Parliamentary Debates

(HANSARD)

FORTY-FIRST PARLIAMENT

FIRST SESSION

2022

LEGISLATIVE COUNCIL

Wednesday, 30 November 2022

Legislative Council

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THE PRESIDENT (Hon Alanna Clohesy) took the chair at 1.00 pm, read prayers and acknowledged country.

ANIMAL WELFARE ACT

Statement by Parliamentary Secretary

HON DARREN WEST (Agricultural — Parliamentary Secretary) [1.02 pm]: I read this statement on behalf of the Minister for Agriculture and Food in my capacity as her parliamentary secretary.

Our community has strong expectations that we have robust measures to protect the welfare of animals. We understand that the humane treatment of animals is an important marker of a strong community. It is particularly important for our livestock producers that we have credible standards and monitoring regimes to protect our reputation with consumers and investors who are becoming increasingly engaged in animal welfare issues. We delivered our first tranche of animal welfare reform in 2018 through legislative changes that permitted national standards to be enforced in Western Australia. Since then, regulations have been developed for several standards and are now fully operational in this state.

We then commenced the major public review of the Animal Welfare Act. We released the report of that review in 2021 and committed to legislating its key reforms. The new legislation will move from a focus on punishing acts of cruelty to ensuring the establishment of clear standards of care for animals and the appropriate monitoring of those standards.

Although these matters are complex, we are making real progress. The second draft of the bill is almost complete, and outstanding complex issues are being worked through. We are confident that we will have the draft bill ready for consultation in March next year, with the final bill being introduced in the third quarter of next year.

I want to thank the teams at the Department of Primary Industries and Regional Development and the Parliamentary Counsel's Office for their dedication to getting this very important reform legislation right.

PAPERS TABLED

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

ATTORNEY GENERAL — PERFORMANCE

Notice of Motion

Hon Nick Goiran gave notice that at the next sitting of the house he would move —

> That this house —
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> (a) expresses its concerns that the Attorney General has once again broken the law of our state;
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> (b) notes that —
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> (i) since 7 April 2022, the Attorney General has been knowingly in breach of section 110ZZE of the Guardianship and Administration Act 1990; and
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> (ii) on a date between 7 April 2022 and 29 November 2022, the Attorney General wilfully breached that same section of the act;
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> (c) further notes that the Attorney General continues to knowingly and wilfully breach this law of our state; and
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> (d) calls on the Premier to replace the Attorney General with a reliable member who will not be confused about their duty to abide by the rule of law, not merely at their own convenience, but at all times.

MEDICINES AND POISONS (VALIDATION) BILL 2022

Remaining Stages — Standing Orders Suspension — Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [1.05 pm] — without notice: I move —

> That so much of standing orders be suspended as is necessary to enable the Medicines and Poisons (Validation) Bill 2022 to proceed through all stages at a day and time to be determined by the house.

I will make some comments about that. Members will be aware from the briefings that have been provided and the second reading speech that was read in yesterday that the circumstances that led to the need to legislate in this fashion were beyond the control of the state government. The commonwealth government made a change to how it

listed certain matters in the scheduling of medicines and poisons and literally changed a schedule. The commonwealth government did not advise the Western Australian government of that. The Western Australian government found the change and enacted legislation to address the change going forward, but not to address the period during which the two schedules had changed. A number of offences under the Misuse of Drugs Act are dependent on the definition of "prohibited drug" and "drug of addiction", which are linked to the schedules in the commonwealth provisions. The change in those schedules has led to this situation. The Office of the Director of Public Prosecutions advised that approximately 350 prosecutions conducted by that office involved convictions for offences under the Misuse of Drugs Act during the affected period, and so it is clear that there is a period during which somebody—at least one person who has been charged is taking advantage of this—might seek to rely on that gap to overturn a conviction or in some way say that the charges were invalid, or something to that effect. That is the reason for the legislation and why we want to act quickly.

As a matter of practice, I normally provide the opposition and the other parties with a list of the bills that the government wants to get through by the end of the year some weeks in advance of us getting to the end of the year. That is my normal practice; that is what I have done each year. I did not do that when I sat down with the parties in our normal Tuesday night meeting in the members' lounge—we use that room for meetings—three weeks ago because I was not aware at that time that the bill needed to pass by the end of this year. I wish I were not in this position, but that is the position I find myself in. I apologise to the opposition and the other parties for that. I was not aware; if I had been aware, I would have advised members of that at the time.

On the bill itself, there were some questions in briefings and some chatter that the bill was finalised on 3 November. In fact, that was the final draft. The bill went through various processes before it was passed by cabinet on 21 November. A bill does not become final until it has been through the parliamentary process. That final draft, dated 3 November—I think a copy was provided to members in the briefing—was circulated to the relevant agencies, the State Solicitor's Office, the Western Australia Police Force, the Department of Justice and the Department of Health, to make sure it met the required policy arrangements. For government, that is quite a fast turnaround. Parliament then dealt with it on 21 November. The department was made aware of the anomaly in August of this year. By September, cabinet had made the first decision that goes to bringing a bill before the house—approval to draft. That part of the process was quite fast, too. The government was acutely aware that, as soon as this bill became public, there was the potential that a number of convictions would need to be reviewed or that people would seek to have their convictions reviewed, so we were dealing with that delicate question of how to get the balance right. We did not want to notify people in advance before we were ready to do that. It was quite a short amount of time.

On 21 November when I became aware that this bill would need to be passed before the end of this year, I requested the relevant minister make contact, at the earliest opportunity, with the Leader of the Opposition in the Legislative Council and that is what she did. I understand that she contacted him last Thursday to explain the position the government found itself in and to let him know that the government would need to pass this legislation before the end of the year. I think members would genuinely understand the need to pass this bill before the end of the year. I understand that members will not be happy about the fact they were not given advice on it three weeks ago when I said, "These are all the bills we need to get through by the end of the year." I apologise for that, but all I can say is that they are circumstances beyond my control. I have to deal with the cards I am dealt and these are the cards I have been dealt. I do not think anyone would take issue with the fact that we need to fix the anomaly. I do not think anyone would take issue with the fact that the bill has an element of retrospectivity in it, although that is not something we normally do either. These are the circumstances that were created when the commonwealth government made a decision, changed the schedules and did not tell respective jurisdictions. We do not want people who have been charged or convicted with serious drug offences to rely on a technical loophole to get around dealing with the consequences of their actions but I appreciate that me asking the house to suspend standing orders to deal with this bill today and tomorrow, if it goes over into tomorrow, is unusual. I regret having to do that, but I ask members to take into account the particular circumstances and note that the substance of the bill is something I am sure we would all agree we need to address. With those comments, I commend the motion.

HON MARTIN ALDRIDGE (Agricultural) [1.13 pm]: I rise to indicate that the opposition will support this suspension of standing orders. Given the circumstances, we stand ready to assist the government in correcting the failings that were identified by the Leader of the House in her contribution just now. Those failings are significant, serious and wide ranging. The Leader of the House made reference to some 350 convictions being in doubt and some 5 000 alleged offences being at risk if we do not move on this matter. There is demonstrable need to move quickly, which brings me to the motion before us —

> That so much of standing orders be suspended as to enable the Medicines and Poisons (Validation) Bill 2022 to proceed through all stages at a day and time determined by the house.

As I understand it, this motion precedes a further declaration by the minister, then a motion enabling a so-called urgent bills process to then prevail. I want to draw members' attention to the deficiency of that process and the need to suspend standing orders as we consider this motion now. I remind members that suspending standing orders is, in effect, suspending the laws of the Legislative Council. The sixty-fourth report of the Procedure and Privileges

Committee presented, in my view, a flawed standing order that had no regard for actually progressing an urgent bill. The motivation was clearly and evidently to curtail debate. I quote from *Hansard* of Wednesday, 8 September 2021. I do not often do this, but I quote myself on that day, making this very salient point —

> Clive Palmer and terrorism are the two examples that the government provided for the need for an urgent bills process. If this was a matter of terrorism and a matter of us needing to legislate urgently because a matter of significant state security needed addressing, why does the report not provide a solution to standing order 121, which is the means by which a bill can be introduced into the Council on motion with notice? Why does it not deal with standing order 125, which requires that a bill introduced into the Legislative Council stand adjourned for two weeks? Why does it not deal with an amended bill under standing order 137 not being able to proceed forthwith to the adoption of the report? Why does it not provide a solution to standing order 140, which requires that an amended bill cannot be considered for third reading until the day following? If this is a matter of terrorism and state security, the government will have to suspend standing orders—four of them, potentially—to deal with its urgent terrorism bill. We all know that this is not about terrorism because in the course of the debate last evening—I quote again from the uncorrected *Hansard*—the Leader of the House said —
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> > I have been here for 20 years. I have been on that side. I have seen the way the system can be gamed. I have to say, there is one person in the chamber who is the grand master of gaming the system, who uses time and does not follow requests, polite though they are, and certainly does not follow directions from his own side when he is asked to. That is in no small part why we find ourselves in this position tonight. We want to get on with our legislation.
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> Members, that is not my assessment; those are the words of the Leader of the House. This is not about Clive Palmer or terrorism; it is about shutting down members of the opposition and reducing the level of scrutiny in the Legislative Council. New South Wales and Victoria do not have an urgent bills process like this, and I challenge any member to show me where there is an operative provision in a standing order in a legislature in Australia that is used for these purposes.

I hope members reflect again on these observations and their misjudgement as we proceed to deal with both the suspension and then the engagement of an urgent bills standing order. Having said that, to facilitate the debate today in the circumstances that have arisen as outlined by the Leader of the House, the opposition will support the suspension.

Question put and passed with an absolute majority.

The PRESIDENT: Are there any further motions without notice?

Hon Sue Ellery: I think that's enough!

The PRESIDENT: Just checking. Noting that motions on notice have been vacated and that members have been advised of that via email, we will now move to committee reports.

COMMITTEE REPORTS — CONSIDERATION

Committee

The Deputy Chair of Committees (Hon Peter Foster) in the chair.

Joint Standing Committee on Delegated Legislation — Second Report — Annual report 2021 — Motion

Resumed from 23 November on the following motion moved by Hon Martin Pritchard —

> That the report be noted.

