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Tuesday, 7 December 2021

Legislative Council

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THE PRESIDENT (Hon Alanna Clohesy) took the chair at 2.00 pm, read prayers and acknowledged country.

DISTINGUISHED VISITORS

Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [2.03 pm]: Good afternoon, members. Our first order of business today is a condolence motion for Hon Dr Christine (Chrissy) Sharp. I would like to acknowledge the members of Chrissy's family, friends and former members in my gallery today.

DR CHRISTINE (CHRISSY) SHARP

Condolence Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.04 pm] — without notice: I move —

> That this house expresses its deep regret at the death of Hon Dr Christine (Chrissy) Sharp, a former member of the Legislative Council for the South West Region, and places on record its appreciation for her long public service, and tenders its profound sympathy to her partner and members of her family in their bereavement.

I want to start by acknowledging the family, friends and colleagues of the former member who are in the galleries today, including former members of Parliament Bill Thomas, Hon Cheryl Davenport and Diane Evers.

I served with Chrissy—which is how I am going to refer to her from now on—in my first term in this place. I found her to be friendly, intelligent, hardworking and committed to achieving practical outcomes in the policy matters that mattered to her. I did observe that if you crossed her or if you did something she considered very unreasonable, she would let you know in no uncertain terms. It took a while to get Chrissy to that point, but once she was at that point, she would let you know how she was feeling about what you were doing.

Hon Chrissy Sharp was born in London in 1947. The daughter of Alfred and Phyllis, she was educated at Bishopshalt School in England before studying at the University of Sheffield, achieving a Bachelor of Arts with honours, and the University of Kent, achieving a Master of Arts. Chrissy arrived here in Western Australia in 1973 after a lengthy period travelling the world and having experiences that no doubt benefited her later on. She has been described by many as a deep thinker. Chrissy would go on to complete her PhD at Murdoch University on the politics and ethics of logging old-growth forests.

In preparing my comments for today, I spoke to Louise Pratt, who is now Senator Louise Pratt. Louise and I started at the same time and we sat about there in the chamber. Louise served with Chrissy on the environment and petitions committee—that is, the Standing Committee on Environment and Public Affairs. Louise said that she learnt a lot from observing the way Chrissy chaired that committee, and that Chrissy would bring people, communities and scientists together and make sure that everybody was heard. On GM in particular, Louise observed that Chrissy worked closely with the late Kim Chance; although Louise did say that she noted what she described as woolly moments between the two of them as Chrissy continued to push the negotiations.

Chrissy's community activism, particularly on environmental issues, led her to achieve much across her life. During the mid-1970s, Chrissy was active in several campaigns to oppose woodchipping, save the Shannon River basin and oppose the expansion of bauxite mining in jarrah forests. The passion that she was most known for was the campaign to save native forests. It was through those campaigns, I am told, that she met her partner, Andrew, and they eventually moved to Balingup in 1977 and started a tree farm that they called Small Tree Farm.

Aboriginal issues were also at the forefront for Chrissy throughout her career. Her job as a journalist for the ABC found her covering the infamous Skull Creek incident. Her investigation and coverage of this incident was influential in prompting a Western Australian royal commission into the police treatment of Aboriginal people. Later, while serving in this house, she seconded a motion from the Leader of the Opposition that this house should apologise to the Indigenous people of Western Australia.

Between 1983 and 1985, Chrissy sat on the Donnybrook–Balingup shire council. She was a member of the South West Development Authority's advisory committee. In 1989, she was the first woman to be appointed as a member of the Environmental Protection Authority, retaining her membership until 1994 when she resigned to concentrate more on the tree farm.

Chrissy was also a founding member of the WA Greens when the party was formed in the early 1990s. She described running for Parliament for the Greens as being risky business, but in May 1997 she was elected to the Legislative Council as a member for the South West Region, a position she would hold for two terms.

By her own admission, Chrissy based her approach to politics on the phrase used by another Greens senator, Christabel Chamarette, and that phrase was: "Doing politics differently." In reflections written by her in 1999, Chrissy said that she was a great fan of the way that Christabel did politics, working with integrity on each issue. With the Greens holding the balance of power at the time, this approach proved very effective. It was so effective that later she would remark —

> For eight years almost every issue I touched moved ground and when you can sense that you make a difference, it is hard to refuse issues. As my reputation for being reasonable and effective grew I became more and more inundated with requests for help. I was juggling processes on dozens of political issues at any one moment … My first thought when I finished in May 2005 was "thank God I didn't crash any issue—now I can collapse!"

This insight goes to not just her effectiveness or capacity, but also her considerable work ethic and drive for positive change on a number of matters. In another reflection on her approach to politics, Chrissy explained her proudest moment, saying —

> In 2002 I was introduced by Norman Moore, the then Leader of the Liberal Opposition in the Upper House, to Sir Charles Court, with the recommendation "Chrissy is a politician of integrity, Sir Charles." What touched me most about those words was the irony that years earlier I was Charlie's most irritating opponent. I treasure the thought that even when those in opposition disagreed with my positions, or thought I was too idealistic, they could still respect me.

A former colleague of mine in this place, Hon Giz Watson, made the following comments about Chrissy's political style —

> She would consider her opponents and wasn't quick to condemn anyone. She did a lot of work behind the scenes and was recognised as being able to work with people across political divides. She would consider the issues and this approach led to great respect for her. And it's an approach we would hope for in the best of politics. She was also a formidable opponent and some people found her a little intimidating.

I have it on good authority from Giz that at Chrissy's funeral, the comment was made that even former Premier Colin Barnett had admitted he found her "rather terrifying". She was clearly respected by all. In many ways ahead of her time, Chrissy would often emphasise the importance of women in politics. I am advised that on one notable occasion, Chrissy put together a coalition of three women from three parties—Hon Ljiljanna Ravlich from the Labor Party, Hon Helen Hodgson from the Democrats, and Chrissy herself—to put together more than 200 amendments to the School Education Act. In a formidable demonstration of three women from different parties working effectively together, most of those 200 amendments were accepted by the Minister for Education at the time, Hon Colin Barnett—I do not want anyone else to get any ideas of that nature!

Chrissy introduced into this house five private members' bills on a range of issues during her time, including environmental protection, cannabis reform, wildlife conservation and land clearing. She was the first woman to chair a standing committee in the Western Australian Parliament—astonishing, really, when you think about that now—and that was the Standing Committee on Ecologically Sustainable Development. She was also a member of the Standing Committee on Environment and Public Affairs. Both those committees were hugely active. They tabled a range of reports on various environmental and other issues that led to real change.

Another former member of this house, Hon Tom Stephens, provided the following remarks on Chrissy's tireless advocacy for environmental affairs. He said —

> Chrissy brought her environmental pre-occupations and put them centre stage in her many contributions to the debates in the house. She helped to shift the needle on the dial when it came to thinking about how to have a sustainable economy that showed genuine respect to the environment.

Towards the end of her parliamentary career, Chrissy was able to see the culmination of some of her life's work of protecting the forests, when 853 000 hectares was added to the WA forest reserve—a significant milestone.

I want to go back to some further reflections about Chrissy given to me by Giz, who beyond many others saw firsthand the impact that Chrissy had. Giz says —

> My main recollection of working with Chrissy was that once she turned her mind to something she stuck with it and she was dogged. Her committee work demonstrates the success there. She was a very strong willed person who thought very deeply about issues that she was fighting for. She was one of the people I really enjoyed working with because of her breadth of knowledge and the intensity she took to all issues. She was tenacious and passionate. She was not afraid to stand her ground. She gave it her all and she was key to the protection of large chunks of the state forest.

On behalf of the government and the Parliamentary Labor Party, I express my sincere condolences to the Sharp family for their loss.

Members: Hear, hear!

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.14 pm]: The opposition joins the government to remember Hon Dr Chrissy Sharp, who was taken from us too soon.

Chrissy Sharp has the distinction of being the first member of the Greens to win a Legislative Council seat for the South West Region, to be re-elected, and to retire with a fellow member of the Greens retaining that seat. Chrissy was born in London in 1947 and was educated at Bishopshalt School in West London, the University of Sheffield and the University of Kent, where she earned a master's degree. She was awarded a PhD from Murdoch University in 1983. She migrated to Western Australia in 1973 with her partner, Andrew, and operated a tree farm at Balingup, near to my own residence. She worked as an ABC journalist from 1974 to 1975 and served a term as a councillor for the Shire of Donnybrook–Balingup from 1983 to 1985. Chrissy was an inaugural member of the Greens at its inception in 1990. She was a very practical and knowledgeable environmentalist and served as the first female member of the Environmental Protection Authority of Western Australia, from 1989 to 1995. At the December 1996 election, Chrissy Sharp headed the Greens ticket for the South West Region, polling 7.5 per cent of the vote—a significant increase from the 5.1 per cent obtained by the Greens at the previous election. She won the seventh seat of the region at the expense of the Australian Labor Party.

She took up her seat in May 1997 and served as the chair of the Standing Committee on Ecologically Sustainable Development during the thirty-fifth Parliament—the first woman to chair a WA parliamentary standing committee. Members should bear in mind that this was almost the year 2000, so perhaps we came to that a little late in the process. In the following Parliament, she chaired the Standing Committee on Environment and Public Affairs. In 2001, Chrissy was re-elected, with 8.5 per cent of the vote in the South West Region. She took a strong stand in reviewing the electoral reform agenda of the Gallop government, insisting on the retention of the Legislative Council's regions. However, she had not intended to seek a long career in Parliament and stood down at the 2005 election, when the Greens retained her seat, although with a reduced 7.6 per cent of the vote.

That ends the formal part of what I would like to say about Chrissy Sharp. I will now spend a little time talking about Chrissy Sharp, my friend. Chrissy Sharp lived not too far away from me in the Shire of Donnybrook–Balingup, and we had known each other for quite a long time. I first met Chrissy when I had taken over the presidency of a small country conservative political branch in the mid-1990s. Looking to become active and explore the territory, we decided to address some of the key issues that were affecting that area. One of the first things we decided upon was the issue of forestry. Members might remember that during that period, the federal government was looking through the Regional Forest Agreement process. Members might remember that John Howard was the Prime Minister, and the rather famous Wilson Tuckey—not Tucker—was, for a brief period, the federal Minister for Forestry and Conservation. Rather than simply dragging out the usual very conservative groups and some timber industry people to discuss with us as a town and a branch what the timber industry was and what it could and should be, I did what I often do, which was that I went completely left field and invited Hon Dr Chrissy Sharp, at that point a member of the Greens, to come and address us and tell us what she thought it should look like. I think it took a couple of phone calls to convince her that this was a good idea, but I have to say that that meeting was probably one of my greatest successes within the lay party of the Liberal Party in inviting a group of disparate people to come and discuss an issue of relevance at a depth that gave substance to the debate. There was something like 100 people at that meeting in a small country town. Chrissy Sharp turned up without fear or favour, absolutely certain of what she was going to say, and impressed a roomful of arch-conservatives in a way that probably only Chrissy Sharp could do. She was a champion for her area for a long time. She understood the timber industry very well. She came to that meeting—into the lions' den, if you will—in a way that I think every member who turned up to that meeting in Donnybrook will remember. She delivered an amazing performance. We sat for a couple of hours talking about all the things that the forestry industry in Western Australia might or might not be. That is the standard of person she was. I came to know her much more after that event.

We, the opposition, also pass on our condolences to her family. She was taken from us much too soon. I note her children, in particular her son, Tosh. Members might be keen to know that he did work experience with me as a veterinarian many years ago. Despite my best efforts to infuse him with good conservative Liberal values, I suspect I failed. As we drove around the south west, delivering calves and doing all the other things you do as a country vet, I noted his astounding level of intelligence and interaction. That is the sort of legacy that we believe in and can see. Unfortunately, I do not know Lara nearly as well. I do not think she came for work experience, so apologies for that. It was a great time to get to know the family. I realise that you can leave behind this amazing sense of knowledge and inquisitiveness about the world that will leave your children in a better place. They can learn much more about the world. In Tosh's case, he was a young person who could see and debate both sides of an argument. I have not given up on converting him yet! But it may take a while, so I will see how we go. It is absolutely the case that we had a very close working relationship.

Chrissy Sharp did not finish her work on the forests when she finished her parliamentary career. She was passionate about her work and maintained a role. Even not long before her death, she was still contributing to research and debate on the forests in the south west of Western Australia. The one thing that we all knew and understood about Chrissy Sharp was that she brought a vivid focus and realism to the role that she undertook. Not for Chrissy Sharp was the purely ideological position that you can never cut down a tree and that every tree that dies is a disaster; she

took a very pragmatic approach to this debate. She knew that a timber industry could exist in the long term, but it had to be sustainable, and to be sustainable it had to be significantly reduced from its size at the time. She and I, on this debate, go back to a time when we were harvesting 450 000 to 480 000 cubic metres of jarrah sawlogs, for example. I apologise for the technical debate, but Chrissy and I used to love this stuff. We would debate the numbers ad nauseam. We were significantly over-cutting the forests.

I remember the lead-up to the 2001 state election, which is when the Gallop government came in. We had a federal election before that, and members might be surprised to know that Wilson Tuckey and I went head to head because we did not necessarily agree about some of these things—and that was always taking your life in your hands! The federal government put forward a proposal to cut back the timber harvest from effectively 450 000 to 300 000 cubic metres, with three variations: 310 000, 300 000 and 290 000 cubic metres. They were effectively the same thing. At the time I said, "I don't believe that that is a real change. You're giving three choices that are the same." The conversations I had with Chrissy around that time absolutely demonstrated that that comment was right. Maybe we should have been arguing about how much further the harvest needed to go down, which probably was the case. In taking a position that was not necessarily popular among some of my colleagues in the Liberal Party, I knew that if I had Chrissy Sharp's backing, I was somewhere near the right mark. I thought that was astounding.

Even this year, President, Chrissy Sharp was still working on these issues. She maintained the position that a discrete and sustainable timber industry could exist as long as we got it right. For that reason, I held her in enormous esteem, above almost everybody else I have engaged with in the forest debate, whether that was a forester, a politician or a conservationist. She could look at the debate dispassionately despite her enormous passion and come up with a valid solution in a way that I have never seen with anybody else.

She obviously had passion, President. She presented five private members' bills in the two terms that she served in Parliament. The Legalise Cannabis WA Party crew would appreciate that the first couple of bills she presented were about the decriminalisation of cannabis, so you sort of had a champion in Chrissy Sharp as well. Most of the other bills related to conservation. She was passionate about that issue and I think that is reflected in her legacy here. Sorry; it is always hard when you have known somebody very well. I will take a deep breath.

The Balingup Greens are some of the most amazing people I have ever met, and I say that as an arch-conservative and a hard-right member of the Liberal Party—that is why I am positioned where I am in this place in the chamber, because no-one is further to the right than I am! The Balingup voting booth was the best voting booth in the entire south west. I used to try to pencil myself in all day at the Balingup voting booth, which was usually at the Balingup Primary School, because an amazing group of people from disparate walks of life would be there. I usually knew all the Greens who would turn up—half of them were clients of my veterinary practice. Chrissy and I would chat as we stood in the shade of the trees as people came through. We would very politely hand out how-to-vote cards. We knew almost everybody who walked in, and we probably knew how they voted, but we took no position on that. It was the friendliest and most relaxing booth that I have ever known. Sometimes when I took my children down there, they would go off with the children of members of the Greens to somebody's house, play for a while and come back later. It was a polling booth of amazing civility. I think the influence of those people, in particular Chrissy, made it so. There was enormous respect across the political spectrum. Everybody had a right to be there and everybody was very friendly. In fact, a member of the ALP joined us for a couple of days there. I think he has passed away, too—I apologise; I have forgotten his name. I think it was Gary. Perhaps a member of the audience from Balingup will remember him.

Hon Dr Sally Talbot: Greg.

Hon Dr STEVE THOMAS: Thank you. It was Greg. He was an excellent fellow.

Hon Sue Ellery: He has passed?

Hon Dr STEVE THOMAS: Yes. I last handed out how-to-votes at Balingup in 2017—I think he passed on after that—and we sat down and worked out a sweepstakes of the seats at that time.

Balingup is the place where there is respect and friendship across the board, something that we do not see very often. I go to a lot of different polling booths and the metropolitan booths can be pretty brutal. The problem now will be that everybody will want to hand out how-to-vote cards at Balingup and there will be no MPs anywhere else! That will absolutely be the case. I will miss Chrissy next time I go down there. I will miss Margie and that group of people who, unfortunately, are no longer with us.

The last time I attempted to speak to Chrissy to wish her well with her illness was on 13 May this year. Unfortunately, she was not in a position to respond but I got a response from Andrew—thank you, Andrew.

Chrissy lived her life to the fullest to the very last. She was a powerful woman of enormous intellect and great courage; I never saw it waiver. She was my friend and a friend of the family. She could have done so much more here. She will be missed. We do her an honour today by remembering the legacy she has left. Our condolences to her family. She was an amazing woman and I will miss her.

Members: Hear, hear!

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [2.28 pm]: I rise on behalf of the Parliamentary Nationals WA to support the motion moved by the Leader of the House and to reflect on the achievements of Hon Christine Sharp. Of course, I acknowledge her friends and family, and former members in the President's gallery today. Chrissy Sharp was born in London in 1947 and arrived in Western Australia in 1973. First elected in 1997, Dr Christine "Chrissy" Sharp was a member of the Greens in the Legislative Council; indeed, she was a member of the Greens since their inception around 1990. As other members have mentioned, Chrissy chaired the Standing Committee on Ecologically Sustainable Development between 27 June 1997 and 10 January 2001. In fact, as others have said, she was the first female chair of a standing committee in the Western Australian Parliament. I have to say that I support what the Leader of the House said in that respect—I was shocked to find out that, indeed, prior to 1997, no woman had ever chaired a parliamentary standing committee in Western Australia. In fact, the decision to establish that committee was something that Chrissy referenced in her inaugural speech in this place as being a great desire of hers, and it was something that she championed from the time she was elected to this place.

Chrissy was well respected in the Balingup community, and she made sure that that part of the world became a Greens stronghold in regional WA. In fact, during the most recent state election campaign, we sent some Young Nationals members down there to do a bit of campaigning, and it was made very clear by the locals that the only colour green they would be supporting would be the Greens candidate; it is a very passionate Greens crowd down there. It is certainly part of Chrissy's legacy that the Greens have such a stronghold there.

She was also a keen negotiator with the Labor government when the lower house was reformed to the one vote, one value system. Part of the concessions won by the Greens was the creation of two new seats—one lower house regional seat and, of course, the six-by-six model in the Legislative Council, which she championed as representing Western Australia's bioregions.

Another huge part of her legacy is the Golden Valley Tree Park—a 60-hectare arboretum set in steep and scenic rural countryside about 1.5 kilometres south of Balingup. Golden Valley Tree Park is the largest arboretum in Western Australia, in terms of both area and the number of species. It is divided into two sections: 25 hectares for Australian trees and 35 hectares for a collection of world plants and trees. There are more than 3 000 individual trees and more than 500 different species, with some specimens dating back 100 years to the establishment of the original farming properties in that area; I think that is quite significant. The collection is increased every year. In 2001, Golden Valley Tree Park was given a permanent entry on the Register of Heritage Places and protected under the Heritage of Western Australia Act 1990.

I would like to quote from Hon Dr Chrissy Sharp's valedictory speech in this place. She said —

> As members would realise, running for Parliament for the Greens (WA) is a risky business. When I decided in 1996 to go for preselection, I was by no means certain that I would end up with a job. However, not only did I end up with a job, but also very significant changes took place in the Legislative Council in the new Parliament in 1997 and, in particular, the two smaller parties, the Democrats and the Greens, which included my colleagues Jim Scott, Giz Watson and me, had the balance of power. That was quite a shock. Members know that it takes a little while to get used to being in Parliament. It is quite a challenge not only getting used to Parliament but also finding ourselves in the hot seat, as it were. Ever since then, life has been tumultuous, and the pressure has been continuous; however, the achievements have been significant.

On behalf of the Parliamentary National Party, I, too, offer my condolences to Chrissy's family and friends, and I support the motion of the Leader of the House.

HON DR BRAD PETTITT (South Metropolitan) [2.32 pm]: I rise on behalf of the Greens WA to pay my respects to and acknowledge the enormous contribution of Hon Dr Chrissy Sharp, former Greens member of the Legislative Council for the South West Region. I begin by paying my respects to and acknowledging her family present in the President's gallery today, including Chrissy's partner, Andrew; her children, Tosh and Lara; and her son-in-law, Jeremy. I also acknowledge Chrissy's friends and former colleagues, including Hon Diane Evers, Hon Lynn MacLaren and Hon Bill Thomas, who are present today, along with those friends and colleagues who cannot be here in person, including, but not limited to, Hon Jim Scott, Hon Giz Watson, Hon Robin Chapple, Hon Dee Margetts and Hon Paul Llewellyn.

I never had the pleasure of working directly with Chrissy, but her passion and advocacy, both in and out of Parliament, left a very strong legacy in our green movement. Personally, my first interaction with Chrissy was a memorable lecture she gave to my undergraduate class at Murdoch University in the 1990s on forestry and the environment—an issue that she remained passionate about and involved with for much of her life.

But back to the beginning. Chrissy was born in London in 1947. Chrissy was the daughter of company director Alfred Sharp and Phyllis Sharp, nee Stone, and was educated at Bishopshalt School before going on to university. At the University of Sheffield, she completed her Bachelor of Arts with honours in political theory and institutions and then a Master of Arts in political science at the University of Kent in Canterbury. After extensive travelling, Chrissy came to Western Australia in 1973. Ten years later, she completed her PhD at Murdoch University on the

politics and ethics of the logging of old-growth forests, with her thesis titled *Perspectives on the Shannon: A study of subjectivity in the making of a political issue*. In the 1970s, Chrissy worked as a journalist with the ABC. Her radio interviews with First Nations people in Laverton over the arrests at Skull Creek helped prompt a royal commission into the incident and led to WA police employing Aboriginal aides.

During this same decade, Chrissy got involved in the Campaign to Save Native Forests. Forests and sustainability were two of Chrissy's fervent passions. Recalling first seeing the jarrah forest in Mundaring upon her arrival in Perth, Chrissy remarked that she was entranced by how ancient it felt. Chrissy was actively involved in three forest campaigns: one opposing the establishment of the woodchip industry, the campaign to save the Shannon River basin and a campaign to prevent the expansion of bauxite mining in the jarrah forest. It was through these campaigns that Chrissy met her partner, Andrew. In the late 1970s, Chrissy and Andrew moved from the city to a farm in Balingup, where they started a local business, the Small Tree Farm. Inspired by Dr E.F. Schumacher and his work *Small is Beautiful*, the Small Tree Farm is a small-scale family farm that has been a tree planting hub for over three decades. In the 1980s, Chrissy co-founded the Golden Valley Tree Park, WA's largest arboretum, in Balingup and helped organise many community tree plantings. As a tree farmer, Chrissy's great interest and passion was to demonstrate how economic needs can be harmonious with the protection of native forests and environmental protection more broadly. This is still a key pillar of our green movement today.

From 1983 to 1985, Chrissy sat on the Shire of Donnybrook–Balingup council, followed by a stint on the South West Development Authority's advisory committee. In 1989, Chrissy was appointed as the first female member of the Environmental Protection Authority, retaining her membership with the change of government until she resigned in 1994 over forest issues.

Chrissy was a founding member of the Greens WA when the party was formed in the early 1990s. In 1997, Chrissy was elected to the Legislative Council as a member for the South West Region, serving two terms before retiring in 2005. Chrissy was appointed as the first woman to chair a standing committee in the history of Western Australia's Parliament. This was the Standing Committee on Ecologically Sustainable Development. Later in her second term of Parliament, Chrissy chaired the Standing Committee on Environment and Public Affairs. Both committees were amongst the most active committees in those two terms of state Parliament, in both the number and influence of those inquiries. Over those eight years, Chrissy chaired an extraordinary 15 inquiries and was responsible for all petitions tabled in the Legislative Council. Three of the inquiries were related to the issue Chrissy was most passionate about—forests.

Her son, Tosh, recalled that one time she even dragged her committee, including members of the major parties and, of course, Hansard, down to Giblett forest block and took submissions from protesters in situ. She used to go to great lengths to make the findings of these inquiries as unanimous as possible, due to her passion for consensus decision-making. In her valedictory speech, Chrissy remarked —

> I have found my committee work a wonderful opportunity to do politics the way I like to do politics; that is, with cooperation across the parties, and by being solution-focused.

With the Greens holding the balance of power in the Legislative Council for the duration of her two terms in Parliament, Chrissy and her colleagues collaborated with great energy and success to move a large number of amendments. Chrissy termed this collaboration as a form of constructive compromise and gained, as she described, "Not our ideal position, but some improvement in that area of governance closer towards Green principles". This constructive compromise saw greater social equity in public schooling, significant environmental outcomes, rights for IVF offspring, state recognition of native title, a moratorium on the introduction of genetically modified crops, legal abortion, LGBTQIA+ rights, and changes to the electoral system.

During her time in Parliament, Chrissy introduced five private members' bills. Chrissy was also passionate about harm minimisation and the decriminalisation of cannabis. Her first two bills dealt with the proposed decriminalisation of marijuana and the legalisation of hemp. Chrissy introduced the first bill in any state in Australia to legalise medical marijuana. Her other three bills focused on environmental issues, including regulating land clearing, protection of fauna in areas of state forest open to logging and the High Conservation Value Forest Protection Bill 1999, the latter being, in her view, despite its rejection by the Legislative Assembly, quite influential in the reversal of the Western Australian Regional Forest Agreement very soon after that.

Following decades of community campaigning, in December 2001, Chrissy had what she described as the great privilege to be in WA's Parliament to see the significant move towards her goal to protect old-growth forests with the addition of 853 000 hectares to the forest reserve. This was a significant milestone in the protection of WA's biodiversity, and I am sure had Chrissy been here this year, she would have joined us in celebrating the recent announcement to end logging of native forests.

In explaining her decision to leave politics during her valedictory speech in 2005, Chrissy referred to the difficulties as a country resident of juggling "the responsibilities of farming, raising a family, servicing an office that is located 300 kilometres away, chairing a committee and holding the balance of power in this place". Despite having an immense workload while holding the balance of power, Chrissy and her Greens colleagues did not qualify for

parliamentary party status and were expected to be across every issue and bill with no more staff than a normal backbencher. You would often find Chrissy still at Parliament in the early hours of the morning photocopying one page at a time.

