ultimately, that is what I would like to see.

When I was at BGC, we created a program specifically to train young Aboriginal men, most of whom were at risk, in building and construction. They started off as a bricklaying team. They were very intensely managed, as members would probably appreciate, being young men, in this case in a trades environment. We had to make sure that we were very intensely focused on bringing them through the journey. We had a really great bloke in Danny Ford running our Aboriginal liaison.

Mr B.S. Wyatt interjected.

Mr Z.R.F. KIRKUP: Yes. He did a great job. We had to manage those young blokes and bring them through. That was a really important process run by BGC at the time, making sure that there was meaningful engagement. That was very much a mature step forward for BGC, which made sure that we could have greater participation of Aboriginal people in our company.

When we talk about Aboriginal procurement and the importance that it has in our state, I am really pleased to see the constant release of reports. I do not know where the report for the current financial year is at; I imagine that may be out or will come out soon. But, of course, the COVID-19 pandemic occurred, so all these things make sense when they are delayed. A couple of things struck me about the first-year performance report covering the period 1 July 2018 to 30 June 2019. Most concerning to me was the number of agencies that failed entirely to meet their policy targets. That was raised by the Minister for Finance in his media release, and undoubtedly would have been raised multiple times within government. A number of large agencies referred to in the first report had zero engagement with Aboriginal businesses. It was not a minor number; they simply ordered a large number of contracts. For example, the Department of Mines, Industry Regulation and Safety had 185 contracts, but only one was engaged with Aboriginal corporations. Health Support Services, which is within my portfolio, had 75 contracts and not one was given to an Aboriginal entity or Aboriginal business. There were quite a number right across the board. Some such as PathWest have a very unique skill set. I understand that it is a very different environment. A number of opportunities are available. I think that was raised in the minister’s media release.

The constant reporting to Parliament on the progress of engagement with Aboriginal businesses is a good thing as we continue to shine a light on where agencies are at and the targets that they meet. As I have raised with the minister previously, we do not delve into—of course, I appreciate the intent—the nature of those contracts and what we have engaged in. We talk about a general value for a number of them. I want to make sure that when we talk about Aboriginal procurement—this is the opportunity to talk about it very briefly—it is a vitally important step on the road towards meaningful reconciliation and greater involvement of Aboriginal people in our economy, which is

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obviously very much a legacy of colonisation. In many cases, the nature of government contracts is reflective of an environment that is very foreign to Aboriginal communities. I support the progressive steps that the government has taken; I think they are very good. What I would like to see, and what I am certain will be something for all of us in this place to consider, is that we look more at the figures of those contracts that are engaged in this. It is an important step. I congratulate the minister, the government and the Parliament for their ongoing commitment to ensuring that we have greater participation of Aboriginal people and Aboriginal businesses, 98 per cent of which were from Western Australia, which is a great result on those contracts. As I said, it is a failure of mine that I have not gone into this more when I should have. We need to look below the waterline and see the nature of those contracts that we have. We have a very good policy in place that should be continued, and there should be ambitious targets for going beyond what we have at the moment, which is still very good. None of us want to be in a position in which we ultimately concede the nature of those contracts. None of us want to see this as a tokenistic approach by some agencies just so that they can tick the box and say they did it.

I appreciate the opportunity to speak on the Procurement Bill; it is not something I would often have the opportunity to talk on. The focus of the legislation is the empowerment of Aboriginal people, which is a very important step. The government can be more equitable when it comes to ensuring that taxpayers' money is spent helping those who need it. I think the member for Roe rightly said that it is a good opportunity to use taxpayers' money to help vulnerable communities and communities that can certainly see an ambitious target set down by government, hopefully one that is met by as many agencies as possible. I commend the bill to the house.

MR B.S. WYATT (Victoria Park — Minister for Finance) [8.16 pm] — in reply: I thank all members for their very useful contributions. I thank the opposition for its support and perhaps some of them for their patience with my request that the Procurement Bill 2020 be treated as urgent. We had a short debate around the urgency earlier. Perhaps I will make some more comments around that shortly.

I found it interesting that three of the members who spoke tonight were former ministers, two of them former finance ministers. The member for Warren–Blackwood, as a former Minister for Regional Development, was very much engaged in the procurement space. There is clearly strong agreement that procurement is an area that has been ripe for reform for some time, hence the support for the legislation tonight. I understand the comments that were made, because a big component of the legislation empowers what will become a debarment. That particularly got a fair run tonight. That will come. I appreciate the comments from members and their support for this legislation. That is still ongoing but there will be immediate, beneficial impacts from the passage of this legislation.

I will go through the comments made by all members and try to deal with the specific questions that were put. As I go through the first year, I will probably end up cleaning up most of them anyway. The member for Bateman and, I think, the member for Nedlands and others posed questions around government trading enterprises, which of course are big procurers in themselves. Members asked why electricity corporations, the Water Corporation, ports and DevelopmentWA are not in the scope in this bill. There are a couple of reasons. Usually, they come under their own legislation. They have their own statutory basis that requires them to operate on a more commercial basis than the general government sector. I will come to the point raised by all members around the concept of value, such as PathWest. As most members are probably aware, Treasury has been leading the GTE reform project. That will have separate mechanisms to align the procurement practices for those GTEs. GTEs have effectively been taken out and dealt with separately, which we will do as per not just the Langoulant report, but also the Barnett government's service priority review, which raised issues around transparency, governance and GTEs. We will deal with that separately. I wanted to get this procurement legislation into Parliament. If we had waited for the GTEs, it would have taken a lot longer and I was keen to get the benefits of this legislation in quicker. That is the issue around GTEs.

