Parliamentary Debates
(HANSARD)

FORTY-FIRST PARLIAMENT
FIRST SESSION
2022

LEGISLATIVE ASSEMBLY

Tuesday, 15 November 2022

Legislative Assembly

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THE SPEAKER (Mrs M.H. Roberts) took the chair at 1.00 pm, acknowledged country and read prayers.

ACTING SPEAKER

Appointment — Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [1.01 pm]: I advise that I have appointed the member for Southern River as an Acting Speaker for Tuesday, 15 November 2022.

BILLS

Returned

1. Charitable Trusts Bill 2022.
2. Mining Amendment Bill 2022.

Bills returned from the Council without amendment.

Assent

Messages from the Governor received and read notifying assent to the following bills —

1. Fair Trading Amendment Bill 2021.
2. Health and Disability Services (Complaints) Amendment Bill 2021.
3. Owner-Drivers (Contracts and Disputes) Amendment Bill 2022.
4. Duties Amendment (Farm-in Agreements) Bill 2022.
5. Charitable Trusts Bill 2022.
6. Mining Amendment Bill 2022.

PAPERS TABLED

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

RAIL CROSSINGS — SAFETY
NATIVE FOREST — LOGGING
CLEO SMITH — CARNARVON COMMUNITY
CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — TRANSITION PLAN

Removal of Order — Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [1.05 pm]: I inform members that in accordance with standing order 144A, the private members' business orders of the day that appeared on the last notice paper as "Rail Safety", "Forest Industry", "WA Police" and "WA Safe Transition Plan" have not been debated for more than 12 calendar months and have been removed from the notice paper.

EDUCATION

Notice of Motion

Mr P.J. Rundle gave notice that at the next sitting of the house he would move —

> That this house calls on the McGowan Labor government to take responsibility for the mess of Western Australia's education system and take immediate action to address systemic issues impacting students and staff.

BUSINESS OF THE HOUSE — PRIVATE MEMBERS' BUSINESS

Standing Orders Suspension — Notice of Motion

Mr D.A. Templeman (Leader of the House) gave notice that at the next sitting of the house he would move —

> That so much of standing orders be suspended as is necessary to enable private members' business to have priority from 4.00 to 8.00 pm on Wednesday, 16 November 2022.

PUBLIC ACCOUNTS COMMITTEE

Sixth Report — Bus fair: The report of the inquiry into the student transport assistance policy framework — Government Response — Statement by Minister for Transport

MS R. SAFFIOTI (West Swan — Minister for Transport) [1.07 pm]: I rise to inform the house that the state government response to *Bus fair: The report of the inquiry into the student transport assistance policy framework* of the Public Accounts Committee will be provided to the Parliament in the next few weeks. This is a very brief statement!

PERINATAL MENTAL HEALTH

Statement by Minister for Mental Health

MS A. SANDERSON (Morley — Minister for Mental Health) [1.07 pm]: I rise to inform the house that last week was Perinatal Mental Health Week. Perinatal Mental Health Week takes place annually in November and is an opportunity to raise awareness, provide information, provide referral pathway support and destigmatise perinatal mental health issues. Perinatal anxiety or depression affects around 100 000 families across Australia every year. Mothers and fathers can develop perinatal mental illness during pregnancy, during early parenthood or at any time in the first 12 months of a child's life.

The Mental Health Commission supports the Perinatal and Infant Mental Health Sub Network, which engages with and improves outcomes for specific cohorts of mental health service users. The network aims to be inclusive, representative and reflect the concerns and views of the sector for these groups. In 2022–23, the Mental Health Commission will dedicate more than $14 million to fund postnatal and antenatal mental health services, including eight-bed mother-and-baby units at King Edward Memorial Hospital for Women and Fiona Stanley Hospital; the New Beginnings postnatal depression support program via the North Metropolitan Health Service; the department of psychological medicine, including the state perinatal mental health unit, at King Edward Memorial Hospital; maternity and perinatal specialist support programs via the South Metropolitan Health Service; and the delivery of four mother–baby nurture groups by Playgroup WA via the North Metropolitan Health Service. A further $460 000 will be invested in perinatal support groups in Bunbury, Collie and Busselton, perinatal mental health services in the metropolitan area and a new program for fathers.

In the regions, the MHC funded midwest suicide prevention coordinators to run a local radio and social media perinatal campaign that used stories from the people of Geraldton to support parents' perinatal journeys. New or expecting parents and professionals shared advice and personal experiences to support local parents in accessing help and breaking the unrealistic expectation of perfect parenting.

This government is committed to prioritising the delivery of timely, quality mental health services. Perinatal Mental Health Week is an opportunity to support expectant and new parents during what will be one of the most vulnerable times in their life. I understand that significant challenges are faced during pregnancy and early parenthood. Support is available to those who may need it.

HEALTH SERVICES AMENDMENT BILL 2021

Second Reading

Resumed from 23 June.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [1.10 pm] — in reply: On behalf of the Minister for Health, I rise to provide the second reading reply to the Health Services Amendment Bill 2021. I thank all members for their contribution to this debate. Members raised a wide range of matters and I would like to specifically address the matters raised by the members for Vasse, Cottesloe and Moore. In the time available, I will limit my comments to those directly related to the bill.

This amendment bill was developed in response to specific issues identified by the Department of Health and health service providers. Consultation was undertaken with the board chairs of the health service providers and with certain health executives, such as the chief finance officers of the health service providers. Many of the issues addressed by the bill were raised directly by the health service providers. For example, WA Country Health Service raised operational and administrative issues related to land and property that are being rectified in this bill. The changes to board member duties and obligations were included to address concerns raised by the boards themselves and clause 20 includes a provision to address the contracting and procurement inefficiency concerns raised by health service providers.

The statutory review of the Health Services Act 2016 has been delayed to allow the amendments in this bill to be operationalised and considered as part of the review. The review will be a comprehensive examination of the operation and effectiveness of the act, including its governance framework. Although the statutory review is delayed, earlier this year the minister appointed an expert panel to conduct an independent governance review of the act. The minister recently received the report and tabled it on 25 October 2022. The government is in the process of considering and consulting on all 55 recommendations of the independent governance review. The independent governance review is an important contribution in reviewing the operation of the act prior to the formal commencement of a statutory review.

The Health Services Act 2016 made changes to the governance of the Western Australian health system to enable it to be more responsive and innovative in meeting the health needs of local communities and of a growing and ageing population. The changes were required to deliver a safe, high-quality, sustainable health system for all Western Australians. The act provides clear roles, responsibilities and accountabilities at all levels of the system and a devolved model of governance that enables decisions to be made closer to the point of service delivery and patient care. The system manager provides strategic direction and leadership for the WA public health system to

ensure the delivery of quality health services. Health service providers are separate statutory authorities with greater responsibility for the delivery of health and support services. Health service providers are responsible and accountable for the delivery of safe, high-quality, efficient and economical health services for their health service area. The Minister for Health retains overall portfolio responsibility for the WA health system and is accountable to the Western Australian Parliament for the operation of the WA health system, including planning, service delivery and performance.

The Health Services Act 2016 established a whole-of-system approach to ensure integration of the system. This is achieved through the oversight of the system manager and provisions that operate to restrict health service providers from acting to the detriment of the others. From a practical perspective, integration is also assured through regular meetings. The director general and the board chairs of each health service provider meet on a regular basis to provide an ongoing focus on common goals and ensure the efficient use of resources to meet demands. There are also regular health executive committee meetings between the director general and the chief executives of the health service providers. These meetings include formal and informal meetings to ensure a consistent approach in the management of key priorities. The bill will reinforce this approach by clarifying the role of the director general to lead and steward the WA health system and by improving the ability of health service providers to work collaboratively through the insertion of new powers that allow health service providers to contract and act as agents on behalf of one another. Expanding the delegation powers of the minister will provide greater flexibility and relieve administrative burdens from the minister and director general when performing functions of the minister and the health ministerial body. Allowing the minister to delegate to officers lower than the director general will ensure that the WA health system can operate in a seamless manner and also that the best or most appropriate person can perform the function. For example, approvals and execution of documentation for low-value land and property transactions will be undertaken by delegated officers within the Department of Health and the health service providers rather than requiring the minister or director general, as delegate, to approve and execute the transactions. The delegations made by the minister will be consistent with the department authorisations and delegations schedule that outlines the monetary tiers for contracts and other transactions that can be approved by officers of the Department of Health. Delegates will be required to comply with the requirements of the Infrastructure (Asset Management) policy framework issued by the director general that is designed to ensure responsible and accountable use of financial resources by authorised officers.

Under the bill, health service providers will be given flexibility to provide a facility under its control and management to a person who engages in community work or conducts a service that has a community or charitable purpose. This will be in addition to the current situation whereby a facility may be used by only a health professional carrying out a health service. For example, this could enable a health service provider to allow a not-for-profit community legal service to use its facilities to provide legal services to patients or for education services to be provided by a registered charity, such as Cancer Council WA and health justice partnerships. It is intended that this amendment will allow the health service provider to provide the facility without having to tie it to a commercial purpose, meaning that the health service provider could grant access free of charge.

The amendments regarding compensable patients relate to the ability to recover moneys from patients who were provided services as a public patient or other category at no cost to them, but either were at the time, or were later established to be, a compensable patient—that is, a person who has received compensation for the injury they received for which they needed treatment. The act was intended to provide this scheme, but due to some ambiguity in the current provisions, it has not operated as intended. These amendments are intended to provide a workable scheme for the recovery of fees from compensable patients. They will also ensure that patients are charged for compensable charges only when they have received, or established the entitlement to receive, compensation in respect of an injury.

In relation to board members' duties, the act previously contained the general duties for board members to act impartially and in the public interest. Although these duties remain, more explicit duties have been included in these amendments. These will provide greater guidance on what is expected of a board member. The duties are well established duties of members of a board—for example, the duty to avoid a conflict of interest, but when unavoidable and with the consent of the board, to ensure the conflict is appropriately managed; the duty to not act with improper purpose; and the duty to not profit at the expense of the health service provider or the state.

In terms of further guidance, the Public Sector Commission issues guidelines for boards and committees on governance, including how to identify and manage conflicts of interest. Additionally, the director general will issue an updated mandatory statutory board operations framework and a mandatory health service provider board governance policy subsequent to the bill being passed by Parliament.

The member for Cottesloe also asked for further clarification on the amendment to the definition of "confidential information" in section 177 of the act. The amendment relates to the powers of the director general when conducting an investigation, inspection or audit under part 13 of the act. The amendment makes it clear that confidential information is not limited to patient information. This ensures that the director general may have access to any records, including confidential information, that are relevant to the DG's investigation, inspection or audit.

In conclusion, I thank the opposition for its support of this bill. I also thank members on the government side who have spoken in support of this legislation. On behalf of the minister, I would also like to thank the Deputy Premier as the former Minister for Health for the work that he and his staff did on this bill when he was Minister for Health.

I commend the bill to the house.

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 —

Ms L. METTAM: I thank the Acting Speaker, the advisers and the parliamentary secretary. Does the parliamentary secretary have an expectation of when the different provisions of the act will be proclaimed and can he indicate how long that will be?

Mr S.A. MILLMAN: I thank the member for Vasse for the question. It is anticipated that the proclamation dates will be as follows. Soon after assent, parts 3, 4 and 6 of the act and some parts of part 2 will be proclaimed. In order for the subsidiary legislation to be drafted to support the changes, some of part 2 and all of part 5 will be proclaimed about three months after the date of the passage of the bill.

Ms L. METTAM: What will be involved in the drafting process of the subsidiary legislation? The parliamentary secretary said it could take several months. Will there be any consultation and what will be the process?

Mr S.A. MILLMAN: A number of things will need to be done, and I will outline them for the member. Some things will require additional time before the balance of the bill comes into operation. Reserve orders to change the management body of the WA health system's crown reserves are required to be drafted prior to the commencement of the transitional provisions in part 2. The minister's Health Services (Fees and Charges) Order 2016 must be amended before the amendments in clauses 29 to 31 commence. Regulations need to be made to replace the Queen Elizabeth II Medical Centre (Delegated Site) By-laws before part 5 can commence. Service agreements between the director general of the Department of Health and health service providers will need to be amended to reflect the amendments in this bill. Finally, the Health Services (Information) Regulations 2017 will need to be reviewed and amended prior to the commencement of the relevant provisions to ensure consistency between the act and the regulations.

Ms L. METTAM: Since the bill was introduced in 2021, the government undertook the governance review of the Health Services Act 2016. What implication does that have for the timing of the commencement, if any?

Mr S.A. MILLMAN: There is no connection between the timing of the commencement of this legislation and the governance review; they are separate.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 6 amended —

Ms L. METTAM: Can the parliamentary secretary explain the reasoning behind the change in definition of "contracted health entity"?

Mr S.A. MILLMAN: Clause 4 deals with definitions in general and it incorporates changes to a number of definitions. The one the member has directed my attention to is the definition of "contracted health entity". "Contracted health entity" is an existing definition in the Health Services Act 2016, but it will be replaced by the amended definition in this clause. The amended definition broadens the term to capture non-government entities that provide services to the state.

Ms L. METTAM: I appreciate that this will be dealt with later in the bill, but who will determine that an entity is facing financial difficulty in accordance with the definition in clause 4?

Mr S.A. MILLMAN: There are a number of advisers for this bill. I will just make sure that the advisers who are with me presently are able to provide an answer so that we can deal with the question now instead of dealing with it later when we discuss financial difficulty. I want to make sure that I have the right advisers, so bear with me for one minute.

The initial assessment will be done by the chief executive officer of the relevant health service provider. We can deal with this further when we consider clause 35. There will be a process for assessing whether the HSP is in financial difficulty. The chief executive officer will do a first pass and that will then be elevated in particular circumstances. It might be better to deal with that during consideration of the substantive clause rather than during consideration of the definition clause, if that is okay.

Clause put and passed.

Clause 5: Section 7 amended —

Ms L. METTAM: Can the parliamentary secretary explain what prompted this change to the definition of "public health service" in section 7(3) of the act? Is it because of the inclusion of the words "the Premier"? What contracts would the Premier be required to enter into that the department CEO or the minister would be precluded from entering into?

Mr S.A. MILLMAN: I am advised that an example is the St John of God Midland contract. The Premier was the signing party to that contract. It contemplates contracts of that nature.

Ms L. METTAM: Will this extend the power of the Premier in any way?

Mr S.A. MILLMAN: I am not sure that I understand the question. What does the member mean by "extend the power"?

Ms L. METTAM: Will the inclusion of the words "the Premier" in this definition give the Premier more power, or will it just underline his existing power?

Mr S.A. MILLMAN: I am not sure that I can provide the perfect answer in respect of the Health Services Act. It will not affect or change any of the Premier's existing powers.

Clause put and passed.

Clause 6: Section 7A inserted —

Ms L. METTAM: Can the parliamentary secretary provide examples of successor health service providers to which proposed section 7A will apply?

Mr S.A. MILLMAN: Two examples of decommissioned hospitals that are successor health service providers or former public hospitals are Swan District Hospital and Princess Margaret Hospital for Children.

Ms L. METTAM: What prompted the inclusion of this proposed section?

Mr S.A. MILLMAN: That is a good question, member for Vasse. Proposed section 7A(2) will be inserted to expressly allow the minister to revoke or amend an order made under section 7A(1) of the act. The previous intention was to rely upon the Interpretation Act provisions relating to subsidiary legislation. Parliamentary Counsel's Office now considers that that needs to be expressly provided for.

Clause put and passed.

Clause 7: Section 8 amended —

Ms L. METTAM: I am trying to understand the reasoning behind the deletion of section 8(1) of the act and the insertion of the new definition of "day hospital facility". Will this be a material change; and, if so, why?

Mr S.A. MILLMAN: The member has referred to the definition of "day hospital facility" in section 8(1). The member will be able to identify that one of the material changes is proposed section 8(1)(b), which states that a "day hospital facility" means premises at which —

(i) persons are provided with a health service determined by the Minister under subsection (2); or

(ii) persons will be provided with a health service determined by the Minister under subsection (2);

I am advised that the purpose of this amendment is to clarify the definition of "day hospital facility" to allow for the commissioning of the new hospital facility.

Further to that, I want to go through what clinical commissioning consists of. It is the process of preparing the public health service facility to provide public health services. Clinical commissioning might include the following types of activities: designing models of patient care and workflow; commissioning the information communications technology; establishing the human resources strategy; setting the financial plans and operating budget for the facility; managing stakeholder relations and meeting their expectations; establishing the opening day definition for the facility and the ramp-down and ramp-up procedures for health services to be provided; and managing the orientation and training of staff.

Ms L. METTAM: Can the parliamentary secretary explain the proposed changes to section 8(4) of the act; and, if these are material changes, expand on what those changes will be?

Mr S.A. MILLMAN: It will have the same effect as the provision that we have just talked about. It is for the purpose of clinical commissioning. For further clarification, I am advised that the absence of the clinical commissioning function created legal issues for the clinical commissioning of Perth Children's Hospital. It meant that a convoluted legal arrangement had to be entered into to ensure that the department CEO could take responsibility for the clinical commissioning of the building. This amendment will address the issue that arose in that process.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Section 13 amended —

Ms L. METTAM: This amendment is to delete the definition of "joint arrangement" in section 13(1) of the act and insert it into section 13(2)(b) of the act. I am curious to know why the definition will be deleted when the reference to "joint arrangement" will still remain in the act.

Mr S.A. MILLMAN: The definition of "joint arrangement" will just be moved from that provision into the definitions section. A separate amendment is proposed later in the bill to deal with joint arrangements.

Clause put and passed.

Clause 10 put and passed.

Clause 11: Section 19 amended —

Ms L. METTAM: In line with what I asked previously, can the parliamentary secretary explain the reason behind these proposed changes? Is it just to tidy up the act but not make any material changes?

Mr S.A. MILLMAN: One thing I mentioned in the second reading speech was that part of the motivation for this bill was providing clarity and removing ambiguity from the way the act operates, and responding to the health service environment that we have experienced since the original Health Services Act was introduced in 2016. An important attribute of the Western Australian health system at the moment is the director general of the Department of Health has the role of system manager. New section 19(1A) will make clear the director general of the Department of Health's role as system manager. It will delineate the responsibilities of the director general of the Department of Health as the system manager and the CEOs of each of the health service providers.

Clause put and passed.

Clause 12: Section 20 amended —

Ms L. METTAM: The amendment changes section 20 from "recommending to the Minister the amounts that may be allocated" to health service providers to —

> notifying the Minister of the amounts allocated to a health service provider under a service agreement;

What is the background and basis for this change?

Mr S.A. MILLMAN: Perhaps this subsection was not precisely drafted when the original act was passed and did not necessarily reflect what happens. Subsection 20(1)(c) will be deleted because it specified that the minister had responsibility for allocating funding to health service providers. This did not accurately reflect the operational practice of allocating funding to health service providers and was not consistent with part 5 of the Health Services Act, which gives the department CEO responsibility for allocating funding to the health service providers through service agreements. New subsection 20(1)(b) will correct this issue by providing that the department CEO is responsible for notifying the minister of the amounts allocated to the health service providers under the service agreements in line with the overall allocation that is provided to the Western Australia health system by the government in the annual state budget process.

I will expand on that. The Minister for Health goes to cabinet and makes a submission for the budget allocation. The budget allocation is then made. The Minister for Health tells the director general what the budget allocation will be. The director general then says where the money is going to each of the health service providers.

Ms L. METTAM: I think the parliamentary secretary has answered this. Does this remove any authority or ultimate decision-making from the minister?

Mr S.A. MILLMAN: No; it clarifies it.

Ms L. METTAM: Proposed section 20(1)(g) adds the wording —

> in accordance with regulations (if any) prescribed for this paragraph —

Is the parliamentary secretary considering regulations for this section? If so, can the parliamentary secretary elaborate on what those regulations will address?

Mr S.A. MILLMAN: That is a good question. The rationale for the regulation-making power related to health executive remuneration in new section 20(1)(g) is that this new section will provide that regulations may be made to guide the department CEO's exercise of the function of determining the classification and remuneration of health executive officers. Under this section, regulations may be made to set limitations on or control the exercise of the function by the department CEO. This is designed to ensure further transparency and fairness. The regulations may prescribe criteria on how the department CEO should determine the classification and remuneration of health executive officers. The constraints and limitations have not been included in the act, and that is a deliberate move to allow flexibility in amending the constraints to accommodate future changes in government policy around setting wages. It is currently not anticipated that regulations will be required; however, if regulations are proposed, the Department of Health will consult with the Public Sector Commission and the public sector labour relations division of Department of Mines, Industry Regulation and Safety prior to developing or issuing any regulations.

Ms L. METTAM: Under proposed section 20(1)(na), what performance data and other information will be collected and required to be reported?

Mr S.A. MILLMAN: I will make some general comments and then provide some further clarifying advice. The power to collect information from health service providers in proposed section 20(1)(na) will be inserted to make it explicitly clear that the department CEO has the function of collecting performance data and any other information from health service providers. It is intended that this function, when coupled with the department CEO's power under section 21 to "do anything necessary or convenient for the performance of the Department CEO's functions", puts it beyond doubt that the department CEO can require health service providers to provide any information that is necessary for the department CEO to fulfil their role as system manager. That is not purely health records; it could be extraneous matters beyond purely health records.

Bear with me while I take some further advice on my response.

By way of example, it will include employment-related information. If there is a question about employment issues for the health service provider's employees, that is obviously not medical information, but that is information that the director general will be able to access.

Ms L. METTAM: How would the performance data and information collected be reported?

Mr S.A. Millman: How would it be recorded?

Ms L. METTAM: Reported. Will the information be required to be reported? If so, how will it be reported?

Mr S.A. MILLMAN: It is information that pertains to the operational requirements of the director general in discharging his or her role as the system manager, so it is not germane to the provision of health services. It is related to the employment relationship of employees.

Clause put and passed.

Clause 13: Section 20A inserted —

Ms L. METTAM: Can the parliamentary secretary explain the types of capital works or maintenance works for the public health service?

Mr S.A. Millman: Explain the —

Ms L. METTAM: For section 20A inserted, I am wondering whether the parliamentary secretary can explain the types of capital works or maintenance works the CEO would commission and deliver for the public health facilities.

Mr S.A. MILLMAN: I understand the question. That is a good question. Clinical commissioning is not part of the function of commissioning and delivering capital works and maintenance works. Capital works and maintenance works are the building and engineering works that create an asset, as well as constructing or installing facilities and fixtures associated with and forming an integral part of those works. It encompasses the works required to build the physical building that will become the public health service facility.

Ms L. METTAM: Can the parliamentary secretary give some examples of what types of capital works and maintenance works would be covered under this?

Mr S.A. MILLMAN: I can. The McGowan government's new women's and babies' hospital is a good example of capital works.

Ms L. METTAM: I have a further question. Can the parliamentary secretary provide some examples of maintenance works that could be provided?

Mr S.A. MILLMAN: It would just be general maintenance—painting, repairs and things of that nature.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Section 26 amended —

Ms L. METTAM: I know this is likely to be covered later, but I seek some clarity. Proposed section 26(2)(e)(iii) requires "issuing a notice of financial difficulty to the department CEO under section 66". Why is this part necessary, given it appears to already be required under section 66? I am also wondering whether the parliamentary secretary might be able to deal with the other financial difficulty issue.

Mr S.A. MILLMAN: The short answer is that section 66 contains the power—the operational provision—but proposed amended section 26 will provide the policy framework. The power to inquire into financial difficulties is contained in section 66, but the way in which that power is exercised consistent with the provisions of the act is under the policy framework. The power to draft or produce the policy framework will be contained in proposed section 26.

Ms L. METTAM: I asked a question about financial difficulty earlier. Can we deal with that here?

Mr S.A. MILLMAN: I think the member is alluding to clause 35, relating to financial difficulty, which we will get to later on. With regard to financial management, the explanatory memorandum states that the clause —

> (a) amends paragraph (e) to expressly provide that a policy framework issued on the financial management and business activities of a HSP may:
>
> a. address when a HSP should issue a notice of financial difficulty to the Department CEO under section 66 of the Act …

That is the "when". The clause sets out the things that the policy framework needs to stipulate, which I think will inform the member's questions on clause 35. They are —

> i. the criteria a HSP should consider when assessing financial difficulty;
>
> ii. the information that should be provided to the Department CEO when the notification is made; and
>
> iii. the timing around when a notification should be made.

This will ensure that notices of financial difficulty will be issued by health service providers in only legitimate circumstances, so that people are not too keen to be pessimistic about their financial situation. That is what the guidance will do.

Clause put and passed.

Clauses 16 and 17 put and passed.

Clause 18: Section 35 amended —

Ms L. METTAM: The words "subject to any relevant policy framework" will be inserted into section 35(1). Will these policies be determined by the minister or the CEO, or could it be a combination of both?

Mr S.A. MILLMAN: The question is a good one. The policies will be issued by the director general—that is, the CEO in his or her role as the system manager. Whether there is consultation with the minister or with stakeholders is going to depend on the nature of the policy and the issue the policy is directed to. This is the head of power that will give the system manager the authority to issue the policy. I am happy to take more questions on this clause; it is a good one!

Several members interjected.

Ms L. METTAM: He is loving it!