After standing down from politics, people would often comment to Chrissy that she must be relieved to get away from politics. She would reply, "Oh no, I still stand for politics. It is all we have got to find a way forward for our society." Chrissy continued to be active in environmental sustainability following her retirement from Parliament. In 2018, Chrissy and her partner were awarded joint WA environmental volunteers of the year for their 40 years of work to establish the Golden Valley Tree Park in partnership with the Department of Biodiversity, Conservation and Attractions. She also worked with the Forest Products Commission on the *Djarlma plan for the Western Australian forestry industry*, as part of an independent panel.

As a very close colleague of Chrissy's told her son, Tosh —

> Chrissy stuck to reason, not ideology. Because of this she had this knack of bringing about change without conflict. Politicians by title are supposed to be honourable. Chrissy really WAS honourable. In fact, she was probably the most honourable person in the whole building.

I would like to finish with an excerpt from the manuscript to Chrissy's book "Being in the Balance of Power", which will hopefully be published posthumously. It says —

> Our pragmatic working ethos was a rule: we never traded across issues only within them. We never considered supporting an un-principled move on a non-core issue for gains in what for us was a more crucial area. Each issue was dealt with on its own merit. And our political relations with all the parties were respectful despite our differences … The noisier a Parliament, the less work it is getting done.

Vale Chrissy.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Mental Health) [2.43 pm]: I, too, rise to make some brief comments about Hon Dr Chrissy Sharp, whom I had the pleasure of knowing a few times over the years. I first of all pay my condolences to Andrew and the family. I also acknowledge the former parliamentary colleagues who are here today, Cheryl, Bill and Diane, and I think Lynn MacLaren is here somewhere, too. We could not see you from the cheap seats—apologies!

I first came across Chrissy long before I was in this place when she helped the student guilds of Western Australia to overturn voluntary student unionism in Western Australia. People in this place might remember that Hon Norman Moore as part of the Court government brought voluntary student unionism into being in Western Australia. In 2002, when Chrissy had the balance of power along with her Greens colleagues, the student movement worked incredibly closely with her and, thankfully, one of the last things that the Parliament did in 2002, I think on 19 December, was to allow universities in Western Australia to charge a fee to enable students on campus to get quality services and support. I want to thank Chrissy for that.

In later years when I was Minister for Environment, it was my pleasure in 2018 to jointly award Andrew and Chrissy the Volunteer of the Year Award for their 40 years of hard work at the Golden Valley Tree Park. I received an invitation to visit the park last year, but, unfortunately, Chrissy was too ill to meet with me on the day that I went. I was briefed and shown around the park by other people involved in the group. Chrissy was an environmental champion before she joined this place; we know that from her time at the Environmental Protection Authority. She was a champion while she was here and she remained a champion until her dying days.

Thank you, Chrissy Sharp, for your years of service to this state. Vale.

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [2.45 pm]: To Chrissy's family, friends and colleagues, it is a fantastic testament to the person that Chrissy was that attending the chamber today are not only representatives from her own party, but also colleagues from other parties. Apart from the Leader of the House and, for possibly a very short time, the Leader of the Opposition, who might have been in the Parliament at the same time as Chrissy, I was a member when Chrissy was here, albeit not in this chamber. Certainly, Chrissy had a very, very visible presence. Of course, when she first joined Parliament and we were in opposition, we had a shared interest in drug law reform. I think Chrissy may have also joined the group of parliamentarians across Australia that was seeking reform in the drug law area. As it has been outlined today, Chrissy contributed to that cause over the eight years of her time in this Parliament. No doubt she would be very pleased to see that we have two members of a party here today who are continuing that argument.

Of course, Chrissy's big passion was the environment. She acted in her own life with the establishment of the tree farm, which has been set out in a very practical way. She contributed to the reforestation of Western Australia and, of course, was a profoundly important proponent of the arguments around the need for proper forest management and sustainable ecological development. When I was the Minister for Planning and Infrastructure, Chrissy was certainly a very engaged member on those issues; indeed, she was a big proponent of getting as much freight on rail as possible. Having gone through the questions she asked and the motions that she moved during her time in this place when we were in government, I know that she certainly pushed that issue very passionately.

I really rise today to reflect the comments that have been made by so many others. Chrissy had incredibly strong values and was incredibly well-informed and with those values she was able to bring so much learning. However, at the same time, Chrissy was never, shall we say, morally self-righteous. Indeed, part of the reason Chrissy was able to develop relationships across all sides of politics was because she was able to understand another point of view even if she did not agree with it. She did not call people out as morally reprehensible because they did not share her views. That was because of the learning, the detail and the rigour of her arguments. It was also her preparedness to understand that people might not come from the same perspective as hers without them being morally challenged human beings. As I said, I think this is what really contributed to her ability to have a very positive input, both directly and indirectly, in the policies and the laws that were developed in this state.

To all her family and to the Greens, you can be exceptionally proud of this wonderful woman and what she achieved.

HON SOPHIA MOERMOND (South West) [2.50 pm]: I rise to make a very brief contribution to this condolence motion marking the passing of Hon Dr Christine Sharp and to share with her family members here today and those who are unable to be with us our deepest sympathies at this time of loss. I did not know Chrissy Sharp; her contributions in this place and to WA politics as a whole were well before my time, although I stand in admiration of them as summarised here by all my colleagues who had the pleasure of serving alongside her. Her contributions show that she was a wise, insightful and strong woman who had compassion for those who may have had different opinions and that she was understanding and willing to negotiate around that. It would be remiss of me not to follow on from Hon Dr Brad Pettitt's comment and acknowledge that she was, I believe, the first member of either chamber of this Parliament to introduce private members' bills to begin to unravel the legislation in which we have tied cannabis for so long. She introduced two such private members' bills, the Misuse of Drugs Amendment (Cannabis Cautioning Notices) Bill 1999 and the Poisons Amendment (Cannabis for Medical and Commercial Uses) Bill 1999. They were worthy pieces of legislation, well thought out and tabled with the best interests of the WA community at their heart. I have no doubt that she played a considerable part in influencing government policy of the day and that they are bills that she could rightly have been very proud of, as can her family and friends when they look back on her legacy.

On behalf of the Legalise Cannabis WA Party and, indeed, on behalf of the legalise cannabis movement Australia-wide, I offer our condolences and our deepest respects.

The PRESIDENT: I ask members to now rise and stand in your places to indicate your support for the motion and to observe one minute's silence in memory of the late Hon Dr Chrissy Sharp, esteemed former member of this Council.

Question passed; members and officers standing as a mark of respect.

The PRESIDENT: I advise that in accordance with our custom and practice, a copy of the *Hansard* transcript of this condolence motion will be forwarded to Hon Dr Chrissy Sharp's family.

BILLS

Assent

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

1. Appropriation (Recurrent 2021–22) Bill 2021.
2. Appropriation (Capital 2021–22) Bill 2021.
3. Industry and Technology Development Amendment Bill 2021.

LEGISLATIVE COUNCIL — SUPREME COURT ACTIONS

Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [2.56 pm]: I wish to advise the house that all notices to produce that were issued by the Corruption and Crime Commission to the Clerk of the Legislative Council under section 95 of the Corruption, Crime and Misconduct Act 2003 have been complied with.

The notices from the commission arose from a 2019 investigation into misconduct risks in relation to members of Parliament electorate allowances. Compliance with the notices was suspended for the duration of the Supreme Court legal proceedings that sought to clarify the law surrounding notices to produce and parliamentary privilege.

As I have already reported to the house, the legal proceedings have now concluded, with the final orders having been made. The Standing Committee on Procedure and Privileges was able to facilitate, with the assistance of the digital forensic staff of the commission, the production to the commission, in an acceptable format, electronic copies of in excess of 500 000 non-privileged items.

I thank the members and staff of the procedure and privileges committee, along with the legal advisory staff of the Legislative Council Committee Office and Parliament's IT section, for the enormous logistical effort in reviewing 500 000 files in order to identify and isolate from production over 10 000 items that were subject to parliamentary privilege.

I now believe this matter to have concluded.

ROBINSON ROAD, BELLEVUE

Petition

HON DONNA FARAGHER (East Metropolitan) [2.57 pm]: I present a petition containing 186 signatures couched in the same terms as a petition that was tabled on my behalf by Hon Peter Collier last Thursday when I was out on urgent parliamentary business. The petition states —

> **PETITION IN RELATION TO KEEPING ROBINSON ROAD, BELLEVUE OPEN TO THROUGH TRAFFIC**
>
> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned are opposed to the denial of access to through traffic being caused by the closure of the level rail crossing on Robinson Road, Bellevue. We welcome the development of the new Bellevue Railcar Assembly and Maintenance Facility but we do not accept being disadvantaged in the following ways (including but not limited to)—adversely affecting local businesses and costing jobs, increasing the risk for local residents by forcing traffic through residential streets that are not equipped to cope with the increased load, removing access to the Roe Highway north of the Great Eastern Highway from Clayton Street, the resultant traffic congestion, intensified risk and exacerbated commute times for the regions motorists.
>
> We therefore ask the Legislative Council to recommend that the Government ensures that Robinson Road, Bellevue remains open to through traffic and an Integrated Transport Plan be prepared that involves an overarching review of the whole area and input provided from all stakeholders being relevant state government authorities (Planning, Transport, Metronet, MRWA), local governments (Swan, Mundaring, Kalamunda, EMRC) and local ratepayer and business groups.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See paper 973.]

PAPERS TABLED

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

BUSINESS OF THE HOUSE — SITTING HOURS

Standing Orders Suspension — Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.03 pm] — without notice: I move —

> That so much of standing orders be suspended so as to enable the Council to sit beyond 9.45 pm on this day's sitting and take members' statements at a time ordered by the house.

If I may, this is to enable us to complete today the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. Advice made available to me behind the chair is that the expectation is that we will finish that bill and may even start another bill before we would rise at the normal time, but, if we are close to finishing that bill, I would like the opportunity for us to be able to complete that today. I thank the house in anticipation of its support.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [3.04 pm]: The issue that we really face over the next little bit is how many bills the government intends to get through between now and when the house rises for the Christmas break. The bills on the notice paper include completion of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021, on which we are at clause 2, and the Police Amendment (Compensation Scheme) Bill 2021, which we have not yet started, but it is a bill that the opposition supports and it is not expected to take a large amount of time. There is also the Aboriginal Cultural Heritage Bill 2021, to be debated along with the Aboriginal Cultural Heritage Amendment Bill 2021. That is a massive bill. That is not a small piece of legislation. That bill will then be followed by the Industrial Relations Legislation Amendment Bill 2021, which is a massive bill of a couple of hundred pages and 190-something clauses on a contentious issue. That bill will be followed by the Dog Amendment (Stop Puppy Farming) Bill 2021. The order may vary a bit.

I suggest that, theoretically, with two weeks to go, after a week having been added, debating two massive bills and one large bill that we are part way through—it is, again, a fair-sized bill, and only the Police Amendment (Compensation Scheme) Bill will go through in a reasonably short time—is a massive undertaking for a house that is here to give due scrutiny to legislation. There comes a point at which it appears that the opposition is being held over a barrel with this. We are, because obviously the government has the numbers and it gets to make the decisions and make the choices, but this reminds me of the year before the election when we were waiting for a list of bills to debate before Christmas and the list was so unrealistic that we obviously would not get to them.

Hon Alannah MacTiernan: Member, you need to look at the amount of time people are taking on some of these clauses.

Hon Dr STEVE THOMAS: Minister, due scrutiny is due scrutiny, and if this is holding the opposition over a barrel, I guess over a barrel it is, because the opposition's intention is not to simply throw away the scrutiny of legislation because the list of legislation is an enormous one. I do not think that is appropriate. I will work with the Leader of the House, to the best of my ability, to get legislation through in a timely manner. I have given her that commitment, but that does not mean that we will throw away our due role and our due duty. Otherwise, I think we make a mockery of the debate we had around changing the representation in this place.

I accept that this probably means that every morning or every afternoon the Leader of the House will move the equivalent motion. I think that is quite likely, given the process. We might see debate slimmed through other means. I urge the government to look at the level of detail that it seeks to get through over a two-week sitting period. There is a number of enormously complex pieces of legislation—three large bills, or three and a half if we include the one we are part way through—and I suggest that this is a highly ambitious and perhaps unrealistic target. We as an opposition accept that there is not much we can do about it, but we will not be blackmailed into passing it without due scrutiny. I think that we just need to be prepared to put the coffeepot on.

Question put and passed with an absolute majority.

CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Committee

Resumed from 2 December. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 2: Commencement —

Progress was reported after the clause had been partly considered.

The CHAIR: I draw members' attention to a new supplementary notice paper of today's date—SNP 51, issue 2.

Hon MATTHEW SWINBOURN: Members may recall that when we were last sitting, Hon Nick Goiran asked about a number of issues and I agreed to take a look at them. One related to how many court outcomes there had been for charges and convictions under section 557K(4) of the Criminal Code. Based on information provided to me by the WA Police Force, I can advise that for the period from 2004 to 2021, a total of 31 prosecution notices have been issued. Some of those prosecution notices are likely to have contained multiple charges; however, the information currently available does not contain those particulars. Of those 31 prosecution notices, 16 convictions have been recorded, nine proceedings were dismissed and three matters are ongoing.

Hon Nick Goiran also sought information on how many declared drug traffickers are in Western Australia. The member can appreciate that owing to the length of time that provision has been in operation, there are some issues with the certainty of this information in terms of its preciseness. However, I can advise the member that there have been 2 819 declarations made. This figure is made up of data collected from the District Court that goes back to 1999 and data collected from the Magistrates Court and the Children's Court from June 2000. To be clear, this means that some declarations may have been made before these times that have not been recorded. I also note that once the declaration is made by the court, a person is declared a drug trafficker for life. I suppose we can contemplate that some of those people may have passed away.

Hon NICK GOIRAN: I thank the parliamentary secretary for taking up those matters and providing the information pertaining to the number of convictions, in particular, that have been obtained under section 557K of the Criminal Code and also the number of declared drug traffickers. Some questions arise from that, but we will not deal with them at clause 2; I will take them up at the relevant clause. Unless the parliamentary secretary has a concern, it seems that the best place to deal with them might be clause 6, "Terms used", when we discuss the definition of "relevant offender". By way of advance notice, that might be the place to take up the issue concerning declared drug traffickers. Otherwise, there is the unlawful consorting notice scheme set out in clause 9.

For the time being, we are on clause 2. When we were last in session, on 2 December 2021, in response to my question about the period of time proposed by the government before the main operative provisions will come into commencement, I note from the uncorrected proof *Hansard* that the parliamentary secretary indicated the following —

> … there was a desire, out of an abundance of caution, to have some flexibility for the circumstances in which a very precise commencement day could provide operational difficulties for WA Police and those sorts of things.

Can the parliamentary secretary indicate what those operational difficulties are?

Hon MATTHEW SWINBOURN: We cannot point to any particular operational difficulties. As I indicated to the member, the provision was drafted out of an abundance of caution. Anything that I could say would simply be speculation at this point.

Hon NICK GOIRAN: To conclude this point, at the time of drafting, out of an abundance of caution—I am now paraphrasing the government's position—a choice was made to take the more flexible option just in case there

might be some operational difficulties. As time has since passed, there have been no operational difficulties. That being the case, why can we not simply amend clause 2 so that the main operative provisions come in on the day after royal assent?

Hon MATTHEW SWINBOURN: Hon Nick Goiran has not moved his amendment on the supplementary notice paper, but, to be clear, we cannot support it because it will create an operational difficulty for the Parliament in that we would have to recall the Legislative Assembly to deal with the amendment. That would delay the progress and commencement of the bill itself. In any event, we do not feel it is necessary to make that amendment because we have already made it clear that our intention is to commence the operative parts of the bill as soon as we are able to do so.

Hon NICK GOIRAN: The government's line of defence is now that it does not want to recall the Assembly. In fairness, that is not something to be treated lightly. It is an expensive exercise because, although the members of the Legislative Assembly continue to be remunerated irrespective of whether they are serving the people of Western Australia inside or outside the chamber, as I understand it, there are some financial consequences for recalling the Legislative Assembly, at least in the staffing arrangements. It might be an interesting line of inquiry for the Standing Committee on Estimates and Financial Operations one day to find out exactly how much it costs to recall a house. Nevertheless, I take the point made by the parliamentary secretary. If the government's line of defence is that the only reason it cannot support the main operative provisions coming into effect on the day after assent is that it would necessitate recalling the Legislative Assembly and perhaps that is not something the government wants to do or there are costs associated with it, then I can certainly understand the difficulty at the moment —

Hon Matthew Swinbourn: By interjection, it is not the only reason, but it is a significant operative reason.

Hon NICK GOIRAN: What are the other reasons?

Hon MATTHEW SWINBOURN: I have already indicated to the member that we are going to commence the operation of this bill as soon as we can practically do so, which will be very quickly. Police are ready to go. There will not be a delay. In fact, if I could hazard a guess, it will happen before the year is out. There is no reason to put in the member's amendment to give practical effect to the commencement of the bill because it is not going to be one of those situations in which it will not commence within 10 years. The issue of recalling the Legislative Assembly is significant, for any amendments to the bill, but it is not the only reason we would not support the proposed amendment.

Hon NICK GOIRAN: What criteria will the government use to determine on which day the proclamation will be made?

Hon MATTHEW SWINBOURN: It is when the police tell us that they are ready to go.

Hon NICK GOIRAN: Have police already provided advice to government that they are ready to go?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: Again, this goes to my earlier point. It is nonsensical to just go around in circles and say that the police say they are ready to go, and I then say that we should make sure this commences the day after assent, and then the government says that it cannot do that because it wants to wait for proclamation, and I then say, "When will that be?", and the government says, "When the police say that we are ready to go", and then we come back to the same point again. The police say that they are ready to go. The bill is going to be passed today, parliamentary secretary. We already know that. The Leader of the House has issued one of her edicts, which come from time to time, so we know that this is going to happen today. According to the government's schedule, the bill will be passed today, clearly unamended—we know that. That will be the case because the government is not willing to listen to reason. It is not willing to recall the Assembly, so the bill will be passed today. In a very short space of time—possibly today or tomorrow—the bill will be brought before the Governor for the royal assent. It seems then that there is no good reason why the operative provisions cannot commence the following day. The criterion is whether the police say they are ready, and they have already given advance notice to government that they are ready.

Therefore, I am prepared to not move the amendments standing in my name at clause 2, based upon the advice that has been provided to the chamber by the parliamentary secretary this afternoon that the government intends for this bill to be proclaimed and operative as soon as police say so, and they have already provided advance notice that they are ready to go. There would seem to be no reason why, in actual fact, the proclamation could not happen this week. In any event, I think the parliamentary secretary might have mentioned Christmas as some form of deadline. It seems consistent with something I seem to recall the Attorney General having mentioned—that these provisions will be in place by Christmas and, if that is the case, the opposition is supportive of that. We still do not see any reason why the government did not originally draft the bill to make sure that this commenced within one day after assent. However, if it is the case that the parliamentary secretary is providing, on behalf of the government, an assurance to the Parliament now that if the bill is passed today, these laws will be in place and operational, with the exception of section 67, and the rest of the law will be in place before Christmas, then the parliamentary secretary can have the opposition's support.

Clause put and passed.

Clause 3: Terms used —

Hon NICK GOIRAN: Parliamentary secretary, the third clause in this bill deals with the common terms used across the six parts of the bill. A number of changes have been made here, compared with the bill that was before us a year ago in the fortieth Parliament. Some of the new terms are self-explanatory; for example, I can see here at clause 3 that the government will insert a new term, "dispersal notice", found at page 3, line 5. Another example is the term "insignia removal notice" on that same page at line 13. Those couple of examples that I have given in respect of clause 3 make sense because these are part of the novel scheme that the government is bringing in, as set out at part 3. But some of the other terms are not so obvious. Can the parliamentary secretary explain to us why it has been deemed necessary to use the terms "authorised officer", "Indigenous person", "prescribed" and "relevant service method"?

Hon MATTHEW SWINBOURN: I am advised that the previous term for "authorised officer" was "prescribed officer". As a general point, all these changes were initiated by the parliamentary drafting office; they have not come about as a policy decision. They have been changed for the purpose of clarity rather than any substantive change to the meaning. I can be more specific in what was a "prescribed officer". The explanation is that the Parliamentary Counsel's Office wanted to avoid confusion over the term "prescribed" as opposed to "authorised". Prescribed is normally related to regulating, so the view of Parliamentary Counsel's Office is that "prescribed" is confusing and more clarity is provided by using "authorised". All these things have been initiated by PCO.

Hon NICK GOIRAN: The explanation provided for substituting the term "authorised officer" for "prescribed officer" makes a lot of sense, so I commend the drafters for that. Why has it been deemed necessary to insert the new term "Indigenous person"?

Hon MATTHEW SWINBOURN: My advice is there is no substantive change, other than where the term used previously was "Aboriginal person or Torres Strait Islander person" in the text of the bill, it will now be defined as "Indigenous person". PCO has lifted that term from the old bill and inserted a definition in this bill. The rest of the bill will now refer to an Indigenous person rather than an Aboriginal or Torres Strait Islander person. Clause 5(2) of the Criminal Law (Unlawful Consorting) Bill 2020 states —

> Without limiting subsection (1), a person is a ***family member*** of another person who is an Aboriginal person or a Torres Strait Islander (an ***Indigenous person***) …

That was how it was defined in the previous bill. I think PCO has lifted the term "Indigenous person" from that bill and included the definition in clause 3, "Terms used", and then used "Indigenous person" consistently throughout this bill.

Hon NICK GOIRAN: I can understand if it is just a case of moving it from one provision to another, and I support that. What is peculiar about this is if I reflect on the passage of the recent Children and Community Services Amendment Bill, the term "Aboriginal person or Torres Strait Islander" was used on many occasions and there was no proposal by government, with or without the advice of the Parliamentary Counsel's Office, to specifically define that as "Indigenous person". Hopefully, there are people within Parliamentary Counsel's Office who are taking an active interest in the debate that we are having here, and I would like them to consider some of the inconsistencies that seem to appear here. The insertion of the definition here causes no trouble to the opposition, so the government has our support for that.

I also draw the parliamentary secretary's attention to line 29 on page 3, where there is a definition for the word "prescribed". The parliamentary secretary indicated that the previous bill included the term "prescribed officer"; that was said, I think quite rightly, to be open to causing confusion, so we are now going to use the term "authorised officer". Having done that, it seems a little unnecessary to then insert a definition for "prescribed", because that would be the ordinary meaning of "prescribed". Again, I hope that the drafters are considering this. If there is in fact a need to make any such definition, I would have thought the Interpretation Act might be the best place, if it were necessary to do that. But, again, even though it seems unnecessary, there is no objection on the part of the opposition.

The last new term I have a question about is "relevant service method". Why was it thought necessary to insert this new term?

Hon MATTHEW SWINBOURN: The previous term was "prescribed service method", so I think the same drafting issues arise as with the word "prescribed", for similar reasons. As the member appreciates, he raised the Children and Community Services Amendment Bill, but there are different advisers here. Typically, the PCO does not sit at the table with us. Those are the explanations we are able to provide the member in the circumstances.

Hon NICK GOIRAN: One term that has been retained from the 2020 bill is "Parliamentary Commissioner", which means "the Parliamentary Commissioner for Administrative Investigations appointed under the Parliamentary Commissioner Act 1971", otherwise generally known as the Ombudsman. Of course, this term is used extensively in this bill, as it was in the previous bill. On this occasion, it is in part 4 of the bill, dealing with which entity will be responsible for monitoring. What monitoring functions does the Ombudsman currently undertake?

Hon MATTHEW SWINBOURN: I cannot give the member an exhaustive list but I can give him two examples. I think they were referred to in my reply speech as well. The Parliamentary Commissioner for Administrative Investigations has a monitoring function under the existing Telecommunications (Interception and Access) Western Australia Act 1996. In that regime, the parliamentary commissioner has a monitoring role to examine

compliance with telecommunications interception legislation through interceptions and the preparation of reports to relevant ministers. The Ombudsman has a similar role under the Criminal Organisations Control Act 2012 that includes monitoring and reporting on the exercise of powers conferred on the Commissioner of Police and police officers under that act.

Hon NICK GOIRAN: The parliamentary secretary said that the two examples were not intended to be exhaustive. The Ombudsman's monitoring functions pertain to activities of the Western Australia Police Force, but does the Ombudsman also undertake monitoring functions of other agencies within government?

Hon MATTHEW SWINBOURN: We do not have those two bills before us to access, but in terms of the member's direct question about whether it involves monitoring police, the answer on both bills is yes. We are not 100 per cent sure at this point in time whether that might include other agencies.

Hon NICK GOIRAN: Perhaps I will rephrase it. The first answer is helpful. The point is that they are two examples of the Ombudsman undertaking a monitoring function that relates to WA police, so that is helpful. I want to know whether the Ombudsman undertakes monitoring activities, not necessarily in relation to those two pieces of legislation, of other agencies or are his monitoring activities limited simply to WA police?

Hon MATTHEW SWINBOURN: The Ombudsman has a broad function to monitor across all government agencies. I think it is mostly complaint initiated, if I can call it that. As the member would be familiar, the Ombudsman has a range of powers under his act that enables him to engage with government agencies and things of that kind.

Hon NICK GOIRAN: I am trying to distinguish between a monitoring role and a complaint-handling role. I agree with the parliamentary secretary that there is a broad function for the parliamentary commissioner to receive complaints on administrative decisions made across government, and he fulfils that role from time to time. I think he also has a function in respect of certain child deaths in Western Australia. He has a number of functions, but just with regard to the monitoring function, I am trying to ascertain whether he does monitoring activities only of WA police or whether he does that of other government agencies.

Hon MATTHEW SWINBOURN: We do not have that advice at the table to confirm that for the member.

Hon NICK GOIRAN: To the best of the chamber's knowledge, on the best advice that can be provided at this time, the Ombudsman undertakes monitoring activities of WA police under the Telecommunications (Interception and Access) Western Australia Act and the Criminal Organisations Control Act, for example. With regard to telecommunications monitoring, it appears that the Ombudsman's function is to ensure that the administrative processes of the law have been adhered to. I recall that, for example, certain warrants are required and that they are audited—the administrative functions are monitored—to ensure that there is compliance. But that is not the monitoring of the special powers that are used by police when they engage with residents of Western Australia in a face-to-face fashion; it is the monitoring of administrative processes. When it comes to the Criminal Organisations Control Act, what is the nature of the monitoring the Ombudsman undertakes to oversee the Western Australia Police Force?