The member for Bateman raised a fair question around whether the Department of Finance will need extra resources. I suspect not at this point, but we will see. Jodi Cant, as the new director general, has undertaken a very large restructure of the agency that has created the space, but we want to make sure this works. If resources are needed, resources will be given. A lot will be asked of the agency around this.

I want to get on the record a couple of things. I have made comments in the past about the benefit of being a minister. I am provided with wonderful information when I do up legislation. I want to get something on the record around small to medium-sized enterprises. I have focused, certainly in the second reading speech, on how the bill will assist small to medium-sized enterprises. One of the objectives of the Procurement Bill is to reduce those barriers that that document—the one that the member for Nedlands was waving around—highlights: to reduce barriers to the participation of SMEs in government procurement by streamlining those procedures. When I was in opposition and procurement issues came along, which is an incredibly complicated space, I always thought, "If I eventually make it to government and get access to all the information, I will understand it." It has not actually worked out that way; I still find it an incredibly complicated space that causes no end of frustrations. I was pleased to see pretty much all three former ministers speak on this and express similar frustrations about the procurement process—it is not just me. Procurement procedures and templates for goods, services and works procurement will now become

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more consistent. That will happen immediately, hence my interjection on the member for Vasse about the works component. That will of course make it easier for SMEs to navigate; there will be one process across government. I made that point in my second reading speech. We can be procuring or tendering, if you like, the same goods or the same services to different agencies but have different processes. It is inefficient for government, but it is also difficult for SMEs to navigate. This bill enables the Department of Finance to strengthen its cross-government leadership role in procurement, to provide clear advice and supporting tools to assist the consistent application of the new procedures and templates that will facilitate that approach.

For SMEs located in the regions, the bill provides for a revised set of procurement policies known as the procurement rules. An updated value-for-money policy will be included with this, which will support a clearer consideration of social value. I will make some more comments on that in a minute. Under this new value-for-money policy, regional prosperity, member for Roe, will be specifically referred to as a value-for-money consideration. That might deal with the issue the member for Nedlands raised as well around those Kimberley roads. In conjunction with existing policies such as the Western Australian industry participation strategy and the Buy Local policy, this will ensure regional businesses are at the forefront of the new procurement framework. I am trying to deal with that. I cannot comment on the specific Esperance tender issue the member for Roe talked about, but by having that value specifically recognised, it means we can weight it accordingly and a regional business would get a much better opportunity to get that regional work. The member for Mount Lawley spent some time on the social objectives, as did the member for Armadale, and I think all members made some comments around the concept of value for money. I found it interesting that early on in the member for Nedlands' career, Main Roads wanted to provide a contract to a second company, simply to keep it going, because ultimately we do not want to end up in a scenario in which there is only ever one contract bid. That, in itself, has value.

Mr W.R. Marmion interjected.

Mr B.S. WYATT: Absolutely. One thing that always terrifies a minister is when we go out to market and there is one bidder, because we never know.

Over the years, governments have got better at deconstructing contracts et cetera to create that competitive tension. The issue of value is really important, because there is a greater expectation, as we all know from our constituents, that if we are spending public money and getting public outcomes, whether they be goods and services or works, that there is a public outcome. The member for Warren–Blackwood referenced the head contractor model specifically in reference to housing. He made the point, and I think he is right, that maybe it works better in larger metropolitan areas, but for regional WA that head contractor model for housing has been diabolical, in my view. It has devastated local communities, particularly Aboriginal communities that are able to provide maintenance to their own housing stock. It took jobs and wealth out of those communities. It has been frustrating the hell out of me that we have not yet been able to fix that up, but hopefully we will when that contract comes to its end, sooner rather than later, I would like to think. Both the service priority review and the Public Accounts Committee inquiry—I thank all members who contributed to that unanimous report—identified this concept of value. This issue has also been raised by industry, businesses and members of the community as part of the quite extensive consultation process. This bill reflects their sentiments and recommendations, instilling as a key objective the promotion of best value for money in government procurement so as to deliver economic, social and environmental benefits to Western Australians. For example, life cycle cost implications must be considered. What may appear at first glance to be the cheapest tender often may not represent the best value. When considering life cycle costs, the economic benefits of engaging a local business can far outweigh otherwise short-term savings offered by other suppliers. When I say it, it is so obvious, but embedding this in a government practice is quite new and something that we need to do. Similarly, on a regional procurement project, the engagement of local and/or Aboriginal businesses can have a profound effect beyond the face value of the cheapest contract price, hence those comments the member for Warren–Blackwood and I made before around the head contractor model in regional WA. The outcomes were diabolical. To be honest, I am not convinced there have been monetary savings as a result. Employing local people and businesses undoubtedly multiplies the economic benefits for that community. Having three or four extra people working full time can have quite a dramatic impact on a remote community. Doing so also further enhances social outcomes, including the health and wellbeing of those meaningfully employed. Anyone in this place knows the value of a job and an income.