The parliamentary secretary says the policies will be determined by the CEO. Will there be a requirement for the minister to approve, or can the minister override the policies of the CEO?

Mr S.A. MILLMAN: The minister can direct; that would be my answer.

Ms L. METTAM: If the minister is unhappy with the policy of the CEO, can the policy be overridden? Will there be a requirement for the minister to make an official direction in such a circumstance, and what would be the process for that?

Mr S.A. MILLMAN: I think the answer to the member's question is contained in section 18 of the act, under part 3, division 1, which says it is subject to the general control of the minister. The minister will continue to exercise that power. No change to section 18 is proposed. The department CEO is subject to the general control of the minister, and that remains the same because there will be no change to section 18.

Ms L. METTAM: I seek further clarification. In a circumstance in which the CEO makes a policy direction and the minister overrides it, would notice be given to Parliament? How would that be managed or communicated?

Mr S.A. MILLMAN: It is a difficult question to answer because it presupposes a hypothetical situation that is not countenanced in the act. It is not the sort of thing that would transpire. The director general has the power to make these directions. The director general is vested with the role of system manager. The provision relating to the role of the system manager will clarify what that pertains to. That would be my answer.

Ms L. METTAM: Can the parliamentary secretary not imagine a circumstance in which the policy of the CEO is inconsistent with the policy of the minister? I am just seeking clarification on that point.

Mr S.A. MILLMAN: I am cognisant of the member's question, but the advice that I have is that we are not aware of that circumstance ever having transpired.

Ms L. METTAM: Clause 18(3) proposes to amend section 35(4)(b) such that the service provider must ensure that the commercial activity is likely to be of benefit to the state, rather than the WA health system, which is required in the existing legislation. Can the parliamentary secretary give an example of an activity allowed under this section that would be of benefit to the state but not necessarily to the WA health system, requiring this amendment to be made?

Debate interrupted, pursuant to standing orders.

[Continued on page 5329.]

VISITORS — DEANMORE AND CARRAMAR PRIMARY SCHOOLS

Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [2.00 pm]: Members, while the advisers are exiting, I would like to acknowledge some very special guests in my gallery. On behalf of the member for Scarborough, I acknowledge the student leaders, principal and staff of Deanmore Primary School. Welcome to my gallery today.

On behalf of the member for Wanneroo, I would like to also acknowledge the principal, year 6 teacher and school leaders of Carramar Primary School. Welcome to you as well.

BUSINESS OF THE HOUSE — DINNER SUSPENSION

Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [2.01 pm]: I would also like to advise members that as the house is required to sit beyond 7.00 pm, there will be a dinner break between 6.00 and 7.00 pm.

QUESTIONS WITHOUT NOTICE

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

680. Ms M.J. DAVIES to the Premier:

I refer to the *Four Corners* exposé, "Locking Up Kids: Australia's failure to protect children in detention", which aired last night. Why has it taken the Premier and his government so long to concede that there is a problem with youth justice in Western Australia when experts like retired Western Australian judge Denis Reynolds; former Inspector of Custodial Services Neil Morgan; President of the Children's Court, Hylton Quail; former police commissioners and the Telethon Kids Institute, have been raising these concerns for some months, and in some cases for years, only to be ignored?

Mr M. McGOWAN replied:

I watched the program last night. Obviously, we have had a look at some of the measures that staff sometimes use to restrain people and we have requested that they be changed and that alternative measures, when required, are used. That is one of the things we learnt from last night's episode of *Four Corners*. Having said that, obviously we have a system at Banksia Hill Detention Centre that provides educational, welfare, psychological, psychiatric, recreational and musical services to the detainees there. With regard to the detainees who were moved to unit 18, they were moved there because of behavioural issues—in particular, assaulting staff. Some of them have assaulted staff on literally scores of occasions and have ruined their cells, so we had to move them elsewhere. That is not unprecedented; the last government did exactly the same thing. When the Leader of the Opposition was a minister, her government did exactly the same thing.

That is the reality of what we are dealing with. The youth custodial officers at Banksia Hill have to do a difficult job. They are trained to deal with people in crisis and a range of other things, and I would like to thank them and the other staff at Banksia Hill for the work that they do. That workforce has to deal with difficult situations. We are spending $25 million on upgrading Banksia Hill, including an Aboriginal services unit, which is a $3 million to $4 million commitment that we announced in the last budget. On top of that, there will also be a rebuild of the crisis care unit and a strengthening of the intensive supervision units to make them less able to be damaged by detainees. All that work is ongoing.

This week or next week, at some point in time, I will meet with some of the individuals who have been public about these matters to hear whether they have any practical or achievable ways to improve the system—practical or achievable.

I heard some people on the program last night, including the journalist, say that detention should not be happening. A lot of the juveniles who are in detention are there because of serious sexual assaults, serious assaults on people, arson offences and armed robbery. Some people advocate that there should not be consequences for that; I do not agree with that.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

681. Ms M.J. DAVIES to the Premier:

I have a supplementary question. Given that the concerns that were raised in the program last night have been raised for some time and have been ignored, how can the community have faith in the minister responsible for delivering the improvements required, and will the Premier move him on and install someone with fresh eyes and a commitment to the portfolio?

Several members interjected.

The SPEAKER: Order, please!

Mr M. McGOWAN replied:

The minister is doing very good job in the corrective services portfolio. Whoever the minister is, under any government, in any state in Australia, the corrective services portfolio will always have issues, because we are dealing

with people who often have a range of mental health and social issues going on. Also, they are incarcerated, and a great many of them do not want to be incarcerated, but they are incarcerated because of things that have occurred and things that they have done. Going into Banksia Hill is an option of last resort. In the criminal justice system today we have 1 200 young people under the age of 18 years subject to orders of the court. Of those 1 200, 95 are in custody; the rest are managed in the community under supervision orders, welfare orders, community work orders and the like. Whether they are at home with their families or with their grandparents or foster carers, or whoever it might be, they are being managed in the community through a range of measures that are in place. The 95 who have gone into detention have generally—almost exclusively—committed scores of offences. Normally the offence is aggravated burglary, in which they break into people's houses at night while people are asleep in bed.

I actually think the victims count; we need to think about this. There needs to be a consequence for doing that. They cannot just break into someone's house scores of times without there being any consequence. I think there needs to be a consequence. The consequence issued by the court is often a form of detention. In detention, they receive all those services to try to get them back into better forms of behaviour and hopefully out of the cycle of offending. We have also put in place a range of measures, including the Target 120 program and a range of other measures across the child protection portfolio, to try to get young people back on track and prevent them from going into a life of misbehaviour or crime.

When they are in custody, as those 95 are, there is a whole range of programs, including bands. They can play in a band and actually get musical training. They can play football. There are teachers and careers advisers and all those sorts of things. If they are bored, every single cell has a Nintendo unit and a TV. If they are bored, they can do those things. There are management tools for helping us to manage a group of young people of whom many have had dysfunctional and difficult lives. There are ways of helping us to manage them and hopefully get them back onto a better pathway in life. That is what we all want to achieve. I saw last night on that program the idea that there be no detention for multiple serious offences, and I just do not agree with that. If that is what the Leader of the Opposition is arguing, I disagree with her.

NURSES — INDUSTRIAL ACTION

682. Ms C.M. ROWE to the Minister for Health:

I refer to the McGowan government's commitment to supporting healthcare workers across our state. Can the minister update the house on the progress of the negotiations between the state government and the Australian Nursing Federation in delivering historic nurse-to-patient ratios and a fair and generous wages offer?

Ms A. SANDERSON replied:

I thank the member for Belmont for the question. I would also like to take the opportunity to personally thank the WA healthcare workforce for its critical role throughout our state, supporting our community, and particularly for its lifesaving work during the pandemic. The whole system has worked together tremendously to support our community through COVID. The state government has been working closely with the Australian Nursing Federation for some time now, including more recently in the Industrial Relations Commission. As those negotiations continued, the government asked the ANF to consider calling off its industrial action so that we could come to an agreement for nurses.

I am pleased to update the house that this morning agreement was reached with the ANF to call off all industrial action and to present the state government's final offer to its membership. This is a new offer, presented this morning and agreed to in principle by the ANF. This is a very good offer. It is an offer that provides a detailed commitment to nurse and midwife-to-patient ratios, including babies, to ensure that midwives can manage their workloads. It is an offer that provides for a responsible and reasonable wages offer, and allowances for experienced nurses to support them in the training of new graduates and, importantly, the $3 000 cost-of-living payment.

These allowances for our more senior nurses are an important initiative that recognises the mentoring role and the greater responsibilities of experienced nurses and midwives as we bring new graduates into our system. This offer will support WA Health to grow our own and attract and retain experienced nursing staff into our system. This pay offer is part of the state's wages policy and is one of the most generous in the nation. The allowances, wages and conditions for Western Australian nurses are now very competitive with other states and territories. I want to thank the Australian Nursing Federation and the Department of Health for their work on coming to this point in the negotiations. I look forward to the membership ballot outcome and the registration of the new agreement.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

683. Ms M.J. DAVIES to the Premier:

I again refer to the damning story about Banksia Hill Detention Centre and youth justice in Western Australia that aired on ABC's *Four Corners* last night and the reports that up to September this year there have been 285 self-harm incidents and 20 attempted suicides by detainees. Will the government immediately instigate an independent inquiry into Western Australia's youth justice system and treatment of juveniles in detention; and, if not, why not?

Mr M. McGOWAN replied:

I will be convening a meeting with a range of stakeholders next week to hear any ideas they might have on practical and achievable measures we can put in place to improve the system. Obviously, within any juvenile or other detention facility we will have a range of incidents involving people who are incarcerated and who do not want to be incarcerated. That is natural. That is why we have a range of support and welfare services in place. Psychologists and psychiatrists visit Banksia Hill to provide that support. There are also a range of other welfare and counselling services. There are staff who are trained in working with young people. All those things go on currently. That is the regime that is in place.

As I outlined to the Leader of the Opposition in the question she asked earlier, some of the people who are there are there because they raped people or broke into someone's house and repeatedly assaulted someone in their home or because they committed arson and burnt down houses. We need an incarceration system for the worst of offences. We have to. All those services are there for people. The reason that some people have been moved into another unit is that they destroyed their cells. We cannot keep them there because there is nowhere to keep them. Somehow they managed to destroy them. It is really quite remarkable how they did it, but they did. When they are released into the broader prison population, they disrupt 90 per cent of the young people there who want to partake in recreational, educational and other opportunities. Some of the detainees who moved into unit 18 assaulted the other detainees when they were engaged in recreational activities or were in the yard. Some of them have committed scores of assaults on youth custodial officers. What are we to do? Are we to just say there is no consequence for that and release them into the community? If someone has a magical solution to that, please tell me, because all I hear is people saying, "Don't detain them." If we do not detain people in that environment for committing those sorts of offences, all we will have is more people in the broader community broken into, assaulted, harmed and that sort of thing, so we have to try to put in place measures to deal with people and help them get back on track, which is exactly what we are doing.

I note the minister advises—I have heard it a number of times—that the number of young people in detention has come down significantly. We have actually reduced the number because we put in place the Target 120 measures in the community and a lot of additional community welfare measures. We even backfilled the funding for the police and community youth centres. We are putting in place an on-country facility in the Kimberley so that the young people in the Kimberley, Pilbara and perhaps the goldfields will be able to go to a pastoral station for supervised attention and care, as opposed to coming to Banksia Hill. We are putting in place those measures. They do not get any attention because people just want to yell from the rooftops without taking into account what is occurring in the system to improve it for the young people. I want to say this to the Leader of the Opposition: we will continue to have a system that tries to get young people back on track, but we are also going to protect the public as best we can because innocent people deserve protection.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

684. Ms M.J. DAVIES to the Premier:

I have a supplementary question. Is the Premier ruling out an open and transparent independent inquiry in favour of private meetings behind closed doors with government?

Mr M. McGOWAN replied:

I am not going to have another talkfest. The Leader of the Opposition's solution is more talkfests and spending millions of dollars or whatever it might be on royal commissions. That does not solve anything. We actually have a facility that has the right programs in place, and we are spending $25 million on it.

Ms M.J. Davies: They are working so well!

Mr M. McGOWAN: Does the Leader of the Opposition want to know what her government did when she was in office? The government moved 70 —

An opposition member interjected.

The SPEAKER: Order, please!

Mr M. McGOWAN: Because the Leader of the Opposition's approach is so hypocritical, I will point it out. When the Leader of the Opposition was a minister and her government was in office, the government moved 70 detainees from Banksia to Hakea Prison. That is what the former department did.

Ms M.J. Davies: Did you agree with it then?

Mr M. McGOWAN: We understood that it was required in the circumstances because the people involved had destroyed their cells and their accommodation at Banksia. That is what the former government did back when the Leader of the Opposition was in office. That was required because there were no other options because the former government closed Rangeview Remand Centre in 2010.

Ms M.J. Davies: You have been in government for six years and people are telling you it's broken.

The SPEAKER: Order, please!

Mr M. McGOWAN: I am trying to explain a bit of history to the Leader of the Opposition. I have not raised this before and attacked her. We did not attack the then government, because it was obvious that the government had to manage a system. What did the government do in 2013? It moved 70 detainees into Hakea Prison for six months because the —

Dr D.J. Honey interjected.

Mr M. McGOWAN: Honestly! The reality is that I am not up for more talkfests or royal commissions and spending millions of dollars on those sorts of things. I am up for doing two things: one is having a centre that provides the rehabilitation services and attention and care for detainees when they need it; and the second, just as importantly, is protecting the public.

CORONAVIRUS — STATE OF EMERGENCY — TRANSITION

685. Mr S.N. AUBREY to the Premier:

I would like to take a moment to acknowledge the student leaders from Deanmore Primary School in the gallery today and thank them for their leadership and service to the Scarborough community.

I refer to Western Australia's response to the COVID-19 pandemic that has delivered some of the best health and economic outcomes in the world. Can the Premier update the house on WA's transition out of the state of emergency and outline how the government is managing the current stage of the pandemic?

Mr M. McGOWAN replied:

I thank the member for Scarborough for the question.

On 4 November, we transitioned out of the state of emergency that had been in place for two and a half years, and the public health state of emergency was also revoked. However, COVID remains in the community and I understand there are some concerns among the public. We urge members of the public to please wear a mask, should they wish, and make sure to stay home if they are unwell. People should not go to work if they are sick. This will protect other people and themselves. I note in the community that older people in particular are wearing masks. I think that is entirely admirable and appropriate should they choose to do so. At this time, we have no advice that we need to reinstate mask wearing, and I do not expect we will. It is not part of our plans or agenda. I do not think it will happen, but obviously we cannot rule anything out with COVID because it is completely unpredictable.

Going forward, we will commission an independent review into COVID, as was called for by many people, so we can look at what lessons were learnt and at what should happen in five, 10, 15 or 100 years if there is another pandemic so people can deal with a future pandemic. We want to make sure there is at least some sort of road map for future governments and people to deal with pandemics based on the experience of the last one. Members will recall that on 16 March 2020, we were preparing for the worst, including tens of thousands of deaths, mass unemployment and an economy that was heading for what was potentially the same result as the Great Depression of 1929. That was what we were advised, at the national level, was going to happen. Fortunately, due to a range of things both nationally and at the state level, we avoided all that. Because of our public health measures, border controls, vaccinations, and strong testing and isolation requirements, we managed to massively reduce hospitalisations and save lives. It is because of all those things and a range of other measures that we managed to protect the economy and ended up with the strongest health and economic outcomes in the world. That is a credit to all Western Australians for doing the right thing during a difficult period. In closing, I will say that we have the temporary COVID laws available to us—to invoke if necessary—to put in place measures again should they be required. I cannot foresee that is required at this point. We are not planning for it. We do not expect we will need to, but at least we have the backup should we need it.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

686. Dr D.J. HONEY to the Minister for Corrective Services:

I refer to the minister's comments in the *Four Corners* investigation broadcast last night regarding moving young offenders to cells at Casuarina maximum-security adult prison, and I quote —

> … we've been able to get a much better environment for everybody, including the youth offenders themselves.

(1) After the train wreck of the youth justice system was laid bare in last night's program, does the minister stand by his comments?

(2) In an effort to reinstate community trust in the system, will the minister resign?

Mr W.J. JOHNSTON replied:

(1)–(2) There are indeed many views —

Several members interjected.

The SPEAKER: Member for Wanneroo and others! I am waiting for quiet, then I will give the minister the call.

Mr W.J. JOHNSTON: Thank you very much.

There are many views about the nature of detention at Banksia Hill Detention Centre. I will quote something about people's views of detention at Banksia Hill —

> A young boy told me a few weeks ago that juvie is so good—good food, good beds, good Xbox.

Member, who was that? It was the member for North West Central in her inaugural speech. The National Party and the Liberal Party are schizophrenic on this issue. The problem is that members opposite want to walk both sides of the street.

I note that there has not been an endorsement of my decision to review the Young Offenders Act 1994, which is the first time it will be reviewed in 22 years. If you want to make a difference about the structure of the youth justice system in Western Australia, you have to start at the heart of the rules. We have to ask: is the community being served by the current arrangements for the law in this state? I do not know anybody in the youth justice area who believes that the Young Offenders Act 1994 is contemporary. What have I done? I have launched a review of the Young Offenders Act, which is massively overdue. What am I doing at Banksia Hill? We are spending the money to create a therapeutic environment for those in crisis, while, at the same time, hardening a small number of cells for that very, very small number of detainees who have been acting against the interests of the community.

It used to be that the Liberal Party supported protecting the community. It supported protecting workers in the youth justice system. Of course we want to get good outcomes for youth offenders, but I do not apologise for saying that the three issues are: protect the community first, protect the workforce second, and provide a therapeutic environment for young offenders as best we can. The idea that there is a magic wand that can be waved around to solve the problems of the youth justice system is simply not correct. Let us understand that one of the big reasons we have a challenge is that the Liberal Party chose to close Rangeview Remand Centre. That means there is only one juvenile detention facility in Western Australia. Do not forget that in 2021, when I became minister, the Inspector of Custodial Services said that Banksia Hill was in the best situation it had been in for a decade. Do not forget that. It would be lovely to have a second juvenile detention facility. But, member, do you want it in your electorate? Tell me which site it is that the Liberal Party —

Several members interjected.

Mr W.J. JOHNSTON: You tell me where the Liberal Party plans to put a juvenile detention facility. You tell me that. When I talked to the people of Broome about selecting a site, the Liberal Party opposed both sites. When Geoff Gallop was Premier and the Labor Party chose the Boronia site, the Liberal Party opposed it. You tell me where you want the second juvenile detention facility.

Several members interjected.

The SPEAKER: Attorney General, that was disorderly, as it was also from you, minister.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

687. Dr D.J. HONEY to the Minister for Corrective Services:

I have a supplementary question. Practices at Banksia Hill Detention Centre have been likened to child abuse and deemed unlawful. The centre is at risk of being in contempt of court. Does the minister stand by his comments that he has achieved a much better environment for everybody?

Mr W.J. JOHNSTON replied:

I will remind the member of what Terry Redman said in the media on 8 October 2011 —

> Corrective Services Minister Terry Redman said the call to shut juvenile detention centres was "nonsense in the extreme".
>
> Mr Redman said the centres were needed to ensure the safety of the general community by isolating violent offenders.
>
> He rejected claims of excessive violence within the centres.

In 2012, the Office of the Inspector of Custodial Services tabled its seventy-sixth report, which detailed a series of unreasonable practices by the Liberal–National government in that detention centre. Again, I remind the member that the Office of the Inspector of Custodial Services in April last year tabled a report detailing that Banksia Hill was in good condition. On a number of occasions, I have said why that ceased to be the case. The idea that you can just come in here, invent nonsense, attack the staff of the centre, tell them that you do not support them —

Several members interjected.

Mr W.J. JOHNSTON: You say that their safety is not important; I am not going to have that.

SCREEN PRODUCTION FACILITY

688. Mr S.A. MILLMAN to the Minister for Culture and the Arts:

I refer to the McGowan Labor government's efforts to diversify the economy through its unprecedented investment in growing Western Australia's film and television industry.

(1) Can the minister update the house on this government's commitment to delivering a new screen production facility for Western Australia?

(2) Can the minister outline to the house what this would mean for our local economy, particularly jobs in our creative arts sector?

Mr D.A. TEMPLEMAN replied:

I thank the member for Mount Lawley.

(1)–(2) I was very pleased to be with the Premier, the Minister for Planning and the member for Mount Lawley in his crisp suit at the Edith Cowan University site to announce last week that we dedicated the site for the new film facility.

An unprecedented amount of money has been delivered for this project. Of course, it is a huge stamp of not only approval for but also faith in an industry that is a very important employer and job creator. It will be a massive injection for creative industries in Western Australia. The site is just north of Morley, adjacent to a Metronet station.

Ms A. Sanderson: An excellent location!

Mr D.A. TEMPLEMAN: The "Morleywood" site! It is important for members to understand one of the great advantages of this greenfields site is that, traditionally, these places grow over time. Although we will be delivering a high-quality facility, it will allow for expansion in the future. Around Australia and the world, the demand for content and productions is ever increasing. We believe that not only do we have some of the best creatives on the planet here in Western Australia, but also building a facility such as this creates a pipeline of work so that our creatives who grow up here, are trained here and hone their skills here, can stay here. That is the whole point. The site will include sound stages, screen production facilities, production offices, art departments, wardrobe facilities, a theatrette, workshops, a back lot, set and stage construction facilities, and storage. We are delivering the final part of the jigsaw puzzle. We know that some magnificent films, documentaries and series have already been produced throughout Western Australia, but this part of the jigsaw puzzle was missing. Who is delivering it? The McGowan government is delivering it, because it believes very much in the creative industries in Western Australia and that they are an important part of a diversified economy. That is what this will do.

I encourage members, if they get the opportunity, to go to a set of a film being made in regional Western Australia, like *Blueback*, which is about to be released and was produced down in the great southern. If members go to a film set, they will see literally hundreds of people, all skilled in a whole range of ways, involved in making that film. It is a highly labour-intensive business. We are bringing the last bit of the jigsaw puzzle here to Western Australia through our film production facility, because we believe in the creative industries and we are proud of the immense history of workers in that industry who were born and bred here and have made their mark worldwide in their field. The facility is expected to open in early 2025, with construction, hopefully, starting late next year. If the young kids who were in the Speaker's gallery before aspire to a career in the creative industries, as a performer or as a person involved in creating sets or technical aspects, gaming or whatever it might be, they will be able to be involved in filming in the facility that we are building north of Morley. I am very excited about this. I love this; this is great! The McGowan government is very proud to be delivering this.

Ms R. Saffioti: It is actually Malaga.

Mr D.A. TEMPLEMAN: At Malaga, is it? It will be delivered in Malaga and Morley. We are very proud of this because we have been waiting a long time for it. It is a Labor government that is going to deliver it. It is a Labor government that is investing a record, unprecedented amount of money in this project, which will mean that films and studio productions can be made here. We should be very proud that this great part of our creative industries is being delivered by a Labor government.

Government members: Hear, hear!

The SPEAKER: Minister for Culture and the Arts, I look forward to a cameo appearance by you there at some point in the future.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

689. Dr D.J. HONEY to the Minister for Corrective Services:

I refer to the minister's comments on the *Four Corners* piece last night, "Locking Up Kids", in which he admitted, "No, I am not aware of what folding up is" and "No, I am not aware of a figure 4 because I'm the minister."

Why has the minister chosen to remain ignorant of a practice that is known to be dangerous and can cause suffocation and death?

Mr W.J. JOHNSTON replied:

I just draw the attention of the Leader of the Liberal Party to either the Young Offenders Act or the Public Sector Management Act; they do not allow me to be involved directly in the administration of any agency.

Several members interjected.

The SPEAKER: Order, please!

Mr W.J. JOHNSTON: Given that the procedure that the member is talking about has been used —

Several members interjected.

The SPEAKER: Sorry, the question has been asked and the minister is responding. There will be the opportunity for a supplementary if I do not get continual interjections from several members opposite.

Mr W.J. JOHNSTON: Given that the procedure the member referred to has been used in the corrective services function for many years, including the entire time that the Liberal and National Parties were in government, I would have thought that there would have been plenty of opportunities for them to do something about that. I remind the member that the shadow Minister for Corrective Services was in the cabinet that moved 70 young offenders to Hakea Prison.

Mr M. McGowan: Seven zero.

Mr W.J. JOHNSTON: Seven zero. At the moment, there are fewer than 10 people at unit 18. Unit 18 is the only facility in Western Australia that could take young offenders, other than Banksia Hill. No other location in the state is available to take those young offenders. That is why we made the decision to move those young offenders. We did not move them to Hakea; we moved them to a separate unit that has no contact with prisoners in the adult estate.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

690. Dr D.J. HONEY to the Minister for Corrective Services:

I have a supplementary question. How was the minister unaware of a practice that has now been banned in other jurisdictions and is allowed to be employed in his system?

Mr W.J. JOHNSTON replied:

No-one has ever asked me to review that matter. Not a single advocate group has ever raised that issue with me—not once; not on a single occasion. The procedures that are used by the agency are used by the agency. They are not new. I was never asked to give, nor did I ever give, approval for that procedure to be used because it was already permitted to be used by the agency. As I say, not a single advocate has ever asked me, even today, to take action. That is why I am pleased that the Premier has taken this action and asked that this procedure cease to be.