Hon MATTHEW SWINBOURN: I am advised that the monitoring role of the Ombudsman under the Criminal Organisations Control Act is substantially similar to what is being proposed in the bill, and that the proposed monitoring arrangements are essentially modelled in the COC act for the Ombudsman.

Hon NICK GOIRAN: The parliamentary secretary has said that the monitoring activities that the parliamentary commissioner—otherwise known as the Ombudsman—is going to undertake under part 4 are similar to the activities that are undertaken under the Criminal Organisations Control Act. What quantity of matters are under the remit of the Ombudsman at the moment under the Criminal Organisations Control Act? Is he monitoring that on a daily basis? Is a large volume of work currently being undertaken by the Ombudsman?

Hon MATTHEW SWINBOURN: It is effectively nil at the moment because no organisation has been declared under that act.

Hon NICK GOIRAN: Chair, this is just unbelievable by the McGowan government. Here we go. The Leader of the House told us that this bill needs to be passed before the stroke of midnight today but now we find that, actually, the monitoring provisions of the Ombudsman are not even being used. The government used that as an explanation to members last week to say that we must use the Ombudsman—it is very important that we use the Ombudsman for this particular role because he is doing this with respect to another piece of legislation. Now we find out in clause 3 that it has never actually been used. It is a garbage argument for the McGowan government to say that the Ombudsman is the best person to oversee these monitoring powers for the Western Australia Police Force. Organised crime is involved here; there will be bikies involved and so on and so forth. There are some 46 organisations listed here in schedule 2. Apparently, there are 800 child sex offenders and, according to the parliamentary secretary, 2 819 declared drug traffickers in Western Australia. All this volume of work will now go to the Ombudsman—a person who, at the moment, is doing how much monitoring? Zero; absolutely none, with regard to this type of function. This just confirms the opposition's point that the best organisation to oversee these powers is the Corruption and Crime Commission; it does this all the time. The Ombudsman does not do this at all.

I hope the government seriously considers the very reasonable amendment that has been put forward by the opposition. For the benefit of other members, all that is being suggested is that we substitute the novice or apprentice

monitor, the Ombudsman—and that is said with the greatest of respect for the Ombudsman, who is a tremendous individual with a massive workload and who deals with ordinary complaints across government—with the specialist. Who is the specialist in Western Australia for overseeing the police and police misconduct? It is the Corruption and Crime Commission. That is at the very heart of why it was established in the first place. It is nonsense for the Attorney General and the McGowan Labor government to insist that the generalist Ombudsman would be a better overseer than the specialist CCC.

I move —

> Page 2, after line 17 — To insert —
>
> > ***CCC*** means the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003* section 8(1);

Hon MATTHEW SWINBOURN: It will surprise no-one that the government will not support this amendment. We have already flagged our reasons for not supporting it and we remain of the view that the Ombudsman is best placed. Reasonable minds will disagree on that point, but we are of the view that the Ombudsman is the appropriate body. I do not think I can add anything that would explain that any further or convince members opposite, so I do not intend to spend a long time mounting a defence of our position.

Hon NICK GOIRAN: I call on members to support the amendment that has just been moved. I remind members of the New South Wales Ombudsman's 2016 report upon which this government so heavily relies for this legislation. I note that at page 111 of *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* it states —

> Consorting is a controversial offence as it involves 'the criminalisation of ordinarily harmless and seemingly innocent behaviour in order to allow authorities to intervene at an early stage' and attempt to prevent or reduce future offending.

Given the controversial nature of this scheme, the probability of it being legally challenged, and the possibility of its misuse by police, it would be far more appropriate for the Corruption and Crime Commission, as the specialist, to hold the oversight function and to be substituted for the Ombudsman in part 4 of this bill, for the reasons I have just outlined. I also remind members that what the opposition is proposing is not without precedent. In fact, precisely the same circumstances unfolded when Parliament decided to make the CCC the overseer in part 2 of the Criminal Investigation (Covert Powers) Bill 2011. The same arguments applied with regard to that change. The Corruption and Crime Commission's main purpose is —

> to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector …

That is found at section 7A(b) of the Corruption, Crime and Misconduct Act 2003. In exercising those powers of oversight and monitoring under part 4, the commission, by its very nature, is far more likely to pay close attention, take note of and respond appropriately to the possible misuses of the consorting law powers of WA police. I want to compare and contrast that to the role of the Ombudsman. The Ombudsman's mission is to improve the standard of public administration. The focus of the Ombudsman is more likely to be on record keeping and efficient administration than on possible misconduct or abuse of powers. As was the case when arguments were made in favour of changing the covert powers bill, the Ombudsman already has a very broad range of responsibility across the whole range of public administration, as well as some very other important specific functions. As I understand it, and perhaps the parliamentary secretary can clarify for the record now, it is not the intention of the government to provide any extra funding to the Ombudsman for this new and crucial monitoring role. Certainly, there was an indication to that effect in the other place, and unless the government has changed its mind and decided to provide some funding, that might provide some comfort to members. But as was argued with the covert powers bill, the limited resources of the Ombudsman necessarily require him to determine how he will deploy those resources most effectively. In this chamber we will provide a mandatory monitoring requirement for him to inspect all police records pertaining to parts 2 and 3 of the bill. With that, evidently, it will be a drain on resources. I very much recommend that members give strong consideration to the amendment before the house, but before we vote, perhaps the parliamentary secretary could indicate whether any extra resources will be provided to the Ombudsman.

Hon MATTHEW SWINBOURN: At this stage there is no allocation for the Ombudsman but it is open for, and we encourage, the Parliamentary Commissioner for Administrative Investigations to seek that additional funding. The commissioner has not finalised his resource and requirements and will be developing budget requirements in consultation with Treasury. I am advised that the parliamentary commissioner's officers will make a budget submission in either the 2022–23 estimates or as a one-off funding, seeking approval by the Treasurer. That will be received by the Treasurer and given its considerations. Obviously, I am not making a commitment to do it right here on the floor of Parliament, but it will obviously be given a very good hearing.

Hon NICK GOIRAN: I will conclude on this point. The situation is that we have a body, which is the Ombudsman, with no experience whatsoever with regard to monitoring these types of powers, and no extra resources provided by government for that task. We have that as one option proposed by the government, or we have the option proposed by the opposition, which is the specialist expert body, the Corruption and Crime Commission. I seek the support of members.

Division

Amendment put and a division taken, the Deputy Chair (Hon Peter Foster) casting his vote with the noes, with the following result —

Ayes (6)

Hon Martin Aldridge	Hon Nick Goiran	Hon Neil Thomson
Hon Peter Collier	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*

Noes (19)

Hon Klara Andric	Hon Peter Foster	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Dr Brad Pettitt	Hon Dr Brian Walker
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Darren West
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*
Hon Sue Ellery	Hon Sophia Moermond	Hon Matthew Swinbourn	

Pairs

Hon Donna Faragher	Hon Ayor Makur Chuot
Hon Tjorn Sibma	Hon Kate Doust
Hon Steve Martin	Hon Rosie Sahanna

Amendment thus negatived.

Hon NICK GOIRAN: I return now to the definition of "consort" found at page 2, commencing at line 20. It includes —

> to communicate directly or indirectly with the other person by any means (including by post, facsimile, telephone, email or any other form of electronic communication);

It goes on to say —

> includes consorting with the other person, in any of the ways mentioned in paragraph (a) —
>
> (i) within this State; or
>
> (ii) outside this State (including outside Australia);

At page 11 of its report titled *Organised crime in Australia 2017*, the Australian Criminal Intelligence Commission made the comments —

> The majority of serious and organised crime activities are enabled, to some extent, by the use of technology. Technology is attractive to criminals as it can provide anonymity, obfuscate activities and locations, and increase their global reach by connecting them to potential victims and information around the world. Using technology to commit crime is also significantly more efficient and less resource intensive than traditional methods of perpetrating crime.

It goes on to say at page 12 —

> High-end encrypted smartphones continue to be preferred by serious and organised crime groups to reduce visibility of their activities to law enforcement. Multiple OMCGs and other serious and organised crime groups use encrypted communication devices and software applications such as Phantom Secure BlackBerry and Wickr as their primary means of communication, due to the content protection features available on these devices and applications.
>
> Increased availability and ongoing advancement of technology will continue to provide criminals with a diverse range of resources to conduct criminal activity and impede law enforcement investigations.

The question I have is: what capacity will these proposed new consorting laws have to target new technologically advanced methods of consorting now available to organised crime syndicates?

Hon MATTHEW SWINBOURN: If I understand what the member is asking about the capacity of the police under this bill, this bill is not facilitative of the police's powers to intercept and obtain information; the consorting provision provides for a prohibition against that. The police will have all the capacity that they currently have under the relevant legislation. The member can appreciate that in terms of the detail that I could go into about what capacity police have, the sensitivity of that is such that the police would not like us and will not allow us to go into that on the very public floor of the chamber of the Legislative Council. But I can advise that the Western Australia Police Force is aware of various communication mediums that organised crime groups use and it seeks to exploit any opportunity to gather evidence of unlawful conduct. I do not know whether that quite answers the question, but the member can understand my caution in talking about the means by which police can find that evidence.

Clause put and passed.

Clause 4: Family member —

Hon NICK GOIRAN: Clause 4 deals with the definition of "family member". Has it been modelled on any other definition?

Hon MATTHEW SWINBOURN: The direct answer to the member's question is no, it is not modelled on an existing provision. The term "lineal relative", which is currently used for consorting provisions in the Criminal Code, was expanded, so that is where we have ended up. There has been some reflection on what the New South Wales Ombudsman said in their report regarding the term "family member" as it relates to Indigenous people. As the member might recall, there were some issues with the introduction of the consorting regime in New South Wales being targeted at that population. The Ombudsman's report in New South Wales has dealt with that and that has had some impact on the inclusion in the definition of "family member" of the Aboriginal and Torres Strait Islander provisions.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Terms used —

Hon NICK GOIRAN: At clause 6, again, some new terms have been introduced when one compares and contrasts the bill with its predecessor in the last Parliament. Why are we introducing the concept of a "named offender"?

Hon MATTHEW SWINBOURN: My advice is that it relates to the person named in the consorting notice—that is, a "named offender". It is being introduced now because the dispersal arrangements were not included in the previous bill. A dispersal notice does not have to apply to an offender but a person who is a member of the outlaw motorcycle gang—one of the named people—and they may not be an offender. It is being introduced now into this part of the bill so that there is a clear distinction between a consorting notice for the person who is the named offender and a dispersal notice that will name other people who the person might be in company with but they will not necessarily be offenders as such, just members of an outlaw motorcycle gang.

Hon NICK GOIRAN: Is a named offender not always a relevant offender?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: I do not understand the previous explanation that a named offender might not necessarily be an offender.

Hon MATTHEW SWINBOURN: I was relating it to dispersal notices, which have a named person, and consorting notices, which have a named offender. A named person is not necessarily a relevant offender because they may not have committed any offences.

Hon NICK GOIRAN: Clause 6 states —

> ***named offender*** has the meaning given in section 10(b);

Clause 10(b) states —

> the name of each relevant offender (a ***named offender***) with whom the restricted offender must not consort;

The parliamentary secretary conceded earlier that every named offender must be a relevant offender. I take the parliamentary secretary to the definition of "relevant offender", which is a person against whom a conviction has been recorded. A named offender must always be an offender of some sort; it is not just any other person that the person has been told not to —

Hon Matthew Swinbourn: I am advised, yes.

Hon NICK GOIRAN: The concept of a named offender has the meaning given in clause 10(b) and that pertains to the content of an unlawful consorting notice. An unlawful consorting notice was part of the previous bill in the last Parliament. It is not necessarily a new provision, but it does not help us understand why the government has now introduced the new term "named offender".

Hon MATTHEW SWINBOURN: I am advised that the approach taken by Parliamentary Counsel's Office is to distinguish between the relevant restricted offender, who is issued the notice, and the person who is on the notice, who is the named offender. There is a distinction between those two people because both of them, for the purposes of the definition, are a relevant offender. "Relevant offender" covers those two things: the person who is issued the notice and the person who is named on the notice. Therefore, this provision covers that.

Hon NICK GOIRAN: How were those two different types of people described in the government's previous proposal in the fortieth Parliament?

Hon MATTHEW SWINBOURN: In the previous bill, the relevant offender was referred to as a convicted offender and the restricted offender was referred to as a restricted person. I think the member can now see the issue we have dealt with in the dispersal notice and why there has been a move away from the terms "convicted offender" and "restricted person".

Hon NICK GOIRAN: I can certainly understand why parliamentary counsel has introduced "named offender" instead of "relevant offender", and why "restricted person" has been changed to "restricted offender", but what was the rationale or advice that suggested that "convicted offender" should become "relevant offender"?

Hon MATTHEW SWINBOURN: The member is going to like this one. The term "convicted offender" here is a tautology; therefore, for the sake of clarity, we have moved away from that particular term.

Hon NICK GOIRAN: I do like that! I wonder why it was not picked up in the last Parliament, but somebody has done some good work since then. Parliamentary secretary—I constantly want to refer to the parliamentary secretary as the parliamentary inspector; he would be a good parliamentary inspector!

Hon Matthew Swinbourn: Thanks for promoting me!

Hon NICK GOIRAN: I take the parliamentary secretary to the definition of "relevant offender". It includes what I would describe as seven categories of persons—six are categorised in paragraph (a), and one is categorised in paragraph (b). For the present purposes, I draw the parliamentary secretary's attention to paragraph (b) of the definition of "relevant offender", which states —

> a person who is declared to be a drug trafficker under the *Misuse of Drugs Act 1981* section 32A(1)(c);

The parliamentary secretary indicated during our consideration of clause 1 that the police have some form of database that enables them to undertake a search to ascertain how many declared drug traffickers there are in Western Australia. The parliamentary secretary indicated to us that there is no register as such, but the police incident management system could be interrogated. Clearly, somebody has done that work since we last sat, because the parliamentary secretary kindly drew to our attention that, according to my notes, there have been some 2 819 declarations since 1999. The parliamentary secretary indicated that those declarations have been made by a combination of the District Court, Magistrates Court and Children's Court. I am really testing my memory from earlier this afternoon. The parliamentary secretary also commented that that might not necessarily be the complete list. Why do we not currently know precisely how many persons have been declared to be a drug trafficker under section 32A(1)(c) of the Misuse of Drugs Act 1981?

Hon MATTHEW SWINBOURN: When I referred the member to those figures, I indicated that we had got that figure from data collected from the District Court going back to 1990 and data collected from the Magistrates Court and the Children's Court that went back to June 2000. I gave the rider that it was not a specific figure because of the length of time the provision has operated. It started in 1990, but, as the member appreciates, the electric transition of information for interrogation did not start in 1990 on our current computing systems. That is how we interrogated between when the issue arose from the member on Thursday and now, when it has arisen again, on Tuesday. To be more certain than that would require a significant amount of work that could not be completed. I do not think the member would ask for us to do that.

Hon Nick Goiran: It will not happen; I understand that.

Hon MATTHEW SWINBOURN: The member can understand why I gave that rider when I described it; I did not want to present to the member that it was an absolute figure and I am being up-front about it.

Hon NICK GOIRAN: Absolutely. I thank the parliamentary secretary for that further clarification. I think I erroneously wrote on my notes that it was 2 819 since 1999, but I think the parliamentary secretary is saying that should be 1990.

Hon MATTHEW SWINBOURN: That is right, yes.

Hon NICK GOIRAN: Right. A proportion of that 2 819 came from declarations made in the Magistrates Court and the Children's Court, and those records are relevant since June 2000.

Hon MATTHEW SWINBOURN: That is correct.

Hon NICK GOIRAN: Nevertheless, we are defining a relevant offender as a person who is declared to be a drug trafficker under section 32A(1)(c) of the Misuse of Drugs Act 1981. The point is that the people who will be entrusted to administer this law, WA police, do not know who those persons are. They know who 2 819 of them are, but they do not know who the persons in Western Australia who have been declared to be a drug trafficker under section 32A(1)(c) of the Misuse of Drugs Act 1981 are. Part of the reason they do not know that is, to the extent that there are records of that, those records are yet to have been interrogated by WA police. The police do not know who those people are. It appears their names are buried in some hard copy file. That is the brutal reality of it for WA police. It concerns me that there are declared drug traffickers in Western Australia and police seemingly have no idea who they are, yet we are asking them to ensure that these declared drug traffickers do not consort on multiple occasions. But they cannot do that if they do not know who they are. It appears that this information that has been provided to the house, the 2 819 declared drug traffickers, has come from the courts. Since we last sat, has an attempt been made to interrogate the police incident management system to ascertain how many declared drug traffickers there are?

Hon MATTHEW SWINBOURN: Yes, an initial search was done by the WA police, and then we went to the court records to get a more fulsome answer for the member.

Hon NICK GOIRAN: Is that an indication that when WA police interrogate the police incident management system and try to ascertain who is a declared drug trafficker in Western Australia, the number of persons that the

system tells them is a declared drug trafficker is fewer than 2 819? Therefore, quite appropriately and conscientiously, the government went to the courts and established a more fulsome number, albeit still incomplete. My question is: do the WA police now know who the 2 819 are?

Hon MATTHEW SWINBOURN: I cannot give the member an answer about whether the two things are the same. The reason we cannot provide the member with information from police is that they were not able to get the data cleared through their structures in the time frame that we had available to us. We were able to get that information more quickly and readily from the courts, so that is how we obtained that information, rather than through the police. The member can appreciate that I am the Parliamentary Secretary to the Attorney General, not to the Minister for Police. That is not the foundation of the issue; I am just saying that in terms of who has carriage of this bill. We do have police advisers, but it is not a police bill; it is an Attorney General bill.

Hon NICK GOIRAN: That explains where the information has come from. It was the most efficient approach to facilitate the obtaining of the information. Neither the Attorney General nor the Department of Justice will have the responsibility for making these laws a reality. The parliamentary secretary might recall from when we considered clause 2 that the criteria by which the government will determine when to proclaim these laws is when the police tell it they are ready. When they say they are ready, the McGowan government will race off and get these laws proclaimed. We will then be able to issue certain persons in Western Australia with these very important and severe restrictions—not all persons; only certain persons.

Yet, WA police do not seem to know who some of the people are who have been declared a drug trafficker under section 32A(1)(c) of the Misuse of Drugs Act 1981. I continue to be concerned about that—that we are passing laws that will potentially have an impact on individuals when the WA police have no idea who they are. There seems to be a systemic problem with communication between the courts, police and the Department of Justice. That is an issue that somebody in government needs to fix. It might need to be a joint task force between the courts, police and Justice, but somebody needs to take this very seriously so that we can help our police officers, who have enough work to do without us making it more difficult for them by simply saying, "Guess what: we want you to go after these declared drug traffickers but we will continue to keep you blindfolded. We won't tell you who they are; they are hidden in some documents in the courthouse." I do not think that is acceptable. I anticipate that well-meaning individuals within the McGowan government do not intend that either, and I would like to think that somebody will do something about it.

That takes me to the definition of "relevant offender", which talks about indictable offences and the like. The parliamentary secretary will see that at page 7, line 5 we are introducing two new types of offence under clauses 25(2) and 42(1). Those two offences are included in this bill. In other words, we are saying that there will be a massive list of people whom we want the WA police to go after. We know there are approximately 800 child sex offenders to whom we want the police to consider issuing consorting notices. We know there are at least 2 819 declared drug traffickers whom we want the police to tackle. We know there are 46 gangs, referred to in the bill as identified organisations, that we want the police to go and tackle. In addition, at page 7, line 5 we are going to ask the police to tackle anyone who is an offender under clauses 25(2) and 42(1). Will WA police keep a register of such people?

Hon MATTHEW SWINBOURN: That information will be recorded on the police's incident management system so police will know who they are.

Hon NICK GOIRAN: This is the tremendous IMS that we were just trying to interrogate for the drug trafficker provisions. The parliamentary secretary can understand the difficulty here if we are going to rely on a faulty product. I want to give the Western Australia Police Force the best tools to be able to fight these criminals, whether they are sex offenders, drug traffickers or members of an outlaw motorcycle gang—I do not really care. We are passing these laws and we want them to work, so let us make sure that WA police have the tools at their disposal. We are not going to try to invent a new system, like we are asking the Ombudsman to do to start monitoring these things, which he has never had to do before. The IMS seems to me to already be a flawed product. Why would the insertion of this data in the IMS now provide confidence for the number of offenders under sections 25 and 42 when it currently does not work for section 32A of the Misuse of Drugs Act?

Hon MATTHEW SWINBOURN: Just before question time, I do not know whether I gave the member the impression the IMS was a faulty product or he formed the view through some other issues he has come across with it. It certainly was not my intention to make that point about the extraction of information as a job lot for drug traffickers. That was not what I meant to get across. That information can be extracted. It is about the clearance of that data for release by police because the IMS obviously controls and has information that is not normally made available to the public for a variety of different reasons. Police will be able to enter these things into the IMS for particular individuals and that information will be recorded against them, including whether they have been convicted under proposed sections 25(2) or 42(1). It will also sit within those divisions that we talked about before regarding who is responsible and who they know. These are police officers who work within those areas. We are not talking about the 7 200 police; we are talking about specialist police who work in that particular area.

Committee interrupted, pursuant to standing orders.

[Continued on page 6176.]

QUESTIONS WITHOUT NOTICE

POTASH ROYALTY RATE

1094. Hon Dr STEVE THOMAS to the minister representing the Minister for Mines and Petroleum:

I refer to recent media that indicates that the government is considering or planning to raise the royalty rate on the much needed fertiliser potash.

(1) Is the government considering or planning to increase the royalty rate on potash?

(2) If no to (1), will the minister commit to maintaining the rate at its current level of 73¢ a tonne?

(3) If yes to (1), what rate of royalty is being considered?

(4) If yes to (1), when will the new rate be applied?

(5) If yes to (1), why is the government making it harder for hardworking Western Australian farmers to stay competitive?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information has been provided to me by the Minister for Mines and Petroleum.

The government has already taken the following actions to assist the emerging potash industry. It has reduced the mining tenement rental from $22 per hectare to $2.60 per hectare, amounting to a saving of $174 000 for 10 000 hectares. It has created a specific mining rehabilitation fund levy, recognising that these potash projects are long lived, thus reducing their annual costs from $50 000 per hectare to $20 000 per hectare for minerals in brine evaporation ponds. The Minister for Mines and Petroleum has also provided letters to banks on the cost of mining tenement rentals to make sure that lenders know the tenure requirements.

(1) No.

(2) The rate of 73¢ a tonne is for salt—NaCl, sodium chloride—not sulphate of potash, SOP.

(3) The royalty rate applying to SOP has not changed since the Barnett Liberal government.

(4) Not applicable.

(5) All current potash projects in development are focused on exporting and although the government of Western Australia expects that, at a future date, potash projects may begin providing domestic consumption, we support the export industry. An ad valorem royalty cannot increase prices because they are paid on the realised market price and not in addition to the market commodity price, unlike a value-added tax.

COLLIE FUTURES INDUSTRY DEVELOPMENT FUND

1095. Hon Dr STEVE THOMAS to the Minister for Regional Development:

I refer to the minister's answer to question without notice 1029 and the associated tabled paper 956, which presents some highly optimistic numbers of anticipated job creation under the Collie industry attraction and development fund.

(1) Please provide the modelling that suggests that 148 jobs will be created under the Wellington Dam National Park infrastructure program.

(2) Please provide the modelling that suggests that 69 jobs will be created under the Collie Trails program.

(3) Please provide the modelling that suggests that 33 jobs will be created under the Wayfinding and Tourism Amenities in Collie Township program.

(4) Given that the Collie Department of Fire and Emergency Services multipurpose facility was opened on 22 October 2021, can the minister confirm that none of the claimed 130 construction jobs are ongoing; therefore, this investment will provide only nine long-term jobs, of which, as of last week, only four were under recruitment?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. I would strongly suggest that one weekend he actually goes down to Collie and he absolutely has a look at how that town is booming —

Hon Dr Steve Thomas interjected.

The PRESIDENT: Order!

Hon ALANNAH MacTIERNAN: — and look at the amount of economic activity and the number of visitors who are coming to the town.

(1)–(3) The direct job estimates are based on information contained in the project business cases and funding agreements. In addition to these direct jobs, flow-on economic benefits are expected to be realised through longer term jobs created in the tourism sector, as well as the result of visitor numbers and increased visitor spend.

(4) The 130 construction jobs were created over an 11-month construction phase of the project. We do not keep constructing the project. I think it is pretty evident that when it is built, it is built. It has been built and there were 130 local construction jobs. As of 6 December 2021, there are 10 permanent full-time workers at the Department of Fire and Emergency Services multipurpose facility in Collie, with one new staff member commencing yesterday.

GLOBAL SUPPLY CHAIN

1096. Hon COLIN de GRUSSA to the Leader of the House representing the Minister for Transport:

I refer to the shipping delays and congestion currently being experienced across global supply chains.

(1) What action is the state government undertaking, in collaboration with the transport industry, to minimise the economic impacts of global supply chain constraints on the state?

(2) Having regard to the global supply chain issues, does the government acknowledge that it is critical that any further industrial action at the port of Fremantle be avoided?

(3) If yes to (2), what is the state government doing to minimise the impacts of any further industrial action by the Maritime Union of Australia beyond its current moratorium of 10 December 2021?

Hon SUE ELLERY replied:

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

(1) The state government is making a significant investment in freight and supply chain improvements, including increasing truck driver training opportunities, replacing the Fremantle Traffic Bridge, facilitating the development of intermodal terminals, continuing the container freight rail subsidy and progressing Westport.

(2)–(3) There is no current industrial action in the port of Fremantle. The state government encourages employers, employees and their representatives to negotiate in good faith to reach agreements and avoid further disruptions.

[Interruption.]

Hon Tjorn Sibma: Geez, I broke something!

The PRESIDENT: Hon Tjorn Sibma. You were seeking the call, were you not, honourable member?

DESALINATION PLANTS — ENERGY USE

1097. Hon TJORN SIBMA to the minister representing the Minister for Water:

Thank you, President. I am glad we are all here!

My question is to the minister representing the Minister for Water, whoever that might be today.