New procurement policy measures issued by way of procurement directions under part 4 will have regard to these objectives of the act. By way of an aside, member for Nedlands, that can be either/or government-wide and at an agency level. They will operate in conjunction with existing policies such as the WA industry participation strategy and the Buy Local policy to also ensure local and regional business are at the forefront of the new procurement policy framework. The introduction of the procurement directions within part 4 of the bill provides a tool to enable the introduction of new sustainable economic, social and environmental measures in a more responsive and streamlined way across all state agencies and all types of procurement. This means that the state's procurement framework can operate in a more responsive way to changing community expectations in the future and support the

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adoption of innovations within the WA economy. Again, an example that is put to me on a regular basis by people across Western Australia is that they fully expect that when a government contract on whatever is issued—we get this perhaps more in regional Western Australia—there is an expectation that there are requirements for training, hence my interjection around apprenticeships. We expect that if we are going to provide a road, or whatever the project happens to be, local people will be given the opportunity of that ongoing work and training. I have had a bit to do with the Minister for Transport around a range of road projects in the East Kimberley. We want to keep the workflow, because 90 per cent of that work is being completed by local Aboriginal people, some from the prison work camp. That work is delivering great outcomes, coming in under budget and being delivered early, but we want to bring projects forward to keep that work and training going.

As part of the consultation, industry has conveyed the value of forward procurement guidance on upcoming supply opportunities. This is not a new issue to government, but, again, it is one that we need to be a bit more proactive on. Taking a more proactive approach to procurement planning will give us opportunities to identify specific procurements across the state best adapted to further economic and social benefits for Western Australians. Examples range from services that can be delivered by Australian disability enterprises to works projects suited to greater apprenticeship and training opportunities. These are just some of the aspects that the Department of Finance is looking at to improve the outcome of this bill.

The member for Cottesloe went through a range of his own personal experiences. Of course, he is right that there is a big carrot in not only reducing the cost of procurement, but also getting those outcomes beyond simply the dollar value that we are hoping to achieve. Interestingly, the member for Cottesloe made a point about whether private sector companies have seen the level of corruption we have seen. One thing I found as I moved around the CBD and some of those big companies after our more high-profile corruption issues became public was that a number of private companies made the point to me, “Look, along the way, we’ve had this appear, but it doesn’t become a public issue.” Often, private companies prefer that these issues do not become a police matter, so we do not hear about them. That is not an option for the public sector.

Dr D.J. Honey: Just by interjection, I think they will have individual things. What they do not see is these events going on for longer periods. I think that is the difference.

Mr B.S. WYATT: Like the housing issue, yes. Interestingly, the finance advisers made the point to me that most of the corruption we have seen is on the works side, not so much the goods and services side, because we have been able to get better processes around that. As members have pointed out, this bill should be able to create better processes around the works component as well so that we will hopefully not get those scenarios. The member for Nedlands made the point that, ultimately, we can have all the processes, and I suspect that once we have others in place—ensuring annual leave et cetera—if somebody is utterly determined to be corrupt and rip off the taxpayer, the chances are that they will get away with it for a spell. The key is having a process that does not allow it to go on for a long period.

Mr W.R. Marmion: By interjection, Main Roads actually got rid of a couple of them in my time without going through a process. They were just told to go.

Mr B.S. WYATT: Yes, and I suspect well before an organisation like the Corruption and Crime Commission was around, many agencies probably dealt with it that way: “Why don’t you just go?”

Mr W.R. Marmion: One guy actually won the commissioner’s citizen of the year award.

Mr B.S. WYATT: Awkward for the commissioner at the time, no doubt!

Member for Warren–Blackwood, I made those comments in respect of that head contractor issue. One of the great frustrations I have had—as I said, I am sure the member does, too—is that when remote communities have had to deal with this model, it has simply not worked at all for regional and remote Western Australia. It does apply to the not-for-profit sector. But a survey undertaken by the Department of Finance on the procurement reform project had responses from over 130 Western Australian government procurement specialists. The results of the survey highlighted the need for more direct support for agencies on community services procurement, and the department intends to respond to and support this. In addition, the Procurement Bill will provide those issues that I have previously mentioned—that is, procurement rules and an updated value-for-money policy. Also—this is what I want to see the Department of Finance do—it will enable the Department of Finance to strengthen its cross-government leadership role in procurement. It will have the tools and capacity to do that as well.

The member for Warren–Blackwood also specifically mentioned the Aboriginal procurement policy. I will make some comments about that policy at the end when I deal with the comments made by the member for Dawesville. The member for Nedlands professed his love of procurement.

Mr W.R. Marmion: It’s fun!