Ms M.J. Davies interjected.

Mr W.J. JOHNSTON: The first occasion we became aware of it was on Channel Seven on Sunday night. If somebody—anybody—had raised it with me, I would have taken action. As I say, no-one ever asked for my approval nor did I ever give my approval for the procedure to be used, because it was already authorised many, many years ago when the Liberal and National Parties were in government. Let me make it clear to the Leader of the Opposition, who has been interjecting: you were a minister in the government that allowed it to occur.

Ms M.J. Davies: You are the minister now.

Mr W.J. JOHNSTON: That is right. The difference is that we are taking action and you never did!

METRONET — ELLENBROOK RAIL LINE

691. Ms M.J. HAMMAT to the Minister for Transport:

I refer to the McGowan Labor government's record investment in job-creating, economy-driving infrastructure. Can the minister update the house on the delivery of the Metronet Morley–Ellenbrook line and outline how this new rail line will deliver more economic opportunities in our north-eastern suburbs?

Ms R. SAFFIOTI replied:

Every week, there are major milestones being delivered on the Morley–Ellenbrook line. I was out there on Friday last week to take another tour of the project to see the work that is underway. There is significant work underway at the Ellenbrook train station; the Whiteman Park train station; the Malaga train station, near where the film studio will be built, member for Mandurah; the Morley train station; and, of course, the Noranda train station. Work is well underway. The southern dive structure is nearly complete and the northern one is also near completion. The best part of this project is that it not only will deliver a rail line to Ellenbrook, which, of course, the Liberal and National Parties promised twice and failed to deliver twice to the people there, but also all the other benefits that come from this rail line, such as the activation of new precincts and new housing opportunities. I can go through them.

If we start at the new station at Morley, the new skate park has been delivered, which the members for Morley and Maylands were out there looking at. That is a community benefit from the new rail line that is being built there. There will be a new car park and new station in that vicinity. The Broun Avenue Bridge will be expanded and will have a new bus interchange to allow for connectivity, both east and west, on Tonkin Highway. Moving north to Noranda, there will be a brand new station. In Malaga, there will be a brand new train station and a new carpark to service people in not only Ballajura but also the electorates of the members for Mirrabooka and Landsdale, in Alexander Heights, Mirrabooka and Girrawheen. The new Malaga train station will create new housing opportunities and, of course, has allowed us to find the site for the new film studio. As the Minister for Culture and the Arts outlined, the studio will have the capacity to expand. Because it will be built near the Malaga commercial precinct, there will be the ability for other industries that support the film and television industry to set up business in that area. This is a very exciting project at Malaga train station, member for Mandurah.

Mr D.A. Templeman: "Malagawood"!

Ms R. SAFFIOTI: "Malagawood"!

Then we go to Whiteman Park. The Whiteman Park master plan has just received an award from the Planning Institute of Australia for its design up to Ellenbrook. Of course, one of the developments around Ellenbrook station is a new youth centre, and other new prospects will be happening around there.

As members can see, this will not be just a train line to Ellenbrook; it will also provide the ability to create new opportunities, such as a new film studio, new housing precincts, new youth centres and new activities for young people through skate parks. It will be a multifunctional train line that will deliver benefits not only to connect from A to B, but also to encourage activity throughout the north-east corridor.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

692. Ms M.J. DAVIES to the Premier:

I refer to findings in the *Four Corners* program "Locking Up Kids" that suggest that Banksia Hill Detention Centre has been plagued with dysfunction and riots, with conditions worsening in the last 12 months, noting that the centre is, at times, dangerously understaffed, a fact reinforced by findings of the Inspector of Custodial Services. I also refer to the Premier's assertion on ABC Perth this morning that it is working incredibly well and that Banksia Hill is working effectively. Does he stand by those comments?

Mr M. McGOWAN replied:

Yes, I do. We have employed an additional 68 staff. Another 19 are undergoing training currently. They are being rolled out into Banksia Hill as we speak to ensure that it can be managed effectively. What has happened is this: 95 young people are in detention there. A lot of them, as I said before, have had very difficult upbringings. They have had potentially dysfunctional home lives. Some of them have some mental health issues. In order to go to Banksia Hill, as I will outline to the Leader of the Opposition again, they have normally been through the justice system on a lot of occasions. Break and enters, aggravated burglaries, stealing cars and assaulting other people are the sorts of offences. Sometimes it is arson and sometimes it is sexual assault; sometimes it is worse. So they end up in Banksia Hill. Of the cohort of young people who are there at the moment, 95 or thereabouts have been sentenced to be detained for any period of time. Of those 95, 85 are participating in educational programs, recreational programs, music programs and welfare and other programs. Roughly 90 per cent are participating effectively, but 10 have not been. Those 10 have been assaulting guards. They have assaulted the youth custodial officers scores of times. Sometimes when they have been released into the recreation areas, they have assaulted other detainees. Then they have destroyed their cells, so we have had to find somewhere else for them while we fix their cells, at the minimum. The only place that is available to us to place them is the so-called unit 18, which is separate from adult prisoners. They cannot see the adult prisoners. It is staffed and it provides a range of services similar to those available at Banksia Hill, but they need to be more carefully managed, because when they are released from their cells into the yard, particularly if they are in a group, they may well attack a youth custodial officer again or try to escape. It needs more careful management. The 85 who are in Banksia are participating in all the programs and it is running well.

I think that is a statement of the obvious. I know there is a lot of gnashing of teeth and a lot of people do not want detention. They do not want detention—full stop. I saw the journalist say at the start of last night's program that there should not be detention. I saw her say it at the start. That is the position she started from. When the program was created, that is what it said. If someone sexually assaults another person, commits multiple aggravated burglaries in which they beat people up in their homes, burns down someone's house or steals a car and drives it at high speed at police officers, I just do not agree with the idea that there cannot be a consequence. Members opposite are arguing this over and again. They need to understand what we are dealing with. When they were in office, they had a bit more sense about these things. They moved 70—not 10—into Hakea Prison, which had asbestos. That is what they did when they were in office. We did not attack them over it, because the cells were destroyed. What other option did they have? It is incredible that members opposite take up this argument in this way.

We are doing our best in a difficult situation. A lot of people out there are very idealistic, and good on them, but we have to deal with the actual practicalities of dealing with a group of people who have caused a lot of disruption

and a lot of pain. I will tell members another example. Danny Hodgson was punched at Perth train station by a 15-year-old and suffered brain damage. According to the people I saw on the program last night, that perpetrator should not be incarcerated. I disagree with that.

BANKSIA HILL DETENTION CENTRE — *FOUR CORNERS* REPORT

693. Ms M.J. DAVIES to the Premier:

I have a supplementary question. If Banksia Hill Detention Centre is working incredibly well and effectively, why has the Premier announced meetings with experts who have voiced their concerns, and stepped in to ban the use of folding in Banksia Hill, a practice that is banned in other states?

Mr M. McGOWAN replied:

If there are any other good ideas out there about how we can improve things, I will accept them. If the Leader of the Opposition has some ideas, she can tell us. I would be interested if she has a single idea. Anything whatsoever? I get crickets from the opposition. If people out there have an idea that can work, of course we will look at it. Why would we not? People have been vocal in public about how the system is not right, so I want to hear what their alternatives are. What you find in political life, particularly when in government, is that a lot of people criticise and say that you should not do this or that, but what are their alternatives, apart from what I saw last night, when the journalist led the program by saying that there should not be any detention whatsoever? That is not an option we are going with. We actually care about victims. I care about the Danny Hodgsons. I care about the people whose homes are broken into and who are assaulted in their beds. I care about the police officers who have cars driven at them. I care about the women who are raped. We have to actually take into account their interests, too.

PUBLIC SECTOR WAGES POLICY

694. Ms C.M. COLLINS to the Minister for Industrial Relations:

I refer to the state government's responsible and fair wages policy that will deliver a $3 000 cost-of-living payment and bigger pay rises for our lowest paid workers. Can the minister update the house on the agreements that have been reached so far under the state government's wages policy and outline what this will mean to those workers?

Mr W.J. JOHNSTON replied:

Thank you very much, member.

On 20 September this year, the McGowan government announced a revised wages policy in light of the prevailing cost-of-living pressures. Public sector employees earning below $104 000 per annum can now receive a $60 a week increase, and those who earn above that will get a three per cent per annum increase. Aside from wage increases, there is also a $3 000 one-off cost-of-living payment, which was increased from the original $2 500, and will be paid pro rata for casual and part-time employees. This policy also allows conditions to be negotiated to support the government's priorities and they can be funded through existing arrangements. The policy has now been widely accepted, with over half of public sector employees already covered by agreements. We have agreement with 28 700 teachers and principals, 22 700 health professionals, over 12 000 education assistants, just under 6 000 doctors, almost 5 000 cleaners and gardeners, nearly 5 000 hospital support workers, over 2 500 enrolled nurses, 2 500 TAFE lecturers and several other occupational groups, totalling 85 000 employees who will receive this extra cash injection.

The SPEAKER: Excuse me, minister. In the gallery, you are not permitted to take photos of the chamber from there.

Mr W.J. JOHNSTON: Union ballots are quite interesting. The State School Teachers' Union of WA had 70 per cent support, the Health Services Union had 80 per cent support and the United Workers Union had between 97 and 98.7 per cent support depending on the classification. It is clear that the government's policy is working, and we will continue to negotiate with unions in good faith. I want to particularly congratulate the Minister for Health and her department and the officials at the Department of Mines, Industry Regulation and Safety who have been working through negotiations with the nurses' union. I am very pleased to hear that the outlines of an agreement will be put to members and that now there is a pathway forward. The threat of industrial action disrupting our health system is no longer in front of us. The workforce has a pathway for those 37 000 public sector nurses to receive their wage rise in short order once all the paperwork, if you like, with the union is complete. It just goes to show the enormous support that our wages policy has received. I look forward to a couple of other unions that we are in deep negotiations with also joining in the wave of support.

CRIME AND ANTISOCIAL BEHAVIOUR — CARNARVON

695. Ms M. BEARD to the Minister for Police:

I refer to the minister's response to a question without notice earlier this year when he stated that "there is not a series of reports of children wandering the streets and reports of truancy on a daily basis and that there is not a crime wave" in Carnarvon. Sadly, crime is a constant presence in all communities and it is no different in Western Australia. After watching *Four Corners* last night, is the minister now aware that children are wandering the streets and at risk in Carnarvon in the north of the state, and will the minister acknowledge that this is a significant problem for police and the communities?

Mr P. PAPALIA replied:

I am not really sure where to go with that question. I do not think that Carnarvon was in the story last night. I did watch it and I do not recall it being in the story. There were some references to Broome and Derby.

Several members interjected.

The SPEAKER: Order, please! The question has been asked and the minister is answering it.

Mr P. PAPALIA: They were dated. They were some months ago, and I can report that Operation Regional Shield has been active since the start of the year in both those towns and, on occasion, in Carnarvon.

I can respond to police matters and issues related to policing. I can give the member an answer if she has a question about policing. I do not know why the Nationals WA continues to attack the Western Australia Police Force and criticise its performance. I think it is doing an outstanding job. The Western Australia Police Force performed exceptionally well during the COVID pandemic. It kept us safe and delivered world-class policing at the same time. It did that right across the state and to a level the likes of which is equal to, if not in excess of, anywhere in the world. We should be proud of the police force and thankful for its contribution. I am not sure what the member is actually asking.

CRIME AND ANTISOCIAL BEHAVIOUR — CARNARVON

696. Ms M. BEARD to the Minister for Police:

I have a supplementary question. What is the minister putting in place to support his officers who are doing a great job but are bearing the brunt of criminal and antisocial behaviour due to the failure of his ministerial colleagues in the Communities and Corrective Services spaces?

Ms S. Winton interjected.

The SPEAKER: Member for Wanneroo, we do not need a comment from you on every question.

Mr P. PAPALIA replied:

I am sorry, Madam Speaker, but it is difficult to identify exactly what the member is wanting of me. She says that police are doing a good job. I totally agree. If the member has a question about my portfolio that I might be able to respond to, I would be happy to do that. But I will take the opportunity to re-read into *Hansard* her contribution about juvenile detention in Western Australia that the Minister for Corrective Services brought to the house's attention only today. The member said —

> A young boy told me a few weeks ago that juvie is so good—good food, good beds, good Xbox.

I assume that the member was suggesting that juvenile detention is too soft or too easy. I assume that the member is saying —

Several members interjected.

The SPEAKER: Order, please!

Mr P. PAPALIA: Is the member's criticism of the Minister for Corrective Services that he is too soft on the juveniles at Banksia Hill Detention Centre? If that is the case, I do not know; I would question that. The Minister for Corrective Services is doing a difficult job. I am very familiar with that portfolio, having had it as a shadow portfolio for many years. I will repeat the observation made by the Premier: when members opposite were in government, they shut Rangeview Remand Centre —

Several members interjected.

The SPEAKER: Order, please!

Mr P. PAPALIA: That had the single biggest negative impact on juvenile justice in the state of Western Australia in probably the last 50 years. Members opposite shut Rangeview. They consigned all juvenile detainees to one facility. We have inherited that. I feel sorry for the minister having to deal with it. He is doing a great job under difficult circumstances.

The SPEAKER: That concludes question time.

YOUTH DETENTION — INQUIRY

Matter of Public Interest

THE SPEAKER (Mrs M.H. Roberts) [2.54 pm]: Members, today I received within the prescribed time a letter from the Leader of the Opposition, in the following terms —

> Dear Speaker
>
> Matter of Public Interest

I give notice that I will move as a Matter of Public Interest:

That this House calls on the Premier to admit the catastrophic failure in the youth justice system in Western Australia and immediately establish an independent inquiry into youth justice, detention, and rehabilitation services in the State.

The matter appears to me to be in order. Is there at least five members who will stand in support of the motion being discussed?

[In compliance with standing orders, at least five members rose in their places.]

The SPEAKER: The matter can proceed.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [2.55 pm]: I move —

That this house calls on the Premier to admit his government's catastrophic failure in child detention and without delay instigate an independent review of all elements of Banksia Hill Detention Centre and the youth detention system in Western Australia.

I bring this motion to the Parliament today because this is a very serious issue. All we heard in question time today was the Premier and his ministers refer back to when we were in government. The Minister for Corrective Services washed his hands of an understanding of what happens within the prison system. He said that it is not his job to know that and that he did not need to know what happened. He also used the excuse that our government did it, so it was okay for his government to do it. Clearly, time moves on, science moves on, inquiries and practices move on and there is a capacity for the minister to understand that perhaps he should have been a little more attentive, given that so many experts were pointing out the problems with not only Banksia Hill Detention Centre, but also the entire youth justice system.

Who watched *Four Corners* last night? Did anyone in government watch it? The minister and his office staff would have watched it, but I wonder whether the backbenchers watched it and how they rated the minister's performance. It was an absolute train wreck. He was combative, evasive, antagonistic and very defensive—all signs of a minister who has been caught asleep at the wheel and who had no reasonable answers to the questions asked. In fact, he repeated that again in question time today when he did not answer the questions. Instead, he went directly to a response to something that he thought he was going to be asked about. The performance of the Minister for Corrective Services on ABC's *Four Corners* was dismal and he utterly failed to recognise the situation.

I want to put up-front that the Premier has made the accusation that we have no care for or understanding about what it means for the victims of the crimes perpetrated by some of these juveniles. We do understand and we have been bringing these issues into the Parliament and asking the Premier and the Ministers for Corrective Services, Police and Community Services again and again what they are doing to address the dysfunction and youth crime in many of our communities, predominantly in the north of the state, but to no avail. Government members should not come in here and say that we are not aware of the impact on victims of crime. We talk to them every day. The member for North West Central is, in fact, one of those victims of crime. Thankfully, she is not a victim of one of the more serious crimes that the Premier spoke about, but we understand that people across the community have been subject to this. This is not about minimising the impact on those victims of crime. It is about acknowledging that a growing chorus of people, experts in their field, have been saying for some time that the youth justice system—not just Banksia Hill, but the whole system—including the responsibilities of the Minister for Community Services, is broken. Our communities are broken. We are failing these kids, we are failing our communities and the government is failing those officers who work in the custodial system and those young people who are incarcerated. It is a failure.

During the *Four Corners* program last night, the minister had a set of talking points that he stuck to. It seemed that he had a blissful ignorance of the behaviours and practices in the prison system for which he is responsible. When I was in government and a minister, I sat in this chamber and regularly listened to ministers say that the buck stops with the minister. I have not once heard this minister or the Premier take responsibility for what is a system in crisis. The Premier needs to move the minister on. It is clearly beyond the minister to deal with the complexities that are inherent in this portfolio.

We can contrast the minister's performance in the program last night with the performance of the president of the Shire of Derby, and the performance of Mick Gooda and Judge Hylton Quail. Why is it that every other person who has a right, a responsibility and a moral conscience can speak up, even if they do not have to, and recognise that the system is in crisis, and that what is being done is not working?

Let me refresh members' memory of what the minister was asked in the *Four Corners* program last night, and how he responded. I am quoting from the transcript. It states —

The Supreme Court recently delivered a damning ruling against the WA government. It found that on 26 occasions a boy was confined unlawfully to his cell for more than 20 hours a day. Four Corners has confirmed lockdowns of this length continue for children at the adult prison.

The reporter, Grace Tobin, then asked —

> Why are you willing to allow your department to continuously break the law?

The minister, Bill Johnston, replied —

> Well, I don't accept the basis of that question.

The reporter then asked —

> Why not?

The minister replied —

> Well, because if you can explain to me what you think that I've done, then I'll respond to the allegation.

The reporter asked —

> That children are being unlawfully detained for an inappropriate number of hours per day in their cells.

The minister replied —

> Are you saying that's happening now?

The reporter said —

> Correct.

The minister replied —

> Well you don't have any evidence of that.

The reporter then went on to say —

> Two days after our interview with the Minister, the president of the Childrens Court, Hylton Quail, described the government's use of solitary confinement as "child abuse" and warned that "continuing unlawful lockdowns" are putting it at risk of "contempt of court".

We acknowledge that the children with whom we are dealing are difficult. That goes without saying. Children who end up in the justice system often have complex backgrounds. In the Kimberley alone, more than 300 kids aged between 10 and 12 were arrested in the past year. Part of the reason that we have asked for an independent inquiry is that rather than send these young people to Banksia Hill, there needs to be the option of bail into the community. In the absence of that option, more than 600 people a year—63 per cent of whom are Aboriginal—are flown to Perth and locked up in Banksia Hill. As was reported last night, many of these children have neurological impairments.

There is no question that these kids have broken the law. For some time, we have been raising with the government the issue of youth crime and dysfunction. The Minister for Police refused again today to answer the very reasonable question from the member for North West Central about whether he agrees that crime is an issue in the communities of Carnarvon, Derby, Broome, Newman, Fitzroy Crossing, Halls Creek and Kununurra. Everybody except the government can see it. The people in those communities are at their wit's end. They are fatigued, scared, disillusioned and angry. They are sick to death of the crime and lawlessness in the state's north. These young people, many of whom are Aboriginal, are the product of dysfunctional and chaotic home lives. They are without the role models that they need. They are living in overcrowded and substandard housing, and they often find that because of gambling, drinking, fighting and abuse, being on the streets is safer than being at home. Many of them have traumatic backgrounds of abuse and neglect, and diagnosed complex neurological disorders.

I cannot, and I do not, condone illegal behaviour. I have sat with, and empathise with, victims of crime. I have met with people in Derby, Halls Creek, Fitzroy Crossing, Newman, Kununurra and Carnarvon and walked through their communities. We understand that these communities are hurting. However, we are failing these communities. We are also failing these young people. That is because the youth justice system is failing us. Banksia Hill is actually breaking people. The government's solution to send a number of these detainees to Casuarina Prison defies belief. It is all very well for the Premier to say that we did the same thing when in government. However, six years on, with a massive budget surplus, and a chorus of people who are saying that is inappropriate, the Premier has to look at these things differently. Put simply, setting aside the Casuarina or Hakea Prison argument, every person with whom I have spoken has reflected on the fact that Banksia Hill is teaching these young people to become better criminals. It hardens them against authority and society. It is readily accepted in the communities that I visit, particularly those in the north of the state, that Banksia Hill is part of the problem, not the solution. However, at this stage, because the government is failing to provide alternatives, Banksia Hill is one of the only options that we have. Why has the government not listened? The Youth Affairs Council of Western Australia has stated that children should not be sent to a maximum-security prison under any circumstance. It has stated also that when young people with complex needs have to be sent to a maximum-security prison, the system is broken.

Judge Hylton Quail has said, in response to the challenge that he has seen —

> When you want to make a monster, this is how you do it.

His response to the treatment that detainees at Banksia Hill are subject to is, quite frankly, chilling.

The president of the Law Society of Western Australia has said —

> Sending children to the main maximum-security prison in WA is not the right solution and there needs to be a rethink.

She goes on to say that the government —

> needs to urgently look at how it can redirect funding to the programmes that work to reduce the root causes of crime before behaviour escalates, and how to house children appropriately when either bail is inappropriate, or a custodial sentence is to be imposed.

We cannot even get the Minister for Police, or anyone in government, to consider providing in Carnarvon, in the electorate of North West Central, a safe place for children who are picked up by the police rather than leaving them on the streets.

Mr P. Papalia: It's not the job of the police.

Ms M.J. DAVIES: The minister is right. The police should not be responsible for that. What is the minister doing to encourage his colleague who sits next to him, and the Premier as the Treasurer, to do more so that his officers will not have to bear the brunt of this dysfunctional system? The minister is absolutely right. It is not the responsibility of the police, but they are the only ones on the ground.

Mick Gooda, who was the Don Dale commissioner, has said —

> Our answer can't be to just keep locking kids up. We've got a recipe for making kids worse.

There is a continuum of people and opinions on this issue. The Premier has reflected that in the chamber today. There are people who do not believe that detention is appropriate for any child. There are also people who say that these children have committed crimes and there must be rehabilitation and punishment. The Premier refuses to allow an independent inquiry to enable all those voices to come together. The Premier has said, in his arrogance, "I'll sit down with them and I'll come up with a solution. In fact, it's not really broken, but I'll listen to them anyway." That is what I took out of question time today—arrogance. When many esteemed experts are saying that the system is broken, the minister and the Premier are saying, "Nothing to see here". The government's tough-on-crime stance and the speech that the Premier made in question time today would be fine if they were delivering a result. However, we can see from the high recidivism rate that the system is not working. The Leader of the Liberal Party will talk about how many of the children who go through Banksia Hill end up in our adult prison population, and about the revolving door of an ever increasing cohort of dysfunctional and broken children who shift from detention to the community and back to detention. The member for North West Central's comment that kids say "juvie is great" is not a sign that the system is working. It is a sign that their community is broken and this government is failing them.

I ask that the Minister for Corrective Services step aside. That would be the best outcome. The minister clearly does not have a handle on this portfolio. I also ask the minister, and the Premier, as the Treasurer, to take into consideration the opinion of the Inspector of Custodial Services and his recommendation to embed an approach of rehabilitation instead of punishment. He has been scathing of this government. He has said that we need to adequately staff Banksia Hill so that the government can deliver on its promise of shifting to trauma-informed care. Restorative justice programs on country also have to become a necessity, more than just the one that has been announced by this government. The government is in a position to deliver that. We also need diversion programs to keep people out of the justice system by dealing with the root causes and to keep them on the straight and narrow. That is also a necessity.

The reality is that it costs more than $1 300 a day to keep a young person in detention—$500 000 a person a year. That is an enormous amount of money for a small cohort of people whom we could do far better for if we listened to the experts, had an inquiry and allowed everyone to have their say in an open and transparent manner. There needs to be something for the government to be held accountable to. Instead, it is harking back to six to 10 years ago and saying, "You did it, so it's all right for us to do it." That is not an adult conversation.

We should all be paying attention to the revolving door, the great expense to the taxpayer and the moral imperative to make sure that we are not returning people to the community worse than when they arrived in the system. We are failing the children, our police, the Banksia Hill Detention Centre staff and our communities. It is broken.

I call on the Premier to consider holding an independent inquiry. The government should use one of the parliamentary committees and use the system to make sure an approach is adopted, acknowledged and understood, because it is a complex issue. The Premier should not dismiss the idea arrogantly as he has so many other suggestions. Too much is at stake for our state.

The DEPUTY SPEAKER: Sorry, before the Leader of the Liberal Party starts, could Minister Papalia and the Attorney General tone it down or take it outside, please? Thank you.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [3.11 pm]: The reality is that under this government Western Australia's youth justice system is in disarray. Although the majority of my contribution will focus on the details of Banksia Hill Detention Centre, I want to reinforce the Leader of the Opposition's comments. What

we have seen on the *Four Corners* program is not especially or particularly the result of a failure at Banksia Hill, although there are failures there. The whole system has a failure: a large part of the state is, effectively, becomingly lawless due to youth crime issues.

Mr P. Papalia: Where is lawless?

Dr D.J. HONEY: Wait for the contribution.