Hon Alannah MacTiernan: It's been me for the last five years.

Hon TJORN SIBMA: That is good.

Several members interjected.

The PRESIDENT: Order! I suggest the honourable member put his question.

Hon TJORN SIBMA: I refer to the operation of both the Perth Seawater and the Southern Seawater Desalination Plants.

(1) How much energy was used by each plant in the 2020–21 financial year?

(2) How much renewable energy was used by each plant in the 2020–21 financial year?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The answer provided to me by the Minister for Water is as follows.

The Water Corporation is unable to answer these questions within the time frame given. The minister will ensure that the information is provided to the honourable member by the end of the week.

CHILDREN IN CARE — WHEREABOUTS UNKNOWN

1098. Hon NICK GOIRAN to the parliamentary secretary representing the Minister for Child Protection:

I refer to the answers to my questions without notice 899 and 948 in which the minister informed the house that as of 11 November 2021 there was one child in the care of the CEO of the department whose whereabouts was recorded as unknown for 259 days.

(1) Has this child been found?

(2) If no to (1), has this child been placed on the Australian Missing Persons Register?

(3) If no to (2), why not?

(4) According to the end of month reporting for November, how many children in the care of the CEO had their whereabouts or living arrangements recorded as unknown?

(5) Further to (4), how many are not in regular contact with their caseworker?

Hon DARREN WEST replied:

On behalf of the parliamentary secretary, I thank the honourable member for some notice of the question. On behalf of the Minister for Child Protection, I provide the following answer.

(1) Yes.

(2)–(3) Not applicable.

(4) As of 30 November 2021, two children in care were recorded in a placement type "unknown".

(5) There are two.

NORTH EAST METROPOLITAN LANGUAGE DEVELOPMENT CENTRE — SPEECH PATHOLOGIST PILOT PROGRAM

1099. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to the North East Metropolitan Language Development Centre and the three-year pilot program being trialled, whereby government schools within its catchment area can access a speech pathologist to work with staff and students who may require support.

(1) Will the minister provide a list of those schools that have taken part in the pilot program in 2021?

(2) Are any other language development centres offering a similar pilot program to schools; and, if yes, please list these centres?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer is provided on behalf of the Minister for Education and Training, who is away from the chamber on urgent parliamentary business.

(1) The schools involved in the program during 2021 are Ashdale Primary School, Bullsbrook College, Dianella Primary College, Morley Primary School, South Ballajura Education Support Centre, Roseworth Education Support Centre, Weld Square Primary School, West Morley Primary School and Warriapendi Primary School.

(2) No.

ABORIGINAL CULTURAL MATERIAL COMMITTEE — APPLICATIONS

1100. Hon PETER COLLIER to the Minister for Aboriginal Affairs:

(1) How many heritage places in relation to section 5 of the Aboriginal Heritage Act 1972 are currently waiting to be considered by the Aboriginal Cultural Material Committee?

(2) How many section 18 applications have been submitted in 2021?

(3) How many section 18 applications are currently waiting to be considered by the ACMC?

(4) Are there any other applications waiting for approval by the ACMC in relation to the Aboriginal Heritage Act 1972?

(5) If yes to (3), how many and in relation to which section or sections?

Hon STEPHEN DAWSON replied:

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

(1) There are 16 109.

(2) There are 142, inclusive of resubmissions and withdrawn applications.

(3) There are 12.

(4)–(5) There is one Aboriginal Heritage Act 1972 section 16 application requiring consideration by the ACMC.

PUBLIC HOUSING — WAITLIST — DISABILITY SUPPORT PENSION

1101. Hon Dr BRAD PETTITT to the Leader of the House representing the Minister for Housing:

I refer to the public waitlist.

(1) How many people on the public waitlist at the end of August, September, October and November respectively receive the disability support pension?

(2) How many people on the public housing priority waitlist at the end of August, September, October and November respectively receive the disability support pension?

Hon SUE ELLERY replied:

I did sign off on the answer, honourable member, but it does not appear to be in my file. If it comes in before the end of question time, I will provide it then.

TOURISM — SHORT-TERM RENTAL ACCOMMODATION

1102. Hon WILSON TUCKER to the Leader of the House representing the Minister for Planning:

I refer to the government's draft planning policy for short-term rentals announced on 6 December.

(1) Has a cost–benefit analysis been completed prior to the release of this draft policy?

(2) If yes to (1), please table the analysis.

(3) If no to (1), why not?

Hon SUE ELLERY replied:

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

(1)–(3) The draft *Position statement: planning for tourism* is currently out for consultation. As such, the government is seeking input from industry and the community on a wide range of planning matters associated with tourism development and the draft policy.

PERTH UNIVERSITIES — MERGER

1103. Hon SOPHIA MOERMOND to the Minister for Education and Training:

I refer the minister to recent renewed calls for the four public universities here in Perth to be merged into one so-called "super uni".

(1) Does the McGowan government have any plans to facilitate talks between the four institutions in question to discuss this option further?

(2) In the event of a merger, will the government commit to at least maintaining, if not growing, the Albany campus to ensure that tertiary education remains within the reach of students in the south west who wish to complete their studies at home?

Hon SUE ELLERY replied:

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

(1) This is a matter for the universities to consider.

Hon Neil Thomson: The state.

Hon SUE ELLERY: Pardon?

Hon Neil Thomson: It's state legislation.

The PRESIDENT: Order!

Hon SUE ELLERY: The question was does the McGowan government have any plans to facilitate talks between the four institutions to discuss this option further, and the answer, honourable member, is —

(1) This is a matter for the universities to consider.

(2) This would be a matter to be considered by any merged university if it were to form. The Minister for Education and Training does not have the power to affect the operational decisions of Western Australian universities.

Hon Nick Goiran: It does.

Hon SUE ELLERY: That is a fact, mate!

Hon Nick Goiran interjected.

The PRESIDENT: Order! It is question time.

CORONAVIRUS — PERTH ASHES TEST MATCH

1104. Hon Dr BRIAN WALKER to the Leader of the House representing the Premier:

I refer the Premier to the announcement by Cricket Australia that the Perth test match scheduled for January has been cancelled due to pandemic-related restrictions.

(1) How much is this decision expected to cost the WA economy?

(2) Have either the Premier or his Minister for Sport and Recreation joined the Parliamentary Friends of Cricket, which is co-chaired by their good friend the Minister for Transport?

(3) If yes to (2), will they be handing back their membership cards?

Hon SUE ELLERY replied:

We are going to the big issues here! I thank the honourable member for some notice of the question.

(1) If there is a cost to the WA economy, that figure is unknown and will be minimal compared with the impacts that a COVID-19 outbreak would have on the Western Australian community and on all community sports, including junior sports.

(2)–(3) As stated on the Parliament of Western Australia's website, the Parliamentary Friends of Cricket is open to all members and is an informal group. There is no formal membership of the group. The state government fully supports its endeavours.

CORONAVIRUS — MANDATORY VACCINATIONS — FIRE AND EMERGENCY SERVICE VOLUNTEERS

1105. Hon MARTIN ALDRIDGE to the Leader of the House representing the Minister for Emergency Services:

I refer to Legislative Council question without notice 1081 of 2 December 2021. I note the minister's inability to advise how many Department of Fire and Emergency Services employees have been impacted by Fire and Emergency Services Worker (Restrictions on Access) Directions (No 2). I ask again —

(1) How many Department of Fire and Emergency Services employees are yet to present evidence of being vaccinated against COVID-19?

(2) How many DFES employees have been suspended, stood down or terminated as a result of noncompliance with the directions?

(3) Are any DFES employees in contravention of these directions continuing to access a Fire and Emergency Services site?

(4) What policy is DFES applying in managing employees who are in contravention of directions issued pursuant to the Public Health Act 2016?

Hon SUE ELLERY replied:

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

(1)–(4) The state government is collating the vaccination status of all public sector employees who are required to have had their first dose by 1 December 2021. This information will be publicly released in due course.

RAILCARS — ALSTOM — KTK GROUP

1106. Hon NEIL THOMSON to the Leader of the House representing the Minister for Transport:

I refer to an email that was sent to the minister's office from the Public Transport Authority at 1.41 pm on 23 December 2020, as disclosed under the recent freedom of information request on 10 September 2021.

(1) Did the minister consider directing Alstom to source supplies from Australian suppliers instead of KTK Group, which is banned in the United States due to concerns about human rights?

(2) If no to (1), why not?

(3) Given it was reported that there would be very little impact in sourcing alternative Australian supplies, will the minister consider directing Alstom to source local suppliers now?

(4) If no to (3), why not?

Hon SUE ELLERY replied:

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

(1)–(4) The contract between the state government and Alstom will deliver 246 locally manufactured C series railcars in their entirety, returning railcar manufacturing to Western Australia for the first time since the Liberal government closed the Midland workshops. This contract includes the requirement for more than 50 per cent Western Australian content, with the railcars to be built at the new Bellevue railcar facility—only two per cent was achieved under the former state government. The Public Transport Authority has sought and received assurances from Alstom that it is confident in the integrity of its supply chain.

TEACHERS — GOVERNMENT REGIONAL OFFICERS' HOUSING

1107. Hon STEVE MARTIN to the Minister for Education and Training:

I refer to my previous question without notice 516 asked on 17 August and the recent GWN7 report that some teachers are sleeping in swags in school halls.

(1) How many teachers are currently awaiting placement in a Government Regional Officers' Housing property?

(2) How many teachers are currently living in temporary accommodation, including, but not limited to, caravans, motels, hotels and school buildings?

(3) What is the breakdown by region of those teachers in (1) and (2)?

(4) Are any of the teachers referred to in question without notice 516 still living in caravan park accommodation?

Hon SUE ELLERY replied:

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

I think it is useful for the member and the house to be aware that the Department of Education is not aware of any public school teachers being made to "sleep in swags in school halls". I am also advised that the journalist from GWN7 did not seek to verify the claim with either the Department of Education or my office.

(1) There are two teachers.

(2) There are eight teachers, including the two referred to in (1). The remaining six are fixed-term appointments and do not require GROH accommodation.

(3) There are two teachers in the goldfields; one in the Kimberley; two in the midwest; one in the Pilbara; and two in the wheatbelt.

(4) One teacher is living in a chalet at a caravan park. They have indicated that this is their preferred accommodation arrangement.

NATIVE FOREST — LOGGING — TRANSITION PACKAGE

1108. Hon Dr STEVE THOMAS to the minister representing Minister for Forestry:

I refer to the government's announcement of 8 September 2021 on the ending of most native timber harvesting in Western Australia and the wholly inadequate $50 million compensation package announced for the hardwood industry.

(1) How much of the $50 million will be directed to businesses impacted by the government's changes?

(2) Will Parkside Timber, which has invested heavily in the industry, as trumpeted by the Minister for Forestry's media release of 3 December 2019, be compensated in part or in full; and, if not, why not?

(3) How much of the $50 million package will be paid directly to employees?

(4) How will businesses forced to exit the industry be compensated?

(5) How was the original figure of $50 million for the compensation package arrived at, and will the government increase it to a credible amount?

Hon ALANNAH MacTIERNAN replied:

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

(1)–(4) The Department of Jobs, Tourism, Science and Innovation is working with the Native Forestry Transition Group members to develop a just transition plan, including support programs for workforce and businesses to transition out of the native forest industry. This plan will provide support to affected workers and businesses, drive further diversification of local economies and assist in identifying and securing sustainable job opportunities. The development of support programs is underway and will be released at the completion of the just transition plan.

(5) The government has allocated $50 million for the just transition plan and is committed to supporting workers, businesses and communities through this transition.

MONCK HEAD BOAT LAUNCHING FACILITY

1109. Hon COLIN de GRUSSA to the Leader of the House representing the Minister for Transport:

I refer to the Monck Head boat launching facility opened in 2007 and ongoing issues with sand deposition that has been attributed to the opening of a rock groyne.

(1) How much money has the state government spent to date in mitigating sand deposition at Monck Head?

(2) Has the minister read the 2009 report titled *Implications of the Monck Head boat launching facility on adjacent intertidal sessile assemblages (Coral Bay, Western Australia)*, which highlights these issues?

(3) Has the minister been briefed on the issues caused by excessive sand deposition at Monck Head or considered any solutions to these issues in her capacity as Minister for Planning; and, if yes, what solutions are being proposed and when will a decision be made?

(4) Will the minister commit to visiting the site to see the issue firsthand?

Hon SUE ELLERY replied:

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

(1)–(4) The member is referring to a report released one year into the eight-and-a-half-year Liberal–National government. From the member's question, it appears as though no action was undertaken in relation to

this issue by the former government. The Department of Transport has advised that in 2017 it undertook its own shoreline movement study that found accretion at the facility was not the predominant cause for erosion north of the facility. The Department of Transport continues to monitor sediment at the location through periodic surveys.

SHARKS — HAZARD MITIGATION

1110. Hon TJORN SIBMA to the parliamentary secretary representing the Minister for Fisheries:

I refer to shark hazard mitigation this summer.

(1) How many automated shark warning towers are operating in Western Australia presently?

(2) Where are the towers located?

(3) What is the approximate cost of the towers in capital and recurrent terms?

(4) What is the specified range of the towers; that is, what is the limit of each tower's capacity to detect a tagged shark?

Hon DARREN WEST replied:

I thank the honourable member for some notice of the question. On behalf of the parliamentary secretary representing the Minister for Fisheries, I provide the following answer.

(1) There are currently 10 automated shark warning towers operating in Western Australia.

(2) Automated shark warning towers are located at: Esperance, which has two; Lefthanders surf break, which has two; Gracetown, which has two; Bunker Bay, which has one; and Cottesloe, which has two.

(3) The capital cost of shark warning towers is $9 500 and the annual recurrent cost is $1 056.

(4) The automated shark warning towers are located adjacent to a shark monitoring receiver that detects a tagged shark swimming within 500 metres of the receiver. The state government is in the process of upgrading the detection range of the shark monitoring receivers to approximately 800 metres.

CHILD PROTECTION — REGISTERED CARERS

1111. Hon NICK GOIRAN to the parliamentary secretary representing the Minister for Child Protection:

I refer to the answer to my question without notice 936 in which the house was informed that the minister regularly meets with the director general about the practice that he described to the Standing Committee on Estimates and Financial Operations as "not something that we encourage", and I note that the minister avoided tabling documents in answer to my question without notice 1054.

(1) Has the minister received any documents about the practice in question?

(2) If yes to (1), will the minister table those documents?

(3) If no to (2), will the minister undertake to inform the Auditor General in accordance with section 82 of the Financial Management Act 2006?

Hon DARREN WEST replied:

I thank the honourable member for some notice of the question. On behalf of the parliamentary secretary representing the Minister for Child Protection, I provide the following answer.

(1) No. The minister meets with the director general of Department of Communities regularly to discuss child protection matters. A standing agenda item in these meetings allows for verbal discussion between the minister and the director general to cover emerging or current issues.

(2)–(3) Not applicable.

CHILD AND PARENT CENTRES

1112. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to child and parent centres.

(1) Can the minister advise the total amount of funding allocated to each child and parent centre currently in operation in each of the following financial years —

(a) 2017–18;

(b) 2018–19;

(c) 2019–20

(d) 2020–21; and

(e) 2021–22?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. Before I provide the answer, can I say that an awful lot of information has been provided in a very short period of time, so kudos to those people in the department who will be watching this right now.

As the information is provided in tabular form, I seek leave to have the response incorporated into *Hansard*.

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

(1) (a)–(e) Total annual operational funding allocated to service providers of the Child and Parent Centres by financial year.

	TOTAL ANNUAL OPERATIONAL FUNDING ($) (GST EXCLUSIVE)				
Child and Parent Centre	**2017–18**	**2018–19**	**2019–20**	**2020–21**	**2021–22**
Arbor Grove	0	0	0	190,485.22	321,986.45
Banksia Grove	307,707.30	310,261.27	317,940.80	323,515.83	327,721.54
Brookman	307,707.30	310,261.27	317,940.80	323,515.83	327,721.54
Calista	307,707.30	310,261.27	317,940.80	323,515.83	327,721.54
Carey Park	307,954.94	310,510.97	324,719.30	329,573.59	333,858.04
Challis	307,707.30	310,261.27	317,940.80	323,515.83	327,721.54
Collie Valley	309,809.24	312,380.66	324,780.77	329,573.59	333,858.04
Dudley Park	307,707.30	310,261.27	317,940.80	325,109.98	329,336.41
East Maddington	309,193.78	311,760.09	317,990.08	323,515.83	327,721.54
East Waikiki	309,193.78	311,760.09	317,990.08	323,515.83	327,721.54
Fitzroy Valley	487,025.60	491,067.91	444,585.90	465,558.04	471,610.30
Gosnells	309,193.78	311,760.09	317,990.08	323,515.83	327,721.54
Halls Creek	487,025.60	491,067.91	444,585.90	481,818.33	488,081.96
Kununurra	487,025.60	491,067.91	435,045.95	429,849.19	435,437.23
Mount Lockyer	309,809.24	312,380.66	318,010.48	327,979.44	332,243.17
Rangeway	315,974.34	318,596.93	319,138.07	337,225.48	341,609.41
Roebourne	496,962.60	501,087.39	426,084.53	437,134.70	442,817.45
Roseworth	307,707.30	310,261.27	317,940.80	323,515.83	327,721.54
South Hedland	381,465.46	384,631.62	361,930.81	383,136.87	388,117.65
Swan	449,568.24	453,299.66	465,323.58	473,510.06	479,665.69
Warriapendi	307,707.30	310,261.27	317,940.80	323,515.83	327,721.54
Westminster	307,707.30	310,261.27	317,940.80	323,515.83	327,721.54

POLICE — MEDICALLY RETIRED OFFICERS — REDRESS SCHEME

1113. Hon PETER COLLIER to the minister representing the Minister for Police:

I refer the minister to his response to question 1076 asked on Thursday, 2 December 2021. What criteria exist for an officer to claim the post-service medical benefits services that are listed in the first part of that answer?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following information has been provided by the Minister for Police.

The Western Australia Police Force advises that former police officers and Aboriginal Police liaison officers who have suffered a work-related illness or injury are eligible to claim the post-service medical benefits provided for in the former police officers' medical benefits scheme after they depart the Western Australia Police Force. All reasonable medical expenses incurred since 1 July 2007 for a work-related injury or illness may be claimed. If the work-related injury or illness was not formally reported at the time, as long as the former officer can provide sufficient evidence for the WA Police Force to verify the claim, the claim should be accepted. Evidence may include witness details, detailed description of the incident and medical reports.

RESIDENTIAL TENANCIES ACT — REVIEW

1114. Hon Dr BRAD PETTITT to the minister representing the Minister for Commerce:

I refer to question without notice 470, asked on 11 August 2021, regarding the review of the Residential Tenancies Act 1987, which commenced in 2019 and for which the consultation period ended on 30 June 2020.

Will the minister please provide an update on the progress of the review, and specifically whether the outcomes of the review are still expected to be provided to government before the end of 2021; and, if yes, when will the outcomes be provided; and, if no, why has this been delayed and when will the review be completed and the outcomes released?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The Minister for Commerce has provided the following information.

The Department of Mines, Industry Regulation and Safety consumer protection division has provided the Minister for Commerce with recommendations for the first stage of reforms arising from the review of the Residential Tenancies Act 1987. The government is currently considering these recommendations and will announce proposed reforms in 2022.

COMMUNITY EMERGENCY SERVICES MANAGERS

1115. Hon MARTIN ALDRIDGE to the Leader of the House representing the Minister for Emergency Services:

I refer to the engagement of community emergency services managers in conjunction with local government.

(1) Is the minister aware that there is a significant inconsistency in salary and conditions between Department of Fire and Emergency Services–engaged and local government–engaged CESMs?

(2) If yes to (1), what action is the minister taking to ameliorate this concern?

(3) Has the state government commissioned a review of the CESM program and funding arrangement; and, if so, will the minister please table the review?

Hon SUE ELLERY replied:

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

(1)–(2) A Department of Fire and Emergency Services community emergency services manager is employed under the Western Australian fire service enterprise bargaining agreement, while a local government community emergency services manager is employed under the respective city or shire's enterprise bargaining agreement or award. There are differences in salary and conditions within each EBA.

(3) No.

ABORIGINAL CULTURAL HERITAGE BILL 2021 — REGULATORY IMPACT ASSESSMENT

1116. Hon NEIL THOMSON to the Minister for Aboriginal Affairs:

(1) Did the state undertake a regulatory impact assessment on the impact of the Aboriginal Cultural Heritage Bill 2021; and, if not, why not; and, if yes, is the regulatory impact statement available to the public?

(2) Regardless of the answers to (1), how did the state consider the economic impact on the following sectors: farming; earthmoving; small contractors, including plumbers and electricians; house construction; orchardists; semirural landowners; owners of industrial land; and government agencies, such as Main Roads?

(3) Has the minister consulted on the 2021 bill with representatives from the categories listed in (2)?

Hon STEPHEN DAWSON replied:

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

(1) Yes. The Department of Treasury's Better Regulation Unit advised that the consultation papers published and the consultation process implemented met the requirements of the regulatory impact assessment program. The consultation process and papers published are available on the www.wa.gov.au website.

(2)–(3) Representatives from the listed sectors were consulted during the development of the Aboriginal Cultural Heritage Bill 2021. The bill replaces the current one-size-fits-all section 18 process under the 1972 act with a tiered land use approval system that is sensitive to the nature of the proposed land use and the level of ground disturbance. Over 380 submissions were received from a wide range of stakeholders with an interest in the future management and protection of Aboriginal cultural heritage in Western Australia, including representatives from the sectors listed. In total, over 1 500 people have participated in around 175 workshops, stakeholder meetings or public information sessions held across the state. A consultation draft was made public in 2020 and details about the content of the final bill have been public since August 2021.

PUBLIC HOUSING — WAITLIST — DISABILITY SUPPORT PENSION

Question without Notice 1101 — Answer Advice

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.03 pm]: Earlier in question time, Hon Dr Brad Pettitt asked me a question in my capacity representing the Minister for Housing. I have the answer and I seek leave to have it incorporated into *Hansard*.

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

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

(1)–(2) As at 31 August 2021, there were 3,352 applications on the public housing waitlist who identified a household member as in receipt of a disability support pension or payment. Of this, 875 applications were priority listed.

As at 30 September 2021, there were 3,415 applications on the public housing waitlist who identified a household member as in receipt of a disability support pension or payment. Of this, 895 applications were priority listed.

As at 31 October 2021, there were 3,393 applications on the public housing waitlist who identified a household member as in receipt of a disability support pension or payment. Of this, 897 applications were priority listed.

As at 30 November 2021, there were 3,538 applications on the public housing waitlist who identified a household member as in receipt of a disability support pension or payment. Of this, 920 applications were priority listed.

This does not mean that all of these individuals, in any given household, are in receipt of a disability support pension or payment.

HEALTH — STAFF — NURSES AND MIDWIVES

Question on Notice 336 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Mental Health) [5.03 pm]: Pursuant to standing order 108(2), I wish to inform the house that the answer to question on notice 336, asked by Hon Martin Aldridge on 27 October 2021 to me, the Minister for Mental Health representing the Minister for Health, will be provided by 9 December 2021.

COLLIE FUTURES INDUSTRY DEVELOPMENT FUND

Question without Notice 1073 — Supplementary Information

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [5.04 pm]: As I undertook last week, I now have the information in relation to parts (3) and (4) of Hon Dr Steve Thomas's question without notice 1073, asked on 2 December 2021. I seek leave to have it incorporated into *Hansard*.

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

(3) The current cashflows of the Collie Industry Attraction and Development Fund are:

2019–20	$5.096 million
2020–21	$15.641 million
2021–22	$25.714 million
2022–23	$21.376 million
2023–24	$6.273 million
2024–25	$6.000 million

As per the 2021–22 Budget papers, the cashflows of the Collie Futures Fund are:

2019–20	$2.512 million
2020–21	$2.656 million
2021–22	$10.990 million
2022–23	$4.444 million
2023–24	$0.700 million
2024–25	–

(4) This part of the answer is in tabular form and I seek leave to incorporate the information into Hansard.

Collie Industry Attraction and Development Fund

Department of Biodiversity, Conservation and Attractions	
2019–20	$0.877 million
2020–21	$3.969 million
2021–22	$6.905 million
2022–23	$3.515 million
2023–24	–
2024–25	–
Development Western Australia	
2019–20	–
2020–21	$0.300 million
2021–22	$0.300 million
2022–23	–
2023–24	–
2024–25	–

Department of Fire and Emergency Services	
2019–20	$1.697 million
2020–21	$7.023 million
2021–22	$3.913 million
2022–23	$0.774 million
2023–24	–
2024–25	–
Department of Mines, Industry Regulation and Safety	
2019–20	$0.006 million
2020–21	$0.294 million
2021–22	–
2022–23	–
2023–24	–
2024–25	–
Department of the Premier and Cabinet	
2019–20	$0.703 million
2020–21	$2.011 million
2021–22	$0.942 million
2022–23	$0.841 million
2023–24	$0.973 million
2024–25	–
Department of Primary Industries and Regional Development	
2019–20	–
2020–21	$1.227 million
2021–22	$11.073 million
2022–23	$15.277 million
2023–24	$5.300 million
2024–25	$6.000 million
Department of Jobs, Tourism, Science and Innovation	
2019–20	$1.813 million
2020–21	$0.662 million
2021–22	$0.556 million
2022–23	$0.469 million
2023–24	–
2024–25	–
Small Business Development Commission	
2019–20	–
2020–21	$0.155 million
2021–22	$0.025 million
2022–23	–
2023–24	–
2024–25	–

Collie Futures Fund

Department of Jobs, Tourism, Science and Innovation	
2019–20	$2.426 million
2020–21	$2.130 million
2021–22	$10.000 million
2022–23	$3.444 million
2023–24	–
2024–25	–

Department of Primary Industries and Regional Development	
2019–20	$0.086 million
2020–21	$0.526 million
2021–22	$0.990 million
2022–23	$1.000 million
2023–24	$0.700 million
2024–25	–

CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Committee

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

Clause 6: Terms used —

Committee was interrupted after the clause had been partly considered.