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Mr B.S. WYATT: “It’s fun”, he says, by way of interjection. I am not sure, looking at my finance adviser at the back, that anyone has said in the past that they love procurement and find it fun, but it is a huge part of government. In fact, the Department of Finance is really the department of procurement. “Finance” is a funny name; I think it is the same as the commonwealth finance body. But, as we have all discussed, it is incredibly important that we get it right and maximise the monetary, social and other values. I have answered the question of procurement direction. They can apply across the board or be agency specific.

I think I have dealt with the main point made by the member for Armadale on the notion of best value, and I want to thank him and all members of the Public Accounts Committee, because I think its report highlighted the procurement issues. Hopefully, this legislation will deal with those issues.

The members for Vasse and Mount Lawley both challenged the concept of what we traditionally consider as value. A couple of years ago, as I said to the member for Nedlands, I received a letter from somebody who had not won a particular contract. For whatever reason, they knew that their bid was much lower than the winning bid. As we all know, decisions on who wins a contract are not made at the ministerial level, but we get these letters and can follow-up on what is going on. They were quite correct; their bid was considerably lower. However, even for a project that I had no expertise in, I questioned that bid. The project was to be done in all parts of Western Australia, and I know how difficult and expensive that can be. Even I questioned the capacity, so the department was quite correct in not awarding it to the lowest bid; if it had, I suspect that we would have been halfway through the contract and would have had to revisit the tender. As we all know, this relates to the delivery of services that government is responsible for, and is not something on which we can say, “Bad luck, it’s your responsibility”, and walk away. Ultimately, we have to ensure that the service is delivered. The member for Vasse raised that issue as well, quite correctly.

I thank the member for Mount Lawley for his comments. He is quite correct; a lot of work has gone into this legislation, and a lot of work will go into the government trading enterprise reform component as well. COVID-19 has certainly given us the opportunity; that is what makes it urgent that we get these reforms done, and I think all members who have commented tonight understand the urgency of this bill.

The members for Mount Lawley, Dawesville and others commented on the debarment regime, in which Western Australia will be nation-leading. We will be the only state government with a legislative debarment regime. Admittedly, the terms of the debarment regime are not embedded in the legislation, but certainly the power to create it is, and this is something that I think is really, really important. It says to those who have the good fortune to win public contracts that there are certain expectations on them. Again, by way of example, a couple of years ago there was a particular company that was not paying its taxes. I understand that companies may not like paying taxes, but when they operate in that environment, that is the way it works. With no debarment regime, it was very difficult for the Minister for Finance to act on that. This legislation will provide these sorts of opportunities, and I do not think anyone in this place will dispute the importance of that.

I agree with everything that the member for Roe said. I cannot make specific comments on the Collie or Esperance contracts that he referenced, but I hope I have dealt with the issue. Regional prosperity is a key part of value in the contract, which will hopefully assuage his concerns. We all want local; in fact, nothing frustrates me, Hon Alannah MacTiernan or others more than when this happens. But I want to make one point; I am aware of a couple in particular. The department is very good at working with companies to assist with the tender process, as the Department of Finance is designed to do, particularly those companies that maybe do not have the administrative capacity of larger companies that know how to churn out tenders. Sometimes, and this does happen, the capacity to deliver is the problem.

That might be why sometimes there are seemingly unfair issues, with a contract in regional Western Australia being delivered out of Perth. It is not something that we want to do. Specifically acknowledging and valuing regional prosperity will hopefully create more flow. As I said, we still need to ensure delivery. Having training and apprenticeships as a part of it means that capacities will be built up in regional centres, which is what we want to see from the government spend that happens year in, year out.

The member is right about companies that use variations. Some companies have a particular strategy by which they do the work and then immediately litigate, looking to settle and knowing full well that it will not go to a full trial. A few actions go to full trial, but companies know that if they bid something, do the work, file the writ and get a payment, then they are done. That happens to all governments. It does not matter which political persuasion happens to be in government at the time. In my view, that is a strategy that we need to pay particular attention to.

I thank the member for Dawesville for his comments on Aboriginal procurement. I put out a statement not that long ago on the six months to December 2019. It was tracking ahead. I think it was \$80-odd million for that six months. The member is right. His worries are quite correct and I worry about them, too. I am in furious agreement with the member on two points that he made. The policy was designed to try to ensure that there would be a flow of work

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so that companies would have the confidence to engage in joint ventures, build more capacity, bring more people on and pitch for bigger work. To be honest, previous policies focused on and pushed for small-value contracts in terms of monetary value. I want to see Aboriginal companies grow. That is what I want to see as a result of this. The member is right, and I like the fact that we publish that information and show that for some agencies it is zero or one. It puts the pressure on, and that is the intent of it. This is a policy that I am very keen on. Nothing is hidden; it is all there. If the member ever needs any information, he should just let me know.

Mr Z.R.F. Kirkup interjected.

Mr B.S. WYATT: It is. The questions that the member raised are the key points. The member is right that the dialysis contract was a very large contract, but we want to ensure that the rest are not made up of small, unimaginative contracts. That is why we will continue to report on that. As the member said, I was surprised as well when I became a minister that there was no debarment capacity in the state government. That is something that we will change with this legislation.