I agree with the Premier that if children commit very serious and violent crimes, which the Premier outlined today, those children have to be in custody, but for those children in custody, the focus has to be on rehabilitation, not punishment. I will go through this today. Clearly, whatever rehabilitation processes the government has in place are failing; they are failing our children and the communities those children come from. This is where the system falls down. Too many kids are running around all night in those communities. If we go to Carnarvon, Broome, Fitzroy Crossing, Halls Creek, Kununurra or Newman—particularly East Newman—we see exactly the same behaviour. Too many kids are not going to school.

The Premier told us to make some suggestions, and I will make a couple of suggestions to him. The first is to go and spend a night in Halls Creek, not as the Premier with an entourage—I am using the term here respectfully—but as Mark McGowan, a dad and someone who cares. He should go and spend time in the community. Can he stay in that community for a night and tell me that those children are being properly cared for? He should do that. He should try to drive through the whole of Derby. He should spend time in those communities. He should go to Carnarvon on a school day, drive around and see the number of kids—mostly young Aboriginal kids—who are on the street during the daytime with no-one paying any attention to them whatsoever. It is not one or two kids, but dozens. That is a suggestion for the Premier: to do that—just him, not with a big entourage and not announced. If it is announced, everyone cleans everything up for him. He knows that is a problem of being the Premier: everyone puts on their best display. He should go and spend some time in those communities and then come back and confront his cabinet colleagues about how effectively they are working.

What is very clear is that it is not working; it is not effective. When I came into this role, I went to Fitzroy Crossing, and I spent a significant amount of time in all the communities along the Fitzroy Valley. I have been back there more recently. I can tell the Premier that whatever his ministers tell him about their programs and however many glossy brochures they have, those programs are not working. All the communities from Broome through to Kununurra are substantially worse with substantially greater crime.

One thing the Premier could do if he wanted to distract youths from going into crime is to give them jobs. He should reopen the Aboriginal workforce development centres that our government established and the McGowan government closed. The Aboriginal workforce development centres in Broome, Geraldton, Kalgoorlie, Bunbury and Perth were closed by the government. They were a way of diverting people from crime; instead, those centres were closed by the government.

Banksia Hill should be properly handling youth. Its existence should primarily be for rehabilitation, but it is quite clear that is not the case. We heard the shocking details of how children are treated in that centre. I was really disappointed that the minister repeated his statement today. Obviously, we want a safe community. Obviously, we want correctional officers working in those facilities to be safe, and we have great respect for the enormous complexity of their job. However, the absolute priority has to be making sure that these children are not only put in a condition in which the community is safe, but also, as much as is humanly possible, rehabilitated and given a productive and meaningful life.

It has come to the point that some of those children were moved into Casuarina Prison. Again, we understand that the government needs to look out for the safety of staff; however, it is a symptom of a facility that is not working. It is not a solution to the problem at Banksia Hill; it is a symptom that Banksia Hill is not working properly. As the Leader of the Opposition alluded to and my colleague Hon Peter Collier, who is the shadow Minister for Corrective Services in the other place, raised in questions, 298 of the prisoners in Casuarina were previously inmates in Banksia Hill. One-quarter of the capacity of Casuarina is occupied by youth who came through Banksia Hill. That is a measure of the failure of Banksia Hill to rehabilitate those children. Those children have gone on to adult crimes and will lead unproductive lives in a great majority of cases.

Casuarina has a capacity of about 1 200 people. Of the 571 children housed at Banksia Hill during the last 12-month period, the period I looked at, 405 are Aboriginal children. By my reckoning, Aboriginal children represent about one-thirtieth—three per cent—of the child population in the state, but they represent more than 70 per cent of the population in Banksia Hill. If the Premier can tell me that that is a symbol of how the system is working, I will be dumbfounded. Those are terrible statistics. These children are, unfortunately, under government care; they are, effectively, wards of the state because they are completely under the government's care. They are coming out of the corrective service system not rehabilitated but demonstrating more criminal behaviour, as some people have indicated.

Another measure of how that facility is failing and failing to inspire children with purpose and hope in life is that over 351 self-harm and suicide attempts were made there. That is pretty much one event every day of the year.

These children feel they have no hope, no future and no options. For a number of them, ending their life is better than continuing it. That is the devastating situation. A lot of those children—the great majority of them—come from desperate family situations. What is this government doing, in a whole-of-system sense, to effectively deal with those family situations? I am serious about the Premier going to some of these towns, but he should also go and meet the women in some of these remote communities. He should go and spend some time—again, not with an entourage, but just him and maybe an offsider—with the women in those communities, listen to them and their stories and listen to what they tell him, because they will tell him what they have told me: that the programs do not work. There might be big offices and lots of people employed in different roles, but it is not hitting the ground in their communities.

We have heard the minister talk about the whole issue of mental health, but it is clear that the approach the minister is taking is not working, because we are seeing such terrible outcomes. There is a cycle of hopelessness for children in custody. We do not need more programs; we do not need more spin from the government. We need the government to take a hard look at this whole problem. The Leader of the Opposition raised the point that the Premier has made it very clear publicly and in this place that he believes that his government is doing the right thing. He has said, "Well, if people can come forward with solutions, tell me." I have already made some suggestions to the Premier. He has said, "If people can come forward with some solutions, tell me, but essentially we have all of this under control. I've got this all under control." He is going to get a hand-picked group of people to come in and he will stare them down and see whether they have anything to offer him. That inquiry will not reveal anything. He might get a couple of suggestions out of that group, but this state needs a whole-system inquiry into why so many children are entering the criminal justice system. Why are there so many dysfunctional families in those communities, and why is it getting worse?

As I said, I have gone to the north of this state as often as I possibly can; I have done it on a number of occasions since I have been in this role and, distressingly, every time I go back to those communities, it is worse. It is not better; it is substantially worse. Fitzroy Crossing introduced mid-strength alcohol into the community and had the first generation of children in about three generations coming through the school system who did not have foetal alcohol spectrum disorder because it had alcohol under control. Youth crime in that community is now out of control. Elders in that community are getting beaten up. The Premier needs to go, not with an entourage, and talk to the elders in Fitzroy Crossing.

Mr P. Papalia: Whereabouts?

Dr D.J. HONEY: I am not going to be distracted by the minister.

Mr P. Papalia: Whereabouts? That's not true!

Dr D.J. HONEY: The minister should get out and have a look at the communities as well.

The government has announced that it is going to build an on-country rehabilitation alternative to Banksia Hill, but like all Labor projects, that has again been delayed. The government's programs are completely failing to prevent children entering the criminal justice system in the first place. The system is also failing those children once they come into custody and the government's care. It is not as though there have not been reviews and commentary on this issue. Under the previous Liberal government, major redevelopments were undertaken at Banksia Hill in 2010 and 2012. The current government has now announced, after five and a half years in office, that it is also going to do something, but we have not seen anything come through. As I said, this government has an appalling record on delivering services.

In 2017, the first year of the current government, the Inspector of Custodial Services released a report that cited some major key findings. One was about staff morale and people being disempowered. The report was also critical of several incidents. Where was the substantive response from this government to that report? That was at the beginning of its first term in office. That report found that, overall —

> Behaviour management practices at Banksia Hill have been inconsistent, inexplicit, and ineffective.

Where was the response from the Labor minister and government to that report? In 2018 the Inspector of Custodial Services reviewed that report and found that there had not been any significant changes under this government. The overview heading of a 2022 report of the Office Inspector of Custodial Services, *Inspection of the intensive support unit at Banksia Hill Detention Centre* should have given the Premier and the minister a hint: "Banksia Hill Detention Centre is once again in crisis". The minister has come into this place and said that he should not have had concerns; I say that he should have had concerns. This government is failing a whole generation of youth in the north of this state, and the Banksia Hill Detention Centre is failing the youth detained there. It is not a rehabilitation centre; it is a punitive centre. A disturbingly large percentage of the children that attend that centre are effectively going directly into adult correctional facilities after brief stints back in their communities. That is why we need the Premier to instigate an independent, wideranging inquiry.

MR M. McGOWAN (Rockingham — Premier) [3.25 pm]: The government will not be supporting this motion. At the risk of repetition, I will again say some of the things I said during question time today. There is a group of young people in Western Australia who go into detention. It is a very small number in comparison with the overall

number of young people in the state and a very small number in comparison with the overall number of people engaged with the youth justice system. These are essentially young people have been found guilty of some sort of crime or misdemeanour. It is an unfortunate reality that they go into detention because of the fact that they have committed multiple offences, some of them very violent and threatening to other people, so magistrates send them into detention.

That happens for a few reasons. One reason is protection of the community, because obviously whilst they are in detention, they are not breaking into people's homes, assaulting people or stealing cars and driving them the wrong way down roads. Another reason is to provide them with education, welfare services and psychological services and the like, which they probably would not access outside that environment, to give them an opportunity for some form of rehabilitation. Thirdly, it is to protect them. If they continually break into houses, eventually a home owner is going to hurt them. If people find someone in their lounge room or bedroom at 2.00 in the morning, they are going to get hurt at some point if they keep doing it. There is a whole range of reasons why some of these young people end up in some form of detention.

Nine out of 10 people caught up in the youth justice system do not end up in detention; they have community orders, community work orders or supervision orders. There are measures through which welfare or child protection officers are required to visit; that is what occurs for nine out of 10 offenders, so there are restorative justice techniques being applied to those young people. Despite all that, when young people continually break into people's homes at night, steal cars and drive them at police cars, burn down houses, break into businesses or assault people—sadly, a very commonplace offence—they are going to end up in detention. That is what happens, because it is a last resort. That is what the justice system has as a last resort for these young people.

Regardless of what the Leader of the Liberal Party said, when they end up in Banksia Hill, there is a huge number of programs available and staff who are dedicated to helping these young people. They devote their lives to that, and I admire them: the youth custodial officers, teachers, education officers, the psychologists and the other staff there. It is a difficult environment, and oftentimes they are disappointed. They try and try, and they think they have a young person back on track, but then they leave detention, catch up with their friends and start breaking into houses or hanging out in gangs in Northbridge or whatever, and they end up back there again. That can be heartbreaking for those staff because they tried but it did not work. However, we will continue to try. All those programs are available. I did not even know until recently that there are actually music programs for the detainees to learn how to play an instrument and join a band. It is wonderful for a young person to do that. There are also football and basketball programs, and there are teachers and staff whose role is to hopefully connect the young people to a training opportunity or an apprenticeship opportunity when they leave. I think around 14 staff are dedicated to those two things—education and connecting the detainees to training when they leave Banksia Hill. They are good things to do. Sometimes it does not work. Often it fails because we are dealing with young people who are often damaged by whatever occurred in their lives outside Banksia Hill. As I have said before—I will explain it again—Banksia Hill has about 85 to 95 detainees there at the moment. In 2012, there were 192. The number of detainees in Banksia Hill has gone down by more than half. When some of the people outside this place who are complaining had responsibility for it, the number of detainees in Banksia Hill was double the number of detainees there now. They should reflect on that.

When the prisoners leave—I have lost my train of thought—they often end up back with their friends or in their groups or perhaps drinking or taking drugs and they end up back at Banksia Hill, so we try again. But a small group of around 10 or 15 per cent of the detainees in Banksia Hill destroyed their cells. Incredible as it might seem, they actually destroyed their cells. Members have seen the images. They pulled toilets and sinks off the walls, knocked holes in the walls and doors, and even removed doors. People could not work how they did it, but somehow they did. They also climbed onto the roof. Their cells were destroyed. How do we deal with them? What do we do? Only one place was available to put them, which was unit 18 at Casuarina Prison. That was the only place available. We could not put them in a youth hostel somewhere or a school. The only place that was secure enough was unit 18. Unit 18 does not connect with the adult prisoners and the detainees cannot see the adult prisoners. The group of 10, as it now is, behave in such an extreme way that when they come out of the cells, particularly in groups, they will attack the guards. A youth custodial officer goes to work and knows that if the detainees are released all at once, there is the likelihood that the officer will be attacked or the young people will try to escape. That is the reality and the practicality of what we are dealing with. What do we do? Apparently, the management technique is to release them from their cells for shorter periods in smaller numbers so that they can be better managed in that environment. Four of the detainees in unit 18 have Nintendos and I understand that all of them have televisions. The other six do not have Nintendos because they were smashed. All the detainees in Banksia Hill have Nintendos. I got attacked for this, but it is true. They have Nintendos and can play them when they want. It is a management tool. They can watch television when they want. The young person who featured in the television show last night with the presenter was calling for no detention. Think about that. Think about people not having detention no matter what they do. What would that say about consequences? How are we ever supposed to teach someone about consequences if they can do anything and there is no detention?

Dr D.J. Honey interjected.

Mr M. McGOWAN: I am just telling the member that is what was said on the program last night. I do not agree with that. A lot of people have emailed me saying that they agree with that, but I do not agree with it. I think all those people need to have a little bit of a think about the victims. Think about the old ladies at home who get broken into at night. Think about the people walking their babies. I saw CCTV footage on television a couple of weeks ago of a woman walking her baby down a pathway who was viciously attacked. Danny Hodgson was viciously attacked. What world are we living in when people say there should be no consequences for that? That is a perversion, in my view, but last night I heard people say it on the show. I fundamentally disagree. No doubt I will get attacked by various people for saying that. They will misrepresent me. The reality is that we have to have consequences in life. If people misbehave, there is a consequence. If they hurt someone else, there is a consequence. If they burn something down, there is a consequence. If they destroy themselves, we have to manage them. That is why they are put in detention. I saw on the show last night the footage of youth custodial officers being attacked. One of those individuals—a young man; a juvenile—who is at unit 18 has attacked staff on 83 occasions and threatened and attacked other juveniles. That is why he is there. It is because of his behaviour. Some people try to say that the behaviour is created in Banksia. Why are they in Banksia? Did they go in there without any behavioural issues? Is that what they are alleging? That does not make sense to me. If someone is in Banksia, it is because of their behaviour outside.

Ms M.J. Davies: You should not get worse, though.

Mr M. McGOWAN: That is why those programs are there. The 10 people who have gone to unit 18 behaved extremely badly outside. One of detainees in unit 18 was the juvenile who tried to bring down the plane flying out of Broome. Hold on! There were six people on that plane—six people—so he is in unit 18.

We have all those programs and dedicated staff. We are doing everything we can to rehabilitate these young people, and many are rehabilitated. But we have done more than that. Outside of Banksia Hill, we have put in place programs such as Target 120, which we are rolling out around the state. That is properly funded and has people whose roles within the Department of Communities is to intervene in the families of those individuals and help them manage their children to get their children back on track. We are funding our schools better than ever before. We are putting more resources into the lowest socio-economic schools to provide literacy and numeracy programs. We fund numerous programs across the community. I saw on the show last night one the programs that provides patrols of an evening to get young people off the streets and back home or into some form of care. The government funds multiple programs around the state to do those types of things to try to help. We are doing a range of things on the outside and inside the detention centres.

The number of people in detention is coming down. As I said to the Leader of the Opposition, in November 2012, 192 people were in detention, and in November 2022, there were 85. There it is. The number has actually come down. I did not see that particular statistic on the show last night. I did not see them interviewing someone whose house was burnt down or someone who was bashed or someone who was raped. Do their rights not deserve to be taken into account? Do they not deserve to be heard on this program? It is as though they do not exist, but they do exist. They live in suburbs like mine and they deserve some form of recognition and protection. There is a balance in all this. It is about protecting the community and also providing the services and rehabilitation for young people who end up in detention. In many ways, the people who go into detention have to want to access it. If all they do is plot and plan how they will beat and hit a youth custodial officer or another inmate or destroy something, I do not agree with the idea that somehow that is the government's fault, which is what the opposition is alleging. If that is the detainee's attitude towards life, how is that the minister's or the department's fault? They provide all these resources and services for these young people to get them back on track.

As I have said a few times in public, I grew up in little country towns for most of my upbringing. I mixed with a lot of kids from dysfunctional backgrounds and there were a lot of Aboriginal kids in my school. I mixed with a lot of kids from low socio-economic backgrounds. I want them to have the best opportunity in life. That was my background. I want them to have the best opportunity in life. I want them to go to school and get educated. I want them to do training and go to university, and we provide numerous services to do it. If they do not take up those opportunities, if they hurt other people, if they sexually assault other people, if they drive cars at police cars or if they try to bring down aircraft, there are limited things we can do apart from detain them to protect everyone, and protect them from themselves to be honest. If a young person—a 12, 13 or 14-year-old—breaks into someone's house at night, what do members think a father would do to protect his wife or children? They will hurt them because it is terrifying. We need to protect those young people from themselves in some ways, which is why detention might help protect them.

I do not expect a lot of people will agree with this, but I think the balance is there to protect the public and protect the victims, and make sure we have huge amounts of resources to rehabilitate and prevent people going into detention. If there are any other good ideas out there or things we can do, I look forward to hearing them—practical things that can be done to improve the system. What can we do? If people have something sensible that would work and would make a difference, we are more than happy to listen. I am more than happy to listen to what they have to say this week or next week. I also think there should be a little bit of acknowledgement of the reduction to more than half. We have put the custody notification service in place. We do not imprison people for fine defaulting anymore. We are introducing new laws to keep mentally ill people out prisons and new laws to release mentally ill people

from prison at least at the time they would have been released had they been convicted. All these things are being put in place or have been put in place under this government. It is as though those things do not exist. We are reviewing the juvenile justice legislation. There is $25 million being spent to improve Banksia Hill Detention Centre. The Aboriginal services unit has been designed specifically to provide support for Aboriginal detainees. A new crisis care unit has been constructed. All these things are part of what we are doing to try to improve the situation. I would hope—although I do not expect it will happen—that the critics outside this place, particularly those who were responsible for the prison population when it was nearly 200, might acknowledge some of those things rather than just come up with complaint after complaint and no solutions. It is easy for those on the outside, when they did not do anything when they were in a position of responsibility, to criticise those who are now in a position of responsibility. There is nothing more contemptible than someone who had responsibility and did nothing about it, then criticising those who came after them who improve the situation. We see it a lot in political life. I will not support this motion. I thoroughly endorse the minister and the role he has played. He has done a very good job in very difficult circumstances.

MR W.J. JOHNSTON (Cannington — Minister for Corrective Services) [3.43 pm]: The corrective services portfolio is a very difficult one. It is certainly not for the faint-hearted, nor is it for the cold-hearted. If people believe some media reports, it would seem that I am personally responsible for choosing which young Western Australians are sent into detention. Of course, who goes into detention is entirely a matter for the WA Children's Court. Further, if people listen to the opposition, it would seem that I personally direct staff in the detention centre in their day-to-day operations. Of course, neither the Young Offenders Act nor the Public Sector Management Act allow me to do that. Some people contributing to the current debate about managing young offenders think that it is as easy as talking on the radio. Other commentators think it can be fixed with a wave of a magic wand, and, abracadabra, everything is perfect. Unfortunately, I have to live in the real world with real problems, real issues and real consequences.

I will quote from the Inspector of Custodial Services' report 135 of April 2021 into Banksia Hill Detention Centre. I do this to make the point that this was the independent advice given to me about our youth custodial facility when I became minister. What did it say? I quote —

> Banksia Hill Detention Centre has been the subject of considerable focus for this office over the past 10 years. We have published seven reports about the centre since 2012, but in recent years some stability has returned. The three years prior to this inspection have probably been one of the most settled periods in its history.
>
> At the time of this inspection we noted several factors that should allow Banksia Hill to progress and build on recent stability. Many areas of the centre were already taking advantage of these opportunities and I commend them for doing so.

The report did not say that Banksia Hill was perfect but it did say it was settled. This is a contrast to Banksia Hill in the past. For some unknown reason, the former Liberal–National government closed Rangeview Remand Centre and transferred those remand detainees into Banksia Hill. This made operations much harder. Remand detainees arrive with complex issues, including leaving violent situations, often impacted by drugs. They are often unknown to our staff and disconnected from education. Generally, remandees stay for very short terms, disrupting Banksia Hill in the process. They are housed with the specialist staff all too briefly for those specialists to make a real difference. This contrasts with sentenced detainees who usually stay for 18 months or longer, in careful programs tailored to their individual needs with the time to assist them on their rehabilitation journey.

Let us have a look at what Banksia Hill was like in 2012, before Rangeview closed, while the Liberal and National Parties were responsible. I quote the Inspector of Custodial Services' seventy-sixth report from January 2012 —

> For example, the reality is that children in detention are subject to being 'locked down' in their cells or units far more frequently than is the case at adult prisons … This Office does not suggest that safety or security should be compromised, but firmly believes the current use of lockdowns is excessive and that the necessary resources should be found to at least bring practices in line with adult prisons.

It goes on —

> Regression is officially badged as a targeted and individualised regime for improving behaviour. Legally, it sits separately from the rules relating to the 'punishment' of detainees for detention centre or criminal law offences. However, we found that it involves a restrictive regime which is in many respects indistinguishable from formal punishment, and generally of longer duration.

My point is that that was happening when the former government was in power. The idea that it is worse now is not supported by the evidence of the Inspector of Custodial Services. Look what happened in January 2013. In the media release of 7 August 2013 the inspector says —

> The January loss of control at the Banksia Hill Juvenile Detention Centre was an entirely predictable incident, not because the young people at Banksia Hill had suddenly become worse, but because the facility had become increasingly unstable over the preceding 18 months and this had not been properly managed.

The report goes on to quote —

> "The 20 January incident began when three detainees accessed a low roof—an unacceptably common event. It escalated to mass disorder as the detainees became aware that many cell windows were vulnerable to external attack. Basic security failings were exposed, including easy access to building materials and weaknesses in fence design

What did the former minister, Joe Francis, say in Parliament about this? He said —

> It is worth noting that this government will always put the protection and the safety of innocent people in society first.

It is no wonder that the Liberal and National Parties do not want to talk about their record. The idea that the challenges in youth detention are new is incorrect. It is always a very difficult process. It is always better to work in the community before offenders come into detention. That is exactly what the McGowan government is doing with Target 120 and many other investments into our community. That is why the overwhelming majority of young offenders are managed in the community, not at Banksia Hill. Put simply, a young offender has to be involved in many, many criminal actions before the courts will send them to detention. Often, these will be serious and violent offences, and only in the most extraordinary cases are they under the age of 13 years. I am advised that since I have been minister, just one 11-year-old has ever come to Banksia Hill and no 10-year-olds. In fact, the courts have very rarely detained anyone under 13 years of age. Why do we have any young offenders housed at unit 18? I have already explained this many times. The reasons are that in the lead-up to Christmas 2021, the number of detainees sent by the courts increased significantly. This increase was unexpected. It meant our recruitment program for youth custodial officers did not keep pace with the number of detainees. That meant that over the Christmas period of 2021, the centre's operations were suboptimal. Earlier this year, the situation was exacerbated by a small cohort of violent young offenders who caused incidents at the centre, attacking staff and being involved in other incidents. In response, the Community and Public Sector Union–Civil Service Association of WA and the staff they represent asked to move some detainees to Wandoo Rehabilitation Prison. The Department of Justice considered this suggestion, but we could not accommodate the request. This was for two reasons. Firstly, the Wandoo prison's infrastructure is not sufficiently robust to house this cohort of offenders. Secondly, and even more importantly, Wandoo is the women's alcohol or other drugs rehabilitation prison. Moving youth offenders to Wandoo would have stopped the operation of the award-winning women's AOD program and would have led to other disturbances of the women's estate, which is in a fairly stable situation.

On examination, only one facility in Western Australia is available for use. That facility is the unused unit 18 at Casuarina Prison. Because it was the only available facility and because it is very large and suitable for temporary use as a youth custodial facility, on the advice of the Department of Justice, I declared it a youth detention facility. Following this declaration, the Department of Justice moved a small cohort of young offenders into unit 18. This move has allowed Banksia Hill to return to a calm operating environment, which allows the expected services to be provided to all the detainees there. Although unit 18 continues to be difficult to staff because a majority of staff do not want to work in an environment with high risks to their safety, we are nonetheless providing the range of medical, psychological, education and recreation services to the detainees at unit 18. We are hiring new staff. Sixty-three new youth custodial officers have been trained and have commenced, and 19 more are in training now. We are always looking for more and we are trying to recruit from more varied backgrounds.

It is expected that unit 18 will not be required after 30 June next year. We are spending over $21 million on infrastructure improvements at Banksia Hill. This will include upgrades to the intensive supervision unit to create a crisis care unit to provide a therapeutic environment for detainees in crisis. It will also include the upgrade of a unit to house violent detainees, to ensure the safety of staff. The safety of staff is a legal obligation on the director general, in accordance with the Work Health and Safety Act, and it cannot be compromised, regardless of the views of commentators. In addition, $4 million will be spent on the Aboriginal engagement unit, and there will be additional investments for other minor works, including in-cell technology to support online learning for detainees. We have also engaged Nous, the consultancy service operated by former Mental Health Commissioner Tim Marney. Nous has developed a new model of care for Banksia Hill, based on a trauma-informed approach. The Department of Justice and the Department of Treasury are currently working through the business case to ensure a successful introduction of this new model of care, as has been requested by the Office of the Inspector of Custodial Services. Only when the business case is ready will it be implemented, because we need to ensure that this work is successful.