Hon MARTIN PRITCHARD: Last week, my contribution was very much a defence of the Joint Standing Committee on Delegated Legislation and the work it does. I have reflected on that a little bit, because not everybody in the chamber would have had a stint on the delegated legislation committee or, indeed, other committees, so it is not surprising that they may not be aware of the role of the committee. I thought I would try to give a more positive contribution this week about the important role of committees and the annual reports, although annual reports seem to have taken on more significance in recent times than they did in previous Parliaments. There has been a lot of encouragement for members of the backbench of the government—I also encourage members of the backbench of the opposition—to make comments on committee reports. It should not be left up to just one or two people to do that. I encourage members to make comments; they are all worthwhile.

The Joint Standing Committee on Delegated Legislation really is an extension of this place. It oversees the authority that the house gives to ministers, for instance, when they make regulations and to local governments when they introduce by-laws to make sure that it is appropriate delegated legislation. That involves quite a number of aspects. As I mentioned last week, the committee staff do a lot of the work in putting together information for committee members to deliberate on, usually on a Wednesday during the sitting week. The parts of the annual reports that most people probably do not look at are the objectives and the standing orders of the particular committee.

I want to go to that part of this report for a moment, if I may. Paragraph 10.6 at the back of the annual report says —

> In its consideration of an instrument, the Committee is to inquire whether the instrument —
>
> (a) is within power;

Again, I am talking about other bodies using the delegated power that we give them to make by-laws and such. Although it may be laborious, could members imagine, with the number of councils in Western Australia, what the consequence would be if there was no oversight of the by-laws that they introduce? They range from the very large councils with big resources that can employ enough staff to do what needs to be done in this area to the smaller regional councils that are usually run on a shoestring. What I find happens is that once an instrument is introduced that is outside of what it should be, there tends to be a domino effect because of the resources that the local governments have or, more importantly, do not have. A lot of copying tends to go on with by-laws, and that can be a real concern. It is one of the things that the committee tries to keep control of.

One of the main functions of the committee is to make sure that the regulations or the by-laws are within power and that they do not exceed the authority that we give them. There is a head of power and the legislation allows for underpinning regulations to be made.

Another point that I have personal experience with is referred to in the next paragraph, which states —

> (b) has no unintended effect on any person's existing rights or interests;

Members may remember that there was controversy a few years back over the Hillarys horse beach. Horse owners had been using this horse beach for many years. At the time, the local council, the City of Joondalup, was looking at closing access to the beach for horses. It would have meant that horse owners would have had to travel to Cockburn or somewhere equally far to exercise their horses. Of course, having horses in the sea is part of their rehabilitation. That particular regulation was disallowed by this chamber on the basis that it would have had an unintended consequence and a detrimental effect on the constituents we represent.

Another paragraph goes to a point that was made last week. It states —

> (d) contains only matter that is appropriate for subsidiary legislation.

One thing that often comes before the committee are the fees that are charged by government departments. The fee is not to exceed the cost of recovery of doing the job, because, of course, if it exceeds the cost of doing a particular job, it becomes a tax. The committee has oversight of that. The committee does not have the resources to go into every department and investigate every fee, but it does have oversight and can seek further information from a department if a fee looks like it is exceeding the cost of recovery.

Hon LORNA HARPER: Apologies; I think I have springs in my feet today. I, too, rise to have a discussion on the annual report of the Joint Standing Committee on Delegated Legislation. As members may have noticed, I am the deputy chair, and, along with my committee colleagues in this house, Hon Martin Pritchard and Hon Stephen Pratt, we have had a very interesting year. I know that people do not normally associate the term "interesting" with talk about delegated legislation, but, as we all know, minute details matter, and making sure that these details are met ensures more clarity for members of the public.

When I was having a good look through the report, I noticed an issue with a page. It is at the very beginning; members cannot miss it. On page 2, there happens to be a photograph of committee members. I think that there must be a problem with the photograph because it appears that I am teeny tiny, and, as all members know, I am not teeny tiny, because I am standing here quite tall, so I think there might be an issue with that photograph.

Hon Stephen Dawson: It's fake news!

Hon LORNA HARPER: It could be fake news! I had the same issue when I stood next to the Premier and had my photo taken. I thought I looked teeny tiny and I thought that could not be true!

Being on the committee has been quite eye opening. As a member who has not previously worked on a council, as other members have, I had not delved deep into the machinations of councils and how they come up with some of their regulations. It has been very interesting. The scrutiny of delegated legislation is extremely important. The executive summary on page 1 summarises the scrutiny of legislation process —

> The Committee scrutinised a significant volume of delegated legislation.

That means wading through thousands upon thousands of pieces of paper from councils regarding the laws they wish to change. The summary continues —

> In the Reporting Period, the Committee considered 369 instruments, including 180 regulations and 118 local laws.

It is quite irrelevant whether they are about fees, fines, fences, pathways, cats or dogs; the important thing is the oversight. It continues —

> Motions for the disallowance of delegated legislation usually do not proceed in the Parliament if the Committee receives satisfactory undertakings to amend the instrument. The Committee only recommends

> the disallowance of an instrument as a last resort. During the Reporting Period, the Committee received departmental … undertakings covering seven instruments and local government undertakings covering 33 local laws.
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> The Committee tabled one report in the Parliament recommending the disallowance of the *City of Kalamunda Dogs Local Law 2021*. The Legislative Council disallowed this local law.

This was us working together in the Legislative Council, doing the job that we are meant to do, to ensure the appropriate oversight by the delegated legislation committee.

Jumping to page 5, "Undertakings", the report states —

> During the Reporting Period, the Committee received departmental (Ministerial) undertakings covering seven instruments —

It is very important that committee members read every single piece that comes through and that the material is explained to us if we have questions. Some of it can feel a wee bit dry and lawyer-ish—we all know how much we love listening to lawyers when they start talking to each other!—but looking through it is extremely important.

One of the things the committee looked at was the local government reform process. I am not sure that councillors are as happy about the scrutiny as we are. On page 12, part 5, "Local government reform process", states —

> On 10 November 2021 the Minister for Local Government announced proposed reforms to the Local Government sector, including reforms relevant to the Committee's work, such as:
>
> - standardisation of local government council meeting procedures

This is a lot more important than people might imagine, because ratepayers want the right to stand up at council meetings and voice their opinion —

> - development of new model local laws

Again, often the things that come before the delegated legislation committee involve a mistake that comes up again and again because somebody has copied a local law. I believe my colleague Hon Martin Pritchard mentioned that last week. New model local laws should reduce the frequency of that occurring —

> - periodic review of local laws

We change, society changes and the boundaries of our councils occasionally change, depending on population increases, so it is important that we continuously review these local laws —

> - specifying the roles and responsibilities of the Mayor or President, the Council and Councillors.

A lot of ratepayers would like to know exactly what the role is of the elected officials in their area. Having met a lot of mayors, I know that it varies from area to area. I am sure the Mayor of Perth's responsibilities are completely different from the mayor of Ashburton's.

Hon Stephen Dawson: It's a president.

Hon LORNA HARPER: There we go. I thank my regional colleagues. Similarly, mayoral responsibilities in the Town of Bassendean would be completely different from those in the City of Vincent. It is very important that ratepayers and members are aware of the roles and responsibilities of mayors, presidents, councils and councillors.

The report continues —

> The DLGSC has summarised the proposed reforms on its website. These include amendments to the LGA and associated regulations.

As members, it is quite important that we have an idea of what is going on so that we can discuss it when people come to talk to us about it and we can direct them to the right people to further their conversations.

As the deputy chair of the committee, I have chaired only two or three meetings. I would like to thank our chair, Geoff Baker, for being there so much and for guiding us through what has been, as Hon Martin Pritchard said, quite an interesting year. Meeting remotely has been interesting but also very effective when dealing with so many rules, typos and issues that have been raised by the clerk for these meetings. That is all I have to say on the report at this time.

Hon MARTIN PRITCHARD: I am always happy to give way to Hon Lorna Harper, Deputy Chair of the Joint Standing Committee on Delegated Legislation. As I said last week, she and the member for South Perth, Geoff Baker, have made extraordinary contributions to the committee in a very tough year.

I want to go over a couple of things that Hon Lorna Harper raised. Getting back to the role of the committee, it is an important role, but it is not one that is designed to frustrate subordinate legislation. The committee goes to extraordinary lengths to work with local government ministers and departments to ensure that regulation designed to improve the lot of the people we represent actually makes it through. We spend a lot of time moving protective

notices of motion in this chamber, but often they are not carried through to disallow the regulation. We spend a lot of time, in between times, dealing with the departments and local councils to try to get a commitment from them to ensure that the regulations and by-laws work appropriately.

I promised myself I would not get defensive about the committee, but there was some comment about typos and such. Some typos actually make no difference, and often we do not even submit a protective notice of motion. Rather, we get a commitment from the local council to improve the spelling in the next iteration of the by-law and we are satisfied. However, there are some typos and references that do make a big difference and sometimes make it impossible for the by-law to work appropriately or properly. Even typos may at some point create a problem. In those cases, we lodge a protective notice of motion to protect our position so that, if we cannot negotiate an appropriate outcome with the council or the department, we are able to recommend to the chamber that the regulation or such be disallowed, but, as I said, most do not get to that point.

The other point members should be fully aware of is that the committee makes only recommendations; the determinations are determinations of this chamber. Members can move disallowance motions in their own right; they do not have to go through the delegated legislation committee, but members can have confidence in the work of the staff and the members on that committee. In the absence of members taking an interest in those areas, the delegated legislation committee performs that oversight function on their behalf, raising the issues and bringing recommendations to the chamber for the chamber to determine.

As I said, it is not a sexy committee, but it is one that keeps the wheels running, particularly for local governments. Local governments have a propensity to go off the rails. I have a lot of respect for local government councillors. For someone like me, it would be very daunting to be on a local council; I never contemplated it. Councils are very much at the grassroots of representation and making legislation. I am sure it is not uncommon for councillors to receive visits at home and be petitioned on issues. It is very much grassroots. I prefer being in state Parliament and acting in the area of oversight. I have a lot of time for local councillors, but they can have a propensity to go off the rails, particularly when they are not well resourced. We have a number of local councils that operate on the smell of an oily rag. Those are the councils for which the committee tends to pick up inherent mistakes in legislation or by-laws.

Members can have confidence that this committee operates on their behalf. The committee staff are particularly diligent, and members can have confidence that they pick up anything that needs to be picked up. Also, committee members will raise issues on members' behalf that would normally be raised.

I am maybe not aware of other committees' roles. When their annual reports come through, I will be very interested to read how they operate.