I think that I have answered all the specific questions that were put to me. I thank all members for their contributions. Procurement is not a natural barbecue stopper, but in light of how much the government spends year in, year out doing what it does, we are right to ensure and expect value to be much broader than just a monetary figure. I feel that all members who have contributed tonight agree with that. This bill does that. It will make it much easier for small to medium-sized enterprises, in particular, to contract with government, bid for work and receive work. Importantly, it will lift thresholds for not just goods and services but also works, so that local contracts can be given. The intent is that they be given quickly. That is something that I will be challenging the department to do to ensure that it happens expeditiously. With that, I thank members for their contributions and support.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr W.R. MARMION: I have a quick question on clause 2. Part 1 will come into operation when the bill receives royal assent and becomes the act. Can the minister give us a rough idea of when he thinks the rest of the act may come into play after part 1?

Mr B.S. WYATT: That was a good question. An amendment to clause 2 will be moved in the upper house to ensure that instead of the rest of the act being fixed by proclamation—as we were discussing earlier tonight, some things can be moved on to immediately, but some, such as the debarment regime, might be a little later—we will proclaim parts of the act.

Mr W.R. Marmion: That was a good question!

Mr B.S. WYATT: That was a very good question! I learnt something as well.

Clause put and passed.

Clause 3: Objects of Act —

Mr D.C. NALDER: I understand the principles of what is trying to be achieved by the objects of the act. I want to share some experience I have had with group procurement over the years within the corporate sector. Going back over 20 years ago, I was involved in a project in which I had to process-map ANZ group procurement across Australia and New Zealand. I then had to business process re-engineer it and set all the policies nationally for a consistent approach right across Australia and New Zealand. The intent was similar, but the practical application of it sometimes gets a bit clunky. I want to determine how much flexibility there will be in some of these provisions. I want to give an example. In the policies, we wanted consistency around purchasing printers. They used to cost a bit! Part of the policy to get consistency was that they needed to be serviced. Therefore, the company that could service it had to have an Australia-wide service to get that consistency. By the time we got to that, there were only a couple of companies that could do it, and the price went through the roof. I came back and ran a division for the group over here. I could walk to JB Hi-Fi and pick up a printer for 400 bucks, yet through the group procurement process internally, I was paying over \$1 200 for the same thing. I could let three of those printers break down before I broke even. It was better to throw them out and get another one than follow the process, which was supposed to deliver a more efficient outcome. I am sharing this because, although I agree with the principle, I am concerned about the practical application of agencies and departments dealing with this, particularly in remote locations,

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because a lot of it can be a CBD-centric model. I am wondering whether this has been considered and whether practical application will be taken into consideration to overcome some of those dramas.

Mr B.S. WYATT: That is a good point. We want to be as flexible as possible. The reason, under the State Supply Commission Act, that we raised that to \$250 000 from \$50 000—which I did a while back—was to create more of that local flexibility to try to resolve the issue that the member talked about. On the passage of this legislation that will apply to works, so flexibility around that sort of scenario can be dealt with. Similarly, in respect of power contracts, regional Western Australia has much more flexibility around that anyway. Moving from \$250 000 to \$500 000 for the next layer of spend, they are a lot more flexible anyway for those sorts of spends. Beyond \$500 000 we are going to end up with the tender process anyway because will need to have some competition introduced at that point.

Clause put and passed.

Clause 4 put and passed.

Clause 5: State agencies —

Dr D.J. HONEY: I know the Minister for Finance has touched on this a little bit, but I am interested to know why we would leave those major corporations out. I refer to clause 5(2)(a). The Water Corporation is an organisation that I have more anecdotal experience with, and I will say that every single specialist I have involved myself within in that field tells me that Water Corporation is not especially efficient and that, in fact, it is inefficient in that area. The minister explained a little earlier, but why is it left out? It seems that it would make a lot of sense to include it. Given that those agencies account for an enormous amount of the government's capital spend outside road and rail projects, it would be very worthwhile to include them.

Mr B.S. WYATT: That is a fair point. Because the government trading enterprises have their own legislation which requires them to act commercially, it creates a slightly different outcome. We are saying that we want to impose social outcomes, whatever they happen to be, in the way the procurement works. Having said that, the service priority review in 2008 and the Langouant review of 2017 both made this point around GTEs: their governance and transparency need work, so Treasury pulled the GTEs out of this and did that in a separate lot. That will hopefully happen this year. The member's points around GTEs are correct, and we will deal with that. It is just that if we dealt with that as well, I would be worried that we would not have even got this legislation into the Parliament.

Clause put and passed.

Clauses 6 to 8 put and passed.

Clause 9: Procurement to which Act does not apply —

Dr D.J. HONEY: I refer to clause 9(1)(b), which does not include a lease for social housing purposes and the like. Again, I am intrigued as to why they would be specifically excluded. I would have thought that there are opportunities to realise improvements in those purposes as well. I am intrigued as to why they were specifically excluded.

Mr B.S. WYATT: It is almost the flipside of the comments I just made about GTEs—that is, that for the vast majority of our tenants we are looking for competitive tension and a commercial outcome. Leases for social housing purposes are somewhat different. We are looking for a different outcome than we would be through a normal procurement process, which is why those have been excluded.