I want to turn briefly to the media commentary about our youth custodial system. I do not want the perfect to be the enemy of the good. We have only one youth custodial facility because the Liberal Party and the National Party closed Rangeview Remand Centre. We are working with the Kimberley Land Council on an on-country facility in the Kimberley. This is an investment of more than $14 million to try a new way of handling youth offenders over the next three years. The business case is currently being refined because it has to be adequate. It should not be rushed. This facility will not be a detention facility. While ever the courts choose to send offenders to detention, we will need a detention facility. Over the years, on several occasions, the concept of multiple small detention facilities has been examined and rejected. This is because it is very hard to provide the services needed at multiple sites.

Further, there are many challenges in site selection. I know that only too well—just look at the travails of choosing a new Broome prison site or the campaign by the Liberal Party opposing the creation of the Boronia Pre-release Centre for Women in Bentley. I invite any local government that is within 100 kilometres of the GPO to request that the government build a youth detention facility in its community; I look forward to that occurring. I personally take the view that choosing a site and doing the necessary planning studies and consultation with the local community, and then building a new facility, would take at least five years, and probably longer. By then, every detainee at Banksia Hill would be an adult.

Calling for the closure of Banksia Hill is an easy thing to do; it costs the commentators nothing. Of course, it would also change nothing and achieve nothing. Even if we could build a new facility, we would still need to invest in improving Banksia Hill. These simplistic suggestions do not help and simply confuse the serious work that has to be done to protect the community, protect the workforce and protect the detainees. However, if any non-government organisation wants to build a new facility to take that small and difficult-to-manage cohort of offenders from Banksia Hill, I encourage it to put forward a proposal. The WA government is not arrogant; it accepts that others have good ideas.

Point of Order

Mr R.S. LOVE: I want to seek a ruling on the current status of standing order 1, the general rule of conduct in the house, and the footnote referring to forbidding the reading of speeches. The minister has been going for 10 minutes or so and is obviously reading from a document. I seek your instruction to the house on the general rule and whether that is acceptable.

Mr W.J. JOHNSTON: On that point of order, I am reading from notes in my own handwriting; it is not a complete speech.

The DEPUTY SPEAKER: I agree with you. There is no point order. The minister is referring to his own handwritten notes. Considering the delicacy of the topic, I believe he is ensuring that he puts across the correct terminology during his response to this motion. Carry on, minister.

Debate Resumed

Mr W.J. JOHNSTON: Thank you, Deputy Speaker. If any NGO wants to put together a business plan to take on the difficult-to-manage cohort, we would be pleased to consider it. In the same way that we have responded to the KLC's proposal, we are prepared to consider other well-structured and sensible ideas.

In closing, I want to table some documents: the seventy-sixth and 135th reports of the Office of the Inspector of Custodial Services, and the media release of the Inspector of Custodial Services of 7 August 2013. I also want to table the transcript of my long interview with the ABC *Four Corners* program. I understand that some excerpts of that interview were put to air last night. Please note that this is a rough edit from an automated transcription system, so there are some errors.

[See paper 1666.]

Mr W.J. JOHNSTON: There are no easy answers in youth justice. If there were, we would have already achieved them. The McGowan government is doing what is necessary. It is investing in the community to reduce criminal behaviour, supporting communities in developing local solutions, recruiting police officers to ensure that criminal behaviour can be identified early, and supporting community corrections, which manages almost 90 per cent of young offenders outside the detention centre. The government is also making unprecedented investments at Banksia Hill to protect the community, protect the dedicated staff and help detainees on their rehabilitation journey.

Division

Question put and a division taken, the Deputy Speaker casting his vote with the noes, with the following result —

Ayes (6)

Ms M. Beard	Dr D.J. Honey	Ms L. Mettam
Ms M.J. Davies	Mr R.S. Love	Mr P.J. Rundle *(Teller)*

Noes (42)

Mr S.N. Aubrey	Ms K.E. Giddens	Mr M. McGowan	Ms R. Saffioti
Mr G. Baker	Ms E.L. Hamilton	Mr D.R. Michael	Ms A. Sanderson
Ms L.L. Baker	Ms M.J. Hammat	Mr K.J.J. Michel	Mr D.A.E. Scaife
Ms H.M. Beazley	Ms J.L. Hanns	Mr S.A. Millman	Dr K. Stratton
Mr J.N. Carey	Mr T.J. Healy	Mr Y. Mubarakai	Mr C.J. Tallentire
Mrs R.M.J. Clarke	Mr W.J. Johnston	Mrs L.M. O'Malley	Mr D.A. Templeman
Ms C.M. Collins	Mr H.T. Jones	Mr P. Papalia	Ms C.M. Tonkin
Mr R.H. Cook	Ms E.J. Kelsbie	Mr S.J. Price	Ms S.E. Winton
Ms L. Dalton	Ms A.E. Kent	Mr D.T. Punch	Ms C.M. Rowe *(Teller)*
Ms D.G. D'Anna	Dr J. Krishnan	Mr J.R. Quigley	
Mr M.J. Folkard	Mr P. Lilburne	Ms M.M. Quirk	

Question thus negatived.

HEALTH SERVICES AMENDMENT BILL 2021

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 18: Section 35 amended —

Debate was interrupted after the clause had been partly considered.

Mr S.A. MILLMAN: The member for Vasse had asked a question about the amendment to replace "WA health system" with "state". I am advised that this clause will amend section 35(4) by replacing "WA health system" with "state" because of a concern that the use of "WA health system" would restrict health service providers from engaging in activity that would not benefit, or would be in competition with, the activities of a contracted health entity.

Ms L. METTAM: The question I had about that was whether the parliamentary secretary could give an example of an activity that would be allowed that would be a benefit to the state but would not necessarily benefit the WA health system. Have I made the right interpretation of that?

Mr S.A. MILLMAN: The member is right. One of the things that will be enabled by virtue of this amendment is, pertinently, health justice partnerships whereby legal support can be provided to patients in the health system. Although that might not be specifically beneficial to the health system, it will be beneficial to the state of WA. It will broaden the remit or the scope of activities that can be undertaken. It is a broader definition to make sure that we do not miss anything.

Clause put and passed.

Clause 19 put and passed.

Clause 20: Sections 36A to 36E inserted —

Ms L. METTAM: Proposed sections 36A to 36E are substantive. Can the parliamentary secretary explain the reasoning behind these new sections? Is there an issue or opportunity that prompted the insertion of these new sections?

Mr S.A. MILLMAN: Proposed sections 36A to 36E are where a significant part of the work of the legislation will be done. Proposed section 36A relates to joint agreements, proposed section 36B relates to the power to borrow, proposed section 36C relates to guarantees, proposed section 36D relates to the restricted power to enter into arrangements on behalf of other health service providers, and proposed section 36E relates to health service providers providing services to each other.

Part of what is sought to be achieved by the insertion of these new sections is to allow the Minister for Health to give the HSPs the power to deal with land and property that is the subject of a joint arrangement on behalf of the minister or the health ministerial body. For example, the terms of the joint arrangement may permit an HSP to grant or terminate leases or licences on behalf of the HMB or the minister. The health service provider will not require the approval of the minister or the HMB prior to granting the lease or licence. However, the extent of the power to deal with the property will be subject to the terms of the joint arrangement. Actions taken by the HSP under this proposed section will be taken to be done and be binding upon the minister and the HMB.

We will have a much greater degree of flexibility for health service providers to enter into those arrangements that are necessary to make the delivery of health services efficacious. Proposed section 36A will allow for joint arrangements. Proposed section 36B pertains to the power to borrow. I am advised that the inclusion of proposed section 36B was consequent upon a change to accounting standards that classified leases as borrowings. This provision was originally drafted bearing in mind that change to the accounting standards. I do not think that that remains germane. I think the changes have moved on. Notwithstanding that it might not be necessary for that particular reason, the HSPs have sought the flexibility to engage in the financial arrangements that this proposed section will give them the power to do. In that way, entering into those financial arrangements will not be beyond power, or ultra vires. The same goes for the guarantees. I suggest that proposed sections 36B and 36C should be read similarly. I will sit down and invite a question on proposed sections 36D and 36E, if I may, member for Vasse.

Ms L. METTAM: Can the parliamentary secretary provide some detail on what the joint arrangements in proposed section 36A might entail?

Mr S.A. MILLMAN: They mostly relate to leases and licences, so they deal with land. In effect, the powers that were previously retained by the health ministerial body or by the minister will be delegated down to the health service provider to deal with those issues.

Ms L. METTAM: I know that we want to get onto the guarantees, but with regard to the "power to borrow", will the health service provider require the approval or the endorsement of the minister before seeking the approval of the Treasurer?

Mr S.A. MILLMAN: Yes. A health service provider's power to borrow will be subject to the approval of the Treasurer except when the minister has, with the Treasurer's consent, exempted a transaction or class of transaction from the requirement to obtain the Treasurer's approval.

Ms L. METTAM: Will it be required to table this instrument of approval in Parliament?

Mr S.A. MILLMAN: I draw the member's attention to proposed section 36B(2). The instrument has to be gazetted.

Ms L. METTAM: Can the parliamentary secretary give me more detail on how this bill will deal with the issue of guarantees and the other areas in this substantive part of the bill, as he was explaining?

Mr S.A. MILLMAN: Proposed section 36C, "Guarantees", states —

> (1) The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the performance by the health service provider, in the State or elsewhere, of any financial obligation of the health service provider arising under section 36B.

This provides for the Treasurer to guarantee the performance by a health service provider of any financial obligation arising under this proposed section. Parties contracting with the health service provider will be able to have peace of mind when entering into those financial arrangements with the HSP. I also note that this proposed section is consistent with similar provisions in other legislation. I direct the member's attention to section 36 of the Western Australian Land Authority Act. Under this provision, the Treasurer will guarantee the actions of the HSP.

Clause put and passed.

Clause 21: Section 37 amended —

Ms L. METTAM: Under this clause, the health service provider may dispose of land with the minister's approval. This is already contained within existing legislation but the wording will be altered by this amendment. Is this a material amendment or has an issue prompted the requirement to change the act?

Mr S.A. MILLMAN: Thank you for the question, member. This is a worthwhile amendment. Section 37(3) of the act reads —

> A health service provider must have the Minister's written agreement before it disposes of health service land.

New section 37(3) states —

> A health service provider may only dispose of health service land if —
>
> (a) the health service provider has the Minister's written agreement to dispose of the land …

That is, in large part, a continuation of the operation of subsection (3) in the act, but the next proposed paragraph introduces a degree of flexibility —

> (b) the disposal is of a class of disposals that has been exempted from the requirement to obtain the Minister's written agreement by order made by the Minister and published in the *Gazette*.

If there is a threshold issue in which some HSPs are disposing of a high volume of low-value land, the minister may want to gazette that class of transaction and empower the HSPs to undertake those transactions without needing to seek approval from the minister. However, proposed section 37(4) will provide a fail-safe mechanism —

> The Minister may, by order published in the *Gazette*, revoke or amend an order made under subsection (3)(b).

That is high value, low volume.

Ms L. METTAM: Can the parliamentary secretary give an example of the some of the high-volume, low-value land options that might be captured by proposed section 37(3)(b)?

Mr S.A. MILLMAN: What an excellent question! Yes, I can. For example, the WA Country Health Service has over 500 leases that require the minister's approval under this provision. Many of these leases are short-term leases of less than six months that are entered into for the purposes of providing accommodation to remote staff members. For example, WACHS has approximately 650 properties that it leases from the private market and subleases to employees. As the member would appreciate, entering into these sublease arrangements to attract workers to our regional and remote areas without having to revert to the minister would be a useful administrative change.

Ms L. METTAM: I can see why that amendment has been made. What challenge in the past has created a cumbersome approach when subleasing the 650-odd properties?

Mr S.A. MILLMAN: The challenge posed is that each time we enter into one of these lease arrangements, it has to go to the minister or the director general for approval. This amendment will expedite that process.

Ms L. METTAM: How long does that process usually take? I can imagine it would be quite cumbersome.

Mr S.A. MILLMAN: It probably varies depending on the circumstances. I do not think we can give the member a time.

Clause put and passed.

Clauses 22 and 23 put and passed.

Clause 24: Section 46 amended —

Ms L. METTAM: Clause 24(2) proposes to delete section 46(3)(a) and (b) and insert new wording. Can the parliamentary secretary indicate the reason for these changes and the new detail in proposed paragraph (a)?

Mr S.A. MILLMAN: Did the member say proposed paragraph (a)?

Ms L. METTAM: Yes.

Mr S.A. MILLMAN: Excellent; thank you. The member is right. Current section 46(3)(a) states —

> the health services to be provided to the State by the health service provider;

That is picked up in proposed subsection (3)(a)(i). Something that the member would be interested in is proposed subsection (3)(a)(ii), which states —

> the teaching, training and research in support of the provision of health services …

That picks up the existing subsection (3)(b). What is incorporated in proposed subsection 3(a) that is not in the act, so what is being brought in, is —

> (iii) the capital works or maintenance works to be commissioned and delivered under the agreement …
>
> (iv) any clinical commissioning of facilities to be carried out under the agreement …

The capital works and maintenance referenced in proposed subparagraph (iii) and the clinical commissioning in proposed subparagraph (iv) are the matters that we discussed when we were considering proposed section 20A. The purpose of these amendments is to permit the service agreement to provide for the health service providers to provide services other than health services. These are not just health services; these are dealing with the land, the property and the clinical commissioning before the hospital comes to life.

Ms L. METTAM: I actually think the parliamentary secretary answered that very well.

The ACTING SPEAKER (Ms A.E. Kent): You were actually surprised there!

Ms L. METTAM: I will ask this question anyway. I appreciate that this is to address the consistency in the bill. I have touched on this before, but has there been any issue that required this amendment to be made? Can the parliamentary secretary indicate what has prompted it?

Mr S.A. MILLMAN: I think the best example is probably Perth Children's Hospital and the ability for the government to have a line of sight into how the capital works and maintenance are being carried out. This provision will make it absolutely clear that that is something that the government can have oversight of.

Clause put and passed.

Clause 25 put and passed.

Clause 26: Section 49 amended —

Ms L. METTAM: I note that the term of a service agreement will be extended from one year to three years. Can the parliamentary secretary explain the reason for this extension? I am assuming it is to provide efficiencies and certainty, but I am just wondering what the reason for the change is.

Mr S.A. MILLMAN: The member for Vasse is right. It is just to provide a bit of flexibility. It is consistent with the terms of service agreements in other jurisdictions such as Queensland. The amendment will allow the department CEO or the commission CEO to extend the term of a service agreement. It will make it three years, so the individual will not always be renegotiating the contracts or agreements. They can enter into them. There will still be the capacity to extend the agreement for a further 12 months at the end of the three years. This is just so that the individual does not have to constantly renegotiate the contracts and agreements.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Sections 53A and 53B inserted —

Ms L. METTAM: Can the parliamentary secretary provide background on the requirement for these new sections? How is compensation determined and paid currently, in the absence of this provision?

Mr S.A. MILLMAN: When the member asks how the compensation is determined, does she mean how is compensation to the health service determined? Actually, I will provide a general answer, and then I will get the member to ask me a supplementary question, if that is okay.

The general answer is that people injured in motor vehicle accidents or who have work injuries that are subject to a workers' compensation claim can attend a health service and receive treatment for the injuries they have sustained. As a result of their motor vehicle accident insurance or workers' compensation insurance, the medical costs they have incurred should be covered by the wrongdoer—the tortfeasor—which is the other motor vehicle driver or the negligent employer, or what have you. The problem was that the state was picking up the burden of these costs. Contrary to the proper policy, the person who caused the accident or injury was not responsible for the cost of

treating the person. This was identified when the previous government introduced this legislation. It set up a scheme in order to try to have those moneys that had been paid out of the public purse recovered from the wrongdoer—the tortfeasor. Once a motor vehicle accident claim or workers' compensation claim had been settled or determined in the appropriate forum, the health service provider was entitled, under the original Health Services Act, to recover that money from the insurer. That was the scheme.

It has not operated how we wanted it to, so we want to clarify it and make sure that we can recover the money. That policy imperative the former government landed upon, which is a longstanding policy imperative of tort law, is one that we want to see brought to effect; that is, if people are entitled to compensation and they have the cost of their medical treatment paid for by the insurer, that should not also land on the public purse—the people of Western Australia.

The member's question was: how is the compensation determined? The definition of "compensation" is actually adopted from a commonwealth act. The same thing applies with Medicare. If an individual puts through a whole bunch of general practitioner consults for their workers' compensation claim that have been charged to Medicare, those costs should be recoverable against the insurer rather than against Medicare. The Health and Other Services (Compensation) Act is a commonwealth act, and we have picked up the definition from that act and brought it into this bill. That act works, and Medicare recovers the money from the motor vehicle accident or workers' compensation claim. Those are two examples. It is not an exhaustive list, but just a couple of examples. In terms of how the liability to pay compensation is determined, that has to be determined in a legal process or via a settlement. I will leave it there.

Ms L. METTAM: As I understand it, the health service provider has had to be responsible for recovering the costs that it had paid out through the delivery of the health services. What is being addressed here is an ability to avoid that challenge of recovering those costs. How difficult has that been in the past? As the parliamentary secretary has pointed to, I can imagine that the challenge of recovering those costs must have been quite significant. How have health service providers undertaken that task up until the introduction of this bill?

Mr S.A. MILLMAN: How difficult is it? It is difficult. Under the current legislation the injured plaintiff receives his or her compensation payment, settlement or award of damages from the court or the tribunal. The health service provider then needs to go to the injured plaintiff and say, "This is how much you spent at Busselton Hospital; you need to pay us that money back." That creates all sorts of problems, particularly when people have been involved in significant workplace or motor vehicle accidents. This scheme is designed to make the payer the insurer, so they will have the capacity and inclination to pay in a way that the plaintiff —

Ms L. Mettam: So it will go straight to the payer?

Mr S.A. MILLMAN: Yes.

Ms L. METTAM: Does the parliamentary secretary have any indication of the proportion, over the last 12 months, of unpaid claims? I am trying to get an understanding of the size of this problem.

Mr S.A. MILLMAN: At the risk of quoting former US Secretary of Defense Donald Rumsfeld, that is an unknown unknown. I do not think that is something that we can get a measure of because we do not necessarily know whether a person who has been involved in a motor vehicle accident has a tortfeasor who is another party to the motor vehicle accident and therefore there is a mechanism giving rise to the compensation. When they arrive at the emergency department consequent upon having been involved in a motor vehicle accident, they are treated by the hospital as though they have been involved in a motor vehicle accident. If there were a way of saying, "This person was involved in a motor vehicle accident and there was a negligent party to that accident", we could quantify the figure that we are after, but otherwise I do not think we can quantify that figure.

Clause put and passed.

Clauses 29 and 30 put and passed.

Clause 31: Section 58 replaced —

Ms L. METTAM: I appreciate that this clause will replace the current section 58, which relied on regulations that did not achieve their intended purpose. Can the parliamentary secretary detail how proposed section 58 differs from the current section 58?

Mr S.A. MILLMAN: These provisions will give effect to the scheme that I was discussing earlier. They clearly identify the liability and obligation that will be created. The liability is created under proposed sections 57A and 57B, and the statutory power to make the regulations falls under proposed section 58. While we are on clause 31, I draw the member's attention to proposed section 57C. A health service provider may waive or refund the whole or any part of a compensable charge that is payable or has been paid under proposed sections 57A or 57B. Those circumstances might include hardship, but that is a particular requirement. A fail-safe mechanism is in place in case the situation is particularly sensitive, such as a quadriplegic being injured in a motor vehicle accident, and a particular burden is imposed on account of an HSP requiring that the money be recovered. The provisions will be exercised to waive that, so that sort of balance, if you like, is provided under proposed section 57C.

Ms L. METTAM: These proposed sections will also rely upon regulations. As I understand it, the regulations under the current legislation did not meet their intended purpose. How will the new regulations achieve the intended purpose of these proposed provisions?

Mr S.A. MILLMAN: There are two ways in which they will achieve the intended purpose: they will be clear and detailed. For example, under proposed section 58(2) we can see all the notifications required to be undertaken by the parties and all the requirements. We can see the specificity under proposed section 58(2)(a), (b) and (c). Proposed section 58(3) states —

> Regulations made under subsection (2)(a) may —
>
> (a) provide that an individual is not excused from complying with a requirement to give information …
>
> (b) require the information … to be given …

There is a reporting mechanism under which it will be incumbent upon the injured party to communicate clearly with the HSP. I think that the clarity of purpose of the scheme is provided for under proposed section 58, which will provide the head of power under which the regulations can be made.

Ms L. METTAM: Will resourcing be provided to review patient services to determine whether compensation can be recovered; and, if not, how will cases be considered retrospectively if the health service has been delivered but the patient subsequently claims compensation?

Mr S.A. MILLMAN: I will do what I can, member. There are already financial management and compliance teams in HSPs that are responsible for looking at costs and things like that. I am advised that it is not anticipated that this will require extra personnel and that part of the task of those teams will be to take up this role as well, which is what was anticipated when the legislation was passed in 2016. This will just give effect to that.

Ms L. METTAM: How will cases be considered retrospectively?

Mr S.A. MILLMAN: The legislation will not have retrospective operation for matters in which compensation has already been paid. If there is a case in which someone was injured in a motor vehicle accident in 2010 and they commenced proceedings in 2015, within the statute of limitations—or 2013, if the Limitation Act had changed—and they resolved their claim with a determination in their favour and have been paid their awarded damages by the court, all well and good. If a person injured in 2020 commenced proceedings for a workplace injury in 2022, incurred costs in a public hospital and won their case against the negligent employer and was paid an award of damages, notwithstanding that the injury was in 2020 before the commencement of the amended act, they will get paid their damages in 2024, and it will be open to pay the costs back in accordance with the provisions of this act.

Ms L. Mettam: Yes, to the HSP.

Mr S.A. MILLMAN: To the health service provider. That is right.

Clause put and passed.

Clauses 32 to 34 put and passed.

Clause 35: Section 66 replaced —

Ms L. METTAM: We touched on this new section earlier. What will be the trigger or the threshold for financial difficulty?

Mr S.A. MILLMAN: The trigger will be when the HSP is unable to meet its financial obligations when they fall due.

Ms L. METTAM: I guess that will be quite subjective or will there be a definition of financial obligations?

Mr S.A. MILLMAN: Does the member recall our discussion about the policy framework and the proposed amendments to section 26(2) of the Health Services Act 2016?

Ms L. Mettam: Yes.

Mr S.A. MILLMAN: The policy framework will set out objective criteria. It will not be subjective. The policy framework that the director general can issue under section 26 will have effect in this clause under proposed section 66. This will make sure that people do not jump the gun. They may be anxious about their financial situation, but the criteria set by the system manager will say, "If you are experiencing these difficulties, now is the time to get cracking."

Ms L. METTAM: This proposed section does not appear to indicate any action will be taken if a health service provider is in financial difficulty but fails to notify the department's chief executive officer. Is this covered by the regulations or is it just not seen as necessary?

Mr S.A. MILLMAN: The short answer is that it is not necessary. The HSP is a statutory authority and its job is to manage the finances.

Ms L. METTAM: I understand that the HSP's role is to manage the finances, but is there an obligation on it as a statutory authority to advise the CEO or the minister that it is in financial difficulty, or is that just done through reporting?

Mr S.A. MILLMAN: I cannot recall the clause off top of my head, but the member may remember our discussion earlier about board members and their duties. The bill will expand the duties of board members to make it clear that they have various obligations. One of the duties at common law and probably also under this act—I cannot remember—is to manage the finances. The board is statutorily bound to manage its finances and each of the directors of the board is under an obligation to make sure that the finances are in good order.

I am sorry; we have not discussed the board yet. We will get to boards! Let me rephrase my answer: most of the HSPs are governed by boards and the board members all have a duty as directors to discharge their obligations in accordance with statute and common law. One of those duties is the financial health of the organisation that the board members form.

Ms L. METTAM: Proposed section 66B(2)(b) provides that the minister must —

> initiate such action as is required to ensure that the health service provider is no longer in financial difficulty.

Can the parliamentary secretary outline the options other than providing funding that are open to the minister to ensure a health service provider is no longer in financial difficulty? I know we have touched on boards.

Mr S.A. MILLMAN: I will get an answer for the member, but I note that proposed section 66B(2)(b) has the same wording as existing section 66(4)(b) in the Health Services Act 2016; that is, the minister must —

> initiate such action as is required to ensure that the health service provider is able to satisfy the relevant financial obligation when it is due.

It is not the same, but it is similar to the new wording —

> initiate such action as is required to ensure that the health service provider is no longer in financial difficulty.

It picks up the existing provision. Therefore, whatever powers the minister currently has will also apply under the amended act.

Ms L. METTAM: Will the minister be required to notify Parliament of any action taken under this proposed section or will that be at the minister's discretion?

Mr S.A. MILLMAN: Each of the HSPs provides an annual report to Parliament. They will be required to notify lists in the annual report when provided to Parliament.

Ms L. METTAM: Just for clarification, are the HSPs obligated to report this in the annual report? Will that be covered?

Mr S.A. MILLMAN: They are obliged to report this in the annual reports.

Clause put and passed.

Clause 36 put and passed.

Mr S.A. MILLMAN: Acting Speaker, may I change advisers?