I keep making the point—a voice from the opposition side of the chamber has also said this—that these annual reports are particularly important, and all members should make some sort of contribution to them. Government backbenchers, in particular, have taken up that challenge and often make contributions about committees that they are not involved with. I encourage the opposition to take up that same cause; it is a very important call. These committee reports should not go uncommented on, and I encourage the opposition to also take up that mantle.

Hon STEPHEN PRATT: As a member of the Joint Standing Committee on Delegated Legislation, I want to take the opportunity to make a contribution on the annual report. As a new member of Parliament, coming into this committee was a baptism of fire. Hon Martin Pritchard perhaps articulated things better than I will be able to, but I remember sitting in the first meeting and seeing a recommendation to place a PNOM on an LDFD. I was thinking: What is going on here? What does this mean? They love to use acronyms, which regularly occur in the agenda papers. I quickly seared into my mind that a PNOM is a protective notice of motion and an LDFD is the last day for disallowance. Members of this house might have on occasion noticed that the deputy chairs—Hon Peter Foster, Hon Martin Pritchard and I—have had to move motions to disallow and remove them from the notice paper once the committee has been satisfied with the local government responses on some of their local laws.

The report has a few things that are worthy of highlighting. Hon Martin Pritchard said that this is not the sexiest committee, but some people out there probably find attention to detail and avoiding typos in things a bit sexy. I am not sure. Whatever makes you happy, I guess.

It is interesting to be on this end of the field after spending eight years in local government land, where we voted on passing new local laws or updating local laws at the council level. I now see the flip side and the importance of getting the wording right, and making sure that they do not have formatting errors and satisfy a state government committee. It has been a great experience.

I reiterate the comments made by my committee colleagues. Firstly, I acknowledge the work of the chair, Geoff Baker; the deputy chair, Lorna Harper; and the committee staff. It has been said that the committee staff and their attention to detail make our lives easier. We would certainly miss things if it were not for the staff being so astute, so I thank them for their work.

Figure 2 on page 4 of the annual report is a pie chart that breaks down by percentage the issues encountered by the committee. The chart shows that 66 per cent of issues were drafting errors, which is consistent with the past

four annual reports. It is highlighted in the report that this is a consistent issue and a regular occurrence; over 50 per cent of what the committee deals with, year on year, is drafting errors. Most of the drafting issues are in local laws. Thanks to the advisory officer's vigorous attention to detail throughout the year, we were able to pick these up and make sure that they were fixed.

There was some discussion last week about the committee's scope and a suggestion that perhaps the committee's powers should be amended. I will not delve into that other than to say that the terms of reference clearly define the intent of this committee. I think it succeeds in fulfilling that role to a pretty solid extent, and that is probably not the right avenue to pursue.

I also reiterate Hon Martin Pritchard's comments about the regular appearance of local cat laws before the committee. Perhaps this could be looked at. Another regular issue that arose was the access to standards. That is also something we have looked into and there could be some remedies.

I covered the old PNOM and LDFD. Another thing is the activities the committee undertakes throughout the year, which are highlighted in the executive summary at the front of the annual report. Interested members can read the scope of work the committee undertook in the past 12 months. In that reporting period, the work included the consideration of 369 instruments, 180 regulations and 118 local laws. Although the majority of those matters are not considered sexy, a lot of reading needs to be done and a lot of attention goes into looking through their formation and whether they have been drafted properly. Paragraph 6 outlines that motions for disallowance do not come to the house if satisfactory undertakings are received by the committee. During the reporting period, the committee received departmental undertakings covering seven instruments and local government undertakings covering 33 local laws.

The last noteworthy point in that section is paragraph 7, which notes that the committee tabled a report recommending the disallowance of the City of Kalamunda Dogs Local Law 2021, and the Legislative Council went on to disallow that local law. I guess that is one example of when the committee can raise an issue, bring it to the house for debate and make a decision on it. For those who have not been involved in the delegated legislation committee, or del lege as some of the committee like to refer to it, I indicate that page 2 outlines the process of the committee. It outlines well how the committee undertakes its business.

In closing, I thank my colleagues for their support and the work we have done on the committee to date. I look forward to what will come in the following year.

Hon MARTIN PRITCHARD: The previous speaker raised an important point to which I alluded but did not expand on about the number of protective notices of motions in this reporting period. Table 1 on page 4 of the report refers to the notices of motion for disallowance given. That is when Hon Lorna Harper has to get up and read them out. At the beginning of the year, given we rose over the Christmas period, there were quite a number, and she spent nearly half an hour reading in a number of these PNOMs. Of the 44 for which notice was given to this house, 36 were discharged because of discussions between the committee and local governments about the commitments local governments and departments gave to remedy the mistakes we found. For the vast majority of instruments in which we find a problem, we can come to a resolution, which, in most cases, does not require the local government to go through the expense of resubmitting a new by-law, or local law. Given what I said before, some of these councils do not have a lot of money and an expense is associated with writing a local law. It usually has to be advertised and requires consultation, and there is an expense to the local government, as well as staff time spent on that. Rather than their having to go through the full expense of resubmitting local laws and gazetting and such, we come to an arrangement with them. In the norm, it is that they remedy the issue when they do the next iteration of that particular local law, the commitments they give to the committee are public and they do not enforce the local law inappropriately, given the mistakes that we have discovered.

I know that people are interested in this, and I am sure I am generating a lot of interest in delegated legislation now. People can see on the committee's website all the issues the committee has found and the resolutions it has managed to achieve. As I said, the committee is not there to frustrate; it is there to facilitate and make sure that the will of this house and the powers that we delegate are used appropriately. The committee does a particularly good job at that. I encourage all members to go to the website.

Constituents often write to the committee complaining about a particular by-law. I want to make the point that the committee exists to oversee the instrument; it is not there to be lobbied and it is not there to give advice to local councils, except in the broadest terms. The committee cannot be the judge and jury. We cannot give advice and then at the end of the day knock back that legislation. That would not be fair on local government. There are many ways in which local governments can get advice on local laws; the Western Australian Local Government Association is probably the most obvious. WALGA often writes a model law, which most councils take up. I encourage that because if they follow it true to form, it is appropriately written and is appropriate to the powers that they are allowed to have. It is only when they start deviating from those model laws that problems arise. As I mentioned before, unfortunately, local councils have to deal with some fairly difficult issues, such as the differences between cat owners and their aims and desires and those who feel that cats are pests and are killing machines of other local animals. There are often difficulties for councils to deal with in legislation and there is always a temptation for them to try to go further than the primary legislation allows them to do. It is a bit of a joke about delegated legislation that the

issues we deal with the most relate to cat laws. People have very strong views about cats and whether they should be tethered or whether they should be released at night. I must stress that it is not for the committee to determine what is appropriate legislation—people often get this wrong—but to determine whether it has been written appropriately and within power. Policy issues are for the government of the day or Parliament to decide; the committee has oversight to ensure that it is written within the power that we confer upon it.

It is a success for the committee that of the 44 notices for which it found difficulty and put on a PNOM in this place, 36 have been resolved. Normally the committee staff deal directly with them in correspondence and it is then left for the committee to have oversight and make determinations on recommendations that go to this place. The committee is an extension of this place and I urge members to become interested in it. It may not be the sexiest committee, but it is part of the work we do for our constituents, and the committee and its staff do a marvellous job.

I know that many members want to speak. On the recommendation of the opposition we comment on committees and reports. We have taken that up and I encourage non-government members to also take that up and comment on these reports so that their feelings about the committees that we put so much trust in are on the record. The call is out: stand up, make a contribution and tell us what you think about the work of the committee. The committee is always interested in the views of this house, whether they be from government members or non-government members. The challenge is there for them.

Visitors — St Mark's Anglican Community School

The DEPUTY CHAIR (Hon Peter Foster): Before I give the call, I note that we have some special guests with us in the public gallery today, St Mark's Anglican Community School. Welcome to Parliament; we hope you have a great day with us. I give the call to Hon Pierre Yang.

Committee Resumed

Hon PIERRE YANG: Thank you, deputy chair. I will speak on this on the next occasion!

Consideration of report postponed, pursuant to standing orders.

Joint Standing Committee on the Corruption and Crime Commission — Fifth Report — Police power of arrest: Parliamentary Inspector's report — Motion

Resumed from 21 September on the following motion moved by Hon Pierre Yang —

> That the report be noted.

Hon SHELLEY PAYNE: It gives me great pleasure to stand today and talk on the fifth report of the Joint Standing Committee on the Corruption and Crime Commission, *Police power of arrest: Parliamentary Inspector's report*. I thank the committee members, particularly Hon Klara Andric, who is away on urgent personal business; Matthew Hughes, the chair of the committee; Shane Love; and Hon Dr Steve Thomas, who I just realised is in the chamber today!

This is a great report. It attaches at appendix 1 the report by Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission. His report concerns police powers of arrest without a warrant, and it alerts Parliament to the operation of police powers of arrest under section 128 of the Criminal Investigation Act 2006. He became aware of this issue while investigating a complaint relating to the way in which a woman had been arrested. The complainant was a 51-year-old woman with severe arthritis who had taken issue with the way in which she had been arrested on suspicion of stealing a couple of boxes of hair dye. She was concerned about her treatment by the two arresting police officers; she was arrested at her home in March 2020. The stolen goods were valued at less than $100, and she actually did not commit the offence.

This report is really a great example of the importance of Parliament having an independent role such as that of the Parliamentary Inspector of the Corruption and Crime Commission, and of the great government processes we have here. Complaints are able to be investigated and a report written. The report is tabled in Parliament and the Joint Standing Committee on the Corruption and Crime Commission considers it and sends it back to Parliament, and then there is a government response. I think it is great that we can have faith in the fact that complaints that go to the police on these sorts of issues are actually dealt with and that we in Parliament have an opportunity to know about them and discuss them to make sure everything is working as it should.

Both the Western Australia Police Force and the Corruption and Crime Commission concluded that this arrest was unreasonable, but not actually unlawful. Section 128 of the Criminal Investigation Act provides that an officer may arrest a person without a warrant if the offence is serious and the officer reasonably suspects that the person has committed the offence. Recommendation 1 of the report is —

> That the Minister for Police consider matters raised in the attached report of the Parliamentary Inspector and respond to the request to consider amending the powers of arrest in the *Criminal Investigation Act 2006*.