Dr D.J. HONEY: I thank the minister. I heard what he said, but what are the different outcomes? I imagine it is still a significant investment by the state. Even if it were an outcome of location or some other factor like that, where we wanted to have a spread of social housing, we would say that within that region we would be looking for the best financial outcome for the government.

Mr B.S. WYATT: Yes, in the end I probably just confused both of us with my answer. Included in there is that our social housing is done through its own standalone legislation. Rather than bringing this in as well—bearing in mind that the Housing Act is a big piece of legislation—the decision was made to exclude that and keep it as it currently operates.

Dr D.J. HONEY: If we go to clause 9(2)(a) specifically, I am interested to know why we would exclude the acquisition or disposal of land or of an interest in land, other than a relevant lease. Why would that be excluded from the legislation?

Mr B.S. WYATT: That is one for which I think I have the answer right! The Land Administration Act provides me, the Minister for Lands, with the capacity to do that. Again, we have had to pull out a few things that had their own specific pieces of legislation to deal with those sorts of things.

Clause put and passed.

Clauses 10 to 12 put and passed.

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Clause 13: Functions of Minister —

Dr D.J. HONEY: This may be a naive question, but the clause is headed “Functions of Minister”. I am not clear as to which minister it refers. Is it deliberately vague or is it intended to apply to a specific minister?

Mr B.S. WYATT: I thought the member was about to say, as opposed to the dysfunction of the minister! The minister, of course, will always be as gazetted. Often a piece of legislation will refer to a specific minister, such as the Treasurer, or a minister, as defined. That can be seen already; a minister might have responsibility for an act, but a reshuffle happens, and they are moved. We gazette responsibility for legislation, and the minister will be as per the gazette, but I suspect it will always be the Minister for Finance, which is the obvious minister.

Clause put and passed.

Clause 14: Functions of Department CEO —

Dr D.J. HONEY: I refer to clause 14(1)(e) with regard to the functions of the department’s CEO. Sorry; perhaps I have confused myself, minister. I had to do this very quickly. That is included in the CEO’s functions?

Mr B.S. Wyatt: Yes.

Dr D.J. HONEY: That is clear, then. Under clause 14(2), the CEO may do anything necessary or convenient for the performance of the department CEO’s functions under the legislation. I understand, based on experience, that sometimes those clauses are added because they are standard clauses that are put into legislation. Is this a standard clause that is put into the legislation and accepted as a standard clause? It seems to me to be very broad to say “do anything”.

Mr B.S. WYATT: Again, I will blame parliamentary counsel for these things. I suspect that this goes back to whether it has been done in the past and whether a departmental CEO did something that although not illegal was perhaps in contradiction to another act. These things are part of the standard statutory process.

Clause put and passed.

Clause 15: Delegation by Minister —

Dr D.J. HONEY: I know that I am jumping ahead, but to save time I have a question about both clause 15(2) and clause 16(3). Are delegations time bound or subject to review periodically to make sure that they are tracked? I am concerned that delegations could be confused or their origins drift off into the mists of time.

Mr B.S. WYATT: Yes, they are. They are also specific. I find that I must regularly update delegations because, for example, David Honey, executive director of this, has either left the public sector or is now executive director of that. The delegations are deliberately specific. They are limited in person and usually in time. The ones that I have signed—I suspect that this is standard; if I am wrong, I will come back to the member—have been limited in time in terms of electoral cycles. If I am wrong about that, I will confirm that with the member.

Clause put and passed.

Clause 16: Delegation by Department CEO —

Mr W.R. MARMION: I seek clarification about delegations in writing. My question is about clause 16(4), but follows on from clause 16(3), which states —

The delegation must be in writing signed by the department CEO.

However, clause 16 (4) states —

The delegation may expressly authorise the delegate to further delegate the power or duty to an authorised person.

This is a double-barrelled question. When the CEO authorises his or her delegation, can it be further delegated only when it is mentioned in the CEO’s delegation of the next person to delegate? The other question is: must it specifically be an authorised person or can it be an authorised position, or—I probably know the answer to this—can it be an authorised category of people?

Mr B.S. WYATT: Yes. The first answer is correct. The power to sub-delegate is given in the original delegation. If, for example, I delegate to Bill Marmion and I am silent on the sub-delegation, the member cannot then sub-delegate unless I have specifically said, “Bill Marmion can sub-delegate it to an authorised person.” The member is correct: an authorised person can be a category; for example, a level of public service rank—seniority.

Clause put and passed.

Clauses 17 to 19 put and passed.

Clause 20: Power of Department CEO to borrow money —

Mr Ben Wyatt; Mr Dean Nalder; Mr Terry Redman; Mr Bill Marmion; Dr David Honey; Dr Tony Buti; Ms Libby Mettam; Mr Simon Millman; Mr Peter Rundle; Mr Zak Kirkup

Dr D.J. HONEY: I am intrigued why the CEO of the department would need to borrow money. I imagine that agencies that carry out work would need to do it, but I was intrigued why this department, which I see as a functional department of people, would have any requirement to borrow.