The ACTING SPEAKER (Ms A.E. Kent): You may.

Clause 37: Section 76A inserted —

Ms L. METTAM: Proposed section 76A deals with the board. What is a requirement of this new section given that a member's removal from a board for misconduct is covered under section 77 of the act?

Mr S.A. MILLMAN: I will make two comments on this. If members look at the existing section 77, they will see that it is contained under the provision relating to casual vacancies. It is not immediately apparent that removing board members from office stands in respect of the act at large, so we wanted to make sure that it was clear that removing board members from office related not only to casual vacancies; it is a more general power. We introduced proposed section 76A, which comes under and follows logically, I would submit, part 8 division 2 relating to boards, and makes it clear that it has nothing to do with casual vacancies specifically but is about misconduct more generally. Proposed section 76A(1) gives us a definition of "misconduct" and proposed section 76A(2) gives us the basis upon which a minister can exercise their power. The definition of "misconduct" is very clear. It states —

> ***misconduct*** includes —
>
> (a) conduct that renders a member of a board unfit to hold office as a member even though the conduct does not relate to a duty of the office;
>
> and
>
> (b) a breach of duty of a board member under —

This is what I was erroneously talking about before —

> (i) section 79; or
>
> (ii) the *Statutory Corporations (Liability of Directors) Act 1996*; or

Any duties that they have at —

> (iii) common law or equity.

Proposed section 76A(2) makes it clear —

> The Minister may remove a member of a board from office on the grounds of —
>
> (a) neglect of duty; or

That is separate from misconduct, because proposed paragraph (b) states —

> misconduct or incompetence …

And proposed paragraph (c) states —

> mental or physical incapacity …

That moves misconduct into a separate section, clarifies what misconduct is and clarifies that the minister has the power to remove board members for misconduct. It spells it out in much greater detail and will make it much easier to deal with.

Ms L. METTAM: Apologies if this is defined somewhere, but what is the interpretation of "neglect of duty" in the context of this bill?

Mr S.A. MILLMAN: I am advised that the definition of "neglect of duty" is no different from what is meant under the current section 77(4)(a) of the Health Services Act. That term has its own meaning.

Clause put and passed.

Clauses 38 to 40 put and passed.

Clause 41: Section 79 amended —

Ms L. METTAM: Can the minister outline what prompted the addition of proposed section 79(3), and are there specific examples or does this provide more specificity to conflicts of interest?

Mr S.A. MILLMAN: I thank the member for Vasse. This is about providing clarity. This clause will amend section 79 to place a number of express obligations on board and committee members, some of which are additional obligations that are not covered by the general law obligations that are imposed on board members by the Statutory Corporations (Liability of Directors) Act or common law or equity. The amendments are intended to make sure that the board and committee members are aware of the duties they owe to the health service provider and the state, with particular emphasis on the management of personal interests. When a prospective board member is invited to participate as a board member of an HSP, they will be able to pick up the act and look at section 79(3) and see in clear and unambiguous terms exactly what their duties, obligations and responsibilities are. The new provisions, I would say, will create a high level of transparency and integrity in the personal interests held by board members by enshrining in legislation under proposed section 79(3)(b) that board members are required to notify their board of any personal interests they hold that conflict with the interests of the health service provider. Due to the nature of health service providers' operations, the significance of the services that are delivered to the public and the relative size of the budgets they manage, a higher level of transparency and accountability by the board of a board member's personal interests is required beyond that already provided for in section 80 of the act.

To conclude, section 80 follows on from what will be the amended section 79 and there will be no changes to section 80. Section 80 is the penalty provision that contains the penalties if board members are in breach. The penalties will remain as they are, but it is felt that because of the nature of the HSPs they are responsible for as board members, these clearly articulated duties should be included in the amended act.

Ms L. METTAM: Currently under section 79(2), a board member must put the public interest before the interests of the health service provider. Under proposed section 79(3)(a), a board member will be required to act in good faith and in the interests of the health service provider. Noting that proposed section 79(3)(a) is subject to sections 79(1) and (2) of the Health Services Act, how will board members balance the requirement to put the public interest before the interests of the health service provider but also act in the interests of the health service provider?

Mr S.A. MILLMAN: This is a hierarchy of interests and it also pertains to the importance of avoiding conflicts of personal interest. It is both proposed sections 79(3)(a) and (b). Personal conflicts of interest are dealt with in proposed paragraph (b) and proposed paragraph (a) deals with having a duty to the public interest and a duty to the health service provider. It is a hierarchy of interests.

Clause put and passed.

Clauses 42 to 99 put and passed.

Title put and passed.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [4.59 pm]: I move —

> That the bill be now read a third time.

MS L. METTAM (Vasse — Deputy Leader of the Liberal Party) [5.00 pm]: I rise to make some concluding remarks as part of the third reading debate on the Health Services Amendment Bill. From the outset, I thank the previous Minister for Health, the current parliamentary secretary for health for answering some of the outstanding questions we had on the bill, and the advisers who provided briefings to the opposition during not only the previous Parliament, but also the current Parliament. We have supported this bill. It is important to address some of the outstanding issues that have existed with the Health Services Act 2016 since it was first introduced.

The legislation will establish the director general of the Department of Health as the system manager for WA Health. It will effectively iron out some outstanding concerns by making consequential amendments to the Mental Health Act, the Motor Vehicle (Catastrophic Injuries) Act, the Queen Elizabeth II Medical Centre Act and the University Medical School, Teaching Hospitals, Act 1955. A range of areas will be rectified, including the WA health system's land management ownership issues. It will establish a more comprehensive and effective scheme for the recovery of fees and charges. It will clarify who the employing authority is and allow for health service providers to more effectively provide services to and receive services from one another. It will strengthen the duties of the board, and some questions were asked about that. Greater detail is given about the obligations of board members, which I think is very important. The progression of this bill is important. This legislation represents a better governance structure for Western Australia's health system with a clear framework of roles and responsibilities for health service providers across the state.

In my contribution to the second reading debate—at that stage in 2021—I raised concerns about the need for a governance review, as floated by the Australian Medical Association at that time, and the fact that the act has some review obligations. Since then, the new Minister for Health has undertaken a governance review of the act. Although I cannot talk on new material, there are some concerns about the outcome of that governance review. We certainly support the fact that the governance review was undertaken, but there are some outstanding concerns about what this means for mental health. These concerns include how mental health issues are now managed under the health system as it relates to the Mental Health Commission, the way it was announced and what it means for the mental health sector. As that was not part of my contribution to the second reading debate, I am unable to go into greater detail about it now, but it is important that this bill provides a greater level of accountability and transparency for the operations of health service providers.

Touching on some of the comments I made previously, going forward, pressure will continue to increase on hospitals, but we need to look at the health system outside of hospitals, including the delivery of care. It is vitally important that the recommendations of the sustainable health review are progressed. Preventing patients from going to hospital in the first place and ensuring that the patients who are in hospital are sick, as well as looking at other options for early intervention and support outside the walls of the hospital, are vitally important. One in five emergency presentations could have been supported in a primary care setting, as outlined in that review. Investment in preventive health is vitally important, as are the roles that our health service providers deliver not only in hospitals, but also through health care in our communities.

I will leave my comments there. Again, I thank the parliamentary secretary and the advisers for their answers during the consideration in detail process. I commend the bill to the house.

MR S.A. MILLMAN (Mount Lawley— Parliamentary Secretary) [5.07 pm] — in reply: I would like to commend the member for Vasse for her contribution to the third reading debate. I agree with a significant proportion of what she just said. The Health Services Act is relatively new. The original version was introduced only in 2016. The unanimous support from members of this chamber for the Health Services Amendment Bill speaks to the importance of these reforms. We have picked up a good structural reform and we have tailored and enhanced it. I think the changes we have debated today that are part of this bill are necessary changes to give effect to transparency, accountability and efficacy. I thank the advisers for their support and advice during the consideration in detail stage. I thank the member for Vasse for the questions she asked, which were germane to a number of the amendments we have put forward. I think those questions helped illuminate some of the interesting parts of the bill. With that, I commend both the former Minister for Health, the Deputy Premier, as well as the current Minister for Health for the work they have done in stewarding this legislation to this point.

I commend the bill to the house and I thank members for their support.

Question put and passed.

Bill read a third time and transmitted to the Council.

AUDITOR GENERAL AMENDMENT BILL 2022

Second Reading

Resumed from 19 October.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [5.09 pm]: I rise to make some comments on behalf of the opposition on the Auditor General Amendment Bill 2022, and in doing so advise that I am the lead

speaker, and perhaps the only speaker, on this side on this matter tonight. I understand that the intention of the Leader of the House is for the bill to pass all stages tonight. I have advised the Attorney General, who is in charge of the bill for the government, that he is in for a very late night.

Mr J.R. Quigley: We shall not be intimidated!

Mr R.S. LOVE: We shall see just how far we can go into the early hours of the morning to discuss this very important bill. We know that it is very important because transparency of government is essential. The Auditor General is a very important officer of this Parliament. The amount of work for the Office of the Auditor General has grown greatly in recent times, partly as a result of the era that we have been through—the COVID-19 pandemic and all the different pressures it put on government services—and because of some notable, shall we say, outliers in terms of poor performance and some terrible circumstances of fraud that occurred within government departments. Another element of that increase in workload has been that all local governments in Western Australia have gradually come under the purview of the Auditor General.

The Auditor General has a very important role, but there have been problems at times. The previous Auditor General highlighted problems with access to protected and restricted documents, which made it difficult for auditors to do their job. There was also a feeling that there was a lack of clarity from the government on what information should and should not be divulged to or shared with the Auditor General, and the circumstances in which it should be shared. This bill will give the Auditor General a clear right of access to materials defined as protected or restricted. Looking at those two definitions, I understand that documents that are considered to be protected are those pertaining to the development of cabinet submissions and cabinet deliberations, while restricted documents are those that might be subject to legal professional privilege or some other public interest test that previously had rendered them unavailable to the Auditor General. We know that this bill will help clear up what can be disclosed.

In August 2016, the Joint Standing Committee on Audit provided 24 recommendations in its review of the Auditor General Act 2006. I understand that not all those recommendations are included in this bill. I would be happy for the Attorney General to perhaps highlight why some have not been adopted when others were, and which of those recommendations are not covered by this legislation.

If we look at the bill itself, we see that clause 8 contains the main changes. It is a quite lengthy clause that deals with disclosure and the circumstances in which it will take place. Since 2007, there has been an understanding of sorts, via a Premier's circular, of how the Auditor General can access certain documents. This will be further refined and clarified by the legislation that we are dealing with.

A briefing was provided to the opposition a week or so ago. The briefing was organised by the shadow Treasurer, Hon Dr Steve Thomas of the other house, but I sat in on it via Teams. A number of questions were asked, and I think the answers to some of them have been supplied in writing. I intend to go into consideration in detail on this bill and I will outline those questions at that time. The Attorney General will then be able to put the answers to those questions on the record. If they are not quite the same as those that were provided to the opposition in writing, I will ask why there are differences. I want to make sure that those issues are on the public record.

At the briefing, we were told that the Office of the Information Commissioner, the Corruption and Crime Commissioner, the Public Sector Commissioner, the Ombudsman, the Treasurer and the executive had all been consulted on this bill. I am sure those consultations impacted on the bill to make sure that it met the government's intentions. I think any person who believes in greater transparency and greater accountability of government would support the changes that will be made. When we go into consideration in detail, I will talk about how efficacious these changes might be, but at no point will I question the need for the Auditor General to have access to that information. There might be some questions around how it will happen and the like, but the opposition is generally highly supportive of this bill. Far from restricting the Auditor General, I think the bill will lead to clearer access to restricted and protected information for officers who work for the Auditor General.

I will ask a few questions in consideration in detail around how the Auditor General will handle a circumstance in which a report hinges on access to information but that information cannot itself be reported. That information will no doubt help the Auditor General to reach a conclusion, but what is behind those considerations will not be as clear because of the requirement to restrict the flow of some information to the Parliament and the public. We know that in some circumstances, the Auditor General will not report directly to the Parliament but may make a report instead to the Premier, the Treasurer and the executive, given that the information will be of a highly protected nature.

I will look generally at what the Auditor General does for this Parliament and this state. I think it would be highly instructive to dwell on that for a little time so that we get an understanding of the importance of the role of the Auditor General. The Office of the Auditor General recently put out its *Annual report 2021–2022*. I will provide some of the information that is contained in this report for members of Parliament who may not have read the report in much detail, as it might be of some value in understanding some of the issues the Auditor General faces and the importance of their work. At the moment, a little over 200 employees work for the Auditor General. I understand that there is a lot of pressure on those employees because the workload has increased, especially with local governments coming on board. I know that, like many other skilled occupations, finding persons skilled in

the area of audit has become quite difficult. The Auditor General seeks to audit the finances and activities of the Western Australian state government and local governments, and tables the reports in Parliament. Many members will have sat in on some of the briefings and discussions with both the current Auditor General and Auditors General of the past in the committee room across the road.

I will highlight some of the issues that the Auditor General has highlighted in her executive summary in the 2021–22 annual report. It refers to the shortage of qualified audit professionals and deploying audit staff from across other business units. It goes on to say —

> As a consequence, we have had to adopt increasingly rigid audit schedules with entities, which has increased the importance of them providing us with access to key audit information and relevant personnel within agreed timeframes to avoid delays. I wrote to entities earlier this year advising of this risk, but not all have been in a position to deliver. This will lead to a number of late audit sign-offs for the 2021–22 financial year.
>
> Full and timely audit access remains a key concern for my Office. While this has been a long-standing issue, impeded access is becoming more problematic due to the delays and additional cost it is causing our growing work program, which no longer has a quieter period. Where access to relevant audit information is impeded, engagement at senior levels diverts attention in my Office as well as in entities. This can impact timely finalisation of an audit or may lead to situations where our Office either cannot issue an opinion or can only issue a modified opinion.
>
> This issue often arises from ongoing confusion in parts of the State sector around the scope of the Auditor General's audit access powers and the importance of these to maintaining auditor independence and, of course, the ability to perform our statutory functions. During the year we sought legal advice from Senior Counsel to clarify access powers and inform a program of engagement with the Government and key stakeholders, with a view to providing the sector with clarity around the information we can obtain and how it is used. I am hopeful this will resolve what has been an enduring operational impediment and lead to greater efficiency in the audit process for both our Office and the entities we audit.

That goes to show that even in the less confronting and difficult environment of dealing with some of the protected documents, perhaps some of the state entities have taken a narrower view of what might be restricted information than the Auditor General believes should be the case. This legislation will help to clarify that issue and bring some certainty to the situation. A table on page 11 of the report outlines that 170 entities and subsidiaries of the state government were audited, 159 000 people work for those entities and they manage over $207 billion in assets. The Office of the Auditor General audited 148 local government entities, with 17 000 employees and $45 billion in assets. Members can see that it is a very big task to ensure that there is probity in organisations that employ that number of personnel and have that level of financial commitment. Page 16 of the report sets out the performance management framework and outlines the desired outcome against government goals, which is an informed Parliament on public sector accountability and performance. Again, the Auditor General provides a valuable service to the public and to this Parliament. The key effectiveness indicator states —

> The extent that the OAG is effective in informing Parliament about public sector accountability and performance is measured by the number of tabled reports compared to target for each of the following categories of audit matter:
>
> - service delivery
> - economic development
> - social and environment
> - governance.

That is basically the output of the Auditor General, who reports on those areas and looks over the financial documents of the organisations as they are put forward.

On the financial auditing that is undertaken, I note that on page 59, the Auditor General has recorded that this year there was a record number of qualifications. The report goes on to state —

> Of great concern from our 2020–21 audits was the number of entities with serious deficiencies requiring a qualified opinion on financial statements, controls or KPIs. Seventeen State government entities received qualified audit opinions on 31 separate matters, an increase from seven entities and 11 matters the year before.

That is quite a steep increase indeed —

> This is the most audit qualifications we have ever issued, noting that most qualifications related to controls rather than reported information in financial statements or KPIs.
>
> This is a very concerning and significant upward trend in audit qualifications particularly in controls around expenditure, payroll and information systems, most likely reflecting a public sector that is resource constrained in some areas, and COVID-19 fatigued and diverted.

Around the world, there is a great need for controls on information systems, and this has never been more starkly highlighted than it has in recent times, as we have seen with the Optus and Medibank situations that have emerged.

I will talk about some of the individual reports in a moment, but now I want to talk about one that goes back to the period when Hon Fran Logan was a minister of this house; in fact, I think he was the Minister for Emergency Services at the time. The Auditor General reported that she could not make a finding in relation to Hon Fran Logan's decision to not provide information about the Bushfire Centre of Excellence. In essence, Mr Logan handed a heavily redacted document to the Auditor General and when asked for an unredacted document, his office declined to hand it over. That occurred in April 2019.

We know that the very energetic former Nationals member for Warren–Blackwood, Terry Redman, pursued this matter with great vigour in Parliament and was looking for information about it. The centre was opened in January 2021. We know that Mr Logan's tender process cost $33.2 million, but Mr Logan failed to list the tender applicants and would not reveal the applicants deemed ineligible. He also refused to list the final eligible tenderers. We are now three years on from that situation and, of course, that disclaimer of opinion still sits there in the ether. That is an indication of what happens when a minister refuses to provide information to the Auditor General and they cannot make a finding on the matter at hand.

I will look at some of the reports that were tabled in the 2021–22 period to show some of the scope of the work and some of the failings that have been highlighted by some of that work. In August 2021, the SafeWA application audit found that WA Health successfully delivered the SafeWA application under significant time pressure. However, in addition to finding that SafeWA data was being used for purposes other than COVID-19 public health contact tracing, the Auditor General found weaknesses in the SafeWA application and the web application used by contact tracers. This included insufficient retention of access logs, a weak password policy and inconsistent use of multifactor authentication.

Again, in an era when we all face threats to our private information, we cannot afford to allow government to become complacent around the issue of the protection of information and access to that information. I recall that a year or two before this report came out, numerous people had been able to access information on the Department of Transport's website. I still do not think that the Minister for Transport appreciates the risks posed for Western Australians in that very porous situation when an organisation refuses to consider unlawful access to be a real issue. The Corruption and Crime Commission also highlighted that in its report on the transport executive and licensing information system.

I move to the *Information systems audit report 2022—State government entities* that was tabled in March 2022. The annual report says about it —

> This is the Auditor General's 14th report on State government entities' general computer controls. It shows many entities are still not addressing our audit findings quickly, with nearly half of all findings previously reported. Information security remains a significant area of concern with only 50% of entities meeting our benchmark in this area. Entities are encouraged to take note of the recommendations in the report as they work to improve their general computer controls, ensuring information security remains a heightened area of focus.

We know that, over the years, similar findings have been made about local government. Again, that is a matter of some concern. In May 2022, the *COVID-19 contact tracing system—Application audit* report was handed down. On that, the annual reports states —

> This audit assessed WA Health's COVID-19 contact tracing application, the Public Health COVID-19 Unified System (PHOCUS). We found WA Health has provided limited information to the community about what personal information they collect, including from other government and non-government entities, to help with contact tracing. In addition, WA Health needs to improve its controls to effectively protect the confidentiality of the personal and medical information stored in PHOCUS.

Wow! Now we know how important that is —

> In any emerging crisis, government responses should consider impacts on trust and confidence in government and the importance of upholding the universal human right to information privacy.

Again, nothing could have made that more stark than the recent situation with Medibank. Another audit report refers to staff rostering in corrective services. This is of some note at the moment as we talk about the ongoing situation at Banksia Hill Detention Centre and Casuarina Prison. This audit report was tabled on 18 May 2022, and the annual report states —

> This audit set out to examine if the Department of Justice was managing staff rostering to deliver services efficiently and safely in corrective services. We found a range of serious deficiencies in systems, processes, controls and culture that have led to a lack of effective oversight and accountability. Consequently, overtime costs are high, officers are being paid for hours they have not worked, absenteeism is a persistent problem and safety provisions in the industrial agreement are not being met.

I move to the *Transparency report: Major projects*. This report was done on those huge projects that the government is in the process of working on and was tabled on 17 June, towards the end of the reporting period. The annual report states —

> This audit provided information to Parliament and the public around the cost and time delivery of a selection of major projects. The vast majority … had their delivery timeframes or costs increased. Combined, budget and time increases for existing projects even when approved, potentially work against those projects that are still in development and are yet to seek funding approval. Also, projects that have time delays have flow on effects for the community and businesses that try to plan around the projects. The report recommends the Department of Finance regularly reports to Parliament and the public on the status major projects.

The only reporting that we get on the status of those major projects is in question time when we have the perennial question on the Ellenbrook line and we hear about when the minister last visited some train station somewhere and how wonderful it is all going to be. In terms of an update on the costs or the progress of that project, very little information can be found anywhere by members of Parliament. I go back to the fraud situation.

Mr D.A. Templeman: You have estimates and then you want to reduce the amount of time.

Mr R.S. LOVE: Shush, shush, shush. The member will have his chance. He can have a discussion after me if he wishes to.

The *Fraud risk management better practice guide* was handed down on 22 June. The Auditor General was very busy during that final period of June. This guide proactively aims to help WA public sector entities to better manage their fraud risks. That goes to show that the work the auditor does is very broad and not only looks at the problems, but also tries to put forward constructive solutions and guide government to seek better outcomes in areas of deficiency.

The final report I will talk about is about a matter that I am sure has many people concerned. The *Opinion on ministerial notification—AWU funding agreement* was handed down on 28 June and comes under the key performance indicator category of governance. The annual report states —

> The Auditor General found a decision by the Minister for Forestry not to provide Parliament with information about the terms upon which $200,000 was awarded to the Australian Workers' Union was not reasonable and therefore not appropriate. The Minister said the funding agreement was commercial-in-confidence but we found it did not meet the criteria. Another opinion on the Minister's decision not to provide other information was not required because the requested information did not exist.

That goes to show the importance of some of the work of the Auditor General. In an earlier discussion I had with the Auditor General, she talked of the problems of dealing with state government entities that did not seem to understand their requirement to provide information and the circumstances around that. With the Bushfire Centre of Excellence, the then minister refused to hand over the information. That type of situation can be very damaging to not only public confidence, but also the ability of Parliament to do its job of ensuring that the money appropriated through the processes of this place is wisely spent and does not end up in the hands of fraudsters or being wasted. The organisations that hold very important information on people's private circumstances—about their driver's licence, health details et cetera—need to be protected with great vigour.

During consideration in detail, we will pose some questions to the Attorney General about the finer details of the new provisions and how they will function when documents from past cabinets are involved. I am sure that he will be able to explain in some detail how it will all work.

In conclusion, I compliment the work of the current and former Auditors General for the Parliament and for the people of Western Australia. I am sure that the people who work in the Office of the Auditor General go above and beyond what is asked of them to provide a level of assurance and transparency for the people of Western Australia. We on this side of house only want to see that increased. This government has an extraordinary amount of legislative power in having control of both houses of Parliament. The lack of some of the checks and balances that may have existed in past Parliaments, when the other place did not have a government majority and parliamentary committees et cetera may have had more scope and ability to delve into matters, means that the role of parliamentary officers such as the Auditor General is of utmost importance. We support the work of the Auditor General and we wish to see that work furthered. Our only concern is to ensure that that happens as quickly, efficiently and effectively as possible.

MR J.R. QUIGLEY (Butler — Attorney General) [5.39 pm] — in reply: I rise in response to the member for Moore's contribution to the second reading debate on the Auditor General Amendment Bill 2022. Just to set the scene: in parliamentary democracies around the Western world there have been various regimes under which governments protect the state's interests. I am not talking about protecting the government's interests, but the state's interests. Things that are discussed in cabinet relating to the business of government are discussed in the utmost of confidence for very good reasons. For example, the government of the day might become embroiled in litigation with a construction company that is building a big infrastructure project. It would be against the interests

of the people and taxpayers of Western Australia for confidential deliberations or legal advice received from the State Solicitor's Office to be made generally known at large. It would be to the advantage of some corporation seeking to rake more out of a contract than the government believes it merits for it to be able to pore over cabinet documents or legal advice that a minister or the cabinet has received.

A classic example of this was omitted from the account given by the member for Moore: the previous Auditor General's audit of Optus Stadium, when the current Leader of the Opposition was a government minister. The then Auditor General sought access to both cabinet documents and advice on aspects of the contracts for the stadium, but the current Leader of the Opposition as the then responsible cabinet minister denied the Auditor General access to them. A qualified report had to be made by the Auditor General because Hon Mia Davies stood by what governments on both sides have done—claiming cabinet-in-confidence and public interest immunity. Because Hon Mia Davies claimed that, the Auditor General could not look at the documents and had to provide a qualified audit. As I said in my second reading speech, the previous Auditor General, Mr Colin Murphy, PSM, was unable to access legal advice that the previous government had received and had to give a qualified audit.

In the interests of transparency, the McGowan government wants the Auditor General to see everything so that she can measure the government's actions against the advice it receives and the information that was before cabinet when a decision was reached. This is unprecedented in Western Australia and will, via legislation, dismantle the iron curtain behind which confidential government documents have been protected. We are dismantling that so that the Auditor General can report to the people of Western Australia about whether the proper processes have been undertaken and whether she is satisfied or otherwise that the government has acted on proper legal advice and has taken the proper matters into consideration in making its determinations.