Interestingly, the government response was produced on 24 March of this year. The Minister for Police considered both the parliamentary inspector's report and the fifth report of the Corruption and Crime Commission in respect of amending powers of arrest. There are some interesting comments in the response; the Western Australia Police Force agrees that the arrest was not necessary, but it does not agree that there should be legislative reform. The

view of the police is that the legislation is not the issue, and that it was a combination of unintentional mistakes and unsatisfactory actions undertaken by the two police officers that led to this very unfortunate series of events. As has been acknowledged by the parliamentary inspector, the Western Australia Police Force took this incident very seriously and took a number of steps to respond to it. I have also talked about the fact that we have this report and we can discuss this issue, and have confidence in the way in which our great Western Australia Police Force operates. I am a big supporter of our police.

A couple of steps were taken after this incident. The complainant received a written apology from the relevant police superintendent for the arresting officers' conduct. Western Australia Police Force also conducted a managerial investigation into the incident, which resulted in both police officers involved being served with managerial notices and being required to undertake additional training in frontline investigations, custodial care and the use of infringement notices. That is really a great outcome. One of the officers was actually relocated to another team, and the other officer was assigned to a new manager. This was to support the officers to have greater supervision and guidance. A key oversight by the officers involved in the incident is that they chose to arrest their suspect instead of issuing a Criminal Code infringement notice.

I also note that, as most members will be aware, there was a comprehensive review of the Criminal Investigation Act 2006 conducted from 2015 to 2018. The review received submissions from a wide range of stakeholders, including the Commissioner for Children and Young People, the Aboriginal Legal Service of WA, the Director of Public Prosecutions, the WA Police Union and the Corruption and Crime Commission itself. The final report contained 126 recommendations for reform, with 75 relating to legislative amendment. However, the final report did not support a review of section 128 of the Criminal Investigation Act; it recommended that Western Australia Police Force should consider lowering the statutory threshold for serious offences.

I want to note that the parliamentary inspector in his report acknowledged the work performed by police officers as necessary and challenging. He did not seek to undermine the important role that the police play in our society and he appreciated that it was important to provide police with a measure of discretion in exercising their powers, including those relating to arrest. He really is, in that sense, supportive of our police officers and all the hard work they do. I thank the committee for this report. Thank you.

Hon Dr STEVE THOMAS: We have now debated this report at least once, possibly twice, and I will complete my contribution and then be happy to sit and allow consideration of the report to be continued by members of the government. I want to refer to the government's response to the report, which it tabled some time ago. As other members have said, this report relates to an unfortunate arrest of the wrong person—a person who was disabled by their physical condition and probably unable to commit the offence for which they were arrested. Everyone understands that in this case the arrest was incorrect and unfortunate, and that the police officers involved made mistakes; I think that is uncontested. The person who was charged with the offence could have been dealt with in another way, and police officers generally would have done that, so it was an error by the police.

However, as I said when I first introduced this report, I agree with the government that an error made by a couple of police officers is not a reason to change the legislation along the lines suggested by the Parliamentary Inspector of the Corruption and Crime Commission. One of the joys of being in Parliament is that we are free to express ourselves. We do not necessarily have to agree with a report that differs from the government position and we do not necessarily have to agree with a report from the Parliamentary Inspector of the Corruption and Crime Commission. In this case, I do not. I think the government's response is correct. The police power to arrest prospective offenders is absolutely essential for the running of the state. The parliamentary inspector suggests that powers of arrest should apply only in more serious circumstances. The government addressed this issue in its response, and I want to briefly speak to this section of the report before I conclude my contribution. I note that the government's response says —

> In regards to the March 2020 incident, WA Police Force agrees that the investigation was unsatisfactory and the arrest was not necessary.
>
> …
>
> A key oversight by the officers involved in this incident is that they chose to arrest their suspect as opposed to issuing a Criminal Code Infringement Notice …

A CCIN is a tool that is used when police do not arrest the alleged perpetrator but issue them with a notice to which they can respond. The government's response continues —

> A CCIN was ultimately issued to the person who was identified as responsible for stealing the hair dye … and this offender has since paid the penalty.

It was not a significant penalty. The two officers were retrained in the use of Criminal Code infringement notices as part of the undertaking from the Western Australia Police Force.

I think there would be general agreement that those officers went too far, but I disagree with the parliamentary inspector's view that this means the legislation should be changed to remove the ability to use the power on some people. He particularly focuses on the definition of a serious offence.

I want to make a point about the comparison with other jurisdictions in the government's response. It states —

> In New Zealand, police officers can arrest for any breach of the peace as well as any offence punishable by imprisonment. South Australia and the Northern Territory allow police officers to arrest for 'any offence'. Victoria and Queensland allow police officers to arrest for any indictable offence. These thresholds are all lower than the existing threshold in WA.

I think that is true. The parliamentary inspector referenced New South Wales and some international jurisdictions that have reduced the threshold, but most states are happy with the current threshold or would consider lowering the threshold. The threshold could potentially be lowered for WA police under recommendation 77 of the final report on the investigation, which was tabled in Parliament in October 2018. That would make it more rather than less open for use.

I want to finish my contribution along those lines. In my view, it is absolutely the case that the power of arrest needs to be retained by police officers in Western Australia and I would not like to see that power diminished. On occasions, the power of arrest will be used in ways that it should not. But with good training and staying on top of the situation and in control of the circumstances, police officers will generally not use those powers in lots of circumstances, including the circumstances in which the two police officers used the powers that were the subject of this investigation. Police should be counselled along those lines and the education program around that should be very strong. If police inadvertently incorrectly use the powers of arrest, it is absolutely the case that they should be counselled as part of that process. If we take away that power, it will create a fairly significant threat and open the door for abuse of that system, particularly if people know that they cannot be arrested for minor offences. I think to disempower police in that way would be a poor outcome. It would not help the good order of society in Western Australia and would simply empower those people who want to make life difficult—that is, protesters and people who do not want to cooperate with police or assist in the operations of the state. Therefore, as much as it aggrieves me to agree with the government on occasion, I think it has it right this time. The response to this report is appropriate. It perhaps could have been worded a bit differently, but, in essence, it says that this is an important tool for police officers in Western Australia to use. I agree, notwithstanding the Parliamentary Inspector of the Corruption and Crime Commission's concerns and different approach.

The Western Australia Police Force, the Corruption and Crime Commission, the WA government and I are of one accord on this: the retention of that power is important, but let it be used to minimal effect. Let us have the iron hammer inside the velvet glove with this one. Let us ask the police force to make sure that it uses this power to the best of its ability to minimum effect. Doing that, in my view, will give the police force the ability to use the power when it is required. I think we should keep an eye on how often it is misused, and the reporting on that will be useful. Obviously, every episode of misconduct that occurs in the police system goes to the CCC. The CCC investigates serious misconduct across the board. It investigates all issues of misconduct in relation to WA police. The CCC will look at all potential misconduct, including the misuse of this particular power. I think that is an appropriate process. It is not unusual for the parliamentary inspector and the CCC to disagree on some things. In this case, I am with the CCC and the government. I respect the goodwill of the parliamentary inspector, but it is important that WA police retain the powers that members on both sides of the chamber would agree are necessary for them to do their job. Although I am happy to note the report, which is the motion before the house, I agree with the government that it does not need or require action, including an amendment to the Criminal Code to change the powers of arrest.

Hon PIERRE YANG: I want to make a few brief remarks. I agree with a lot of the Leader of the Opposition's comments made minutes ago. I have spoken previously on this report and on other Joint Standing Committee on the Corruption and Crime Commission reports. I am of the view that it is important that we support the Western Australia Police Force because it is doing a tremendous job. I am sure members of this place who have interacted with WA police in either a personal capacity or as members of Parliament have found those interactions to be overwhelmingly positive and constructive. I wholeheartedly support that. I have talked about the importance of supporting the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission so that if there are members of the police force or the public service who are doing the wrong thing, they will be investigated and brought to account.

In the time remaining today, I want to bring to the chamber's attention a recent incident in another state. In New South Wales, there is a famous sandwich board protester called Danny Lim. He was involved in an incident with two police officers at the Queen Victoria Building. Two New South Wales police officers attempted to arrest him. On that occasion, the officers prevailed and, as a result, Mr Lim suffered severe head injuries. There has been a huge uproar in the community about the force exerted by the police officers involved, and an investigation is underway. It is important for us to note that incident on the other side of the country. It is important that we support our police force. It is important that we have mechanisms in place so that if there is alleged overreach by police exercising their powers authorised by law, an investigation can be carried out.

I wish to conclude my remarks and see that the report is noted. Thank you.

Question put and passed.

Progress reported and leave granted to sit again, pursuant to standing orders.

MEDICINES AND POISONS (VALIDATION) BILL 2022

Second Reading

Resumed from 29 November.

Declaration as Urgent

On motion by **Hon Sue Ellery (Leader of the House)**, resolved —

> That the bill be declared an urgent bill.

Remaining Stages — Time Limits — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved —

> That pursuant to standing order 125A, the following maximum time limits apply to the following stages of the bill: second reading, 85 minutes; Committee of the Whole House, 150 minutes: and third reading, 60 minutes.

Second Reading Resumed

HON WILSON TUCKER (Mining and Pastoral) [2.21 pm]: I am not concerned with the content of the Medicines and Poisons (Validation) Bill 2022. The bill is very short; it has only four clauses. I also understand the government's need to deal with this bill urgently before the summer break. It is unfortunate that we do not have more time to debate the bill. However, the fact that we are debating this bill at all raises some concerns for me around the legislative processes in this place. My biggest concern is that this bill will be retrospective. The Leader of the House touched on this earlier. I am also concerned that this bill will encroach on natural justice. I am not referring to the natural justice for the people who have been convicted of offences relating to drugs that are listed on the federal government schedule. I am concerned about the larger question of using Parliament as a government instrument or tool to pass laws that will, in a sense, exonerate the government from prosecution for actions that it has taken previously. To use a sporting analogy, if the government has the sense that it is losing the game on a particular matter, it will change the rules halfway through the game. We saw that occur with the Clive Palmer case. I do not need to remind members of the details of that case. I am not siding with Clive Palmer, or, indeed, with some of the people who have been convicted of these offences. We could probably have a larger debate around the convictions for some of the drugs that are on the schedule, but I understand that the laws are the laws, so I will leave that for another day. In both those cases, I believe the government's actions are justified. However, a precedent has been set. That is a concerning trend. I believe this process should be used only in extreme circumstances, and with an adequate amount of debate.