Mr B.S. WYATT: Under the State Supply Commission Act there is capacity for State Fleet to borrow, and it has borrowed for the state. That borrowing is still there. This clause deals with that, but it is specific to only State Fleet.

Clause put and passed.

Clause 21 put and passed.

Clause 22: Agency specific procurement directions —

Mr W.R. MARMION: I want to test clause 22(1), which states —

The Minister may issue an agency specific procurement direction ...

If an agency already has a contract running—let us say for Roe 8—the Minister for Finance could direct the agency to cancel that contract. Is that how clause 22(1) can be interpreted? Would there be no limitation on that direction?

Mr B.S. WYATT: No. It would not allow for that. Clause 21(2) sets out what procurement directions are really focused on—not so much around cancelling contracts. Those sorts of decisions are really for the cabinet, not for an individual Minister for Finance, to issue a procurement direction to do.

Clause put and passed.

Clause 23 put and passed.

Clause 24: Compliance with procurement directions —

Dr D.J. HONEY: Perhaps the minister can clarify what is the normal way that these bills are looked at. Was any consideration given to include a clause to say that an officer's noncompliance with procedures would be a misdemeanour or an offence and/or penalties would be prescribed? I know that under other legislation when people do things, the legislation will provide that they have to do this; and, if they do not, they would be committing an offence. That offence is subject to a penalty and that penalty would be prescribed in the legislation. I appreciate that the minister might be a little bit vague about this, but if the Minister for Finance issues a direction in terms of procedures and the department's CEO wilfully or otherwise does not follow those procedures, would it be made clear they have in effect disobeyed the minister and would have committed an offence? I wonder how we pick that up. I made the point in my second reading contribution that it had been made very clear to me in my management roles that if I did not follow procurement procedures, I would have been committing a very serious misdemeanour within the organisations that I was working in. There were very severe penalties and it was made very clear to me that I had to follow those procedures. That was an important part of maintaining proper procurement processes and it was very clear that there would have been serious consequences if I had ignored the organisation's procedures.

Mr B.S. WYATT: Under clause 24(4), an officer, ultimately, would be subject to disciplinary proceedings by the Public Sector Commissioner under the Public Sector Management Act. That can lead to dismissal so there is still a disciplinary process to ensure that people understand that there is a consequence for noncompliance.

Dr D.J. HONEY: The question was: what mechanism makes it clear that it is a serious offence? Is there a mechanism or is this just a normal departmental procedure that the minister has issued a direction and someone in the department, whoever it is, is not following it?

Mr B.S. WYATT: The public sector code of conduct would deal with this—that is, directions from ministers and directions lawfully given under relevant legislation. This will be part of the relevant legislation. This is something that all public servants are aware of, particularly senior public servants. It is part of their contract.

Clause put and passed.

Clause 25: Common use contractual arrangements —

Dr D.J. HONEY: This probably does not require a response from the minister directly, but I make a comment that clause 25 may be the opportunity in future to look at a prequalification process or maybe that can be developed here. Based on my experience at least, it seems that having a prequalification process greatly simplifies things for users of the process, such as agencies that are then looking for suppliers of goods. If the minister does not feel like commenting, I am quite relaxed.

Clause put and passed.

Clauses 26 and 27 put and passed.

Clause 28: Investigation and audit of procurement —

Mr Ben Wyatt; Mr Dean Nalder; Mr Terry Redman; Mr Bill Marmion; Dr David Honey; Dr Tony Buti; Ms Libby Mettam; Mr Simon Millman; Mr Peter Rundle; Mr Zak Kirkup

Dr D.J. HONEY: I wonder whether the minister could explain the overlap with the Office of the Auditor General in clause 28 “Investigation and audit of procurement”. Obviously, the Office of the Auditor General has a specific role in this area, and when I was quickly reading through these clauses, I noted that the investigation of incidents can be delegated to another agency, so I understood that, but is there going to be overlap with the Office of the Auditor General? Is it a second check or will this internal investigative process work with the Auditor General?

Mr B.S. WYATT: This bill builds on work that the government has already done to improve public sector agency accountability and transparency, including the measures we announced in November last year around the independently chaired audit committees, rotation of firms, conducting internal audits and segregation of duties and payment authorisations. Specific to the member for Cottesloe’s point, the audit and investigation functions in part 6 focus on the procurement activities of state agencies. It does not duplicate the functions of other bodies such as the Office of the Auditor General. The audits and investigations under this bill relate to an agency’s compliance with the bill, the procurement directions and other instruments under the bill. As a matter of practice, this would principally cover an agency’s compliance with government procurement policies. It is a fair question, but it does not duplicate the OAG’s role.

Clause put and passed.

Clauses 29 and 30 put and passed.

Clause 31: Regulatory action following investigation or audit or judicial or investigative proceedings —

Dr D.J. HONEY: Where would someone outside this agency find out about the outcome of these investigations? Are they published or is this really just to complete the internal process that no-one else has a way of discovering unless they happen to hear about it and do a freedom of information request? I would have thought that as part of transparency it would make sense to have some report or such thing so that we can have comfort that the agencies are complying, or otherwise, with this bill and the procedures prescribed.