Hon NICK GOIRAN: Prior to the interruption for the taking of questions without notice, we were discussing the capacity for WA police to identify relevant offenders, as they are defined in clause 6 at page 6 starting at line 19 across to line 8 on page 7. One of the categories of relevant offender is somebody who has been convicted of an offence under clause 25(2) and clause 42(1) of this very bill that we are dealing with. The parliamentary secretary indicated that WA police will have information about who has committed an offence by virtue of what is known as the incident management system. That is the very same system on which some preliminary interrogation work was undertaken to obtain information about how many declared drug traffickers there are in Western Australia. That, ultimately, I gather, was abandoned as a mini project and instead information was obtained by the Department of Justice through the courts to let us know that there have been 2 819 declared drug traffickers since 1990, which is as far back as electronic records are able to inform us.

The parliamentary secretary indicated that, as far as the government is concerned, the incident management system might be functioning well and there does not seem to be any problem with it. He explained that part of the reason a different approach was taken to ascertain the number of declared drug traffickers was that the incident management system information is sensitive and, understandably, not routinely provided to external parties. We do not want or need to know at this time the names or any sensitive information from the incident management system, but we need to know how many declared drug traffickers there are in Western Australia. Why can the system not be interrogated to find out the raw total number of declared drug traffickers without revealing any other sensitive operational information?

Hon MATTHEW SWINBOURN: The reason that we do not have the data is not that the system cannot be interrogated and a figure produced at the end, but that the release of the information has to be cleared through the internal hierarchies, if I can use that term. Rather than go through that process, the government has decided that it will go to the courts, which is what we have done through the Department of Justice and the courts, and we have obtained a figure for the member. I do not think the figure from the incident management system will show anything that is any different from the fact that we have 2 819 declared drug traffickers—off the top of my head. That is why we do not have information from there. I do not think there is any great controversy in that. It is about how we use the government's resources, and that is how we have given the answer the member sought last week.

Hon NICK GOIRAN: I want to test and make sure that WA police has the tools at its disposal to enforce these laws, and a good test would be to see what the IMS says about the number of declared drug traffickers. If the figure comes back as 2 819, it would provide great confidence. If it says that its records indicate that there are 1 000, we have a problem. That is what I want to identify at this time. If a member asked the same type of question as a question without notice of which some notice has been given—I respect and understand that there is this internal hierarchy that requires approval and permissions to be given—could that information be provided during that space of time or, again, will it require a much more arduous permissions and authorisations process?

Hon MATTHEW SWINBOURN: As the member knows, I do not represent police, so I could not answer that with any certainty. I will say that from when the member asked the question on Thursday to us being here on Tuesday, the best way we could obtain that information for him was through the Department of Justice and the court system. As I say, I do not speculate on that. My guess is that if it did do it—I just said I did not want to speculate and now I am guessing, so I will not guess. I will just leave it at that.

Hon NICK GOIRAN: Perhaps I can give advance notice to WA police, who have a keen interest in this bill, that there may well be a question without notice of which some notice has been given about how declared drug traffickers are recorded in the incident management system, and we will see what response comes back. Just to round this out, has any modelling been done to identify how many relevant offenders there are in Western Australia?

Hon MATTHEW SWINBOURN: No—not the total number.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Objects of Part —

Hon NICK GOIRAN: This is the objects clause. It refers to the capacity of relevant offenders. Was consideration given to also making reference to named and restricted offenders?

Hon MATTHEW SWINBOURN: The short answer to the question is no and the reason for that is that we are looking at disrupting those relevant offenders. If a named offender is somebody we would also wish to disrupt, we would make them a relevant offender by giving them an anti-consorting notice and therefore they would fall within that particular category.

The CHAIR: Hon Nick Goiran.

Hon Matthew Swinbourn: Sorry, a restricted offender.

Hon NICK GOIRAN: A restricted offender is somebody who meets the criteria in clause 9(1), which is basically a person who receives or is served with an unlawful consorting notice. A named offender is somebody who meets the criteria in clause 10(b)—that is to say, a person whom the restricted offender must not consort with. By definition, are we not seeking to disrupt and restrict their capacity to organise, plan or encourage the carrying out of criminal activity—that being both named offenders and restricted offenders?

Hon MATTHEW SWINBOURN: Just to clarify what I said before, which may have caused the member some confusion, the term "relevant offenders" in clause 8, "Objects of Part", is taken to mean both a restricted and a named offender; therefore, the object is to disrupt and restrict the capacity of both restricted and named offenders to organise, plan, support or encourage the carrying out of criminal activity.

Clause put and passed.

Clause 9: Issue of unlawful consorting notice —

Hon NICK GOIRAN: Clause 9 establishes and inserts the substitute scheme; that is to say, we already have an unlawful consorting scheme in Western Australia but it will be replaced by that outlined in division 2, "Unlawful consorting notices", which begins at clause 9. I indicated at the end of our discussion on clause 1 that I would be taking up a little further the issue of comparing the threshold that currently exists for any police officer in Western Australia to issue a police warning under section 557K of the Criminal Code with the threshold for an authorised officer to issue an unlawful consorting notice under clause 9. What are the requirements for a police officer to be able to issue a police warning under section 557K and how does that differ from the requirements for an authorised officer to issue an unlawful consorting notice under clause 9?

Hon MATTHEW SWINBOURN: Thank you, chair, for indulging me with a bit of time to get this correct for the member.

I think we are mostly talking about child sex offenders, because we have already indicated that we do not have a system in place for drug traffickers, so we cannot talk about what is, essentially, the difference here. In relation to section 557K and the current requirements, WA police have to have some intelligence upon which to make a decision to issue a warning to a child sex offender who is consorting with another child sex offender. This is currently done within the sex offender management squad I am told. They need to then work out whether it is appropriate to issue such a warning. If a decision is then made that it is appropriate to do so, it is up to an officer to go out and issue the warning. We have already talked about what that looks like in terms of showing the actual information. The information that the warning had been issued is recorded in the incident management system.

With the new regime, the same internal process would occur that happens within police: in these circumstances, is there a justification for issuing an anti-consorting notice on a child sex offender, not someone who is consorting with another child sex offender? As we know it can be any person convicted of an indictable offence within the definition to whom it applies.

They would then need to go to the commander—the authorised officer—and make the case that it was appropriate to issue the notice. In those circumstances, if the commander, or above, was of the view that it was appropriate to issue the notice, the notice would be issued. The provisions for the arrangements for it to be served on the person are dealt with later in the bill. If I recall correctly, the notice can be served either orally and later provided in written form, or immediately in written form. The physical provision of the notice, as set out in the bill, is more detailed. Essentially, they are the differences between the two things. It is important to re-emphasise that the starting point is making a decision and having the evidence that justifies taking action in the first place.

I am advised that under section 557K of the Criminal Code, if a police officer happened to see two child sex offenders talking to each other on the street, the police officer would not simply go up to them and issue a warning. The police would need a basis for deciding internally that it was appropriate to issue a warning. They would go back, make a decision and do those sorts of things.

Hon NICK GOIRAN: When we discussed this matter under clause 1, the parliamentary secretary said that the police have information that approximately five per cent of child sex offenders are known to police to have been consorting,

and that is why the police have some confidence that those five per cent will qualify for the new notice provisions moving forward, but that they do not have any information about consorting for the other 95 per cent and that is why the police need to spend the next three years working through that system. I question the first criteria that has been suggested for issuing the 557K notices, which is that the police must have information and intelligence that consorting has occurred between child sex offenders in order for the police to issue a warning. Can the parliamentary secretary confirm which is correct: is it the version that was provided when we discussed clause 1 that that is not necessarily the case, or is it the version that has been provided now under clause 9 that the police need some intelligence and information that child sex offenders have been consorting?

Hon MATTHEW SWINBOURN: The member asked me a question about the operation of those two provisions and I gave him a description about how they would work, effectively, and what the differences are. The member is now asking me specifically about the five per cent figure that has come out. Five per cent of offenders who are subject to the current warnings have consorted—this is what the police know—with persons against whom they have been warned. That is the number of child sex offenders the police already know are consorting with other known child sex offenders. That is the cohort the police want to deal with because they present the highest risk at this point. That is the information the police are acting on when we talk about those five per cent. It is not that the police do not know what the other 95 per cent of child sex offenders are doing. We have identified an issue with the global figure, which is that because the 557K notice is issued for a lifetime, some people will no longer be on the register and will need to be removed from the system. However, the five per cent that the member referred to currently present a risk that the police have direct intelligence on at this point in time, so when the bill comes into effect, the police will want to directly engage with those five per cent, as opposed to the other 95 per cent to which the member referred.

Hon NICK GOIRAN: Is it the case that the information and intelligence that starts the warning process under section 557K is the same information and intelligence that will start the new notice provisions?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: Therefore, if the two systems are the same, all 800 of the child sex offenders who currently have a warning should receive a notice moving forward?

Hon MATTHEW SWINBOURN: No, because the current ones are historical; they go back over a long time. That is why the police have to manage it. They are still subject to the section 557K anti-consorting warning. As the member knows, if police have intelligence immediately, subject to the commencement of this act, they could still convict under section 557K during the three-year transitional period.

Hon NICK GOIRAN: At the end of that three-year period, section 557K will no longer exist. At the end of that three-year period, police will have undertaken a comprehensive assessment of the approximately 800 offenders and will have worked out whether they are going to issue a notice. What I am saying is that if the standard, the threshold, the scheme and the requirements are the same, it would follow that the 800 who currently have a warning will eventually, at the end of that three-year period, so long as they are still alive, find themselves receiving a notice. The government is saying that is not the case; to the contrary, that would be the case for five per cent of them, but work needs to be done with regard to the other 95 per cent. The very fact that work needs to be done suggests that some other kind of threshold, hurdle or requirement will need to be considered in order for someone to determine—in this case, a police commander—whether a notice will be issued. The only difference between the two schemes is that at the moment, a police officer can issue a warning, but moving forward only a police commander will be able to issue a notice. One is called a warning; the other is called a notice. That evidently is not what is going on here. Something else is going on here; otherwise, it would not require the police to take three years to establish that. What I am trying to find out from the parliamentary secretary is: What are the extra requirements for a notice to be issued that are not required for a warning to be issued? What will the police have to consider over the next three years that would determine whether a warning would be transferred into a notice?

Hon MATTHEW SWINBOURN: The five per cent are the people who are high risk, if I can describe them as that; that is my term. These are the ones who are problematic for the police. The police know who they are. They have issued them with warnings. They know that it is difficult to obtain a prosecution, because these people habitually consort if they go to court. The police want to transition them into the new system immediately because—I do not know whether the member or somebody else acknowledged it—the prosecution threshold, if we want to use that term, will be lower under the new regime than it is under the existing arrangements. That is the imperative with the five per cent. The police have to manage the remaining 95 per cent because, under section 557K, there is a lifetime ban for a child sex offender.

I have said this before; we can contemplate that some of them have died and they need to be removed from the system. Some of them are now so infirm or disabled that they do not present a risk as a child sex offender and, therefore, it is not appropriate to have them in the system to be managing them. Some of them are rehabilitated, believe it or not, and no longer present a continuing measurable risk. I know that is hard to imagine with child sex offenders and I cannot imagine that there is a large number of them on the list. There is also the issue of workload and transitioning them. There is the need to take it to the commander, and we have talked about flattening that workload

over three years. The previous bill, as the member highlighted to me, provided for 12 months. The police have had the opportunity to come back and say they would like three years to transition, and that is what they are trying to achieve. If a child sex offender out there is presenting a risk of continuing to offend through their consorting and the police feel that they are in a position to issue them with a notice under the new system, they will be able to do that. The five per cent, of course, is an estimate and the police want to get on and cracking with that particular matter, but they want to manage the overall thing. As I said to the member before, when we get to the end of the three years, the goal is that every child sex offender who should be subject to a consorting notice under this act will be subject to such a notice.

Hon NICK GOIRAN: On that point, I do not doubt for a moment that that is the intention. The question is whether all those who are subjected to a warning will also be captured by a notice. It sounds like they will not be for the reasons that somebody might have died, somebody might be infirm and somebody might be rehabilitated. Can a section 557K warning be issued to someone aged under the age of 18 at the moment?

Hon MATTHEW SWINBOURN: Yes, it can.

Hon NICK GOIRAN: Here we go then. Here is a criterion that is not the same. At the moment, any police officer in Western Australia can issue a 557K warning to a child sex offender in Western Australia even if they are under the age of 18, but from now on we will limit the number of such people who can receive a notice to those who are above the age of 18. On whose recommendation was that based or was it based on a particular model? Whose advice was it that it should begin at the age of 18 when the current scheme allows for people under the age of 18?

Hon MATTHEW SWINBOURN: Our position was informed by the New South Wales Ombudsman's recommendations in his report on the consorting laws of New South Wales. I do not have the recommendation number, but the recommendation by the Ombudsman was essentially —

> The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to remove children and young people aged 17 years or less from the application of the consorting law.

Obviously, in our case, we have made it 18 years of age. That is what informed our position on age.

Hon NICK GOIRAN: It is certainly within the scope of government to make those decisions. However, what is outrageous is when the Attorney General then goes and abuses anyone who suggests that there will be a watering down of the existing laws. Plainly, there will be, because at the moment a young offender who is subject to a warning from police is not able to consort; and, if they do, they may be prosecuted. Under the new, shall I say, Quigley law, that will not be the case for a young offender. They will be free to consort. They will not be captured by one of these consorting notices. There may well be fair, reasonable or rational explanations for these things, but that is what should be provided by the Attorney General. If he wants to rely on the New South Wales Ombudsman's report to make a case that we should not restrict young people from consorting with one another, he should stand up and say so. What he should not do is abuse the likes of the member for Cottesloe for pointing out that the Attorney General had not read his own bill. Here we go; on page 7, line 27 it states —

> the person has reached 18 years of age …

Obviously, that line was skipped over by my learned friend. Can a section 557K police warning be issued only if the police officer suspects, on reasonable grounds, that it is likely that the person will consort with another child sex offender?

Hon MATTHEW SWINBOURN: Section 557K does not provide for a reasonable grounds test in the language of the act, which the member probably has before him, as opposed to what we are talking about now, both from a practical point of view in terms of having some grounds to issue it and from the test that a court would apply as to whether there was any reasonable evidence for that to happen in the first place. I do not have access to the decisions of magistrates or District Court judges to say whether they have read into that a reasonable grounds test, but we both know that it could not just be on the whim of a police officer; it could not be without any grounds at all. I do not know whether that would be elevated to reasonable grounds, but from a practical point of view, if police have in mind that a prosecution might occur if someone contravened the warning and subsequently habitually consorted, they would need to have some basis upon which to present a case.

Hon NICK GOIRAN: That is not what the Criminal Code says at section 557K(4). It states —

> A person who is a child sex offender and who, having been warned by a police officer —
>
> (a) that another person is also a child sex offender; and
>
> (b) that consorting with the other person may lead to the person being charged with an offence under this section,
>
> habitually consorts with the other person is guilty of an offence and is liable to imprisonment for 2 years and a fine of $24 000.

There is no mention there whatsoever of a reasonable grounds test.

Hon Matthew Swinbourn: I did acknowledge that, member.

Hon NICK GOIRAN: The parliamentary secretary did—exactly. We are in furious agreement that section 557K(4) makes no mention of it. If that is the case, we are now inserting a requirement for a reasonable grounds test. That said, I am mindful of the fact that, despite what section 557K says in the statute, a police process is being implemented and has resulted in approximately 800 of these warnings being issued. As a matter of practice rather than of law, are police presently implementing a reasonable grounds test before they issue a warning?

Hon MATTHEW SWINBOURN: I cannot confirm that police use a reasonable grounds test as we have described it here, but my advice is that, basically, on confirmation there has been actual contact, police would issue the warning.

Hon NICK GOIRAN: We are saying "contact", so it is if police have some intelligence or information to say that child sex offender A has had some kind of contact with child sex offender B and that is the extent to which the reasonable grounds exists at the moment.

Hon MATTHEW SWINBOURN: Yes. They have to have some evidence of sex offender A being with sex offender B, but they consider all the material that they have and whether that presents a risk or whether it is appropriate to issue a warning and all those other kinds of things. As I said previously, it is not just a flippant decision that a police officer makes and says, "I'm going to warn you under section 557K." They want these things to be taken seriously by child sex offenders. Police want them to understand what they are trying to get them to stop doing and police want to have some grounds on which to commence prosecutions if they continue with that behaviour. There are robust processes around it. The member has not made this comparison, but it is not like someone has been pulled over because they did not indicate early enough. The police might issue a warning to say they did not indicate or they did not quite come to a stop. It is not that level of seeing something and then doing something about it. It is within the sex offender management squad. These people are well known to police and have reporting requirements under the Community Protection (Offender Reporting) Act as well. They are certainly in a position in which there is a robustness before the warnings are issued.

Hon NICK GOIRAN: Let us put to one side the wording in section 557K(4); that is the law at the moment. I am talking about the practice. Is it fair to describe the existing practice as that set out at clause 9(1)(b)(i)?

Hon MATTHEW SWINBOURN: I am advised, yes.

Hon NICK GOIRAN: That is helpful. Again, that is an argument for the government to say that, notwithstanding what section 557K(4) says as a matter of law, as a matter of practice this is how the police are issuing these warnings, and we could argue that clause 9(1)(b)(i) is a reflection of the existing practice. We are, if you like, codifying and enshrining the existing practice. That said, after clause 9(1)(b), it states —

> and
>
> (c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

Therefore, I take it that that will add a new test that does not exist at the moment, or is the parliamentary secretary saying that subclause (1)(c) is also a codification of existing practice?

Hon MATTHEW SWINBOURN: The first thing to note about paragraph (c) is that when it refers to an "officer", it is an authorised officer. The member asked whether it was a new test or codification. It is obviously new, because previously the authorised officer would have been a commander or above. Clause (9) reads —

> (1) An authorised officer may issue a notice … in respect of a person … if —
>
> …
>
> (c) the officer considers that it is appropriate …

But after that, we think the member's description of it as a codification of existing practice is fair in terms of its appropriateness. Currently, the warning is aimed at stopping a person engaging in behaviour that under the current regime would constitute offence, so the answer is yes.

Hon NICK GOIRAN: Can the parliamentary secretary confirm that the approximately 800 police warnings issued so far have only ever been issued to child sex offenders who have been consorting with another child sex offender, and that police have said this is appropriate in order to disrupt or restrict that person from engaging in conduct constituting an indictable offence? Is the parliamentary secretary saying that all 800 warnings have met that test and that not one of the approximately 800 warnings that have been issued at the moment would fail the two tests that are set out at subclause (1)(b) and subclause (1)(c)?

Hon MATTHEW SWINBOURN: I cannot say that with absolute certainty about the 800 warnings that have been issued over a period, but it is an accurate description of the current practice that police employ under section 557K.

Hon NICK GOIRAN: Have any of the 800 warnings been issued to a person under the age of 18?

Hon MATTHEW SWINBOURN: My advice is yes, but we do not know how many. We are aware that a number of under-18s have been issued with a notice, but we do not know how many.

Hon NICK GOIRAN: Is there a mechanism to obtain that information or is that again an inquiry via the incident management system?

Hon MATTHEW SWINBOURN: A figure can be obtained, but we cannot get it to the member tonight as 800 warnings is a large number and would require interrogation of matters going back to the start of the scheme. We could obtain that figure, but the police manage those figures, so the question should be directed to them.

Hon NICK GOIRAN: Let us give police a little advance notice to another question without notice: how many section 557K warnings have been issued to a person under 18 years of age? Whoever is representing the Minister for Police might be busy over the next day or two. The parliamentary secretary has said that this is a codification of an existing practice, albeit the authorised officer will obviously be more senior to the officer who considers these things at the moment. What evidence will the officer need in order to be satisfied that it would be appropriate to issue the notice under clause 9(1)(c)?

Hon MATTHEW SWINBOURN: I am conscious of the time, member, so just bear with me as I push my way through this. First, I will not get into specific brass tacks of this for operational reasons. Obviously, I am not going to talk about what the bare minimum might be, but the issuing of a notice will occur through the development of an application package that will involve examination of data sources, including criminal histories and whether they had been co-offenders or offences involving consorting; address checks; prison periods; intelligent databases; prosecution notices; and national child sex offender databases. That is the kind of evidence that they will be looking at to determine whether it is appropriate to issue a notice.

Hon NICK GOIRAN: Will that be the same information or evidence that they are relying on at the moment?

Hon MATTHEW SWINBOURN: In spirit, yes, but we have to note that in this particular case, it was child sex offender and child sex offender, but now it will be child sex offender and an offender under that broader definition. As I say, in spirit, yes, but obviously there is some practical expansion here that will be beneficial for the reasons that we talked about before.

Sitting suspended from 6.00 to 7.00 pm

Hon NICK GOIRAN: We are considering clause 9 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. Prior to the dinner adjournment, we were considering this clause and the distinction between the current police warning system, with particular reference to child sex offenders under section 557K of the Criminal Code, and the newly proposed replacement regime that is set out in clause 9, which will allow a very senior police officer at the level of commander or higher to issue a consorting notice, and some of the information that has been extracted from the government includes the fact that some of the existing warnings have been issued to what I have described as young offenders—a person under the age of 18—and that will no longer be applicable when this new replacement regime comes into place.

Clause 17 of the bill is titled "Offence of consorting contrary to unlawful consorting notice"—in other words, an offence contrary to a notice that has been issued under clause 9, which we are considering now. Clause 17(3) provides that the prosecution does not need to prove that the consorting occurred for a particular purpose or that the consorting would have led to the commission of an offence. However, under clause 9(1)(c), an authorised officer cannot issue a consorting notice unless the officer considers it appropriate to issue the notice in order to disrupt or restrict the capacity of the offenders to engage in conduct constituting an indictable offence. Is there an inconsistency between the policies in clause 9(1)(c) and clause 17(3)?

Hon MATTHEW SWINBOURN: We do not think so, member.

Hon NICK GOIRAN: Clause 17(3) says —

> Nothing in subsection (1) requires the prosecution to prove —
>
> (a) that the consorting occurred for a particular purpose; or
>
> (b) that the consorting would have led to engaging in conduct constituting an indictable offence.

Yet before the dinner break, the parliamentary secretary indicated that it is the case that police already apply some form of internal test of appropriateness; that is, they need to consider whether it is appropriate to issue the notice to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence. How can it be that the officer will need to consider the conduct constituting an indictable offence, yet later the legislation says that whether or not the consorting would have led to an indictable offence is irrelevant?

Hon MATTHEW SWINBOURN: The whole purpose of the provision at clause 9 is essentially to disrupt the behaviour. It is appropriate to issue the notice in order to disrupt or restrict the capacity of the offender to engage in that behaviour. Once the notice has been issued, it creates a new set of obligations on the person subject to the notice, and if they breach those obligations, the provisions of clause 17(1) and (2), I suppose, will come into effect, but clause 17(3) is simply there to avoid any doubt about the elements of the offence. It is not that the prosecution will have to prove a particular purpose or that the consorting would have led to the person engaging in conduct constituting an indictable offence. Effectively, the obligations become strict once the notice is issued.

Clause put and passed.

Clause 10: Content of unlawful consorting notice —

The DEPUTY CHAIR (Hon Dr Sally Talbot): Member, I wonder whether you can assist the chair. I recognise that you have amendments on the supplementary notice paper for about a dozen clauses. Are you in a position to give an indication of which clauses you propose to speak on?

Hon NICK GOIRAN: As part of my consideration of clause 10, can I indicate to you, deputy chair, and also to the parliamentary secretary, that the next amendment on the supplementary notice paper standing in my name is under clause 18. Unlike some other amendments, which are consequential on the failed amendment at clause 3, clause 18 most definitely will need to be addressed by the opposition.

The DEPUTY CHAIR: Member, I am sorry; can I interrupt you. We will keep this formal. I will put the question that clause 10 do stand as printed; then I will give you the call and perhaps you will respond to my previous question as part of that and then at least we will have a question before the chamber.

Hon NICK GOIRAN: I am delighted at clause 10 to identify for members that the next amendment standing in my name on the supplementary notice paper will come under clause 18. I quickly indicate that we definitely will be pursuing that, as we will at clause 43. But there are a number of other amendments on the supplementary notice paper, starting at 5/48, that will fall away because they were consequential upon the, regrettably, defeated amendment earlier at clause 3. I hope that assists members.

In terms of other clauses between now and clause 18, can I indicate that apart from the clause we are on now—clause 10—I also have questions on clauses 11, 13, 14, 15, 16, and 17, so we will be able to fly through clause 12.

Clause 10(c) details the content of an unlawful consorting notice. It stipulates that the notice must specify that consorting on two further occasions with any offenders referred to in paragraph (b), irrespective of whether the consorting occurred with the same offender on each occasion or with a different offender on each occasion, may lead to the commission of a crime of unlawful consorting. Does the consorting between the person to whom the notice is issued—which I think we agreed earlier will be known as a restricted offender—and two other different offenders have to be for the purpose of engaging in conduct that constitutes an indictable offence referred to in clause 9(1)(c)?

Hon MATTHEW SWINBOURN: No.

Hon NICK GOIRAN: I think it was confirmed in our earlier discussion that the bill goes further than the New South Wales consorting law—that is, under the current bill the person must be found to have breached a consorting notice on two or more occasions but the breaches may relate to separate breaches against separate named individuals in those consorting notices. I understand the New South Wales laws restrict a person, or apply to a person, who commits the offence if the person consorts with at least two other convicted offenders, whether on the same or separate occasion, and if a person consorts with each of those convicted offenders on at least two occasions. In other words, I think we identified earlier that our laws under this legislation, as proposed, will require consorting only with one other person on the notice, not two other people. The defence will apply if the person who is subject to a notice consorts with any other person on the notice on two occasions. The New South Wales law effectively requires four strikes. Either in his reply to the second reading debate or during consideration of clause 1, the parliamentary secretary touched on the fact that the New South Wales laws were subject to a High Court challenge that was unsuccessful. What was the outcome of our state's consultation with New South Wales as to the operation and effectiveness of its scheme?

Hon MATTHEW SWINBOURN: Consultation with the New South Wales prosecutor did not really go to these particular provisions. The member might recall that in my second reading speech I talked about the in-depth consultation that was conducted with the visiting prosecutor; that mostly related to the defences. It provided insight into the defence provisions and how, in general, the NSW scheme had impacted on individuals involved with outlaw motorcycle gangs. That was not specifically in relation to this part, so I will not be able to illuminate that for the member.

Hon NICK GOIRAN: Other than the consultation with the visiting New South Wales prosecutor, has there been any communication between WA and New South Wales with regard to the New South Wales scheme?