An easier case can be made for changing the laws and moving forward. That is also easier to understand from a public perception point of view. The government is basically drawing a line in the sand and saying that from this day forward, this is how the laws will operate. As I have said, that is easier to understand. When we start to change the laws of the past, we enter a murky reality in which the government can theoretically never be proven wrong on anything. To use a sporting analogy again, the government is not just changing the rules while it is playing the game; it is basically changing the rules after the game has finished so that it can alter the score. If we tread in this direction, we should do it with a level of caution. I urge the government to think long and hard when it goes down the route of making retrospective laws in the future.

The other question I have is why it has taken so long to bring this bill into this house. The Leader of the House has already answered that, so I will leave that point for now. This problem was originally uncovered in August. I understand that a number of offences and convictions are pending as a result. The other question I have is around how this has happened. The state government is blaming the federal government and saying that it was not notified. However, this schedule update has not affected the federal government. The federal government has made sure that its processes are in order. It has affected the state government. Therefore, the onus is on the state government. It is our responsibility to ensure that our laws operate as intended. We need to be more proactive about ensuring that any changes that are made and that we rely upon will not break us. It is not the other way around. As far as I can see, it is the state government's responsibility. I will use a software analogy to paint a picture. I know how much members enjoy my software analogies.

Several members interjected.

Hon WILSON TUCKER: I am getting a mixed response!

Hon Darren West interjected.

Hon WILSON TUCKER: Thank you, Hon Darren West.

To use a software analogy, the Western Australian jurisdiction can be painted as one application, and the federal jurisdiction as another application. For the most part, the federal application runs by itself. We do not know what the federal government is doing behind the scenes. A lot of its internal processes are hidden to us. We rely upon the federal government's laws occasionally. In this case, we have a dependency upon the federal government drug schedule. In that sense, the state government is operating downstream from the federal government. For the most

part, we are operating in our own little bubble, as is the federal government. In the software realm, the onus is on whoever owns the Western Australian application to ensure that we are aware of any changes that are made upstream of our application. A good software principle if that if we are making a change in our application and someone else has a dependency upon that application—for example, the federal jurisdiction—we notify the other teams. We tap on the shoulder and say, "I'm making a change; please test it", and we give them a time frame, and hopefully no-one will break away as a result. The onus and responsibility is on the owner of the software to ensure that if they make any changes, they put in place adequate processes and testing to notify the other users of that software of those changes. It is not the other way around.

To labour that point a bit more, monitoring and checking needs to be put in place. We have not seen that in the case of this legislation. Obviously, a lot more automation takes place in the software realm. Within the legislative processes, there is obviously a lot more human intervention. To take a broad look, we can certainly draw a lot of parallels from those two processes. The reliance on federal laws and on using tables or excerpts or parts of federal laws is part of a wider pattern that is used in not just the Misuse of Drugs Act but also other acts at the state level.

The other question I have is: if we encountered this issue with the federal act as part of this legislation, how do we know it is not happening in other legislation as well? Typically, with software systems, if a bug is found in one application or part of a code, if they dig more widely, they will find other bugs as well. What assurance can the government give that federal laws that have been updated have not broken other parts of our state laws and that this is not more widespread and systemic in other acts? Also, what assurances can the government give that this is not going to happen again? Obviously, there has been a break in the process between when this was put in place and now. We are having to deal retrospectively with a period of time. What assurance can the government give that the process will be robust enough moving forward to ensure that we are proactively monitoring the situation and making sure that state laws behave as intended?

I will leave it there. They are the two larger questions that I have. The bill is very short. It is troubling that we are dealing with this retrospectively. Again, I urge the government to tread cautiously because we are, in a dramatic sense, rewriting history on the fly as we debate this bill.

HON MARTIN ALDRIDGE (Agricultural) [2.31 pm]: I rise to make a contribution as the lead speaker for the opposition on the Medicines and Poisons (Validation) Bill 2022. As the Leader of the House pointed out today in an earlier debate, this is a bill that, at least by brief reference, the opposition became aware of on Thursday last week. We certainly became aware at that time that it was something to do with medicines and that it was a validation bill. A validation bill usually means it is an attempt to make something lawful that was potentially unlawful, as is the case with this matter. On Monday, the opposition received a briefing, at which, for the first time, we learnt of the substance of this legislation. It was clear from that briefing that the genesis of this issue occurred some time before Monday this week. The period in question, referred to as the "validation period", was between 1 February 2019 and 19 November 2019, during which the Medicines and Poisons Regulations 2016 had an incorrect reference to the SUSMP, which is the Standard for the Uniform Scheduling of Medicines and Poisons. This appears to have had numerous implications across the statute book, impacting numerous offence provisions. I pause here, because it was an offence, a conviction, an appeal and then an appeal against a conviction that has brought this matter to the fore today. There are also other concerns regarding other statutory provisions for licensing and regulation.

The second reading speech makes reference to "more than 40 items of legislation". The opposition was provided, subsequent to the briefing, with some supplementary information that lists numerous provisions in both primary acts and subsidiary legislation that were potentially affected by this issue between 1 February 2019 and 19 November 2019. When we go into Committee of the Whole, it would be good to understand the implications for some of those statutory provisions and whether a finer number can be put on the primary acts and subsidiary regulations, and perhaps other instruments, that have been impacted by this issue. The minister in the other place yesterday described this matter as "unfortunately, necessary" and I agree with that assessment. It is not a good position for the state to be in. Effectively, for 292 days, more than 40 pieces of legislation were ineffective or to some extent ineffective as a result of this regulatory oversight. I understand that new regulations were gazetted by the Governor on 20 November 2019 to address this issue. It is not clear, from the time line that I have been provided, at what point the government became aware of this issue in the course of 2019, which then led to new regulations being gazetted by the Governor on 20 November 2019. If I can draw members' attention to the regulations that existed up until 19 November 2019, the definition of "Standard for the Uniform Scheduling of Medicines and Poisons"—the SUSMP—was —

> … the document set out in Schedule 1 of the current Poisons Standard.

The issue is that schedule 1 of the updated Poisons Standard did not contain the definition of the SUSMP. From 20 November 2019, the SUSMP was defined as —

> … the Standard for the Uniform Scheduling of Medicines and Poisons set out in the current Poisons Standard;

That is obviously a more generic and less specific reference to where one might find the definition of the SUSMP. I understand that it was intentionally designed this way to futureproof and guard against future commonwealth changes. If I understand it correctly from my briefing, the problem arose because the definition of the standard

was moved from schedule 1, but then it reverted to schedule 1. It is rather odd that there seem to be regular changes at a commonwealth level. In fact, one of the questions taken on notice at our briefing, which we hope we may be able to get some greater understanding of today, was about the commonwealth's intention for changing its regulations in the way that it did, which resulted in the impact on many pieces of legislation and legislative instruments in Western Australia.

Noting the limited period I have had to turn my mind to this—we were briefed around noon on Monday, the Legislative Assembly dealt with this bill yesterday and we are now dealing with it this afternoon, being Wednesday—the other thing I want to raise is the extent to which we will futureproof this issue from arising again. I am looking at the Medicines and Poisons Regulations 2016—this version was published and current as at 20 November 2019. I understand that further regulations were published, but they do not deviate from this version in the matters I am going to raise now. The definition of SUSMP found in regulation 3 provides that it is —

> … the Standard for the Uniform Scheduling of Medicines and Poisons set out in the current Poisons Standard;

We then need to turn to the earlier definition in regulation 3 of "current Poisons Standard", which is defined as having —

> … the meaning given in the *Therapeutic Goods Act 1989* (Commonwealth) section 3(1);

If we then turn to the commonwealth Therapeutic Goods Act 1989, section 3(1) reads —

> In this Act, unless the contrary intention appears:
>
> …
>
> ***current Poisons Standard*** has the meaning given by section 52A.

Section 52A of the Therapeutic Goods Act says —

> (1) In this Part, unless the contrary intention appears:
>
> ***current Poisons Standard*** means:
>
> (a) if no document has been prepared under paragraph 52D(2)(b)—the first Poisons Standard; or
>
> (b) otherwise—the document last prepared under that paragraph (including as amended).
>
> ***first Poisons Standard*** means the latest edition at the commencement of this Part of the document known as the *Standard for the Uniform Scheduling of Drugs and Poisons* published by the Australian Health Ministers' Advisory Council.

Section 52D(2)(b) says —

> Subject to this Act and the regulations, the Secretary may:
>
> …
>
> (b) prepare a document (including schedules containing the names or descriptions of substances or classes of substances), in substitution for the current Poisons Standard.

I make the point that there is a deep web of definitional references that one has to go through to navigate to where the Standard for the Uniform Scheduling of Medicines and Poisons might be. Although we may have addressed where our regulations and other instruments point to in the commonwealth act, there is probably still a risk to the state from legislative amendment to the Therapeutic Goods Act 1989. I put on notice—it may not be something that the minister will reply to in her second reading response—that something I would like to contemplate when we get to the committee stage is whether the state remains vulnerable to legislative change by the commonwealth, with the impact being that numerous pieces of state legislation become inoperative or inoperative in part.

We also note from the time line that was provided to the opposition that the Attorney General became aware of this issue on an undisclosed date in August 2022. In the information that we have been provided with, we were advised that the Office of the Director of Public Prosecutions notified the Attorney General that an appeal against conviction had been lodged on the basis of the anomaly that existed between 1 February 2019 and 20 November 2019. That is about the limit of what we know, but, as we understand it, that was the point at which the government became aware of this issue.

The opposition also sought information about the appeal. Obviously, somebody had been charged with an offence—I understand that it was an offence under the Misuse of Drugs Act—they were convicted and they then appealed that conviction. I understand that that appeal is currently before the Supreme Court and is the reason that the ODPP raised this issue with the Attorney General sometime in August this year. The question that was specifically raised by the opposition at the briefing about the appeal currently before the Supreme Court was to ask the DPP whether this was raised as a defence at trial in the first instance. We were comforted by the response provided by the minister's office that this matter can be addressed during Committee of the Whole. We look forward to a better understanding of the circumstances that led to the ODPP informing the Attorney General that we, as a state, had an issue.

There has obviously been limited consultation. We asked about this at our briefing. A number of stakeholders were referenced. From memory, they were all internal stakeholders of government. The Western Australia Police Force, the office of the Attorney General, the State Solicitor's Office and the Department of Justice were consulted on the bill. I understand the sensitivity of this issue and that consulting more broadly would have alerted more people to the fact that they may have a defence or a right of appeal based on the circumstances that are being dealt with by this bill.