Mr B.S. WYATT: If indeed a failure to comply with the legislation has occurred, clause 31(2)(b) states that it is required to be published in the annual report of the accountable authority of the department under the Financial Management Act. The FMA still captures that to ensure that it takes place, because ultimately we want to have it recorded somewhere.

Dr D.J. Honey: I skimmed too quickly. Thanks, minister.

Clause put and passed.

Clause 32: Terms used —

Mr D.C. NALDER: I want to talk generally about debarment. I found “debarment” an interesting term. I have to admit that I have expanded my vocabulary. I sat there thinking that “debarment” almost sounds like an oxymoron, because we bar somebody and then we debar them, and I was not sure what that was. I read right through part 7, so I am asking a general question on this whole part. I see that the CEO has the authority to debar. Earlier, we talked about the delegation of authority to an authorised person. I assume that debarring will be delegated to an authorised person as well. I will use this time to go a bit broader. If someone is debarred, I assume that there has been conduct unbecoming, and I just wonder how that then gets populated, because this specifically refers to an agency. If there is inappropriate behaviour of a supplier and it has been debarred and other departments or agencies should be made aware of it, is there a central registry or something like that for which the Department of Finance is responsible?

Mr B.S. Wyatt: This is once you have been debarred?

Mr D.C. NALDER: Yes. Although the supplier might be banned somewhere, another agency has contracted it for something else and was not aware that there had been previous issues or problems with another agency.

Mr B.S. WYATT: Is there some special person? The question is about delegation. Only the CEO can debar, because no power has been given to the CEO to delegate that role. Clause 36 (1) states —

The Department CEO must maintain a public register in accordance with the regulations of suppliers who are debarred under this Part.

The public register would be seen somewhere like Tenders WA. That is exactly where it would be seen.

Mr D.C. Nalder: Will it be at Tenders WA?

Mr B.S. WYATT: Yes.

Mr D.C. NALDER: Therefore, would we expect anybody who is setting up some form of contract to check that or does the Department of Finance oversee it to make sure that other agencies are checking to ensure that we do not miss some of these things?

Mr Ben Wyatt; Mr Dean Nalder; Mr Terry Redman; Mr Bill Marmion; Dr David Honey; Dr Tony Buti; Ms Libby Mettam; Mr Simon Millman; Mr Peter Rundle; Mr Zak Kirkup

Mr B.S. WYATT: I think I have an answer to the member's question about clause 36(1). The list on the public register is maintained on the Tenders WA website. Exceptions can be given to companies that may be debarred. I suspect it will be rare, but capacity has been given for exceptions to be granted when they need to be. The Department of Finance will effectively manage how contracts are issued through Tenders WA. I think the member's question was: would an agency still be able to give a contract by mistake to a debarred company? Technically it probably could, but the Department of Finance's role is to make sure that it does not happen. It is the purpose of the public register and the role of the agency to make sure all those putting tenders through Tenders WA know who is debarred. That is why the public register is important.

Clause put and passed.

Clauses 33 to 35 put and passed.

Clause 36: Miscellaneous provisions relating to debarment of suppliers —

Mr W.R. MARMION: Clause 36(8) is very useful in stating "no civil liability is incurred".

Mr B.S. Wyatt interjected.

Mr W.R. MARMION: However, my question relates to subclause (9). I do not expect the minister to name anyone, but subclause (9) states —

A supplier may be debarred or suspended under this Part because of conduct that occurred before the commencement of this Part.

I wonder whether the minister would like to share with the chamber whether the Department of Finance considers any possible suppliers to be on the list already, without mentioning their names?

Mr B.S. WYATT: None spring to mind, member, but I guess I will find out in due course whether a list from Finance is going to come my way. I think subclause (9) is only to be consistent with the debarment regime, which is timed to three years, so it took place three years previously. This provision captures that. I am not expecting a list with "Marmion Proprietary Limited is hereby debarred".

Clause put and passed.

Clause 37 put and passed.

Clause 38: Regulations —

Mr D.C. NALDER: I have just a simple question. I am looking for a date when the regulations are likely to come into effect. Obviously, that is pretty important because this is an urgent bill. I imagine it would be a high priority to get the regulations through, so I want to get from the minister a sense of what the date is likely to be.

Mr B.S. WYATT: I am keen to engage with industry on the main regulations around the debarment regime, so I guess it will be in the back half of this calendar year. I would be keen to get it in and done. I do not want to have a big fight with whomever. We will release a proposed regime, consult widely and have it regulated.

Mr D.C. NALDER: A simple question that comes from that is: why was it urgent legislation then?

Mr B.S. WYATT: I am talking about only the debarment regime. This is the head of power to create the debarment regime, but the other issues applying to works will start pretty much immediately. The whole act will have components; hence, to answer the very first question the member asked, it will be proclaimed in bits so that we can lift the local contracting bid of \$500 000 for works immediately to get it in place. I think that will be of broad benefit. The debarment regime requires some effort around consultation.

Clause put and passed.

Clauses 39 to 73 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr B.S. Wyatt (Minister for Finance)**, and transmitted to the Council.