We do not want to have ministers saying, "That's legal professional privilege." Governments of both stripes have done that for many years, and for many years Auditors General have called upon governments to lift the curtain and let them examine the government's processes. This is an epoch-marking moment; the McGowan government is the first government in Western Australia's history to say to the Auditor General, "It's all yours. You can examine anything—legal professional privilege, confidential documents from the Solicitor-General, submissions to cabinet that form cabinet's decision-making in a matter, the documents attached to those submissions—they are all available." The opposition, through the member for Moore, has indicated its very strong support for these measures.

The member referred to the consultation process and specifically referred to the Leader of the Opposition in the other place, Hon Dr Steve Thomas. We all remember what Hon Dr Steve Thomas's response was—that the opposition would support the bill, but that its shortcoming was that it had within it a prohibition on the Auditor General further publishing those documents in a report, which he referred to as "opaque". How do members like that? Opaque! This comes in a situation in which the government is opening up all its books to the Auditor General. The Auditor General does not have to recount in a report paragraphs or perhaps whole letters of advice from the Solicitor-General; it is sufficient for her to say, "I've had a look at all these documents and I'm satisfied the right considerations were taken into account." Alternatively, the Auditor General might say, "Having examined all the documents, I am less than satisfied with the veracity of the decision."

The Auditor General was closely consulted during this process. I was personally present at those meetings and she was at pains to point out that Auditors General are always careful not to publish sensitive information that could be damaging to the state—not the government, but the state—and that she had no intention of ever publishing that sort of document if it were to be made available. There would be no point in publishing it, because the Auditor General's function is to test or measure the government's actions and decisions against the advice it has received to see whether its decisions are supported by the advice, go against it or overlook some risk. It is therefore open for the Auditor General to not quote chapter and verse from any cabinet document or legal opinion, but do what I said and either give the government a merit stamp to say that having examined the cabinet documents or the legal advice behind those cabinet documents, she is satisfied with the government's actions, or, in the alternative, that having examined those documents, she is not satisfied. It is then open for the opposition to stand up in this Parliament and press the government on that point.

Another important feature of this bill is that by making these documents available to the Auditor General, there is no waiver of privilege. Be it public interest immunity, as it were, attached to cabinet-in-confidence, or, perhaps, other contractual documents—goodnight, leader; *Dad's Army* will carry on—the Auditor General can examine those without waiving privilege so that contractors such as the John Holland Group, which was engaged in litigation over the Perth Children's Hospital, do not get to see the government's documents. We do not get to see the legal advice that John Holland receives from its lawyers; why should it get access to the government's legal documents or advice via the Auditor General? If the government brought in legislation that permitted that, it would be acting against the interests of its citizens and taxpayers, because it would be giving John Holland an unfair advantage via the Auditor General, who could publish the documents. The Auditor General says that she would never publish sensitive documents, and I well believe the Auditor General, but it is not just this Auditor General we are dealing with. This legislation will be there for the ages and will apply to subsequent Auditors General, so it is very important that the legislation will protect the privilege that attaches to those documents. If that privilege were to be waived, the other side in a litigation could use it against the state, so it needs to be statutorily protected. On the other hand, if the

Auditor General were to inspect these documents and see something that caused her to suspect that there has been serious misconduct by a minister or the government, she would be duty-bound under the Auditor General Act to inform the Corruption and Crime Commission. If there were anything untoward in those documents evidencing impropriety, they must go to the CCC to be inspected, so there is no fetter on total accountability. It is very important that if the Auditor General were to see impropriety in the accounts that may amount to serious misconduct, she has that obligation to refer those documents to the CCC.

Up until now, a protocol has existed between the Auditor General and the government. This protocol was fashioned years ago and has been respected by Auditors General and governments of different stripes. It required the Auditor General to make a request for cabinet documents, and the cabinet had absolute discretion whether to grant the Auditor General access to those documents. Once again, we bear in mind that the government should not deny access to protect its own reputation, but rather to protect the state and keep matters relating to the state confidential for the reasons I have already outlined—that is, that third parties who want to bring actions against the state will not be in a more advantageous position. That is critically important. That is how I would answer Dr Thomas. It is not opaque; there is full disclosure, and the Auditor General can refer to that disclosure in her report.

I will give members an example of a case that I was involved in. I refer to the ex gratia payment to Gene Gibson, the Indigenous man who was wrongfully convicted of the manslaughter of a pedestrian in Broome. Gene Gibson was intellectually impaired. He had participated in a police interview. It was all a bit odd, and, years later, it was shown that he had been wrongly convicted. He made an application for an ex gratia payment. Then, under section 82 of the Financial Management Act, as the Attorney General, I was requested to present the documents via the Auditor General. Acting on the advice of legal advisers to the government, I said, "No, that's legal professional privilege." I was a little uncomfortable, but I was told, "That's legal professional privilege, don't let it go." In the end, to show that I had received legal advice, I redacted it so that the Auditor General could see that I had actually received legal advice from the State Solicitor's Office that was addressed to me, see the words "Re Gene Gibson ex gratia payment", see the "yours sincerely" at the bottom, but not see the content, so that the Auditor General could see that it was not just a whim of the Attorney General to say that we will give money to Gene Gibson. The Auditor General could see that it was done after advice, but never got to see the chapter and verse of the letter of advice. That will change. Under this legislation, in a like circumstance, the Auditor General will make a request to me under section 82 to produce, and I will produce, safe in the knowledge that the documents will not be given to the other side. The Auditor General can report on those documents. She might report that the Attorney General went way beyond what was in the legal advice, at which point the opposition would be pressing me in the chamber to explain that. But at least the Auditor General would get to see it and could comment on whether the ex gratia payment was in the ballpark of the legal advice. That process will introduce transparency and accountability for my actions. This is very, very important.

A similar situation occurred when Hon Mia Davies as the then Minister for Sport and Recreation was requested under section 82 of the Financial Management Act to produce the contractual documents relating to Perth Stadium, and she chose not to. Under this legislation, she would disclose those documents. The Auditor General would check them and comment without actually publishing those documents, because the Auditor General will not always know —

Mr R.S. Love: I would expect that she probably acted in the same way that you did—on legal advice.

Mr J.R. QUIGLEY: That is right, but we are changing it.

Mr R.S. Love: You shouldn't criticise her.

Mr J.R. QUIGLEY: No, I was not criticising her; I was giving an example. It is an example that the member overlooked. The member made it sound like it was all Labor people standing on this convention of not handing over documents. I am saying that it is governments of both stripes, and they are all acting on legal advice, as I was and as the then minister was. Taking the situation of Hon Mia Davies as the then minister, the Auditor General did not know the details at the time.

Sitting suspended from 6.00 to 7.00 pm

Mr J.R. QUIGLEY: I will wrap up the second reading in reply speech and touch upon the last subject that the member for Moore raised, which was access. As I was saying before we rose for the dinner break, at the moment there is a protocol under which when the cabinet or minister decides to give access—which is not a matter of always—the Auditor General can come down and take notes, but she cannot make copies of the documents. Therefore, the arcane process under which the Auditor General has to come down, trawl through cabinet papers and make notes but not make any copies will be history, member. The plan is that the documents will be seen on a screen, in real time, with access at the Auditor General's office. A program will prevent the documents being captured, downloaded or printed et cetera, and a time limit can be set. If the Auditor General says that it will take two months to complete an audit, the file can be left open on the screen, or accessible on the screen, for that period. If the Auditor General needs an extension, she will be able to come back to the Department of the Premier and Cabinet to ask for an extension to complete the audit. There will be no on-publication to third parties and privilege will be protected. As I said, this will be the start of a new dawn for the Auditor General in Western Australia, who will have unlimited access

to cabinet files and other files that are the subject of public interest immunity. Clear lines will be set within the act as to whom the Auditor General should make application to for access to these documents. Henceforth, there will be an open book for the Auditor General.

I will wind up because I know that the member for Moore wants to go into consideration in detail and examine a few of these propositions, which we welcome. This bill will ensure total transparency between the government and the independent Office of the Auditor General. With that, I will conclude my remarks and thank the member for his effort. I look forward to his examination of the bill in detail.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1: Short title —

Mr R.S. LOVE: Sometimes in the clause 1 debate a little bit of leeway is granted to stray into more general discussion and I am looking at the Acting Speaker for an indication as to whether he —

The ACTING SPEAKER (Mr T.J. Healy): Ask the question and we will see!

Mr R.S. LOVE: Good. The minister's officer was kind enough to provide a briefing to the opposition on a number of questions prior to the discussion on this bill. For the public record, can the minister answer one of the questions that was raised at the briefing: how is it envisaged that the Auditor General will manage the process of providing a report without the ability to disclose sensitive or confidential information?

The minister could choose to answer that now or at clause 8, or somewhere else, but if we could perhaps put that on the record because I know that the office has already provided an answer, and I would like to have it on the record.

Mr J.R. QUIGLEY: As I said in the second reading speech, the Auditor General will be able to have open access to the documents. The Auditor General can then form an opinion of the government's conduct based on those documents. It is not necessary to publish the text of those documents to make a report. If the Auditor General is denied access to the documents, she cannot do an audit. This way, the Auditor General will be able to complete an audit. It will not be like when the Leader of the Opposition was the minister and said that the Auditor General could not see the papers concerning Optus Stadium. It will not be like that. It will not be like when I withheld the Gene Gibson legal advice. The Auditor General knew that I had taken legal advice but not whether I had gone over or under the quantum. Therefore, the Auditor General will be able to give a report even though she will not be given the text of the report.

Access to cabinet materials has been provided in a similar way under the cabinet protocols since the act commenced. Under the cabinet protocols, under which the previous government, our government and governments back in history operated, the Auditors General were at times given access to documents. Pursuant to that protocol, the Auditors General could come down and take notes but could not reproduce anything, and would then give a result on the audit whether everything was kosher or something was amiss. Of course, if the documents reveal an instance of serious misconduct, the act has a provision requiring the Auditor General to report that to the Corruption and Crime Commission.

Mr R.S. LOVE: The written response that the office provided to the opposition outlines that the bill will ensure that the practice, which the minister just outlined, of providing information will continue and there will be a soon-to-be express ability for the Auditor General to access information that was previously not provided, such as information subject to legal professional privilege. The Department of the Premier and Cabinet said it has continued to work with the Auditor General to develop appropriate operational processes and procedures. Can the minister explain what is involved in developing those appropriate operational processes and procedures, and when that might get underway?

Mr J.R. QUIGLEY: The Department of the Premier and Cabinet is working with the Office of the Auditor General to refine and trial the processes and procedures, bearing in mind regulations have to be formed. This will provide the opportunity to ensure that they reflect the effective and efficient processes and procedures that meet the needs of the Auditor General and those agencies being audited in the first instance. It is a matter of working with the Auditor General at the moment to work out those procedures. I have already averred to the computer program that will give the Auditor General access on her desk, but we will work out—with the Auditor General's cooperation—the correct procedures that will satisfy her.

Mr R.S. LOVE: Thank you for that answer, Attorney General. Questions were also asked about what would happen in the event of a conflict between what a government agency and the Auditor General felt were within the scope of the Auditor General's inquiry and what documents could be dealt with. What would happen to try to work through how to resolve those types of disputes?

Mr J.R. QUIGLEY: As is the practice at the moment, the Auditor General will work collaboratively with the agencies to identify what documents fall within the scope of the audit. I have already mentioned that in consultation

with the Auditor General during the preparation of this bill, she stressed that she was not in the business of publishing the text of confidential information. Any disagreement about whether a direction of the Auditor General to provide information must be complied with will ultimately be resolved by the Supreme Court. However, it is anticipated that the Auditor General and the agencies will continue to work collaboratively to reach appropriate outcomes. We did not want to have the executive or anyone else in there, and we discussed at length with the Auditor General about having an independent arbiter. There was a number of options, such as appointing a King's Counsel or a retired judge as the arbiter to say that something is or is not a privileged document, but that would undermine the independence of the Auditor. After discussions with the Auditor General, it was agreed that the Auditor General would work collaboratively with the agencies to access the documents. If, at the end of the day, a dispute arose, that will be resolved by the Supreme Court in an unusual circumstance that none of us can envisage. I mean to say that it would be a risk for the government to say, "No, we have such a dispute here; you go to the Supreme Court, have all this litigated in public." It is just not something that any government would want, knowing that it can let the Auditor General see the document and it is not going to be published to a third party.

Mr R.S. LOVE: Has there been any discussion about whether there will be any additional resourcing requirements for the Auditor General's office with these new provisions? Is there any thought about whether there will be a need for more personnel, facilities or resources?

Mr J.R. QUIGLEY: The Auditor General has not advised us that she is anticipating that more resources will be needed. Bear in mind that under the new regime, most of the access will be on her desktop or on the desktop of the dozens and dozens of people at the Auditor General's office. It will be on the desktop of those working on the audit, rather than those people having to take their notebooks and traipse down to the Department of the Premier and Cabinet and knock on the door and ask for access. Therefore, we think this will streamline her process.

Mr R.S. LOVE: The Attorney General has alluded to the fact that there will be dozens and dozens of people with access to these documents.

Mr J.R. Quigley: No, I said there's dozens and dozens that work there.

Mr R.S. LOVE: Those who work there presumably have access to the documents. I am just wondering what thought there has been about the protections around digital access for those documents and how that will be resolved. Again, going back to that resourcing issue, will that require more resources? How robust will the regime to protect that information be?

Mr J.R. QUIGLEY: Dozens of people—multiples of dozens—work in the office, but they are not all working on the same audit at the same time. I take the member to proposed section 36D, "Confidential material must not be disclosed". That proposed section refers to —

> (a) parliamentary privileged material;
>
> (b) protected material;
>
> (c) restricted material;
>
> (d) material that for any other reason could form the basis for a claim by the State in a judicial proceeding …

There are prohibitions on the Auditor General and her staff disseminating this information. Of course, that would be in breach of the act. It would carry very severe consequences for an Auditor General. I could not imagine an Auditor General doing it. They can be dismissed only by motion of both houses of Parliament, but an Auditor General who is acting in defiance of the act could end up before the bar—not the members' bar, but the Bar of the Assembly.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 4 amended —

Mr R.S. LOVE: I quote directly from the explanatory memorandum —

> This clause amends section 4 of the Act by moving the definition of Parliament from Part 2 of the Act and including in the appropriate alphabetical order in section 4—Terms used in this Act, which is the principal interpretation clause of the Act.
>
> The definition of Parliament remains the same as that which was previously included in Part 2, but the definition will now apply throughout the *Auditor General Act 2006* unless the contrary intention appears.

Can the Attorney General explain what that will mean and whether any other legislation mirrors that situation?

Mr J.R. QUIGLEY: Yes, clause 4 will amend section 4. Moving the definition of "Parliament" to section 4, "Terms used in this Act", means that it will apply throughout the act as it is referenced in relation to materials that are parliamentary privilege. By putting it in section 4, "Terms used in this Act", it will have global application throughout the legislation.

Clause put and passed.

Clause 5: Section 4A inserted —

Mr R.S. LOVE: The discussion in the briefing was on the issue of parliamentary privilege. Clause 5 will insert proposed section 4A in the act, which will confirm that the scope of parliamentary privilege is unaffected by the Auditor General Act 2006 and, unless authorised by Parliament, any powers, rights or functions exercised under the Auditor General Act must not be exercised to the extent that the exercise would relate to a matter determinable by Parliament.

I raised this question in the briefing and an answer was provided that might be instructive for the Attorney General if he reflects on it when he answers this question that I am about to ask. As I understand it, any matter that ultimately leads to a proceeding in Parliament—such as any document or any work of a member or a group of members of Parliament—is fairly well covered by parliamentary privilege if it directly relates to the discussion in Parliament. Given that cabinet documents in the main will have originated from members of Parliament having discussions and they will lead to appropriations and actions in the Parliament, can the Attorney General explain how to differentiate between what is a protected cabinet document and a document covered by parliamentary privilege? This point may be of interest to members, especially perhaps former members wondering what provisions there may be in the future.

Mr J.R. QUIGLEY: First of all, I want to disabuse every one of the myths about privilege. As my learned friend Mr Bowen knows, the courts have spent some time trimming back the concepts of both legal professional privilege and parliamentary privilege. There has to be a close nexus between what is being said in this chamber and any document that is created outside this chamber. A document created for cabinet is not created for the purpose of debate in this chamber. A bill that might come out of the cabinet or is prepared on the cabinet's instructions might be different because that bill is for presentation to Parliament. We have to be particularly careful not to undermine, diminish or denigrate the concept of parliamentary privilege as elucidated in the judgement of Justice Hall in the matter of the President and the CCC by saying the only people who can adjudicate on parliamentary privilege or a breach of parliamentary privilege is the Parliament itself. We could not have a situation in which the executive was claiming parliamentary privilege against the Auditor General and the Auditor General determining that. That would undermine the authority of this chamber, which the Supreme Court identified in the matter of the President and the CCC.

Parliamentary privilege does not extend to every document produced by a member of Parliament and their staff in undertaking their duties as elected representatives. As I have said, there must be a close connection between the proceedings in the relevant house and the document for it to be potentially protected by privilege so that the document is necessarily incidental to the performance of a function in the house. Although it is possible that, in some cases, a cabinet document may be subject to parliamentary privilege, cabinet documents are prepared for the purposes of the executive, not for this Parliament, and will usually be subject to public interest immunity. They are protected material under this bill, which the Auditor General will be able to access and will be able to perform her functions in respect thereof, but will not be able to further publish.

If a member is directed by the Auditor General to provide material that the member believes in good faith is subject to parliamentary privilege, the person is not required to produce that material to the Auditor General unless the Parliament has authorised the provision of the material to the Auditor General. That will be so even if the material is also protected or restricted material. It will be for the Auditor General to seek authorisation of the Parliament for its release. If a member claims in good faith that a document is privileged, the Auditor General can come to Parliament for a determination. The member for Moore might sit on the Procedure and Privileges Committee.

Mr R.S. Love: I've never been on the privileges committee.

Mr J.R. QUIGLEY: That probably accounts for a few things! I understand.

Mr R.S. Love: Yes, my ignorance!

Mr J.R. QUIGLEY: You have probably been before it!

Mr R.S. Love: No.

Mr J.R. QUIGLEY: It will be for the Auditor General to seek waiver of that privilege by the chamber, which would be on the recommendation of the privileges committee.

Mr R.S. LOVE: I read the response that was provided, but I do not think it goes to the heart of the issue. If members of Parliament have a cabinet meeting to discuss what a bill is, which then goes into the Parliament, is that not in itself protected under parliamentary privilege if those members choose to claim so?

Mr J.R. QUIGLEY: I myself at the minister's table do not wish to undermine the authority of the Speaker of this chamber by saying that those documents are not covered by privilege, but bear in mind, as I said in my earlier answer, those documents are not prepared for use in this chamber. They are prepared for consideration by the executive in the cabinet room, so they would not be covered by privilege. There might be some examples. When members are sitting around the cabinet table they are ministers of the state. They are not sitting there as members of Parliament. They are sitting there as the executive. Therefore, ordinarily parliamentary privilege would not apply unless a document was prepared specifically for this place.

Mr R.S. LOVE: That is an interesting point. Is that an opinion or based on some statute? Where is the authority that those persons are no longer acting as members of Parliament just because they happen to be sitting around the cabinet table?

Mr J.R. QUIGLEY: That is not opinion; it is a fact. They get sworn in as ministers and part of the oath is that they will keep secret those matters that they are required to keep secret et cetera. Proposed section 4A(2) reads —

> Except as authorised by Parliament, a power, right or function conferred under this Act must not be exercised if, or to the extent that, the exercise would relate to a matter determinable by Parliament.

It has to be something that this chamber could adjudicate on.

Mr R.S. LOVE: As I understand it, parliamentary privilege does not extend just to current serving members of Parliament because we have heard discussions about former members of Parliament who have claimed parliamentary privilege. Is it possible that for a member of a former government, if the Auditor General wished to access information, could claim a document, even though it was a cabinet document, was covered by parliamentary privilege because it led to an appropriation in the house or a bill, or any other action that took place in Parliament?

Mr J.R. QUIGLEY: I cannot speak for future governments. That is not the sort of document that is envisaged by this government or the executive as being covered by parliamentary privilege. Those documents were prepared for the consideration of a member. The member for Moore mentioned appropriations or it might be for the Expenditure Review Committee or the cabinet itself. The primary purpose of those documents is not for use in this chamber but use by the executive in another place. As far as former members go, what they have said in this chamber is of course covered by continuing privilege. Just because their service to this chamber has expired does not mean the privilege expires for what they have said in the past. Similarly, any document that they have prepared for production for this chamber would be covered by privilege. For things that have gone to cabinet, I cannot think of the circumstances in which parliamentary privilege would attach to them. I say that without wanting to undermine the authority of the Speaker or this Parliament itself.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Section 25 amended —

Mr R.S. LOVE: Proposed section 25(2) states —

> (a) consult regarding the terms of the report with —
>
> (i) the Treasurer; and
>
> (ii) the agency or audited local subsidiary, as the case may be …

First, will the introduction of this change to section 25 provide extra powers to the Treasurer; and, if so, which powers?

Mr J.R. QUIGLEY: The clause does not provide extra powers. This change provides clarity that the report signed by the Auditor General that is proposed to be submitted to Parliament or a committee is not just a summary of the findings and is provided for the purpose of consultation. The substantive content of the report should be provided, not just a summary. This will allow proper informed submissions to be made. It will also give the person or the agency receiving the report the opportunity to draw to the Auditor General's attention that confidential, protected or restricted documents are referred to. It is understood that this is how the summary of findings is currently applied to practice during the audit process, but that is a summary of the findings; it is going to be more like the Corruption and Crime Commission process, with more text of the finding. Have you had an adverse finding from the CCC, member—a draft one? The member is looking at me quizzically so I will take that as no.

Mr R.S. Love interjected.

Mr J.R. QUIGLEY: I have seen them.

Mr R.S. Love: What? For me!

Mr J.R. QUIGLEY: No. For me. When I answered, they accepted my answer and said, "He's perfect." You cannot be better than that!

The ACTING SPEAKER (Mr T.J. Healy): To the clause, minister.

Mr J.R. QUIGLEY: The CCC provides the text of the finding, not a summary, so that the agency or the minister can see that the text does not contain matters that are restricted or protected and there is an opportunity to give a full report to Parliament as part of the audit.

Mr R.S. LOVE: Proposed section 25(2)(b) deals with a written notice to each person. I assume that is the category of persons above the Treasurer; the agency or audited local subsidiary; a person who is taken to have a special interest under section 36B(5) of the act; and any other person who in the Auditor General's opinion has a special

interest in the report. Can the Attorney General explain how that written notice will be presented? For instance, could it be via email or text? What form will the written notice normally take? What is the time frame for a notice to be given? I note that there is a time frame for a person to make submissions, but what will be the time frame for giving notice?

Mr J.R. QUIGLEY: The person can be asked in advance whether they would be happy to receive documentation—draft findings—by email. Otherwise, it will have to be served in hard copy to the minister or the agency concerned. But there is no time frame specified in the act.

Clause put and passed.

Clause 8: Part 4 Division 2 replaced —

Mr R.S. LOVE: Clause 8 has by far the bulk of the amendments. It replaces part 4 division 2 of the Auditor General Act 2006, making a number of changes to the legislation. I want to ask a couple of questions about that. First, proposed section 34(2) will amend the period to provide information to the Auditor General from 14 days to 10 business days. Can the Attorney General outline whether that is consistent with other legislation involving the power to gather information?

Mr J.R. QUIGLEY: The agency, the person or the minister will be given adequate time to respond. We cannot say, "Give us the document in 48 hours", and cause the person to freak out because they cannot do the job within 48 hours. It will be a reasonable time that is not less than 10 business days after the direction to produce was received. It might take the agency a while to respond—to find the documents and take advice from the State Solicitor's Office on whether they are restricted or protected and whether they are that nature of privileged document. An agency might want to go to the SSO and get an opinion on whether it is a restricted or a protected document or a document at large. They have to be given time to do that. We cannot just put people under the pump. It is like the Supreme Court. The Supreme Court says that a person has to file a defence within 14 days. We have to give people time to respond. It was considered that not less than 10 business days after the direction is a reasonable and appropriate period.

If the member looks at the terms used section, he will see that "business day" means a day that is not a Saturday or Sunday. It would be 14 days if those dates are counted, but 10 business days cuts out those two days on the weekend and any public holidays. If a person copped it over Easter when there is Thursday, Friday, Monday, Tuesday and two in the middle—that is six days—they would have their time eaten up. It is not less than 10 business days to give the agency, minister or whomever adequate time to respond.

Mr R.S. LOVE: Is it correct that some of the current Premier's circulars on gathering and providing information to the Auditor General will be reflected in new regulations that will be developed? Can the Attorney General detail how those regulations will be developed and when they will be completed?

Mr J.R. QUIGLEY: What is being contemplated between the government and the Auditor General in consultation—not by government edict—is that we have agreed processes, rather than regulations. At the moment, there is an agreed process that we all regard as inadequate. It is a written protocol that was executed by a previous Auditor General and a previous government—it might have been Mr Barnett who was Treasurer at the time; I forget—for the production of documents. It is envisaged there will be guidelines et cetera. At this stage, promulgating regulations is not envisaged. It will be processes and guidelines for how this will occur. It is all new country and we all want to cooperate and give the Auditor General full access.