That takes me to the briefing. Although I made some remarks earlier, I want to make some comments at this point about how we find ourselves, on the second-last sitting day of the Legislative Council, in this position of dealing with a bill that we first learnt of last Thursday. We had a briefing scheduled for 11.30 am on Monday this week. I naturally, but wrongly, assumed that this was the earliest opportunity that the government could brief the opposition because cabinet would be considering the matter on the same day. It then followed that a briefing had been arranged for the opposition to deal with this matter of urgency following cabinet having first made a decision. But what is now obvious from the information that has been provided to the opposition, and also confirmed by the Leader of the House in debate earlier today, is that cabinet took a decision one week earlier. Some time had certainly passed—in fact, one week had passed—between cabinet taking a decision on the printing of the bill and the opposition being briefed on this matter.

As I said, the briefing commenced at about 11.30 am on Monday. When these things take place virtually, there are quite a lot of people at the briefing, including advisers, but also members of the opposition. It is interesting, but also quite alarming, when members commence a briefing on a matter, particularly one that they know nothing about, with no documents. The first question that I asked the briefers as my colleagues were joining the briefing was whether we could have access to the bill and explanatory memorandum. Although it still would have been challenging to receive them at 11.30 am, when the briefing was commencing at the same time, it is most unusual for a briefing on a bill to occur without a bill. In fact, I struggle to recall many instances when I have experienced that. I was advised that the documents that I sought—the bill and explanatory memorandum—would be provided immediately following the briefing. The second question that I asked as my colleagues were joining the briefing was, if it was not too much trouble, whether I could be afforded the respect of knowing the name of the bill. That was forthcoming, and I was fortunate to receive for the first time the name of the bill that we would be contemplating, at least in the Legislative Assembly the following day.

At 11.53 am—at this point, we were roughly halfway, if not more than halfway, through the briefing—the bill and explanatory memorandum were circulated, and that was after a number of members of the opposition had pointed out quite strongly to those briefing us that it was extraordinary that a briefing was being conducted on these important legislative provisions without the relevant documents. Clearly, the position changed quite quickly. I believe that email was sent at 11.49 am and I personally received the documents at 11.53 am.

The opposition has certainly faced over the past few years numerous circumstances like these in which a strong case is put, and I think there is a strong case that we act quickly on this matter. We expect some understanding and respect from the government and government advisers about these matters, and I do not think we fully got that on Monday. In fact, there was at least one instance when an officer of the department, who was providing an answer to a question, was spoken over by a staff member of the minister's office to stop that person from speaking. That certainly did not give me confidence or assure me that the government, or indeed the minister, was interested in advancing this important issue in a bipartisan way.

As I said, that is not the only time such conduct has occurred; there have been others. Nevertheless, in the limited time that we have had, we have been able to contemplate the bill to an extent. We gratefully received some supplementary information that was provided on the same day as the briefing—being Monday—noting that the bill was considered in the Legislative Assembly the following day.

We are still waiting for clarity on some things. The first is the legislative provisions impacted by this "anomaly", as the government describes it. We have been provided with a table, as I am sure other parties have. It would be interesting to know whether that is an exhaustive assessment of impacted legislative instruments in Western Australia or whether it is simply what the government has been able to identify in the time available. We sought to understand whether there is a rational explanation for the commonwealth changing the structure of the Poisons Standard, and specifically the definition of "Standard for the Uniform Scheduling of Medicines and Poisons". I might pause here to make some comments about this.

Hon Sue Ellery: To clarify, are you asking why the commonwealth made the change?

Hon MARTIN ALDRIDGE: Yes, that is right.

The government's message last week, when we did not know what we were dealing with, was that it was all the fault of the commonwealth. Looking at it a little more closely, I learnt on Monday that WA is the only jurisdiction impacted by these regulatory changes by the commonwealth. It was not an issue that affected every state and territory; it affected only Western Australia, as I understand. To that extent, it would be interesting to contemplate the issue raised by Hon Wilson Tucker, which is: how did this happen? If more than 40 pieces of legislation rely on

a reference to a schedule contained within a standard published by the commonwealth, whose job is it to maintain those linkages accurately, particularly given we were the only state deficient in this respect? I think that ought to be explored further in the committee stage, unless a reasonable explanation can be provided. I am not convinced that this is entirely the fault of the commonwealth, as it has been described by the government and the minister. The response we got was that this information has now been requested, and when a response is received, it will be communicated through appropriate channels. Up to the point that I stood in this chamber on this debate, I had not received any communication on whether there is an update on that, but the Leader of the House may have some further information.

The third issue I spoke to was the action in the Supreme Court that caused this issue to come to the fore. I pause to make comment on this. The department became aware of the issue on a date we do not know. There was a period between 1 February and 19 November 2019 in which somebody became aware of this issue; it would be good to understand who became aware and how they became aware, as it resulted in the change on 20 November 2019. According to the uncorrected *Hansard* of 29 November 2022, the Minister for Health said —

> The definition was amended in 2019, when it was brought to the attention of the department. At that time, it did not occur to anyone that retrospectivity was required, but it became apparent through the Director of Public Prosecutions that that is now required, hence the short time frame.

I find that a little difficult to accept. I assume that an officer of the department realised in 2019 that our regulations were pointing incorrectly to a commonwealth law. Obviously, somebody made an informed decision that our regulations ought to be updated, but, according to the minister, they did not contemplate the impact of the 292 days during which the regulations inaccurately referenced a standard until the appeal was made to the Supreme Court.

The other issue that was raised was with respect to uniform legislation. Some information was provided. In reading the bill in last evening, the Leader of the House confirmed that this is not a uniform legislation bill. We asked for some information about the 5 000 alleged offences that were at risk, and that was provided, but, as I said in my earlier remarks, it would be good to have a greater understanding of some of the other impacts. I know the focus has been on drug offences, if you like, but what are some of the other impacts that may exist in Western Australia from the 292 days of a deficient level of regulation of medicines and poisons? That could go to the conduct of doctors, pharmacists, vets and a whole range of people, organisations and functions that are regulated by state law.

We have a time line. Some further information is needed, and information was sought about the bill commencing on the day of royal assent rather than the day following. I understand that the opposition in the other place yesterday sought clarification from the Minister for Health about other examples of acts that commenced on the day of assent. We were advised by the minister in the other place that that information would be available when the Legislative Council considered this matter further today.

I want to comment on something Hon Wilson Tucker just mentioned in his second reading contribution. I do not want to verbal the member, and it is something we can probably discuss further in the committee stage. I think his concern was that somehow the state government was trying to limit its liability on this matter. That is not something that I drew from the briefing or from the bill that is before us. In effect, I think we are trying to address this so-called anomaly so that the regulations were in force during this period as though they were correctly referencing the commonwealth statute. I admit that this has been a very short time frame to fully consider these issues, particularly while Parliament has been in session, but from the clauses before us I did not get an understanding that the state was trying to limit liability. In fact, it was trying to validate the many legislative instruments in Western Australia's statute book that could be in jeopardy if a court found in favour of an applicant in the Supreme Court, as I understand is being considered on the basis that the SUSMP, as referred to in our regulations, directed people to a standard that did not exist. The legislation tries to address that issue, but clause 4 of the bill, the main clause before us, contains a number of subclauses. We will more fully consider each of those subclauses and whether the concern the member raised is one we should explore to ascertain whether it is a case of the state trying to limit its liability in this respect. I reiterate that the opposition supports the bill.

HON DR BRIAN WALKER (East Metropolitan) [3.00 pm]: I must say in advance that I see no reason not to support the Medicines and Poisons (Validation) Bill 2022. I will be supporting it. I do not particularly want to say anything in Committee of the Whole. However, I want to use this time to highlight some of the issues that arise from this. The government is doing a sensible thing by closing a loophole that could have the consequence of letting people off the hook who should not be left free from the consequences of their crimes. However, I will speak to the bill as a doctor. One of the things we do as doctors is make a diagnosis, first by looking at the symptoms. It is a little like standing on the beach and, when the water suddenly goes out way past the groyne, thinking, "Isn't that lovely. Now we can see the rock formations where we can play, and, look, there are fish there. We can have a gentle walk along an area that we could not normally reach." A sensible person would realise that a tsunami was coming and would run as fast as they could to the highest hill! The diagnosis depends on looking at the symptoms, the signs, and saying, "Right, now I have come to the conclusion that this is not a good place to be. I am out of here—now."

I relate this to the case of a dearly loved one of mine on the other side of the world. I was told that this elderly person had fallen and was a little confused, and the sodium levels that the GP measured were a bit down. I made the diagnosis

then that it was syndrome of inappropriate antidiuretic secretion, possibly a non–small cell lung cancer, and I was going to visit that person as soon as possible. I assessed the signs and symptoms and came to a presumptive diagnosis. The tests that were done reinforced the diagnosis and I was indeed correct, simply by looking at the symptoms and signs. What we have here is a symptom that needs to be closely assessed. It is not just putting a patch on the symptom. If the doctor had simply said that person was confused and gave them some medication to make them less confused, that would not have dealt with the underlying problem.

We could say that another symptom is that we had to have a briefing a day later without documents, suggesting that perhaps we were treated less kindly than the opposition. Members can draw their own conclusions from that. The symptoms point to an underlying diagnosis; it is a symptom of needing illicit drugs. One might think that a bad thing. It is also a symptom of intergovernmental communication issues, which need to be addressed. Looking at the symptom of needing illicit drugs, we are looking at unmet treatment. People are driven to treat themselves because no treatment has been available to them. Are we accepting this? Are we comfortable with this or are we going to allow them to be driven to criminals who will ply them with the drugs they seek? That will, indeed, manage their symptoms, but they will be in the hands of criminals who care not a whit for their wellness at all because they are just making profit. As we see with the vast number of people who attempt to bypass the laws, the criminals are encouraged to make an example of this loophole and to get off their crimes. By the same token, we are also encouraging criminals to flourish. By banning drugs, by criminalising them, we are encouraging criminals to do business. Criminalising the issue prevents us from medicalising the issue. Preventing the medicalising of the issue means that we condemn people to poorer health. We condemn them to less wellness. We condemn them to a lower quality of life. We condemn them to fewer chances of reintegration into society. Are we, as a Parliament, comfortable with that?

It is also causing problems and increasing costs to the judiciary, because what we are looking at is: how do we put these cases through the courts and the police system? What is the cost to us as a society of criminalising it? It is costing us money. It is also losing us life because people are falling foul of this and are having a very hard time and are killing themselves as a result or, indeed, being killed. They are losing quality of life. Are we, as a Parliament, comfortable with propagating such legislation? Passing this bill will address the symptom that has been created, but it will not address the cause. If we are at all interested in helping people live better lives, as we have sworn to do as members of Parliament, we ought to consider this fact very closely. We can respond by crafting ever more bills, as we are doing now to close a loophole in complex legislation. We can then predict that the costs will rise in the judiciary. We can predict that costs will rise in the policing of this. This is predictable.