Hon MATTHEW SWINBOURN: Outside of that, no.

Hon NICK GOIRAN: It is difficult to comprehend the government's confidence in these proposed laws surviving any legal challenges when there has been so little consultation with the one jurisdiction that has been effective in surviving such a challenge. A quick cup of coffee with the visiting New South Wales prosecutor to discuss the defence provisions is not full and adequate consultation when we are talking about a scheme through which we are trying to tackle the financial might of outlaw motorcycle gangs who, inevitably, will take these matters to the High Court. It seems that the McGowan government is content to run consultation over a cup of coffee. That is highly inadequate and only goes to further re-emphasise the opposition's concern that the government has not done all its homework on this matter.

With regard to the content of an unlawful consorting notice, at clause 10 there is a curious addition at the seventh item, paragraph (g). Why has the government deemed it necessary to include that particular paragraph; that is to say, beyond the other six items already listed in clause 10, what else might be required to be included in an unlawful consorting notice?

Hon MATTHEW SWINBOURN: Nothing particular is contemplated specifically at this point. An example that has been given to me—but there is no plan for this—might be the inclusion of a photograph on the notice, if that was

something that they wanted to do. We could of course have drafted it to say, "Any other matters considered appropriate by police", but we obviously wanted the protection of any further matters that become prescribed by way of regulation, which will be disallowable and subject to review by the Joint Standing Committee on Delegated Legislation.

Hon NICK GOIRAN: Has the WA Police Force given any advice to the government that it would be beneficial to include a photograph in an unlawful consorting notice?

Hon MATTHEW SWINBOURN: No, member; that is not what has happened. We were just trying to illuminate what might possibly happen. Aliases might happen in the future as well, so it is really about whether the operational experience of this over time dictates that further matters are appropriate. That paragraph makes provision for that and also makes provision for it to be by way of regulation and, therefore, to be disallowable if Parliament does not agree with it.

Clause put and passed.

Clause 11: Service of unlawful consorting notice —

Hon NICK GOIRAN: The eleventh clause of this bill deals with the issue of serving one of these unlawful consorting notices, which must have all the information set out in clause 10 and can be issued under the power of clause 9. What purpose is served by including clause 11(2), in that a police officer must explain to the person, in language likely to be understood by the person, both the person's obligations under the notice and the consequences that may follow if the person fails to comply with those obligations, if clause 11(3) provides that failure of the police officer to fulfil clause 11(2) does not invalidate an unlawful consorting notice?

Hon MATTHEW SWINBOURN: The purpose of what we are doing is to make sure that the person receiving it understands what is happening to them. I believe the issue about language comes from some of the advice from the New South Wales Ombudsman's report that was about making sure people understood, and that being reflected in those sorts of things. Aboriginal people who are child sex offenders, for example, who live in remote or regional areas and whose first language is not English might be subject to these notices. There have been a number of inquiries into police interactions with Aboriginal people and how these sorts of matters are communicated. That creates that obligation. I am advised that clause 11(3) is comparable to a police order served and explained under section 30E(5) of the Restraining Orders Act 1997. It is not a provision that I am familiar with, but I am advised there is some similarity between those things.

Hon NICK GOIRAN: The parliamentary secretary referred to what is set out here in clause 11(2) as an obligation to a police officer, yet at clause 11(3), a few words later, the obligation is in effect taken away. The obligation is a fake one. Once this bill passes, it will be there in words on the statute, but it has no force at law if a police officer fails to comply with it for any reason. It could just be carelessness, negligence or reckless indifference. Whatever the reason, such failure to comply with this subclause will not invalidate the unlawful consorting notice. It seems that the government is either serious about the New South Wales Ombudsman's recommendation about people understanding the notices or it is not. This seems like a bit of a halfway house. The government is saying it would like to pretend it is interested in the New South Wales Ombudsman's recommendations about people understanding these very serious notices, but whether they understand or not, it does not the care. That seems to be the attitude of the McGowan Labor government. It seems quite peculiar to keep the two clauses together. Might an amendment to the seventeenth and eighteenth lines on page 9 be appropriate?

Hon MATTHEW SWINBOURN: We do not support deleting that. I take the member's point about the conflicting nature of subclauses (2) and (3). Subclause (2) will still create a legislative imperative because it uses the word "must", and we would hope and expect that police officers would comply with the law as it is provided there. It will not abrogate their duty to explain the notice. It might become relevant not at the point of prosecution, but on sentencing. It could be a matter of mitigation if a defendant was able to establish that the obligations in what is now clause 11(2) were not met by the police officer and it would be a mitigating factor in sentencing. It is not completely without relevance on that point.

Hon NICK GOIRAN: Would failure by a police officer to comply with clause 11(2) be police misconduct?

Hon MATTHEW SWINBOURN: Yes, member, it is within the realm of possibilities that it could constitute misconduct, depending on the circumstances and the motivations of the police officer.

Hon NICK GOIRAN: This is a matter under part 2 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. Does that mean it will fall under the jurisdiction of the Ombudsman to monitor this matter?

Hon MATTHEW SWINBOURN: Yes, it will fall within the ambit of the Ombudsman, but it will also fall within the ambit of the Corruption and Crime Commission, if it involves misconduct. We have already pointed to the fact that the Ombudsman is obligated to refer any matters of misconduct that come to his attention to the CCC, so if something did amount to misconduct, the CCC and the Ombudsman could both have a role.

Hon NICK GOIRAN: That reconfirms the duplication that has been created here by the government, something that would have been completely avoidable had we not decided to give the job of monitoring to the generalist Ombudsman instead of the specialist CCC, which has sole jurisdiction when it comes to matters of police misconduct. Nevertheless, that is the government's decision. It obviously does not feel that the Corruption and Crime Commission

and the Ombudsman have enough work to do, so it has decided to duplicate their efforts by giving them dual jurisdiction under clause 11(2) of this bill. Why was the period of two months in subclause (4) chosen? In what circumstances will it take an officer who has issued a notice up to two months to serve it?

Hon MATTHEW SWINBOURN: The two-month period was decided on in consultation with the police. It is obviously the maximum period in which we would expect a notice to be served in that situation. Western Australia is a very large state and there might be circumstances of natural disasters or events that make it difficult to physically serve the notice—for example, runways in the north west might flood during the wet season and those sorts of things—so that is why we have arrived at two months.

Hon NICK GOIRAN: Is the two-month time frame for police to serve notices on an offender consistent with other notices that police issue to offenders around the state or is it consistent with other models?

Hon MATTHEW SWINBOURN: I cannot give the member an answer about other things with any particularity. The advice from police is that most notices are not restricted in this way; this is a change in practice in that regard. I do not have specific advice about what happens across other notices. As the member can imagine, there are requirements to serve under many acts and processes, such as court processes and all those sorts of things.

Hon NICK GOIRAN: That begs the question: why have any period of time at all?

Hon MATTHEW SWINBOURN: Clause 11(1) states —

> An authorised officer must, as soon as practicable after issuing an unlawful consorting notice, ensure that a police officer serves the notice on the restricted offender …

We have created an imperative that it be done as soon as practicable. Subclause (4) states that that is the maximum time in which it can be done. It is a policy decision. We have decided that we want the notices to be issued and served physically, not just orally, so we are putting in a regime to ensure that that imperative is placed on the police and that there is a limit. Of course, if after the expiry of two months, there are still circumstances that justify the issuing of the notice, a new notice could be issued and served on the person.

Hon NICK GOIRAN: The notice will have the information of another person, who is a relevant offender. Is there any requirement on the part of the restricted offender—that is, the recipient of the notice—to keep the information in the notice confidential?

Hon MATTHEW SWINBOURN: Not under this bill—there are no confidentiality requirements. There might be other obligations on offenders such as child sex offenders, under the Criminal Procedure Act and those sorts of things, which might mean they are effectively to be kept confidential. We do not have advice at the table about that. It is not under this bill.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Duration of unlawful consorting notice —

Hon NICK GOIRAN: To what extent will the period for service we just discussed under clause 11 have an impact on the time for the validity of the notice under clause 13?

Hon MATTHEW SWINBOURN: The clock will not start ticking for the three years until service is effected, whether it is orally or in writing.

Hon NICK GOIRAN: When the notice has been issued, under clause 12, will there not be an obligation to still issue a notice under clause 11 subsequently—in fact, within a 72-hour period? Will the time begin to run from the first notice or the second notice?

Hon MATTHEW SWINBOURN: Clause 12 has no bearing on the time. Once it is orally given, the clock will start ticking. If it is orally given, the obligations under clause 12 will kick in and it will have to be served within 72 hours.

Clause put and passed.

Clause 14: Correcting mistakes in unlawful consorting notice —

Hon NICK GOIRAN: My question to the parliamentary inspector is whether the omission of a —

The DEPUTY CHAIR (Hon Dr Sally Talbot): Parliamentary secretary.

Hon NICK GOIRAN: Did I say inspector again?

The DEPUTY CHAIR: Yes.

Hon Matthew Swinbourn: You keep promoting me!

Hon NICK GOIRAN: The parliamentary secretary —

A member: Overdue promotion, I must say!

Hon NICK GOIRAN: It is only a part-time job, though!

The DEPUTY CHAIR: I would not have pointed it out if I had realised it was going to lead to this discussion.

Hon NICK GOIRAN: Thank you, deputy chair.

Parliamentary secretary, would the omission of the name of an offender with whom the restricted person must not consort—that is, a person defined as a "named offender"—be considered a mistake for the purposes of clause 14(1)?

Hon MATTHEW SWINBOURN: I think the answer is that if the name of the named offender was omitted, that would effectively invalidate the notice because the notice could not possibly be given effect. I think the member's question is whether a clerical mistake, an accidental slip or omission or mistake in the description of any person would be sufficient to come under that term. It is a fundamental requirement of the notice to have the name of the named person, as opposed to the misspelling of the name of that person. If the offender's name was Neil and it was spelt N-E-A-L rather than N-E-I-L, that would be an issue, but if the name were completely omitted, we would not have the subject matter of the notice, which is that the named person not consort with another person. That element of doubt would probably invalidate the notice and it would need to be reissued.

Hon NICK GOIRAN: When I try to compare clause 14(1)(c) with the content of an unlawful consorting notice at clause 10, it is not readily apparent what otherwise might be applicable in this situation. Clause 14(1)(c) says that it captures a material mistake in the description of any person. However, clause 10 states —

(a) the name and residential address of the restricted offender;

(b) the name of each relevant offender … with whom the restricted offender must not consort;

(c) that consorting on 2 further occasions with any named offender … may lead to the commission of a crime …

(d) the date of issue of the notice;

(e) the name, rank and identifying reference of the authorised officer who issued the notice;

(f) that the notice remains in effect for a period of 3 years …

When I look at that list and turn to clause 14(1)(c), I see —

a material mistake in the description of any person …

If we are not saying that it is the name of the relevant offender, it follows that it is not the name of the restricted offender either. We are saying that if the name of the relevant offender is omitted, the notice will be invalid and cannot be corrected under clause 14(1) and the process will have to start all over again. Following that logic, the same would apply at clause 10(a). If an unlawful consorting notice did not have the name of a restricted offender, it would be invalid and the process would have to start all over again. What other names are captured under what is described at clause 14(1)(c) as a material mistake in the description of any person? The only thing that immediately jumps out at me is the name, rank and identifying reference of the authorised officer who issued the notice. Is the advice from the government that clause 14(1)(c) should be interpreted as being restricted only to a mistake at clause 10(e)?

Hon MATTHEW SWINBOURN: It is not restricted to clause 10(e), but I think the member has made a number of points. It is most likely to occur under clause 10(e), but it could also occur under clause 10(g), because "any other prescribed matters" would include any of those things that fall within clause 14(1)(c). It is a bit of a catch-all in that regard.

Hon NICK GOIRAN: For the purpose of interpretation, is the government saying to the chamber that it wants the people with responsibility for managing this legislation and, ultimately, those responsible in any dispute, to interpret the legislation to mean that the omission of the name of one of the named offenders, or indeed the restricted offender, should be a consideration for invalidating a notice?

Hon MATTHEW SWINBOURN: If there was only one named offender on the notice, that would probably be correct. If there were multiple names and a name had been omitted from that list, that would not invalidate the notice with respect to all those other named persons, and a new notice would have to be issued to include a new person, because that person had not been included. It would occur in a circumstance in which the police had identified a new person whom they did not know about and wanted to name that person.

Hon NICK GOIRAN: If a notice has been corrected under clause 14, what impact would that have on the three-year time frame within which the unlawful consorting notice was in place?

Hon MATTHEW SWINBOURN: It would have no impact.

Hon NICK GOIRAN: In other words, if it would have no impact and the three-year time frame would still exist, would the person still be responsible and liable under the incorrect notice until such time as the corrected notice had been issued?

Hon MATTHEW SWINBOURN: I think generally yes, but it would ultimately be a question for a court if someone had been prosecuted on this matter.

Hon NICK GOIRAN: It would require testing. Why would we not want to be clear on that? Why would we leave it to the courts? The police and the prosecution have expended a whole heap of money. These people will potentially be legally aided. We will be asking the courts to interpret all these things. What is the government's position? How

does the government want this to be interpreted? Is it the case that if an unlawful consorting notice has been issued with one or more mistakes, the person would still be liable to comply under the unlawful consorting notice, or would the liability for the unlawful consorting begin to run only from the time that the person had received the corrected notice?

Hon MATTHEW SWINBOURN: It will be from the time that it was issued. This clause will allow for a later error to be corrected without interfering with the running of that time. If the error was so fundamental that it made the notice completely defective, the wise thing would be for the police to reissue the notice and therefore remove all doubt. It is our expectation that this will be a rare occurrence. The member knows the spelling of my name, for example, but it is persistently misspelt. Hon Tjorn Sibma smiles, because he has exactly the same problem that I have with people spelling my name. We do not want a person who has got to the stage of being prosecuted to be able to defeat a notice on the simple basis that there was some kind of error, whether that was a clerical mistake, a mistake arising from an accidental slip or omission, or a material mistake in the description of any person, thing or matter referred to in the notice. It is available for the prosecution to argue any of those matters to excuse the error if they got to that particular stage and were prosecuting on that kind of notice.

Hon NICK GOIRAN: At least the record will reflect that it will be possible for an inaccurate unlawful consorting notice to be issued and served to a person liable under that notice for a period of three years. It might not be until the time of prosecution that a notice was corrected. Notwithstanding the fact that potentially two or more years might have passed, under clause 14, the police could quickly issue a corrected notice and there would be no problem. What would happen if there has not been a corrected notice? Clause 14(3) states —

> An unlawful consorting notice corrected under this section has the same validity and effect as if the mistake had not been made.

Is it fundamental that the incorrect notice must have been corrected in order for it to be valid?

Hon MATTHEW SWINBOURN: That is a hard question to answer because it depends on the nature of the error. It could be something like the "O" and the "U" in "Swinbourn" were the wrong way around. The member has experienced these sorts of things and knows that courts tend to take a strict approach on them. For example, warrants and such things that incorrectly, through a typo, name the wrong address can sometimes be invalidated, but it is really a question that the courts will decide on a case-by-case basis depending on whether the change is substantive or immaterial.

Hon NICK GOIRAN: This is my last question on this clause. The New South Wales laws were challenged, but unsuccessfully. Does New South Wales have a "correcting mistakes" provision like clause 14?

Hon MATTHEW SWINBOURN: I am sorry, member; we do not know off the top of our head and we do not have it right before us at the moment.

Clause put and passed.

Clause 15: Revocation of unlawful consorting notice —

Hon NICK GOIRAN: Clause 15(4) says it is the Commissioner of Police who will revoke the notice. Now we are getting very serious. We have moved quite some way from the existing section 557K provision, which as a matter of law any police officer in Western Australia can issue. There are more than 7 000 of them. Under clause 9, we moved to an authorised officer, which is commander or higher, but now we are bringing in the big guns because under clause 15(4) it will be the Commissioner of Police. Apparently, he must —

> … revoke an unlawful consorting notice if the Commissioner is, on an application under subsection (1) or on the Commissioner's own initiative, satisfied that —
>
> (a) the unlawful consorting notice was invalidly issued because the requirements under section 9(1) for issuing the unlawful consorting notice were not met; or
>
> (b) the unlawful consorting notice was validly issued but the requirements under section 9(1) for issuing the unlawful consorting notice are no longer met due to a change in the circumstances.

Clause 15(6) does not require the Commissioner of Police to specify the reason for which the notice has been revoked under this clause. Even if the commissioner does not reveal details of their reasons for revoking a notice, would it not be more prudent to require the commissioner to record either clause 15(4)(a) or (b) as the general ground on which the notice is being revoked under clause 15(6)?

Hon MATTHEW SWINBOURN: It is not in the bill, but we were advised by police that as a matter of practice the commissioner would record whether it is being revoked under clause 15(4)(a) or (b).

Hon NICK GOIRAN: The parliamentary secretary said that it is a matter of practice, but this provision does not exist at the moment, so are we basing this on some other practice that the commissioner tends to follow for other revocations that the commissioner undertakes?

Hon MATTHEW SWINBOURN: We are basing it on advice from police that we are receiving at the table.

Clause put and passed.

Clause 16: Variation of unlawful consorting notice —

Hon NICK GOIRAN: I think that clause 16 did not exist in the original 2020 bill, and it was included by the government through an amendment in the other place last year, but what prompted its inclusion?

Hon MATTHEW SWINBOURN: I think we contemplated that this clause might apply when multiple offenders are named. There might be a change of circumstances for one of those offenders; for example, they might have a conviction overturned, so they would no longer fall under the ambit of the act because they would not be a relevant offender anymore, and they would be removed from the notice. The concern was that we did not want an entire notice to be invalidated as a consequence of that, as we want to preserve any occasions of consorting that had arisen under that notice.

Clause put and passed.

Clause 17: Offence of consorting contrary to unlawful consorting notice —

Hon NICK GOIRAN: The New South Wales Ombudsman's report from 2016 notes that consorting offences in South Australia, Western Australia and Tasmania are all summary offences, and that police are therefore restricted by time limits between an alleged offence of consorting and a charge. It says that the period in South Australia is two years pursuant to the Summary Procedure Act 1921, in Tasmania it is six months pursuant to the Justices Act 1959, and in Western Australia it is one year under the Criminal Procedure Act 2004. Will the one-year time limit still apply to the time that may elapse between an alleged offence of consorting and a charge of unlawful consorting under clause 17?

Hon MATTHEW SWINBOURN: The 12 months under the Criminal Procedure Act will no longer apply. Making the offence an indictable offence will also have the effect of removing the time frame specified in the Criminal Procedure Act within which a prosecution must be commenced. Simple offences must be commenced within 12 months of the date on which the offence was allegedly committed, whereas no such limitation exists for indictable offences unless a written law specifies otherwise, which this bill does not.

Clause put and passed.

Clause 18: Defences to charge of consorting contrary to unlawful consorting notice —

Hon NICK GOIRAN: Members are going to get some exercise in a moment, because I will shortly move an amendment that seeks to remove a defence that is applicable to a charge of a crime under clause 17(1). It remains a concern for the opposition that the government has seen fit to give special treatment to activities undertaken by members of an organisation of employees registered under division 4 of part II of the Industrial Relations Act 1979 or the commonwealth's Fair Work (Registered Organisations) Act 2009 for the purposes of the business of the organisation. This is the union defence clause that we discussed earlier. I know that the parliamentary secretary and I do not share a common view on the appropriateness of this clause. That said, does this particular special provision that is being provided to union members exist in the other jurisdictions?

Hon MATTHEW SWINBOURN: The member's question was whether any other jurisdiction provides a similar defence to that set out at clause 18(2)(a)(viii) of the bill. The consorting scheme is different in all Australian jurisdictions. In Victoria, consorting offences are contained in its organised control order scheme. In most other jurisdictions, consorting offences are contained in crime legislation or criminal codes. There is not a consistent approach to the offence provisions or defences across Australian jurisdictions. The scheme introduced by the bill will be the most comprehensive of all Australian jurisdictions, including the range of safeguards, such as targeted defences. In the other jurisdictions with defences comparable with clause 18(2)(a)(viii), the Victorian consorting scheme provides it is a defence for the accused to prove that they did not associate with a person named in the notice for an ulterior purpose and the association occurred for the purpose of industrial action. The Northern Territory consorting scheme provides it is a defence for the defendant to prove they had a reasonable excuse. Whether this defence is available to a defendant who consorted while engaged in industrial action will turn on its facts.

Hon NICK GOIRAN: Earlier in the debate, did the parliamentary secretary indicate that the government modelled its bill in any way on the New South Wales or Queensland legislation?

Hon MATTHEW SWINBOURN: I did say it was modelled on the New South Wales legislation.

Hon NICK GOIRAN: Does the New South Wales legislation have a special defence for unionists like this one here?

Hon MATTHEW SWINBOURN: No.

Hon NICK GOIRAN: Without any further ado, I move —

> Page 14, line 30 to page 15, line 3 — To delete the lines.

I strongly encourage members to support the amendment to this outrageous provision in the bill. The government cannot have it both ways. It cannot say, "We're modelling our law on the New South Wales provisions. Don't worry about it because New South Wales has had its laws challenged by the bikies in the High Court. We're very confident that we've done all the work that's necessary" and then, at the eleventh hour, slip in this special defence for unionists. If a unionist is a declared drug trafficker, I am sorry, but they have lost the right to be able to consort with a fellow drug trafficker. I do not understand why we are allowing a special defence in these circumstances. The government has decided it is very important that if a declared drug trafficker is a unionist, they should be able to continue to

consort with a fellow drug trafficker who is a unionist. That is the effect of this provision. They will have a special defence, despite the fact that the New South Wales law that the government is relying and modelling on has no such provision. I encourage members to support the amendment that has been put.

Hon MATTHEW SWINBOURN: Members, I rise to advise that the government will be opposing this amendment. I made that clear in my second reading in reply speech. I have said that these consorting provisions are modelled on the New South Wales provisions, but we are not copying the New South Wales act, so that is an important distinction. In any event, this amendment seeks to remove the defence to a charge of a crime under clause 17(1) of the bill to prove that the consorting occurred in the course of activities undertaken by members of an organisation of employees registered under the Industrial Relations Act 1979 or the Fair Work (Registered Organisations) Act 2009 for the purposes of the business of the organisation.

The defences outlined in clause 18(2) of the bill are narrow and targeted. They recognise that consorting will sometimes be necessary when a person is engaged in a particular activity, such as a lawful occupation or particular circumstance such as when a person is dependent on the accused for care and support. Consistent with the other defences, the defence set out at clause 18(2)(a)(viii) is a narrow and targeted defence. Importantly, this defence is inextricably linked to the defence at clause 18(2)(a)(i), which provides for a defence if the consorting occurred in the course of a person's lawful occupation, trade or profession. Being a member of a trade union is connected with being in a lawful occupation, trade or profession. We acknowledge that it may be necessary for a person to consort while engaged in gainful employment. It is entirely appropriate that we also recognise that it may be necessary for that person to protect their rights attached to that employment. Like all defences contained in clause 18(2), the industrial action defence is not an open invitation to relevant offenders to use that defence as a cover to avoid the operation of the unlawful consorting notice. The accused must prove, on the balance of probabilities, that the circumstances in clause 18(2)(a)(viii) apply and that the consorting was necessary in the circumstances.

Turning to the narrow nature of the industrial action defence, the accused will have to prove the following; firstly, that both the accused and the person with whom they were consorting were members of an organisation of employees, registered under the relevant state or commonwealth levels; secondly, the consorting occurred in the course of activities undertaken for the purpose of the business of the organisation; and thirdly, that the consorting was necessary in the circumstances. Therefore, it is quite a heavy burden for them to prove.

The business of an organisation could include, for example, providing information and advice about making an application to an industrial tribunal or assisting in negotiations about their employment, or it might even relate to workplace safety arrangements. The requirement that the accused prove the consorting was necessary in the circumstances imposes a threshold test, and will ensure that sham communications will not stand up as a defence to a charge. If the purpose of the communications could have been achieved without consorting with a named offender, the defence will not apply. It will depend entirely on the particular circumstances of the situation, whether the consorting that occurred was necessary, and the onus is on the accused person to prove that it was.

To conclude, without this defence, workers would be denied the opportunity to communicate with others to pursue the legitimate industrial rights to which they are entitled in connection with their employment. We want people who will be covered by this act to get on the straight and narrow, get gainful employment and be engaged in the kind of pro-social activities that being a member of a trade union provides. We do not support the removal of this defence.

Division

Amendment put and a division taken, the Deputy Chair (Hon Steve Martin) casting his vote with the ayes, with the following result —

Ayes (6)

Hon Martin Aldridge	Hon Nick Goiran	Hon Dr Steve Thomas
Hon Peter Collier	Hon Steve Martin	Hon Colin de Grussa *(Teller)*

Noes (20)

Hon Klara Andric	Hon Peter Foster	Hon Sophia Moermond	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Dr Brad Pettitt	Hon Dr Brian Walker
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Stephen Pratt	Hon Darren West
Hon Sue Ellery	Hon Ayor Makur Chuot	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*

Pairs

Hon Donna Faragher	Hon Rosie Sahanna
Hon Neil Thomson	Hon Kate Doust
Hon Tjorn Sibma	Hon Samantha Rowe

Amendment thus negatived.

Hon NICK GOIRAN: This is the defence clause, including the very special defence for union activity. One reasonable defence pertains to family members. I note that a family member of a person who is an Indigenous person is defined in clause 4, which we dealt with earlier. It includes a person who is regarded as a member of the extended family or kinship group of the Indigenous person under the customary law and culture of the Indigenous person's community. This defence, together with the definition of a family member, is set to safeguard against these proposed new consorting laws from unfairly affecting Aboriginal and Torres Strait Islander people. Reference was made to the New South Wales Ombudsman's 2016 report, *The consorting law*. The government has placed some reliance on this report for various elements of this bill, including this issue, on the basis that the New South Wales consorting law was "used against"—I understand is the term used in the Ombudsman's report—Aboriginal and Torres Strait Islander people and that this should be avoided. Although I consider that the expanded definition of family member to reflect extended family kinship ties between Indigenous Western Australians is appropriate, it is not readily apparent how inserting it into the law, through this bill, will address the concern raised in the New South Wales Ombudsman's report. Has any information been provided to the government by police, the Corruption and Crime Commission or any other agency that demonstrates that the current consorting laws that we will be repealing in a later clause have been used against Aboriginal or Torres Strait Islander people or have had some kind of impact upon them?