I have just been helpfully reminded that proposed section 36B will provide for regulations in relation to protected material. There might also be regulations that make further provision for audit requests relating to protected or restricted material, including provisions about the form and content of the audit request, or the rights and obligations of a person in possession of controlled material, and the processes and procedures following the making of a request for that protected material, to ensure that there is a clear understanding of protected and restricted material and its production.

Mr R.S. LOVE: The bill certainly envisages that regulations will be provided. That begs the question of how those regulations will be developed and what impact they will have when approved. We are not really clear about whether there will be regulations at some point. I am now quite confused.

Mr J.R. QUIGLEY: The member is right. There might be additional regulations after we have negotiated further with the Auditor General. We are going where no government in Western Australia has ever gone; that is, we will be handing over all this confidential information for audit, in the interests of transparency and accountability. If the situation ever arises that those processes and procedures need to be locked in regulations, we will come back to the Parliament. If the agreed procedures are not working properly, no doubt the Auditor General will also mention that in the next iteration of the report that the member has read from. We can then all look at that as a Parliament. The Parliament does not own the Auditor General. She is an independent officer. If she were to point out in one of her reports that the processes and procedures are not working out well enough or are not being respected by both sides, we will look at the regulations, and no doubt the member will point us in that direction if what we have done thus far is not to the Auditor General's satisfaction.

Mr R.S. LOVE: I take it from that that there is not an expectation that a whole raft of regulations will be required in order for this legislation to take effect. In that case, what time line does the Attorney General envisage for these protocols or procedures, which he says will be more informal, to be worked through?

Mr J.R. QUIGLEY: I want to assure the Parliament and this chamber this evening that we are working cooperatively with the Auditor General. This is not us in conflict with the Auditor General's office. This is not us being forced into something by the Auditor General or us resisting the Auditor General. This is the Auditor General, Treasury, the Department of the Premier and Cabinet, and me, as the Attorney General, sitting down to work out how we can proceed to take the best audit. As I understand it, the Auditor General and the director general of the Department of the Premier and Cabinet are talking to each other at the moment about the processes and procedures. We want to get this bill through lickety-split. The access is codified in this bill. How people will bring it into effect is being agreed now between the Auditor General and the director general of DPC. It will happen. With regard to how quickly this will come into effect, we intend to take this bill to the Governor as soon as it gets through the other place and have it promulgated.

Mr R.S. LOVE: Proposed section 32A, "Terms used", provides the following definition —

> ***parliamentary privileged material*** means material the disclosure of which would, apart from any immunity of the Crown, infringe the privileges of Parliament;

Is that a standard definition of "parliamentary privilege material" that we would find in other legislation?

Mr J.R. QUIGLEY: Yes, it is very standard. It is about material the disclosure of which would, apart from any immunity of the Crown, infringe the privileges of Parliament—that is, the disclosure of a document that would undermine the immunity that we have through parliamentary privilege. It is not for this bill or the Auditor General to determine what is and what is not the subject of parliamentary privilege. That is for this chamber to determine. This reflects the protection of parliamentary privilege in the existing legislation.

Mr R.S. LOVE: Proposed section 32A(2) states that requested material is protected material if—

> (a) it relates to proceedings, deliberations or decisions of Cabinet or of any committee of Cabinet (including proposed or contemplated proceedings, deliberations or decisions) …

It then refers to a whole range of other matters, such as damaging the security or defence of the commonwealth or the security of the state, or divulging any material communicated in confidence by or on behalf of the commonwealth, a state or a territory that relates to the security or defence of the commonwealth or the security of any state or territory.

To go back to the first part, deliberations or decisions of cabinet, I am wondering about the status of material from cabinets past.

Mr J.R. QUIGLEY: I do not know whether the opposition has some particular worry on its mind about some decision that was made by a cabinet past, but, no, it will be the same, whether it is a document of a cabinet present—a contemporaneous document—or a document of a cabinet past. Proposed section 37B, which is a transitional provision, refers to a record created before commencement day. That covers documents of the past as well.

Mr R.S. LOVE: The Attorney General referred to a transitional provision. Can the Attorney General explain what the process would be if we wanted to go back to the era of the Burke government, for instance, or another former government, for whatever reason? I cannot imagine why a contemporary Auditor General would want to have that information, but if there was a desire to look at a cabinet document from that period, how would that progress?

Mr J.R. QUIGLEY: It is hard to imagine what relevant audit the Auditor General would be undertaking on documents that are now over 40 years old, or, for that matter, over a decade old, because the Auditor General is so busy investigating current matters. However, something might have happened back then that relates to a current audit. The situation would be the same. It would be a protected matter. She will—sorry; I keep referring to the Auditor General by her pronoun. The Auditor General will have access to any cabinet documents, but will not be able to publish those to a third party. It would need to be in relation to documents that are relevant to a current audit. The Auditor General cannot just say as a matter of interest, "I'd like to see something to do with the sale of some asset back in the 1990s". She would have to say, "I'm conducting an audit into this asset, and I want to see these documents that are relevant to that", and she would be able to get them. She is not going to go back and have documents from Mr Barnett's government produced just for puerile interest. With those transitional provisions, to be a relevant audit it would have to be an audit commenced before, but not completed by, the commencement date. We cannot say, "I am going to start a new audit into something Mr Barnett did in 2009." It has to be an audit that has commenced but not completed before the commencement date.

Mr R.S. LOVE: Did the Attorney General say the audit has to have been underway before the commencement date?

Mr J.R. Quigley: Yes.

Mr R.S. LOVE: That is the transitional arrangement, but what about the case of an audit that might uncover a practice or behaviour that may go back a number of years? Is there no provision for that to lead to an exploration of cabinet documents —

Mr J.R. Quigley: Sorry; I got distracted. Could the member repeat the preface of his question?

Mr R.S. LOVE: I think the Attorney General said that any audit could not go back beyond the commencement date of this bill.

Mr J.R. QUIGLEY: It would have to be a relevant audit. If the audit starts before the commencement date but has not been completed, it can look at any document relevant to that particular audit. It is hard to imagine, but that audit may need to look at a previous document. That would be permissible, if an audit commenced after the commencement date and, in the course of that, it is necessary to look at a document that was created before the commencement date.

Currently, the Auditor General directs to the director general any written requests for access to cabinet documents from a previous government. The request must outline in detail the date and subject of the submissions and decisions and the reason that the earlier cabinet document is required. The director general then requests it from the leader of the party that created the record and advises the Auditor General of the leader's decision. That is the current protocol. It is necessary to go back and ask for permission.

Now it will not be necessary to ask the permission of the leader of the party at the time if the document is relevant to an audit that was commenced but not completed by the commencement date or an audit that was started after the commencement date.

Mr R.S. LOVE: I turn to section 33 and the access to information. The Attorney General has spoken about the ability for the Auditor General to access information for a specified time. Presumably, that will be electronically, on a laptop or a server somewhere. Is this the area in which those details are contained, and how will those arrangements be framed?

Mr J.R. QUIGLEY: As I understand the member's question—correct me if I have misunderstood—it is about the time during which the auditor will have access to the documents.

Mr R.S. Love: And the methodology.

Mr J.R. QUIGLEY: The preferred methodology is by computer.

Mr R.S. Love: Where in the bill does it say that?

Mr J.R. QUIGLEY: It does not say that. There may be regulations. We have not yet decided that. We are working through these processes with the Auditor General, the Department of the Premier and Cabinet and the director general of Department of the Premier and Cabinet. This bill does not specify electronic access. That is something that is being worked out with the Auditor General at the moment. The federal Parliament has a program of a very similar nature, which Western Australia will largely replicate. The processes and procedures to be followed in making or responding to the audit requests refer to the practical operational considerations for the Auditor General to request protected or restricted information as well as for the provision of that information requested by the Auditor General. For example, this could be that all protected information is provided by a secure electronic channel in a particular format, with a requirement for regular confirmation that the access is still required. Every few days or every week, the Auditor General would be required to confirm that access is still required. As I said, the processes and procedures are being worked out cooperatively with the Auditor General. If they have not been worked out cooperatively, I am sure the member will hear about it.

Mr R.S. LOVE: If there is no final arrangement or agreement, the default position will fall back to proposed section 33B, which is the power to access information, but it does not actually specify the form of that information. There is a guarantee, perhaps, that the information will be available in some form. Proposed section 33B(2) states —

> (a) access, search, take extracts from and make copies of information, records and systems that are in the possession or control of that person and that the Auditor General considers to be relevant to the audit …

If this bill passes and there are no regulations and no agreed procedures, presumably the Auditor General will be able to serve a notice on a department and somehow go and take control of the laptop. Is that the case?

Mr J.R. QUIGLEY: I draw the member's attention to proposed section 36C —

> (1) Despite anything else in this Act, the Auditor General or an authorised person must not take extracts from, or make copies of, an item of protected material or restricted material, except with the written approval of the specified person in relation to that item.
>
> (2) If the Auditor General takes or receives an extract from or copy of protected material or restricted material for the purposes of an audit, whether under this Division or otherwise, when the audit is completed the Auditor General must —
>
> (a) give the extract or copy to the person in possession or control of the material; or
>
> (b) destroy the extract …

So, yes, we fall back on the Auditor General's current powers to demand entry and access documents, but we are aiming for a better and more efficient method, which we are currently trying to work out to the Auditor General's satisfaction. That will be electronic. I think that the member would welcome that, and the efficiency it will introduce to the Office of the Auditor General.

Mr R.S. Love: It's very dangerous. The Russians might hear.

Mr J.R. QUIGLEY: Very dangerous?

Mr R.S. Love: Well, you never know who might be listening.

Mr J.R. QUIGLEY: That is why we have worked out a secure channel so that people cannot get to the cabinet documents and those documents that are protected by public interest immunity. It will be a secure channel. There are secure channels already operating within government. I cannot guarantee that Mr Putin will not get there, but I doubt that anyone else will.

Mr R.S. LOVE: I want to briefly ask about proposed section 36B. I am dropping in all over the shop here, but I would like it if we could get to proposed section 36C, because I have noted it. However, I will talk about that in a minute. The Attorney General has raised proposed section 36C, so maybe I will deal with that now and we will go back to proposed section 36B. The Attorney General has mentioned that proposed section 36C maintains that in the event of a lack of agreement or approval, the Auditor General cannot take or receive an extract from a copy of protected material and so on. My note on that was: Is that not just the status quo? How are we actually advancing the situation if there are not going to be any regulations or anything besides verbal arrangements? If a person who was in possession of the information forms a view that they do not want to give that information under these new provisions, will we not just be back at the status quo?

Mr J.R. QUIGLEY: Perhaps I distracted the member, because proposed section 36B provides for the right of access for audit requests relating to protected material and restricted material. It makes it clear that the Auditor General will have a right of access straight to protected and restricted material.

The member asked whether we will be back to where we started. No. The current situation is that the Auditor General must make a request to cabinet for access. That would no longer be the case. The member will see that there are obligations upon the specified person to provide the access. They are not excused from responding to the audit request on the ground that it relates to protected or restricted material. That will certainly be different from the way it is now. We are taking this forward in leaps and bounds. The specified person will no longer be able to say that because it is protected or restricted material the Auditor General cannot see it; it will all be open to the Auditor General.

How we will deliver that access in the most efficient way is still being worked out with the Auditor General. Clearly, the Auditor General will be able to attend an agency, demand entry using the powers under the bill and demand access to the documents. We are trying to work out a more efficient way to do that, because the Auditor General wants a more efficient way than going down to the agency, taking notes, being unable to take copies, having to go down again, having another look and checking her notes. This is horse-and-cart country. We want to make it efficient for the Auditor General so that once she makes an application for access to restricted or protected material, she can see it on her desk.

Mr R.S. LOVE: Can we slip back to proposed section 36B, "Audit requests relating to protected material and restricted material"? It refers to a "specified person". Many of these provisions refer to regulations. The Attorney General is telling me that there is not actually going to be any regulations around this. What will happen in the event that there are no regulations for the operation of the provisions of proposed section 36B? I note that proposed section 36B(1)(b) states —

> if no person is specified in the regulations in relation to the item, a person in possession or control of the item.

In the ordinary course of events, what would be the definition of the "person in possession or control of the item"? Would that be the director general, the CEO or the head, if you like, of an organisation, or would it be some other person?

Mr J.R. QUIGLEY: Both. It could be the minister, it could be the head of the Department of the Premier and Cabinet or it could be both. We are going to work out the most efficient way with the Auditor General. That is why we talk about process and procedure. At the moment, once this bill passes, there will be an obligation to disclose to the Auditor General restricted and protected material. That is light-years in front of what happens at the moment. We are working out what will be the most efficient way for that to occur. The obligation will be there anyway.

Mr R.S. LOVE: The option of either having regulations, which are actually laid out through these provisions —

Mr J.R. Quigley: May have regulations.

Mr R.S. LOVE: The Attorney said "may have", but in the case of the discussion point we just had, the provision refers to "the regulations". Be that as it may, can the Attorney General explain why there is an advantage in having

a system that is not public—so it is not known exactly what process is being followed between the executive and the Auditor General—over having regulations that are actually transparent and laid out before the houses of Parliament for all to see?

Mr J.R. QUIGLEY: Making regulations before we get the process all settled might be counterintuitive, because we might be making regulations for a less than optimal way of granting access. Once the bill passes, there will be an existing obligation to produce. The Auditor General's power to attend will already be in the legislation. Once the process is agreed upon, it will be known. It will probably be known to the public because the member will ask me in Parliament, "What is the process?", and I will tell him. It is a fair question for the Parliament. There is no doubt that the agreed process will be published in the Auditor General's annual report. We may lock this into regulations once the process is settled and we understand any nooks or crannies or hooks. It does not matter what is put in the regulations because there is nothing within them that can diminish or deprecate the Auditor General's authority under the head legislation. The legislation will give the Auditor General the right of access to restricted and protected material. There is no regulation that could be passed that would diminish that right. We cannot do that at law; it is subsidiary legislation. If it goes to regulation, it would be after that.

We are going into country where no Western Australian government or Auditor General has ever been. We want to pass it now. We could say that we will take another year to trial regulations and do all this, but we want the Auditor General, right here and now, by Christmas, to have access to protected and restricted material. On the way, we will work out with the Auditor General how she will access that material, and maybe next year, if we all agree, we could set it in regulation. We will come and tell members opposite about it.

Mr R.S. LOVE: Given what the Attorney General has said, would he publish those arrangements or lay them on the table for the Parliament's information so that we can all see what those arrangements are so that it does not seem to be in any way opaque or secretive?

Mr J.R. QUIGLEY: I am carrying this bill for the Treasurer. It sits within his portfolio range, so I do not want to give an undertaking on behalf of the Premier. But it will be, in due course, part of the *Cabinet handbook*, which, of course, as the member knows, is publicly available. Therefore, in due course, the arrangements will be in the *Cabinet handbook*, and the public will be able to access it. But I cannot give the member an undertaking that, prior to that, the Premier is going to do this or that. But it is not going to be a secret forever, so it will be in regulation or in the *Cabinet handbook*. Even if it is in regulation, it will still be in the *Cabinet handbook*.

Mr R.S. LOVE: I turn to proposed section 36D(5), which refers to the Auditor General being able to include in the report to Parliament a statement that confidential material, or information about the substance of confidential material, has been omitted from the report. This would be a case in which a degree of confidential material will not be reported directly to the Parliament, but some sort of report of it would in fact be made. Can the Attorney General explain the form that he envisages that report would take and what it might disclose if there were information from a particular source or pertaining to a particular matter? Is that just a blanket statement to say that confidential information is being withheld from the report?

Mr J.R. QUIGLEY: As we have already discussed, the Auditor General will not be able to publish to a third party the contents of restricted or protected material, but the Auditor General may aver to the fact that she has sighted and read confidential material. There will be no regulation to prescribe the form of words, but the Auditor General can in a report to the Parliament include a statement that confidential material, or information about the substance of confidential material, has been omitted from the report. Therefore, she could say, as with the example I gave the member earlier in the case of the ex gratia payment to Gene Gibson, that she has sighted confidential information—that is, protected information, it being protected by public interest immunity or legal professional privilege—and that she is not including it in the report, but having had the benefit of sighting it that she has then come to the conclusion that the Attorney General, as always, did the right thing.

Mr R.S. LOVE: In making that report to Parliament about what should and should not be included, how does the Attorney General envisage the to and fro will go with the Auditor General, the department, the minister and whoever else is the custodian of the confidential information? How closely could the Auditor refer to that information without causing a breach of confidentiality?

Mr J.R. QUIGLEY: As discussed earlier in the evening, the Auditor General will be required not to give a summary of the findings to the department or the responsible minister but to give the text. In that process if the Treasurer or the minister objects, they will soon be able to identify the protected or restricted material. I also draw to the member's attention proposed section 36E in which the Auditor General will be able to then report to the Treasurer or the responsible minister. But it is understood that the Auditor General will work with the agencies to ensure that when access to these types of materials and information is provided, whether by statute or not, the information will not be publicly disclosed and will instead be reframed or removed whenever possible.

As I said in my response to the member's contribution to the second reading debate, this is all being done in cooperation with the Auditor General. We prepared this bill after lengthy consultations with the Auditor General

to improve her access. In the course of those consultations, I was sitting opposite the Auditor General when she said, "Attorney, we never publish confidential material. Even without this legislation, we do not publish that sort of material. We can do our audit and check it without publishing that material."

Under cabinet protocol, access to cabinet materials has been provided in a similar way since the act commenced. This has not hindered the Auditor General's ability to perform her functions. At the moment, the Auditor General can go to cabinet and ask for access to cabinet documents, can make notes but not copy the documents and can make a report without publishing those documents. It is a tried and true method, but with the passing of this bill, that access will be made ever so much easier. The Auditor General will not have to come and genuflect in front of the cabinet and say, "Please, Premier, may I see that document?" It will be a statutory right of access—a new era of transparency in Western Australia.

Mr R.S. LOVE: I move to proposed section 36E, "Reporting to Premier, Treasurer and responsible Minister". Can the Attorney General explain for the benefit of the house how this section will work in practice because, again, there are provisions that refer quite extensively to regulation. But in the absence of regulation, what will that mean to the operation of proposed section 36E? How does the Attorney General see this provision working in practice?

Mr J.R. QUIGLEY: Currently, the Auditor General may have, as is her right, accessed either restricted or protected material and is unable to disclose that to the Parliament in the report, or to any third party. But what if the Auditor General comes across something that the minister needs to know about for the administration of his or her department or portfolio, or something that the Treasurer needs to know about from another agency? Proposed section 36E provides the discretion that the Auditor General may report to those people listed—the Premier, the Treasurer and the minister—about matters that would otherwise be restricted or protected and not available for publication to a third party if the boss of the government or the boss of the agency, being the minister, need to know about what she has discovered in the audit.

Mr R.S. LOVE: I think the Attorney General is referring to proposed section 36E(2)(b), which talks of the report being made to —

> (i) the Premier; and
>
> (ii) the Treasurer; and
>
> (iii) a responsible Minister in relation to the person in possession or control of the confidential material …

Does it have to be given to a number of different ministers and not to just one minister in that case?

Mr J.R. QUIGLEY: Proposed section 36E(2) states —

> … the Auditor General may —
>
> (a) prepare a report under this subsection that includes the material or the reference …

It then goes through the people: the Premier, the Treasurer, the minister and the director general. The Auditor General may report on that restricted or protected material to one or more of those people. It will be totally discretionary. That is so that the people who are responsible for the administration of our state's agencies, the people who bear ultimate responsibility—that is, the ministers in this chamber or the directors general—get to know what the Auditor General has found out about the workings of their agencies. The Auditor General can publish to those third parties, but not otherwise.

Mr R.S. LOVE: Proposed subsection (2)(b) states —

> subject to and in accordance with the regulations, —

Again, we do not have any regulations to be subject to or in accord with —

> give a copy of the report to —
>
> (i) the Premier; and
>
> (ii) the Treasurer; and
>
> (iii) a responsible Minister …

Does the "may" overwhelm the "and" so that there is discretion between providing the report to all three, or does it actually have to go to all three? How will they do it in accordance with regulations and subject to regulations that do not exist?

Mr J.R. QUIGLEY: It will be discretionary. Proposed subsection (2) states —

> … the Auditor General decides not to make a report to Parliament, or omits confidential material, or reference to confidential material, from a report to Parliament, the Auditor General may —

I will put my own word in: "nevertheless" —

(a) prepare a report under this subsection that includes the material or the reference; and

(b) subject to and in accordance with the regulations, —

If there are any —

give a copy of the report to —

(i) the Premier; and

(ii) the Treasurer; and

(iii) a responsible Minister … and

(iv) the Director General.

It will be discretionary that she can do this and that. It is a huge step forward.

Mr R.S. LOVE: I want to turn to proposed section 37, "Information subject to notice under Financial Management Act 2006 s. 82(1)". Section 82 of that act says —

Ministerial decisions not to give Parliament certain information about agency to be reported to Parliament etc.

(1) If the Minister decides that it is reasonable and appropriate not to provide to Parliament certain information concerning any conduct or operation of an agency, then within 14 days after making the decision the Minister is to cause written notice of the decision —

(a) to be laid before each House of Parliament or dealt with under section 83; and

(b) to be given to the Auditor General.

(2) A notice under subsection (1)(a) is to include the Minister's reasons for making the decision that is the subject of the notice.

How does the operation of that provision sit with the general view that all information should be disclosed to the Auditor General? Is the disclosure under proposed section 37(1) a public disclosure and not a disclosure to the Office of the Auditor General?

Mr J.R. QUIGLEY: It is broadly consistent with existing section 37, but proposed section 37 seeks to introduce consistency between restricted and protected materials that have been accessed consequent to a section 82 notice under the Financial Management Act. It is the same. If, pursuant to a Financial Management Act section 82 notice, that gleans the production of protected or restricted material, that is to be dealt with in the same way as that sort of material in a general audit. I go back to my Gene Gibson example. The Auditor General was seeking a section 82 notice for access to the legal advice. If I had released that legal advice to the Auditor General, it would have been dealt with in the same manner as if she saw that legal advice as part of an audit not pursuant to a section 82 notice. She can say, "I've seen confidential information and I'm satisfied that, once again, Attorney General Quigley has acted perfectly."

Clause put and passed.

Clause 9: Section 46 amended —

Mr R.S. LOVE: Clause 9 is some relatively minor redrafting of the provisions that already exist in section 46 of the act to do with information and penalties around any acts. Can the Attorney General explain to a layman what the impact of these changes are in this relatively short section?

Mr J.R. QUIGLEY: Clause 9 amends section 46 and talks about what we have touched on upon before, the Auditor General not giving a summary of the findings to a minister or to the Department of the Premier and Cabinet but giving the draft. The clause updates the terminology contained in section 46 relating to the confidentiality of draft reports and summary reports provided to Parliament. It will ensure that the confidentiality obligations are extended to any person who has obtained a draft report or summary of the findings under section 25 so that anyone who receives a draft of the report—a policy officer, someone working with a ministerial office or a public servant in the DPC—will be under a legal obligation to keep that confidential in the manner that is intended. Under clause 9, "Penalty for this subsection" is to be inserted. Instead of reading "Penalty: a fine of $50 000", it will now read, "Penalty for this subsection: $50 000." Someone who has released some of that confidential, protected or restricted information will face a fine of $50 000.

Clause put and passed.

Title put and passed.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR J.R. QUIGLEY (Butler — Attorney General) [8.32 pm]: I move —

That the bill be now read a third time.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [8.32 pm]: I thank the Attorney General for that discussion in consideration in detail. I will say again that I am the lead speaker in this house but the shadow Treasurer in the other place is the opposition's main spokesperson for these matters. When it gets to the Legislative Council, he will no doubt want to interrogate further some of the provisions we have discussed tonight. I want to reiterate our support for the bill. I thank the Attorney General for walking us through some of the provisions. I thank his advisers for their attendance and participation in the discussion this evening. I appreciate the candour of the answers that were given. I hope that some of the discussion may provide a bit more clarity around the progress of these matters once the bill presumably passes Parliament and we can see the development of the new regime and access to information for the Auditor General. I raised in the consideration in detail stage some of the uncertainty around there being regulatory powers but no regulations. I take on board the Attorney General's commitment that an understanding of the arrangements will be given so that it will be quite clear and transparent that there will be a good working arrangement and it will be known how it will all work. As I said in my contribution to the second reading debate, one of the matters that the Auditor General herself outlined in her report was that there needed to be clarity between government agencies and her office regarding how these matters are progressed. It would be a pity if there was still a lack of clarity after the legislation passed. There definitely needs to be a clear understanding of the requirements on everybody and the obligations and responsibilities of all sides. With that, once again I thank the advisers and the Attorney General. I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.

BILLS

Returned

1. Government Railways Amendment Bill 2021.
2. Human Tissue and Transplant Amendment Bill 2022.

Bills returned from the Council without amendment.

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2021

Receipt

Bill received from the Council.

House adjourned at 8.36 pm