I point out that the war on drugs is being lost; it has always been a losing war. I do not think anyone here could argue that it has been a winning war in any shape or form. Therefore, throwing more resources at the losing drug war is simply illogical. We can see this scurrying to catch up with the legislation that has now found a problem. We have created the problem by criminalising the drugs in the first place. I am not saying that drugs are good; I am saying that minimising harm is better. Let me reinforce that. As Hon Martin Pritchard showed in his example, taking drugs is a foul thing to do. No-one in their right mind would recommend that—no-one—but are we also recommending that we not deal with that in a medical fashion but instead criminalise it and make the problem worse? I have personally experienced that people have gone through this system and come out no better; in fact, they are worse, and we have created that. Are we, as a Parliament, happy that we have worsened a problem?

Throwing more resources at a losing drug war, as we are doing right now, is simply illogical. It results in increased costs to the public exchequer. Are we happy with that? It results in the loss of quality of life in general society, and thus swathes of people feel disenfranchised. I point out that although this bill must pass—it must pass in its current form; I fully support that—there is a problem that I wish to highlight. That problem is drugs themselves. We need to change the way we think about this. There has to be a change because if we carry on doing more of the same, we will get more of the same result. Are we happy with that? Seriously—are we happy getting more of the same failing result? If we say we are, I will be very unhappy to hear that because it is completely wrong. It is a losing proposition. It is also a measure of insanity—the famous Einsteinian quote. It needs a change in thinking. We cannot continue to think the same way. We need to think about decriminalising drugs.

Let us consider the approach of the Australian Capital Territory, for example. Why would the ACT have passed a bill to decriminalise drugs? It is not saying that drugs are a good thing—I agree with it that they are not a good thing—but has it gone down the right path in harm minimisation? I could take the example of Portugal, where that has been done since the early 2000s. Portugal found that health and wellness improved, alcoholism and drug deaths went down, gross domestic product went up and good things happened. The ACT is following a tried and tested path that has succeeded, whereas we are staying with the old mindset, criminalising rather than medicalising, with the result of loss of life and loss of money. We need an innovative mindset based on clear evidence and proof of success. The question is: why are we not already heeding the lessons already learnt? Why do we continue down the pathway of fighting a losing battle?

I hope these thoughts, which will not affect the bill in any way, and nor should they, percolate gently through the minds of those here—that we need to be thinking differently and responding differently because the path we have taken so far has not worked. Although this bill will be eminently good at fixing the symptom, it will not address the underlying issue. By failing to address the underlying issue, we will have failed in our duty.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [3.09 pm]: I will make a very short contribution to the Medicines and Poisons (Validation) Bill 2022, which retrospectively endorses a set of schedules under the Standard for the Uniform Scheduling of Medicines and Poisons regulations.

I say this as someone who, like Hon Dr Brian Walker, has been registered to handle most of those poisons up to schedule 8, at least, for many years. It is a fairly complicated system. It is very well regulated. I have to say that it is more regulated than it ever has been and will continue to be so.

This is fairly simple legislation to correct the issue of the commonwealth government changing the regulations. In changing the order of the appendices and schedules, the commonwealth change affected the regulations that sit in the state of Western Australia.

My first point is simply that, these days, we have a plethora of actions that are governed by regulation rather than by legislation because regulations are very simple to change and move around. If these things were covered in legislation, there would be an obvious debate, and we would see them much more easily. The regulations are done effectively on the stroke of a pen; somebody tables a set of regulations for the new set of poison schedules and, unless we are actively looking to check, there is no debate on it and so we do not see it occurring.

That is exactly what happened in this circumstance: the state of Western Australia was unaware that the commonwealth had changed the regulations. The minister might be able to confirm this. It was changed simply by the tabling of a set of regulations, and Western Australia was not notified. I can see how it happens, even though it potentially should not happen. This is one of the things we need to consider with the plethora or expansion of the use of regulations, because regulations should make it easier for government, rather than making it more complex.

As I understand it, this bill will deal with a number of the definitions of the higher medicine and poison schedules, particularly schedule 8 and schedule 9, which need to be very carefully managed. Schedule 8 includes controlled drugs. Most of the drugs in human or veterinary medicine are in schedule 4 and are by prescription. That system works for most of the common things people might be exposed to, such as antibiotics. In the veterinary field, schedule 8 is the drugs related to pain relief, such as morphine and pethidine, which might be addictive if misused. Vets used to have to keep a register of their use in each case and record each dose. Beyond that, schedule 9 is prohibited substances, and schedule 10 has complete prohibition because they are far too dangerous. This deals with addictive drugs that are the centre of court cases.

The simple change of a regulation has messed up the system. I suspect that, unbeknownst to the state of Western Australia, the change in regulations somehow opened a door for a very strict legal interpretation to be applied in court cases, particularly for those charged during the brief period throughout 2019 when the regulations were changed and the schedule was shifted. From February 2019 to November 2019, the shift of the schedules and appendices basically put this out of whack. It has been corrected since, and I understand that the government needs to retrospectively apply this to prevent an easy out for people who have been misusing and selling drugs.

It is a fairly simple argument. Obviously, the opposition supports the bill before the house. It is not a debate about the use of medicines. It is not a debate about the use of drugs. It is simply a debate about a set of regulations and the order in which this instrument is scheduled. It is a shame that the state of Western Australia was not informed at the appropriate time that the schedule was shifted. As Hon Martin Aldridge, the opposition's lead speaker, said, the opposition is happy to support the government to make sure we do not leave open a potential loophole.

As we expand the amount of regulation by which we govern ourselves and our society—particularly competitive or uniform regulations between the state and commonwealth governments—there will be a constant risk that regulations will not get picked up as they change and affect other jurisdictions. I do not have a simple solution for that. I think it will become more common. Ideally, more things would be done by legislation, and Parliament would have a stronger control, but this will be more frequent as we expand the amount of subsidiary legislation and regulations.

Having said that, we probably need to proceed. The opposition is happy to support the bill before the house to make sure that we do not allow people to escape justice and get away with something on a legal technicality.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.15 pm] — in reply: I thank members for their contributions and support in the second reading.

I will begin with the comments made by Hon Wilson Tucker, who went to the question of retrospectivity and used the term "natural justice", although I do not think he fleshed out that argument. I took notes during his contribution, and he made the point that the government was using this as a tool to exonerate the government. That is not what the government is trying to do at all. He put a proposition that used the analogy that it was like someone who is losing the game and so changes the rules of the game part way through. I do not resile from that at all. If he wants to describe it as changing the rules of the game against drug offenders because of a technical problem about where a definition sat, he can go ahead and describe it as that. I do not resile from what we are trying to fix here.

In one sense, the honourable member is right about retrospectivity. We do not do it very often. We do not do validation bills very often either because, as a matter of general practice, we work on the rule that we should not change the

rules for the sake of change after we have put something in place. However, I am told that recent precedents for validation bills include the Waste Avoidance and Resource Recovery Amendment (Validation) Bill 2014 and the Environmental Protection Amendment (Validation) Bill 2014.

Hon Wilson Tucker raised a couple of themes about how this occurred. I am advised that the Western Australian Department of Health was not notified of the change made by the commonwealth. The structural change was identified some months later by the department, and it was not mentioned in any consultation material released by the Therapeutic Goods Administration in the lead-up to the release of the amended Poisons Standard, nor was it in the explanatory notes published in conjunction with the amended Poisons Standard.

The question was asked about why we did not seek to retrospectively apply the correction in November 2019. It does not appear that the amending regulation that corrected the anomaly in 2019 contemplated the anomaly's implications for drug offences in the Misuse of Drugs Act 1981 or any other affected legislation. Members may raise a question about whether it should have, and that is a legitimate question to raise. Why did the commonwealth not notify the state, and how can the lack of communication be rectified going forward? These changes were made in 2019 and 2020. Since that time, we have seen a significant improvement in communications between the commonwealth and the states in respect of amending the Poisons Standard. For example, the commonwealth has recently published an amended Poisons Standard, which will commence in February 2023. It consulted and communicated extensively with the Department of Health in respect of the amended Poisons Standard, including in relation to changes to the structure of the Poisons Standard, which will commence at that time. Another question was: how do we know this will not happen in respect of other laws in this state? All I can say to the honourable member is that generally the state and federal governments, and departments, have a very good working relationship in most areas.

Hon Martin Aldridge asked exactly how many acts, regulations or other instruments would be affected. I ask the honourable member to explore that question in Committee of the Whole. The member will have to forgive me; I have a lot of notes here. In respect of the court case, I am advised that I am not in a position to share any details about the matter that is before the court. I can only apologise if the honourable member was given the impression that we could provide him with that information, so I am sorry, but I am advised that I am not able to.

A further question was: when did Western Australia become aware of this anomaly? I am advised that the Department of Health became aware of it around June 2019 and immediately initiated the process for amendment regulations. With regard to the member's question about the late provision of the bill, I tried to address the matter of the timing of the matter before government more generally in my contribution to an earlier debate. The member referred to going to the briefing and the people providing the briefing assuming it was reasonable to provide it without giving the member a copy of the bill. I do not think that is reasonable, and I apologise to him for that. I note that he was provided with the bill during the course of the briefing, and that is as it should be, but I do not think it is at all reasonable for people to be expected to understand the detail of a bill without having been provided with a copy of it. People were working really fast behind the scenes to get things ready for Parliament, but it is nevertheless not reasonable for members of Parliament to not have a copy of the bill in front of them when they receive a briefing. I apologise to the member for that.

Hon Martin Aldridge also raised the matter of the table of effective legislation. It appears that it was a preliminary assessment. I have a table, but I think the member has already been provided with it. The member asked whether what he had been provided with is exhaustive, and the answer is no, it is not. I am not sure whether during Committee of the Whole I can get the member something that is exhaustive, but that is the best effort at this point.