Hon MATTHEW SWINBOURN: As the member knows, the current consorting regime applies only to drug traffickers and people convicted of child sex offences. No drug traffickers have been issued with a consorting notice, so we can put them to one side. It is only the child sex offenders. Within that cohort of 800 are Aboriginal and Indigenous people. I will use that term; I do not know whether they are Torres Strait Islander people. We do not have the figures of what proportion they make up. They are not an insignificant number. That is that, but I think the member's question was whether these laws as they currently exist have been particularly targeted at Indigenous people. I think the issue with comparing what currently applies with what will apply is that the existing laws with respect to child sex offenders are of a narrow nature. Because the new legislation will apply to people convicted of an indictable offence and those sorts of things, the net will be cast much, much wider than it currently is. That gives rise to the concerns that the Ombudsman has talked about and that we are conscious of, which is why we have included provisions to make sure that the family defence that applies takes into account cultural circumstances and kinship for Aboriginal and Torres Strait Islander people.

Hon NICK GOIRAN: It appears from a reading of the New South Wales Ombudsman's report that the issue is not so much in the drafting of the legislation, but in the use of the police powers in issuing notices. At page 63 of the report, the Ombudsman says —

> There is no specific reference to the use of the new consorting law in relation to Aboriginal people in the *Consorting Standard Operating Procedures* …

Is it the intention of the WA Police Force to adopt a form of consorting standard operating procedures that makes specific reference to the vulnerability of Aboriginal and Torres Strait Islander people under these new laws?

Hon MATTHEW SWINBOURN: The short answer is no, not specifically, but policies already exist that deal with how police interact and deal with Aboriginal and Torres Strait Islander people, and it will obviously come into consideration in terms of commencing prosecutions.

Hon NICK GOIRAN: I am disappointed to hear that. The government is relying on the New South Wales Ombudsman's report for this bill. The NSW Ombudsman made an express point about this issue with respect to the New South Wales Police Force's consorting standard operating procedures and yet there is no indication from the Western Australia Police Force that it will do likewise here or has an appetite to do so. It will rely on an old generic provision, when we are implementing a brand new scheme with this legislation. It is very good for WA police to say, "Hurry up, McGowan government; get this bill through Parliament before midnight on 7 December 2021, because we're ready to go. Get it before the Governor and start proclaiming it." I commend police for that. As we discussed last week, particularly during the clause 1 debate, some of the heinous individuals who police have to deal are quite shocking, particularly when it comes to outlaw motorcycle gang members and some of their activities. But something very basic like making sure that the operating procedures have been modernised and updated to reflect new legislation appears to have been overlooked. I encourage WA police to take a further look at page 63 of the New South Wales Ombudsman's report of 2016. While they are at it, they may also like to look at page 64, which states —

> Western Region police reported that, among other strategies, they most commonly used the consorting law in relation to drug, theft, robbery, and break and enter offences … In some LACs, consorting was valued as providing an additional proactive tool that could be used to approach and engage individuals. However, others advised us that existing police powers, such as conducting bail compliance checks, search powers and move-on directions, provided more effective and less cumbersome proactive tools.

All of this goes to police discretion about which of the various tools they have at their disposal they will seek to rely on. Has there been any advice from WA police on this point, specifically on whether a procedural policy will be established so that whenever possible WA police will use these new consorting laws as a last resort, particularly in relation to Indigenous persons?

Hon MATTHEW SWINBOURN: My advice from police is no. Police will focus on dealing with the risk of offending and trying to minimise future offending.

Hon NICK GOIRAN: This again leads to the discussion about monitoring. We know not only from recent reports, but also over an extended period—more than a decade—that the Corruption and Crime Commission has consistently looked into the excessive use of force by WA police. In fact, a recent report of the Joint Standing Committee on the Corruption and Crime Commission is on exactly that point and the CCC has been tasked with constantly overseeing the Western Australia Police Force's use of force powers. WA police will now have a different type of power over an expanded group of Western Australians that will restrict the capacity of those people to consort—except, of course, if they are involved in a union and then there will be special defence provisions for them to do as they please. That aside, anyone not so fortunate to carry a union membership card with them all the time may be subject to a police consorting notice. The lived experience in New South Wales indicates that those types of consorting notices are sometimes used in a less than desirable fashion. I very much would like to reiterate to the government that I see problems emerging here. There will be a lot of duplication between the Ombudsman and the CCC, and I am concerned about that. Those organisations have enough to do without having this constant duplication. They definitely will have to work it out and there will be resource implications as a result.

Clause 18(1) contains the defence for family members—a person will have to prove that consorting between persons who are family members is reasonable in the circumstances. What type of consorting between declared drug traffickers will be considered "reasonable in the circumstances" to provide a defence against a charge of unlawful consorting?

Hon MATTHEW SWINBOURN: Again, I apply the rider that each circumstance will give rise to its own judgement, but one example could be a funeral. One person cannot choose to go to a funeral at a different time from another person. Another example might be when those people have caring responsibilities for elderly parents or a child, or things of that kind. I cannot give the member an exhaustive list, but the sorts of things that are contemplated include people being obliged, whether culturally or through kinship, to participate in and attend family gatherings. It is not just about two people catching up for a coffee at a coffee shop and that just because they are brothers they can get away with that kind of thing. Some people in outlaw motorcycle gangs are related or are family members and there will be broader circumstances in which it will be completely reasonable. But then there will be much narrower circumstances in which it will be used as a justification. However, defence of the activity will still be subject to what arises in clause 18(3), which provides consorting —

> is not reasonable or necessary … if a purpose of the consorting —
>
> (a) is to avoid the operation of an unlawful consorting notice; or
>
> (b) relates to criminal activity.

Hon NICK GOIRAN: If it is a funeral and the two declared drug traffickers are not family members, are they prohibited from attending because they will not be captured by clause 18(2)?

Hon MATTHEW SWINBOURN: They would not be prohibited from attending; they would be prohibited from consorting with each other. For example, if they are at the funeral and they sit next to each other and are chatting away, that would be consorting, but if they are at the funeral and one is sitting on one side of the chapel and the other is sitting on the other side and there is no consorting, that is okay. They are not prohibited from attending the occasion at the same time; they are prohibited from consorting during the occasion.

Hon NICK GOIRAN: They could attend the funeral but not, as the parliamentary secretary says, consort, whereas the family members of both declared drug traffickers could attend and consort because they have the extra defence, if you like. It all turns on the definition of "consort", which includes to seek or accept the company of the other person, to be in the company of the other person, or to communicate directly or indirectly with the other person. "Communication" is largely self-explanatory; they are either communicating with each other or they are not, but have "being in the company" or "accepting the company" of another person been judicially considered—the term "being in the company of another person"—either under WA law or one of the other model laws that we are relying upon?

Hon MATTHEW SWINBOURN: My understanding is that it has been judicially considered in relation to burglary-type matters. We do not have any particular cases to point the member to, but I have a bit of advice from the table. The scope of the expression "in company" used within the term "consort" requires more than the mere physical presence of two persons; it must be both physical presence and a common purpose.

Hon NICK GOIRAN: If they were attending a union rally and there were 100 people participating, just because they were one of the 100 people participating, that would not necessarily put them in contravention of being in the company of the other person. I take it there has to be some proximity with the other person. Is that —

Hon Matthew Swinbourn: By way of interjection, yes, some proximity.

Hon NICK GOIRAN: Right. Again, it goes back to the provision at clause 18(2)(a)(viii), which allows for activities undertaken by such members. To try to relate it back to the funeral example, we are not saying they cannot be at the funeral and we are not saying they cannot be at the rally; we are saying that they cannot consort. But in this provision we are actually saying that if they are unionists, not only can they attend the rally, but they can consort, and

we are going to give them a special defence for it. I know the parliamentary secretary is going to say that we have already had that discussion and he has already won the argument, which is true, but I think the funeral example that the parliamentary secretary provided only illustrates further the nonsensical nature of the union defence clause. With regard to the defences in other jurisdictions, do they also rely upon a necessity—that it is necessary or reasonable in the circumstances?

Hon Matthew Swinbourn: Member, before you sit down, what is the example you're giving?

Hon NICK GOIRAN: Do the defence provisions in other jurisdictions also have the same elements of reasonableness or necessity?

Hon MATTHEW SWINBOURN: In New South Wales the test is reasonableness, but it does not have the necessary test. The necessary test for those contained at clause 18(2) is a higher standard than reasonableness to satisfy.

Hon NICK GOIRAN: At clause 18(2)(a)(iii) is a reference to receiving a health service or social welfare service. Is the bill's definition of a health service intended to be the same as that under the Health Services Act 2016?

Hon MATTHEW SWINBOURN: Yes. If the member refers back to clause 3, he will see the definition for health service is —

> … has the same meaning given in the *Health Services Act 2016* section 7;

Hon NICK GOIRAN: Will that then cover therapeutic and counselling services; rehabilitation services; alcohol and other drug support services; accessing a social worker; and counselling and accessing other support groups, such as assistance with drug rehabilitation and alcohol rehabilitation?

Hon MATTHEW SWINBOURN: I think in general, yes. A social welfare service is defined in clause 3, which states —

> … includes services provided by governments and charitable organisations for community welfare, financial assistance, housing and temporary accommodation;

It is quite a wide ambit.

Hon NICK GOIRAN: The New South Wales Ombudsman recommended the inclusion of the following additional defences to the Crimes Act 1900 at section 93Y —

> (g) consorting that occurs in the course of complying with —
>
> (i) an order granted by the Parole Authority, or
>
> (ii) a case plan, direction or recommendation by a member of staff of Corrective Services NSW,

Is a like provision included at clause 18?

Hon MATTHEW SWINBOURN: I am advised that clause 18(2)(a)(vii) would cover what the member just described. It states —

> complying with a written law, an order made by a court or tribunal, or any other order, direction or requirement made under a written law;

Hon NICK GOIRAN: The New South Wales Ombudsman also recommended the inclusion of an additional defence for consorting that occurs in the course of the provision of transitional crisis or emergency accommodation. Is that also covered?

Hon MATTHEW SWINBOURN: Yes, member; it would come under the definition of a social welfare service.

Clause put and passed.

Clauses 19 and 20 put and passed.

Clause 21: Terms used —

Hon PETER COLLIER: I was not going to, parliamentary secretary —

Hon Matthew Swinbourn: And why did you?

Hon PETER COLLIER: Because I have to say, "I told you so!"

I went through the definition of "insignia" in debate on clause 1, if the parliamentary secretary remembers. Insignia is clearly identified in clause 21. I will not read it out again; it is in the bill. As I mentioned in my contribution to clause 1, the report tabled by WA Police Force outlines that the colours of a bikie gang are actually more extensive than in part 3, which is what we are talking about, regarding insignia.

As I said in my contribution to the debate on clause 1, without a doubt they will try to find a way around this. It is almost as if they already have. I also mentioned this in my previous contribution: believe it or not, they are keeping an eye on what is going on in this place right now. One of them has phoned my office on several occasions. They are keeping an eye on what is going on, but I am not for a moment suggesting that they are taking advice from comments that were made on the bill. Having said that, I was sitting here with slight amusement this afternoon. If the parliamentary secretary remembers, I told him that they would find a way around this. If the insignia is not on their

arm or they cannot wear their colours in a particular way or whatever, they will start using ink; they will start getting tattoos that will clearly identify them. There was an article online this afternoon. I will not table it, but I provide it for the parliamentary secretary's benefit—if the attendant could show it to him. The article is headed "Rebels bikie Samuel John Willmott shows off '500k' ink as he's jailed for $500,000 theft from Perth backyard". It says —

> At his last court appearance, baby-faced bikie Samuel Willmott proudly showed off his newly acquired gang tattoo which apparently was a sign he had cemented his association with the Rebels Motorcycle Club.
>
> On Tuesday, as the patched member was jailed for almost three years for stealing half a million dollars in a "revenge" plot against his friend's father, he flaunted another piece of face ink—500K.
>
> Willmott showed no qualms displaying the tattoo, which runs down his face next to his right ear, to District Court Judge Linda Petrusa who was tasked with both determining his role in the "grand theft" and how long he should remain behind bars.

That brings me back to the point I raised in my earlier contribution; that is, how on earth will these bikie gangs be stopped from using tattoos as their insignia? The parliamentary secretary's response to me at that time was that they would get fined. They will get fined, but they will still have a tattoo. This guy will still have one. The 500K is obviously a sign for the Rebels.

Hon Stephen Pratt: That is what he stole from the backyard.

Hon PETER COLLIER: Yes, I know what he stole, but read the article. The article said it was a revenge plot. It said "newly acquired gang tattoo", so he has a gang tattoo as well. How do we prevent that?

Hon MATTHEW SWINBOURN: It is not just a fine, there is up to 12 months' imprisonment as well. He could end up going to jail. If people are going to break the law, they are going to break the law, and the law is going to deal with and punish them. At this stage, the punishment is a fine—was it $12 000? I stand to be corrected on whatever the fine is—and a term of imprisonment. It is an age-old question about those who choose to obey the laws and those who do not. Thankfully, in our society people overwhelmingly obey them. We will deal with them through our criminal justice system, and if people want to flout the laws, they will end up in jail.

Hon PETER COLLIER: I am not going to pursue this any further. I am just making a point.

Hon Matthew Swinbourn: I do not know what more you can ask from me on this point about what you expect the government can do on this other than fine and jail people.

Hon PETER COLLIER: The government cannot do anything about it. I am not justifying it and I am not looking for an excuse; I am just saying that exactly what I said would happen will happen. The bill has not even hit the Governor's desk and exactly what I said would happen will happen. I do not want it to happen, do not get me wrong; do not get defensive. I am saying that exactly what I said would happen will happen. We support the bill. I am totally supportive of it, but I am just making a point that no matter what we do, they will flout the law—no matter what happens. Yes, I agree, 99.9 per cent of the public do not put a tattoo on their face to say they are part of the Rebels bikie gang, but we can bet that his mates will do exactly the same thing. As I said, good luck with it, and it is good that the government will curtail their actions, but I will finish on this: they will find a way around this. All I am saying is that, just by sheer coincidence, this article was online this afternoon as we were debating this bill. The parliamentary secretary does not have to respond to this. All this does is reinforce the point I have made that, unfortunately, no matter what we do, some people in the community will find their way around our laws. It is unfortunate that this mob of people will do this sort of stuff, because no matter what laws we make, they will find a way around them, and they obviously have.

Hon NICK GOIRAN: I apologise, parliamentary secretary; I was taken away on urgent parliamentary business. In respect of the important point that has just been made by the honourable shadow Minister for Police, in a scenario in which a person inked the insignia on their person, as I understand it from the parliamentary secretary's response, they would be subject to prosecution under part 3, which is the new part that was inserted via a bill in the last Parliament. What penalty will be applicable in that situation?

Hon MATTHEW SWINBOURN: I think the member was out of the chamber on urgent parliamentary business. The penalties in that situation are dealt with in clause 25(2), which states —

> A person commits an offence if the person displays insignia of an identified organisation in a public place.
>
> Penalty for this subsection:
>
> (a) in the case of an individual — imprisonment for 12 months and a fine of $12 000;
>
> (b) in the case of a body corporate — a fine of $60 000.

Hon NICK GOIRAN: There are two ways in which we can consider a fine of up to $12 000 for one of these outlaw motorcycle gang members. One is that a whole stack of money is available to them through various means, so maybe a fine is not that much of a severe penalty. Let us park that to one side because there is really nothing we can do about that; if they happen to have the money to pay a fine, so be it. The second is when they refuse to pay a fine issued against them under clause 25(2)(a). What is the state's capacity to deal with that unpaid fine?

Hon MATTHEW SWINBOURN: I am advised that it would be dealt with under the Fines, Penalties and Infringement Notices Enforcement Act 1994.

Hon NICK GOIRAN: Could the non-payment of a fine, which, in this case, could be up to $12 000, ultimately lead to the imprisonment of the individual?

Hon MATTHEW SWINBOURN: The answer is yes; at the very end of that long process, they could end up in prison by order of a magistrate.

Hon NICK GOIRAN: Could the period of imprisonment be longer than the 12 months set out in clause 25(2)(a)?

Hon MATTHEW SWINBOURN: At this stage, I do not have the advice available at the table to answer that. We are trying to find the answer for the member, but we do not know the answer at this stage.

Hon NICK GOIRAN: If it helps the parliamentary secretary, I indicate that my questions about part 3, if you like en bloc, are being dealt with here under "Terms used". It is not my intention to continue to go through the other provisions of part 3. That said, again, in this example that the shadow Minister for Police has brought to our attention, clause 23(2) states —

> A person commits an offence if the person displays insignia of an identified organisation in a public place.

Is that limited to one display per day or could there be multiple displays on a particular day?

Hon MATTHEW SWINBOURN: It could be multiple.

Hon NICK GOIRAN: Is that because the public place might be different or because a different hour of the day has passed?

Hon MATTHEW SWINBOURN: It will be on a question of fact, but both circumstances could give rise to multiple occasions. If it were six o'clock in the morning and then six o'clock at night in the same location, who would know what has gone on in between, but it would be the public display. Then, obviously, I suspect that the person, having been dealt with, would be arrested and then transported to the police for the first one. If they came back later on the same day to the same place, they would get done again.

Hon NICK GOIRAN: Let us test the scenario that the shadow Minister for Police brought to our attention. The person has ink—the insignia—on their person, they have been identified by WA police and they have been transported from the public place and brought to police headquarters for processing. Then they have been released until such time as their first appearance occurs. Upon release, they are out in a public place again and the person still has the insignia on their person. Would that be a second offence on that day?

Hon MATTHEW SWINBOURN: Yes, it would be.

Hon NICK GOIRAN: Is there any limit to the number of contraventions under clause 25(2) that a person could commit on a particular day? I am talking about one 24-hour period. Is there any limit to the number of contraventions? I am not talking about a person wearing an insignia on a jacket that they have put on for five minutes and have then gone to the next pub and put on the jacket once again. This is a unique set of circumstances when the insignia is permanently on the very person who is subject to the charges. Is there any limitation on the number of offences that the person can be charged with in the 24-hour period?

Hon MATTHEW SWINBOURN: The practical limits will apply, but there is no upper limit to the number of times they could be charged if they continued to wear their tattoo in public and continued to flout the law.

Hon NICK GOIRAN: Has the displaying of insignia that is inked on a person been tested in another jurisdiction?

Hon MATTHEW SWINBOURN: No, member; we are the first jurisdiction to introduce it.

Hon NICK GOIRAN: It is all an experiment. When we say that in a certain scenario, a person will be charged, and brought into the police station and charged again and so forth—no-one really knows, but in theory it could happen—the government can be absolutely sure that these guys will challenge these laws. There simply could not be a situation in which a person is charged with an offence in every second that passes. They still have the tattoo on and one second passes and they still have the tattoo on and another second passes and they have contravened the offence yet again and again and again. That is nonsensical. There will have to be some reasonable limitation on these provisions. Is there no like provision that police will have to prosecute when this kind of scenario occurs?

Hon MATTHEW SWINBOURN: Without getting down to the nitty-gritty of criminal law, it will be an issue of whether it is a continuing course of conduct, as opposed to a particular incident. I do not know what the member has done, but he is very popular with that bug! Speeding is probably a good example. Apposite to that is a person who speeds up and slows down in a car and is caught each time—that bug is quite distracting! That is one example. There is a practical limitation to the number of times it can be done. The difference with tattoos, as opposed to patches and insignia, is that we can confiscate and take physical things, but we cannot take tattoos off a person's skin. If the breach is not inadvertent and those people continue to choose to act in that way in direct contravention of the law, having just been charged under this provision and having had this explained to them, that is the choice they make.

Hon PETER COLLIER: I think this is a real problem for you guys—I really do. They cannot just go and have a shower and get rid of their tattoos. They have them for life. The parliamentary secretary can say that every time bikies go out in the public arena they will be fined for contravening the law. Yes, they will be. We are passing a law tonight that is, quite frankly, impractical. I cannot see how it can be implemented. We are assuming that the offender is not a Nigel no-friends and that he has not done this by himself. Word will get around. The bikies will say, "How are we going to get around this law? I'll tell you what we'll do, we'll have a tattoo as our insignia from now on." We are talking about 700 or so of them. They will all want to go out and get the same tattoo on their forehead, arm or wherever it might be. They will get fined and thrown into jail and when they come out, they will still have the tattoo and they will still be breaking the law.

This is so impractical. I do not care if the government does this. It is the government's decision and its bill, and the government has ownership of it, but let us think this through. These guys will have permanent ink on them. It is all well and good to say that when they go out in the public arena—assuming they will not be hermits and will go to the shopping centre, the pub, Scarborough, the Ocean Beach Hotel or on their bike runs—they will be arrested every single day. That is impractical. Imagine the police resources that will be required to chase around these bikies with tattoos. That is exactly what the parliamentary secretary said will happen. He said that if they go out, they will be breaking the law and they will suffer the consequences. If this law is passed, every single time those bikies with a tattoo insignia go out into the public, they will be breaking the law. How will the government get around that?

Hon MATTHEW SWINBOURN: I might be misunderstanding the member, but that is the mischief that we are trying to deal with. That is what we want to see happen. They have a choice. They can publicly display their tattoos and commit an offence and be imprisoned and fined, or they can cover them up. There are ways to cover up their tattoos. That is what will be required of them once the bill is passed. Whether that is by clothing, concealer or getting the tattoo filled in or removed, which can be done, that is the choice they will make. That is the mischief we are dealing with. We are saying that it is no longer acceptable to wear outlaw motorcycle gang–related insignia on a person's body or clothing, and that is what this bill seeks to do.

Hon PETER COLLIER: Fine. I will leave it at that, I promise, but —

Hon Matthew Swinbourn: I cannot say that there will not be issues with dealing with this group of people.

Hon PETER COLLIER: I would say that there will be. The government has just created a massive problem.

With that, I just want the parliamentary secretary to confirm with a yes by interjection, or whatever he wants to say, that if bikies go out in the public arena with a tattoo that is an insignia, they will be breaking the law and will suffer the consequences every single day; is that correct?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: That will, of course, be subject to any defences, parliamentary secretary.

Hon Matthew Swinbourn: Of course.

Hon NICK GOIRAN: One of those defences is what is described at clause 26(1)(a)(i) as being for "a genuine artistic" purpose. Is there any danger that one of these guys will say that the numerous tattoos on their body are for a genuine artistic purpose?

Hon MATTHEW SWINBOURN: Clause 26(1)(a)(i), which is what the member is talking about, refers to "a genuine artistic or educational purpose". That is subject to subclause (1)(b), which states that it is "in the circumstances, reasonable for that purpose". Therefore, although it is probably conceivable that a particular bikie in the circumstances might give it a go, I do not know that they could argue that it was reasonable for the purpose of an artistic expression.

Hon NICK GOIRAN: I take it that like the other matters we have discussed, this is all very novel; this is untested.

Hon MATTHEW SWINBOURN: Yes, we are the first. I am sure that any new laws in that regard will invariably be tested through the courts. The policy of this bill is to try to deal with these sorts of behaviours, and the opposition has indicated it is supportive of that. We could have waited for another jurisdiction to show the way, but in this instance we have decided to go first.

Clause put and passed.

Clauses 22 to 35 put and passed.

Clause 36: Issue of dispersal notice —

Hon NICK GOIRAN: Clause 36 is in division 3 of the bill, which is the third largest part of this bill. We have already dealt with the new unlawful consorting regime, which will be in substitution of the existing scheme. We have also just dealt with the new prohibited insignia scheme. This third weapon that is proposed to be created is the dispersal notice scheme. Is a dispersal notice or similar scheme in place elsewhere in Australia?

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: Has there been any international experience in this area? We were told at the briefing that was provided to the opposition that to the best available knowledge of the government, there has not, but is there any further information that somebody else has embarked upon a similar dispersal notice regime?

Hon MATTHEW SWINBOURN: Not that we are aware of, member.

Hon NICK GOIRAN: What additional resources will be necessary to enable the police to utilise this new dispersal notice scheme?

Hon MATTHEW SWINBOURN: I am advised that the gang crime squad has received 16 additional advisers out of the 950 program, so that will contribute to the additional effort that will be required for the enforcement of these provisions.

Hon NICK GOIRAN: Why will any police officer be able to issue a dispersal notice but we will need a commander to issue a consorting notice?

Hon MATTHEW SWINBOURN: The consorting notices and the dispersal notices are of a species, if the member can take my point. A reasonable degree of effort, which we have already identified, has to go into a consorting notice to issue it, and it will last for three years. The dispersal notices are a more proactive, on the ground, immediate response to a particular circumstance as it arises. In that instance, it might be that a number of police officers are working with the gang crime squad to help it in relation to a particular run that it knows about and wants to disperse. As I said, it is for only seven days, rather than three years, so they have a different nature in terms of scale.

Hon NICK GOIRAN: Could a dispersal notice be issued to a person who is subject to an unlawful consorting notice?

Hon MATTHEW SWINBOURN: Yes, they can be subject to both.

Hon NICK GOIRAN: In what circumstances would that be considered appropriate?

Hon MATTHEW SWINBOURN: I will give the member some examples. For example, the consorting notice may have a list of people, so that would apply, but if they are out on a run and that group of people is much larger, we would want to capture a larger group of people than would apply on the consorting notice. The consorting notice will apply only to that group of people identified, for want of a better word, for indictable offences, whereas the dispersal notice will apply to anyone who is a member of an outlaw motorcycle gang who may not have been convicted of any other offences. It could overlap to a degree, but there will certainly be circumstances in which a dispersal notice will go beyond the people who are covered by the consorting notice.

Hon NICK GOIRAN: But will the dispersal notice not need to specify the persons?

Hon Matthew Swinbourn: Yes, but they could be persons who have not been convicted of any indictable offences.

Hon NICK GOIRAN: Yes; I understand that there might be an additional group of people, but I am referring to whether a dispersal notice would be issued to a restricted person for a named person when the restricted person and the named person are already subject to an unlawful consorting notice.

Hon MATTHEW SWINBOURN: It is possible to have a dispersal notice and a consorting notice for the same group of people. The member may recall that for it to be an offence under a consorting notice, it has to occur on two occasions. The police might have evidence of it occurring on one occasion; therefore, it would not be actionable. However, for a dispersal notice, it is only one occasion. Notices will be issued—I do not want to use these words, but I will—to move them away and on from each other, to disperse. Therefore, that is the mechanism for achieving that.

Hon NICK GOIRAN: I refer to a scenario in which the restricted person and the named person are both subject to an unlawful consorting notice, and a dispersal notice was issued on the first occasion that police identified the restricted person had breached the consorting notice. I use the words "breached the consorting notice" tentatively, because by that I mean that it is not yet a breach that qualifies for a prosecution, but it is a breach. If you like, it is strike 1, but we have not yet obtained strike 2. At strike 1, police say, "For the immediate, imperative situation, we will issue a dispersal notice." Of course, if the dispersal notice is then contravened, that would also mean that there has been strike 2 for the unlawful consorting notice. In those circumstances, could the person be charged and prosecuted for a double breach?

Hon MATTHEW SWINBOURN: They could be convicted on both the dispersal notice and the consorting notice. For the sake of completeness as to the matter of law, a person can be charged and convicted of two separate offences arising from the same act; however, section 11 of the Sentencing Act 1995 prevents a person from being punished twice for the same act. They would have the two charges—in fact, I think it would be wise to proceed with both charges because it is an and/or, or both—but then on conviction, they would be punished only once.

Hon NICK GOIRAN: Is the maximum penalty the same in both instances?

Hon MATTHEW SWINBOURN: No, the consorting notice penalty is five years' imprisonment and the dispersal notice penalty is $12 000 or 12 months' imprisonment. That is at clause 42(1)(b).

Hon NICK GOIRAN: What prescribed matters are we intending to include in the dispersal notice at clause 37(g)?

Hon MATTHEW SWINBOURN: It is essentially the same reasons that we spoke about for the prescribed matters in relation to consorting notices. If the police want to expand that list, they must form a regulation, which will then become subject to parliamentary oversight through the Joint Standing Committee on Delegated Legislation and potential disallowance.

Hon NICK GOIRAN: On the time period for a service, previously a two-month period was selected. This one is for 72 hours. What was the advice that led to 72 hours being chosen?

Hon MATTHEW SWINBOURN: The time frames in the bill on dispersal notices arose through consultation with the police. As the member will appreciate, a dispersal notice lasts for only seven days, so it must be issued within 72 hours.

Hon NICK GOIRAN: Is there any provision to renew these dispersal notices after the seven days?

Hon MATTHEW SWINBOURN: No, they cannot be renewed. A new one would have to be issued and there would have to be a new set of circumstances to issue that notice.

Hon NICK GOIRAN: On the set of circumstances, if I go back to clause 36, it reads —

> A police officer may issue a written notice … in respect of a person … if —
>
> (a) the person has reached 18 years of age; and
>
> (b) the police officer reasonably suspects that the person —
>
> (i) is a member of an identified organisation; …

They have already satisfied themselves of that, so unless they suddenly have some new information that suggests the person has resigned their membership of that organisation, the police officer is going to say, "I reasonably suspect it because yesterday the person was on day 7 of the dispersal notice, so I was satisfied at that time that the person was a member of an identified organisation." The clause continues —

> (ii) has consorted, or is consorting, in a public place with another person who has reached 18 years of age and is a member of an identified organisation;
>
> and
>
> (c) a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting.

At the end of the seven-day period, the police officer would have to observe a new event of consorting and, at that point, that might trigger the capacity to issue a dispersal notice under clause 36.

Hon MATTHEW SWINBOURN: They do not have to observe it because the test at paragraph (b) is that the police officer "reasonably suspects". It could be based on police intelligence, an informant and those sorts of things. It is the standard of "reasonably suspects".

Clause put and passed.

Clauses 37 to 42 put and passed.

Clause 43: Defences to charge of consorting contrary to dispersal notice —

Hon NICK GOIRAN: Parliamentary secretary, at clause 43 there are a number of defences under the novel dispersal notice scheme. They appear, at first glance, to be identical to the defence provisions that are set out in clause 18. Clause 18 deals with defences to a charge of consorting contrary to an unlawful consorting notice. Why was it considered appropriate for the defences to be identical?

Hon MATTHEW SWINBOURN: At their heart, both the consorting notices and the dispersal notices deal with the subject of consorting; therefore, the view is that the defences that are available for consorting under a consorting notice and consorting under a dispersal notice deserve the same defences.

Hon NICK GOIRAN: Yes, but the dispersal notice is not able to be placed on the same class of persons. As I understand it, the class of persons is far smaller. The police officer must reasonably suspect that the person is a member of an identified organisation. The identified organisations are set out at the back of the bill at schedule 2, and there are some 46 identified organisations. Does the government have any information on how many persons are currently members of these 46 identified organisations?

Hon MATTHEW SWINBOURN: Obviously, these numbers change with the change in circumstances of the individuals. However, I refer the member to page 5 of the *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*, which was tabled with the explanatory memorandum. It states —

> WA Police currently records 431 verified OMCG members, however due to recent membership movements within gangs, this number is not truly indicative of current gang membership in WA. When the emerging gangs such as the Mongrel Mob and Black Power are included in the numbers, it is likely that gang membership in WA exceeds 700.

Hon NICK GOIRAN: Just by comparison, we are talking about, let us say, approximately 700. That is fewer than the large number of child sex offenders currently subjected to the police warning scheme in section 557K. It is far fewer than the declared drug traffickers, which even though WA police do not know exactly who all those declared drug traffickers are, we know that there are at least 2 819 of them, and that is before we even start looking at all the indictable offences and so on and so forth. The cohort that is possibly subjected to the dispersal notices scheme is a small fraction really of those who are eligible for consideration of an unlawful consorting notice. Why was it considered not appropriate to include declared drug traffickers as part of the category of individuals who could be subjected to a dispersal notice?

Hon MATTHEW SWINBOURN: I think it really comes back to the nature of drug traffickers. The advice we have from WA police is that it is artificial to look at drug traffickers as a discrete or standalone group of offenders. The operational advice that I have from WA police is that once declared by a court to be a drug trafficker, persons so declared do not routinely form networks consisting of other declared drug traffickers and plan future drug offences. Therefore, it is really about the nature of what police know about drug traffickers and the fact that they do not really fall into the same category. Fifty or sixty of them do not come together and drive their mopeds down the street—I am being flippant, but I am just illustrating the point—in the same way that a group of outlaw motorcycle gang members get on their bikes and go on big runs and do those sorts of things. It is really about the nature of what a drug trafficker is and how they do and do not consort with each other in the same way.

Hon NICK GOIRAN: Surely, we should be concerned the moment that two drug traffickers consort again? I go back to an earlier example we discussed. The unlawful consorting notice scheme that will be implemented still requires two strikes, so the police would want some form of additional weaponry to deal with the one-strike scenario. Of course, the person who has already struck out once is on their last chance before the police haul them before the courts, but, in the interim, we do not want these two declared drug traffickers to continue to consort.

It would seem to be handy for the WA Police Force to be able to intervene at that point and say, "You're subject to a dispersal notice, so I don't want to see you two guys next to each other during the next seven days; and, if you are, you will be not only breaching one of these dispersal notices, but also on strike 2 for the unlawful consorting notice." It seems this would be a useful, additional tool for WA police. We are talking about declared drug traffickers, and not about the wider range of individuals who will be subject to the consorting notice scheme. The parliamentary secretary has indicated that the police have said that, effectively, they do not need them for declared drug traffickers. I am not surprised because WA police have done absolutely nothing about declared drug traffickers. As we know, not one single section 557 notice has been issued against one of those declared drug traffickers, despite it being as easy to issue a notice against them as it is against the 800 child sex offenders. That is because the two provisions are the same. WA police have done nothing about declared drug traffickers; therefore, it does not surprise me that they are not that interested in dealing with dispersal notices, keeping in mind that they do not know who the declared drug traffickers are. They are still trying to work out who all these people are. Has WA police made any request to include any other individuals in the dispersal notice scheme?

Hon MATTHEW SWINBOURN: My advice is no.

Hon NICK GOIRAN: This clause deals with the defence provisions, and the opposition continues to be concerned that the government has decided to provide a special defence here for individuals who are undertaking union activities. The government's explanation on the previous clause for unlawful consorting was that it was necessary for these unionists to consort with one another. Here we have a situation in which people who are part of an identified organisation have already been told that they are not to consort. So concerned is WA police about these members of this identified organisation that they have gone to the trouble of issuing a dispersal notice, and now we find slipped at the back of the bill, under clause 43(2), a special defence for union activities. Why do we need to allow two individuals from an outlaw motorcycle gang to consort so that they can engage in union activities?

Hon MATTHEW SWINBOURN: I covered this in an earlier clause in my response to the member.

Hon Nick Goiran: This time we are talking about outlaw motorcycle gang members.

Hon MATTHEW SWINBOURN: Yes, and they are subject to consorting notices as well. Consorting notices are issued to offenders for particular behaviours and dispersal notices are for a much narrower range of people.

But the principle remains the same for trade union activities and the types of things that I talked about. I do not think the member and I are ever going to agree on this point. I do not think I can take it any further. I think that I could argue a lot longer and a lot more forcefully—militantly, perhaps might be the case—but, member, we are never going to meet on this point. It is a matter of principle and policy for this government that we think those sorts of things ought to form the basis of a defence. Members should remember that the defence can be used only after a person has been charged, and the onus falls on the defendant to establish the elements of the defence, so it is not a get-out-of-jail-free card; there is a reasonable degree of burden on a person who tries to establish these defences.

Hon NICK GOIRAN: I understand why members opposite feel the need to defend unions. I absolutely understand that, and I do not and have never had a problem with the existence of unions, but that is not what we are talking about here. The opposition is not asking for an amendment to say, "Disband all unions; everybody who is a member of

a union should be subjected to a dispersal notice." I am not suggesting that a union should be listed as an identifiable organisation. This discussion is not about any of those things. This discussion is about people who police have identified as the worst of the worst in Western Australia and are so bad that they need to be subjected to these part 3 extraordinary powers by police. They are so bad that we are saying that police can come along and say to them, "We want you to disperse for seven days. We're so concerned about the activities between these two members of these outlaw motorcycle gangs that for the next seven days, we don't want them anywhere near each other." That is how concerned police are—super concerned. But in the seven days, if they happen to be doing some union activity, that is okay. I do not understand why the government seeks to defend that part. I actually think it exposes a weakness in the government. I would have thought that if the government wants to maintain the integrity of union bodies and associations, the last thing it would want is for these outlaw motorcycle gang members to be able to try to weaponise this defence provision. I think the government is doing a disservice to its own cause—it is a well-known cause and respect to the members for that—that it wants to double-down on this particular provision.

It is not at all apparent to me that it is necessary for an outlaw motorcycle gang member or a declared drug trafficker or anyone else who is subjected to these various provisions to have a special defence with regard to union causes. We have asked for an explanation from the government. We have been told that these things could be argued on another occasion, but we have not really been provided an explanation other than to say that there is a difference of opinion.

With that, I move —

Page 35, lines 4 to 9 — To delete the lines.

Division

Amendment put and a division taken, the Deputy Chair (Hon Jackie Jarvis) casting her vote with the noes, with the following result —

Ayes (7)

Hon Martin Aldridge	Hon Donna Faragher	Hon Steve Martin	Hon Colin de Grussa *(Teller)*
Hon Peter Collier	Hon Nick Goiran	Hon Dr Steve Thomas	

Noes (20)

Hon Klara Andric	Hon Peter Foster	Hon Sophia Moermond	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Dr Brad Pettitt	Hon Dr Brian Walker
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Stephen Pratt	Hon Darren West
Hon Sue Ellery	Hon Ayor Makur Chuot	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*

Pairs

Hon Neil Thomson	Hon Rosie Sahanna
Hon Tjorn Sibma	Hon Samantha Rowe

Amendment thus negatived.

Clause put and passed.

Clauses 44 to 47 put and passed

Clause 48: Parliamentary Commissioner to monitor exercise of powers —

Hon NICK GOIRAN: The Ombudsman—a super professional individual undertaking an immense amount of work on behalf of the Parliament and the people of Western Australia—will be undertaking monitoring activities, which we identified earlier he has absolutely no experience in. The chamber has already decided that the Corruption and Crime Commission will not monitor these powers; it will be the Parliamentary Commissioner for Administrative Investigations. I am concerned that the parliamentary commissioner will very quickly become overwhelmed, because clause 48 says he must inspect the records of the Western Australia Police Force. It says "must". There is no choice here; he has to do this. Clause 48 states that the parliamentary commissioner —

(a) must inspect the records of the Police Force in order to ascertain the extent of the Police Force's compliance with Parts 2 and 3;

How many records are we talking about that will be created per annum?

Hon MATTHEW SWINBOURN: I cannot give the member a figure because I just do not know how many records there will be, but I can say that the Ombudsman will be working with the police on record keeping. The Ombudsman has not raised any concern about being overwhelmed, as the member characterised it, in the role he will be given by the bill; therefore, we are reasonably comfortable that the Ombudsman will have the capacity, skills and ability to take on this oversight role.

Hon NICK GOIRAN: Is the Ombudsman ready?

Hon MATTHEW SWINBOURN: I am advised that he is ready.

Hon NICK GOIRAN: The Western Australia Police Force has been saying to the McGowan Labor government, "Let's get this bill passed urgently so we can access these new extraordinary powers." As part of that the Ombudsman will immediately be required to undertake monitoring activities with no previous expertise. I asked the government how many WA police records it expects the Ombudsman will inspect. Its response was: we do not know. The Ombudsman is working—present tense—with WA police to work all this out. This only further highlights my concern. I think that the Ombudsman will need to inspect a very large number of records if WA police utilise these powers sufficiently. The parliamentary secretary indicated that there are about 700 members of the 46 identified organisations, so we can expect police to be issuing many dispersal notices for those 700 people. We can expect WA police to take plenty of action on the display of insignia by those individuals, and that is before WA police even get to the mammoth task of working out over the next three years who of the existing 800 will be subject to section 557K warnings captured by unlawful consorting notices. In addition, there will be a further group of individuals—another mammoth number of individuals—including the infamous declared drug traffickers that police are unaware of, who will be subject to these new laws. The Ombudsman is required to monitor all these things and will be given no additional resources by the government. I cannot suggest in all good conscience that the opposition is persuaded and satisfied that the parliamentary commissioner will have the necessary resources to fulfil the tasks that we are about to agree to here—that is, the mandatory requirement to inspect the records of WA police under clauses 46(2) and 46(3); and, having done so, then report to the minister and undertake any other ancillary and incidental functions associated with that. We discussed police misconduct earlier. Will clause 48(2)(c) capture an investigation into police misconduct?

Hon MATTHEW SWINBOURN: Member, I think I have mentioned this a number of times. The Ombudsman is obliged to refer to the CCC any instances of police misconduct that he becomes aware of. I mentioned the act and the section that that relates to; it is not at my fingertips, but that would obviously still apply. I would hazard a guess that, given that there is an obligation to refer incidents of alleged police misconduct, it would not include—other than the Ombudsman satisfying themselves that, on the face of it, there was misconduct—investigating it as well. That is the job of the CCC. If there is communication between the CCC and the Ombudsman about misconduct in this instance, it would obviously fall under matters that the Ombudsman could report back to the minister and, therefore, back to Parliament, but not in terms of the investigation of it.

Clause put and passed.

Clauses 49 to 66 put and passed.

Clause 67: Section 557K amended —

Hon NICK GOIRAN: Does this clause delete section 557K(4) of the Criminal Code?

Hon MATTHEW SWINBOURN: Yes, it will have the effect of deleting it three years after proclamation.

Hon NICK GOIRAN: Is the parliamentary secretary very sure about that?

Hon Matthew Swinbourn: That's the advice I have.

Hon NICK GOIRAN: It is very interesting that the Attorney General told the other place on 9 November this year —

> We have not repealed section 557K(4); that is the still the law …

He was very adamant and, in fact, very rude to the Leader of the Liberal Party in his disparaging remarks on 9 November 2021, when he insisted that the government was not going to repeal section 557K(4), but that is exactly what is going on here; members need only turn to page 51, line 13 to see that. I am grateful to the parliamentary secretary for confirming, without any equivocation whatsoever, that in three years' time, because of this legislation introduced by the Attorney General to the houses of Parliament, section 557K(4) of the Criminal Code will be deleted. That is no small, insignificant matter. In fact, it is the provision that currently allows police to issue warnings to child sex offenders, and we have been told previously that 800 such warnings are in place. Those warnings will no longer exist in three years' time, because despite what the Attorney General said on 9 November, the McGowan Labor government is most definitely repealing section 557K(4).

Clause put and passed.

Clause 68 put and passed.

Schedules 1 and 2 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

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

ROBINSON ROAD, BELLEVUE

Statement

HON DONNA FARAGHER (East Metropolitan) [9.51 pm]: Members will recall that at the commencement of proceedings today, I presented a petition to keep Robinson Road in Bellevue open. That petition contained 186 signatures, but that is in addition to the petition that was couched in the very same terms that Hon Peter Collier kindly tabled on my behalf last Thursday when I was unexpectedly away from Parliament due to ill health. That petition was signed by more than 4 640 petitioners. At the outset, I acknowledge the Bellevue Residents and Ratepayers Association, including its chair, Mark Richards, and its committee members. The association is and continues to be at the forefront of raising the community's significant concerns with the McGowan Labor government's decision to close Robinson Road to accommodate the new Bellevue railcar manufacturing and assembly facility. I want to be clear on one thing straightaway: the petitioners welcome the facility; however, as the petition outlines, they do not accept being disadvantaged as a result of it. That disadvantage can be seen across multiple fronts. At its core is the significant impact that the closure will have on traffic movement for both residents and businesses, and businesses—I understand there are over 70—will have major disruptions. They are concerned that it will lead to potential closures, and, if that happens, there will be job losses.

It is important to reflect that the people who signed the petitions tabled both today and last week are not from areas remote from this road. In fact, nearly all are from communities very close to the impacted area. They are within a very small radius. Take the 186 members of the community whose names appeared on the petition that I tabled today. On my quick calculation, around 150—one or two either side—of those 186 live in Bellevue, Helena Valley, Swan View, Midland, Glen Forrest, Darlington, Hovea, Mundaring and other surrounding suburbs. That same geographic spread is also seen very clearly in the 4 600-plus signed petition that Hon Peter Collier tabled last week for me. The government will say that it has now undertaken additional traffic modelling that has found that the closure will not adversely affect the surrounding traffic network, and that some minor improvements will be made. I say to you, President, that the local residents and businesses that will be affected beg to differ, and the very strong community response to the petition shows it.

Anyone who travels around that area, and I do on a very regular basis, will know that it is already busy and congested, and it will only get worse. By way of background, the proposed closure came as a surprise to everyone. The Bellevue Residents and Ratepayers Association stated in its submission, which was tabled in the house last Thursday by Hon Dr Steve Thomas, that the closure was nowhere to be found in the publicly available material about the railcar facility. Furthermore, there has been a complete lack of community engagement or recognition of the community's concerns. The submission states —

> The announcement of the Metronet Railcar Assembly Facility coming to Bellevue was welcome news to the local community. People and businesses saw opportunities for more jobs, not only at Metronet, but with the many local businesses conveniently located to provide Metronet with a broad range of goods and services.
>
> However, the sense of anticipation and optimism has been marred with the knowledge that Metronet is working towards closing Robinson Rd, without taking into consideration the impact on the local and regional community. The change to local network movement will force traffic to either rat run through residential streets to Great Eastern Highway or add to the congestion on Clayton St and at the Lloyd Street underpass. Our Community south of the train line face significant travel time delays and lengthened journeys without this important link road.

The traffic modelling that has been undertaken and that the government relies upon is seen by many in the community as far too limited in scope. It does not adequately take into account the broader impact of the closure on traffic flow and congestion across the surrounding road network. It is because of this that the petitioners are calling for two things: first, an alternative solution to the closure and, second, the preparation of an integrated transport plan that involves an overarching review of the entire area. It is the association's very strong view that the development of this plan needs to involve input from all stakeholders, not just the state government agencies relevant to the project. It must also include input from the relevant local government authorities, mainly the Cities of Swan and Kalamunda, as well as the Shire of Mundaring, and it must include input from local residents, ratepayers associations and businesses.

There is real and justifiable concern in the community about the impact of the government's decision. The City of Swan and the Shire of Mundaring have also been very clear about their concerns. The matter has been raised in council meetings and motions have been moved at both councils and have been unanimously supported. The association's submission also includes a submission seeking the retention of the road from the Darlington Residents and Ratepayers Association, the Helena Valley Estate Residents' Association, the Mundaring Residents and Ratepayers Progress Association, the Midland Society and the Midland and Districts Historical Society. Even the Labor member for Midland has voiced significant concerns. In an article in the *Echo News* she was quoted as saying —

> "Alternatives need to be looked at …
>
> "The alternatives have to include how they can reconfigure some of the requirements of METRONET or whether there's other possibilities for other railway crossing points.

> "We need to look at those alternatives before it's too late."
>
> She agrees with the concerns of businesses and residents who say current road infrastructure is not coping.
>
> …
>
> "As the old Midland Railway Workshops side has been developed there's been a whole lot more traffic movements and now with [the new] Bunnings and other big stores [on Clayton Street] my view is the railway crossing points are going to be under even more pressure.
>
> "If you don't cross at Lloyd Street you're looking at going up to Scott Street and Scott Street is already an intersection that Main Roads knows is under pressure.
>
> "Like-wise, the intersection of Lloyd Street and Great Eastern Highway must already be close to its maximum capacity."
>
> She said she has communicated her concerns to her party and expressed disappointment at the circumstances leading to the proposed closure.
>
> "I am disappointed that when the [the Bellevue railcar facility] was announced there was no mention at the need to close Robinson Road and I suspected some people thought it was a minor road used by very few people but it is a major transit route through our area for both commercial and residential.
>
> "I have raised [my concerns] with [Transport Minister] Rita [Saffioti].
>
> "She knows I don't want to see Robinson Road closed."

I hope the government will listen to all these concerns and recognise that these concerns are real and that they need to be taken seriously. I would also like to encourage the members of the Standing Committee on Environment and Public Affairs, who will, of course, now deliberate on this petition, to visit the site so that they can see firsthand the impact that closing Robinson Road will have. Again, I say that not just a couple of residents or a couple of businesses will be affected. I ask that the government remember that over 4 820 people signed this petition, almost all of whom live in and around the impacted area. These community members need to be listened to. They need to be heard and a better solution needs to be found.

POST-TRAUMATIC STRESS DISORDER

Statement

HON DR BRIAN WALKER (East Metropolitan) [10.00 pm]: I know it is late, but I wanted to present a report on the excellent film I saw last night at the behest of Mind Medicine Australia. The film was about post-traumatic stress disorder and its treatment.

Yesterday, I was heavily involved in my own clinic and I vividly recall sitting in front of a patient who was in constant tears, paralysed mentally by the fears she experienced, paralysed into ineffective life, paralysed and unable to manage her life, with nothing in my armamentarium to fix that. I look back over 40 years of clinical practice when I have seen this time and again with nothing available to help people live. When I say "live", I do not mean existing with a beating heart and breath that goes in and out, but being able to live, enjoying the beauty of this world, which is all around us to those who are able to appreciate it. This is denied to this patient and to thousands of others not just our service men and women and our police men and women who are serving—our first responders—but also those who are suffering at home through domestic violence with the ravages of life that destroy people's minds and lives.

This film was about an experiment in Israel where they took just 10 patients, three of whom were followed through. One is an ambulance driver who attended a horrible—they are all horrible—bus bombing in Israel: body bits everywhere, cleaning up the mess, limbs torn apart, people breathing their last, expiring in front of him totally helpless. He had seen this several times and this was just too much. He resigned from life and went into a life on the streets. This is typical of many people with PTSD. Members may have passed them by today on the way to Parliament and not known about it. I, myself, recall seeing a man who could take no more and used his car to end his life. I knew him well. The only way I could recognise him was by the shape of his jaw because there was nothing else left. In my inaugural speech, I mentioned the body I cut—a cold body—and the live family members utterly distraught for the rest of their lives. What more could they have done? We saw how with the use of MDMA, which members know as ecstasy—clean, of course, medically provided—these people could passage through their treatment. We saw what happened before and what they were seeing in their lives. One girl had been kidnapped and brutalised. One man had been sexually abused, and there was the ambulance driver. The story was of how they went through their treatment, which was actually quite a complicated psychological treatment with the assistance of MDMA—ecstasy.

The hope I can give members is quite bright because, in all my experience, I have not found one single person who has recovered from PTSD, yet from this cohort of 10, at the end of a very simple few days' treatment, there was an 80 per cent cure. What I want to bring to this Parliament is that a cure is possible to bring people back to life, not just living with a beating heart and breathing in and out, but a life in which they can contribute again. They can love and be loved by their partners, and love and be loved by their children. They can have a life that we would consider

really living and being alive. We owe it to the people whom we claim to serve to allow this treatment to be made available in Australia. I appreciate that there are ongoing studies right now and that the government is supporting them, and I thank everyone involved in that. But from my point of view, as a serving medical practitioner, every single day when people are barely surviving under these atrocious conditions is one day too long. Come the day when this is legal and people are made aware of the potential that they can return to the life that they actually deserve. Thank you.

PROFESSOR ISABEL MARCUS — TRIBUTE

Statement

HON SOPHIA MOERMOND (South West) [10.05 pm]: I rise today to make a brief comment on the death, at the age of 83, of a bit of a hero of mine, Professor Isabel Marcus. She died a few weeks ago in America, having lived with advanced Alzheimer's disease for some years. Isabel Marcus was a law professor and women's rights advocate. She stood side by side with protesting students in China's Tiananmen Square as one of the few westerners in Beijing in June 1989 and she was also known for confronting anti-abortion protesters in the US. Twice a Fulbright scholar, Professor Marcus spent most of her five decades in academia at the University at Buffalo where she co-founded the Institute for Research and Education on Women and Gender. She focused on women's rights and gender equality, becoming a scholar of international human rights, recognised the world over. From the late 1990s, she turned her attention to developing a legal framework for women's rights in Central and Eastern Europe. Her seminal work *Dark numbers* explores the lack of official accountability for domestic violence. She worked within the US criminal justice system later in her career in an effort to strengthen the help given to survivors of domestic violence. Very few women have done as much as Isabel Marcus did for women's rights, education and those who have suffered the awful reality of domestic violence.

Vale, Isabel Marcus.

House adjourned at 10.07 pm