Another question was: why did the commonwealth make the change in the first place? We have not been provided with an explanation of why it changed the structure; it appears to have been an administrative amendment to improve the drafting of the instrument. In February 2019 the commonwealth made a number of changes to the Poisons Standard following consultation with stakeholders. The changes included amendments to existing entries and the inclusion of a number of specified substances in the Poisons Standard for the first time. It appears that consultation on those specific amendments occurred in February 2017, May 2017, April 2018 and September 2018. In addition, the February 2019 Poisons Standard was the first in which the commonwealth repealed the preceding Poisons Standard; the previous Poisons Standard had only three clauses: a citation clause; a clause providing that the Poisons Standard consisted of the SUSMP, as set out in schedule 1; and a commencement clause. We can perhaps explore that if the honourable member wants to in Committee of the Whole, but it appears from the information available to me that, despite there having been consultation on other elements of the Poisons Standard going back as far as 2017, there was no consultation on the matter that we are dealing with today.

There was also the question as to why the department did not consider retrospective legislation. That is a very good question, and the response is that there should have been consideration of a retrospective impact, but at that point the focus of the department was to ensure that an immediate change to the regulations was put in place to protect us going forward. It appears that no-one put their mind to that until it was drawn to their attention by law enforcement. I think that covers the main issues raised by Hon Martin Aldridge, and I will be happy to go into more detail on those when we go into Committee of the Whole.

I thank Hon Dr Brian Walker for his support of the legislation, and note his general philosophical contribution about why people turn to the kinds of drugs that are on the schedules subject to this legislation. That is noted, but it is nothing to do with the bill. I also thank Hon Dr Steve Thomas, who made the point that there is a risk when we rely upon regulations in this manner. We need to take that into account when we are thinking about these things. I have to say that the circumstances of the legislation in front of us are unusual. Members know that I have been in this place for a long time and I do not remember anything having been fixed halfway going forward, but not fixed looking backwards. It is an unusual set of circumstances; it is unusual for the commonwealth jurisdiction to not consult when it is making a change that it is obviously aware will have consequences for at least our state, if for no others. I thank members for their contributions and for taking the time to prepare themselves for this debate so quickly under the circumstances, and I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon MARTIN ALDRIDGE: I might start with the case that has brought this to the government's attention and work from there. As I understand it, this bill has a long history. It starts from a point sometime in August, when the Office of the Director of Public Prosecutions had a conversation, or some communication, with the Attorney General or the Office of the Attorney General, who said, "I think we have got a problem. There is an appeal in the Supreme Court claiming that this anomaly exists, and they are using it as a defence to a conviction." We will get to the issue of the court case, which may have some problems, in a moment. However, can anything more specific be provided in terms of whether it was the Director of Public Prosecutions that spoke directly with the Attorney General or their officers? Additionally, I guess if there is the date in August when that happened, that would be useful.

Hon SUE ELLERY: I am advised that the Acting DPP spoke to the Attorney General's office. The Attorney General wrote to the Minister for Police and copied the Minister for Health into that letter. In the event that the member was going to ask for that letter—it contains details of the appeal. We are not in a position to table it, because we do not want to do anything to prejudice a matter that is on foot. I am not in the position that I can table the letter, but I can tell the member that that is the sequence of events.

Hon MARTIN ALDRIDGE: I am not exactly sure how we would prejudice the matter. I assume that an appeal in the Supreme Court is before a judge, not a jury. I am not sure how disclosing to Parliament under the protection of parliamentary privilege would prejudice a matter in the Supreme Court. In fact, it would protect that information from being provided to the Supreme Court in those circumstances. I might just make that as a comment.

Did the minister mention the date in August when that occurred?

Hon SUE ELLERY: I am told the letter was sent from the Attorney General on 15 August.

Hon MARTIN ALDRIDGE: With respect to this case, as we understand it at the moment, there is one appeal that is live. That is what has brought this to a head. Is there some information that the minister can provide on the appeal that would not necessarily disclose—I mean, is the entire case, the initial case where the conviction occurred and now the appeal to whatever stage it is at, some sort of secret, behind-closed-doors court proceeding that none of us are allowed to know about or is there some information that can be provided, even if it as simple as knowing who the defendant is?

Hon SUE ELLERY: It is not normal practice for the house to talk about the details of a matter on foot. That is not our normal practice. What I can tell the member is that the basis of the appeal is that methylamphetamine was not a prohibited drug at the time. The appeal is not expected to be finalised before next year. It is not possible then for us to kind of predict in advance a time frame for the decision to be handed down. I think that we can take from that that what is being relied upon is that methylamphetamine was not a prohibited drug at the time, because of the issue that we pointed out about it being in one schedule or the other.

Hon MARTIN ALDRIDGE: I take the minister's point that it is not normal for us to probe into individual cases, but this is not a normal bill. We are dealing with a bill arising from a case. I am not sure that there is any issue of sub judice here, unless I am incorrect in the belief that a matter of appeal before the Supreme Court would be before a judge. The likelihood of the Council considering this matter and influencing the decision of a judge would not hold against our standing orders. It is challenging for us, in terms of this being the motivation for the need for urgent reform. Clearly, the government and the court have information, but in terms of understanding the circumstances of the case that we are legislating to effectively prevent a successful appeal of, we do not. That is the motivation for this bill progressing in the way that it has. I know that the Leader of the House provided an apology in her second reading reply. It certainly was the opposition's belief from the written information that we were provided post-briefing that this matter could be addressed during consideration in detail. Obviously, under the circumstances that the Leader of the House has outlined, it cannot.

In terms of the need to legislate quickly on this matter, is the appeal something that is likely to be resolved in the short term? Is it something that needs to be legislated today because there is a hearing tomorrow? I know that when we were dealing with a similar matter, not necessarily a directly comparable one—the Mineralogy bill—the government was nothing but open about the circumstances of that legal action that it was seeking to intervene with through legislation. Certainly, there was an importance of the timing of that as well. Is there anything that the minister can provide, noting what she has said already, with respect to the stage of appeal?

Hon SUE ELLERY: Other than what I have said already, not really. The appeal itself is not expected to be finalised before next year. It is then not possible for us to anticipate the time frame for the decision to be handed down. I am at a slight disadvantage. I did not know that the government's position had changed on what information we could provide the member until I was handed a note in response to his question in his second reading debate contribution. I found out when he found out.

The other thing is that I do not have someone from the Office of the Attorney General here at the table. It might be something I follow up on in question time to see if I can test the reasons. I do not really know what the reasons are. It is not easy for me to do that here, with the greatest respect to him, with the member sitting two feet away from me. I might use question time to see if I can find out more information about that. Maybe we can move on in the meantime.

Hon MARTIN ALDRIDGE: I thank the minister for the approach she is taking to this, because it certainly would help if we can understand it more. Perhaps we cannot. Obviously, we may have a different view around the ability for the Legislative Council to prejudice a decision against an appeal court. I guess if there is something that could be answered, which is around this case, the original conviction, and now the appeal, it would be: is any public information accessible?

I find it difficult to accept that in every respect the action that has occurred in terms of the charge, the conviction and now the appeal is private. I understand the appeal is still on foot, but the conviction has occurred. If, during question time, I went down and knocked on the Supreme Court doors and said, "I'm interested in a case. I can't even name it at this point, but I am interested in a case; what can you give me?", will the answer be nothing, because it is effectively sealed, secret, private—not accessible to the public? If that is the case, that will help my understanding of the issue.

Hon NICK GOIRAN: Further to this line of questioning, I am glad that the Leader of the House will take this away, consider this matter or seek some further advice on it, because, as I understand the bill before the house, its very purpose is to prejudice this appeal. We are passing this bill, in part, to extinguish at the very least that element of the appeal that is arguing that methamphetamine was not a prohibited drug at the time. We, in the chamber, are saying on a bipartisan basis that, in actual fact, everybody knew full well in 2019 that methamphetamine was a prohibited drug and it was contained in the relevant standard. People might have a view on whether the definition said that it was set out in the current Poisons Standard. Perhaps let us start with that. Is methamphetamine currently set out in the Poisons Standard?

Hon SUE ELLERY: Yes, it is; we are going to find out where that sits for you.

It is listed in schedule 9 of the Poisons Standard.

Hon NICK GOIRAN: That is current, as at today. Was it also in schedule 9 of the Poisons Standard in 2019 or, more particularly, in what is referred to in the bill as the validation period?

Hon SUE ELLERY: Yes, it was.

Hon NICK GOIRAN: To what extent does it matter what the definition of a standard for the uniform scheduling of medicines and poisons, what is being referred to as the SUSMP, matter with regard to knowing that methamphetamine was a prohibited drug at the moment and also during the validation period?

Hon SUE ELLERY: I will step the member through this. The Misuse of Drugs Act uses a definition for prohibited drug that includes the term "drug of addiction". "Drug of addiction" is defined broadly as a schedule 8 or 9 poison as defined in the Medicines and Poisons Act 2014. The Medicines and Poisons Act 2014 broadly provides that a schedule 8 or 9 poison means a substance classified as such by the Medicines and Poisons Regulations 2016. Those regulations in turn provide that a schedule 8 poison is a substance listed in the SUSMP schedule 8, and it is similar for schedule 9. The Medicines and Poisons Regulations define the SUSMP. The member can see that we are going to a series of different definitions. The document set out in schedule 1 of the current Poisons Standard was correct prior to 1 February 2019 but incorrect from 1 February 2019, when the SUSMP was moved to schedule 2. That is when we got ourselves in a pickle. From 20 November 2019, the Medicines and Poisons Regulations defined the SUSMP to be —

> means the Standard for the Uniform Scheduling of Medicines and Poisons set out in the current Poisons Standard;

Did the member follow that?

Hon NICK GOIRAN: I understand the sequence of events and thank the Leader of the House for it. It would be useful to have that set out.

Hon Sue Ellery: If someone wants to copy this, we could give you this.

Hon NICK GOIRAN: That would be particularly handy.

Hon SUE ELLERY: If it is helpful, I might identify the two documents. One of them is titled "How is the MDA affected?" The other is a table which is headed, "Misdirected definition of the SUSMP". I am checking whether I can table that; yes.

[See paper 1914.]

Hon NICK GOIRAN: Thank you, Leader of the House. We will look at those documents momentarily and I think that will be helpful to set out those matters. In the meantime, going back to the original point, the very purpose of this bill before the house is, in my view, to prejudice that Supreme Court appeal. I do not see any difficulty in actually being clear about what we are doing. We want to affect this Supreme Court appeal. Why do we want to do that? I understand from the second reading speech that the matter was drawn to the attention of the government, particularly the Attorney General, or if not from the second reading speech at least with respect to the Leader of the House's reply and her interactions with Hon Martin Aldridge. That led to a letter from the Attorney General to the Minister for Police and the Minister for Health on 15 August 2022. According to the second reading speech, there has been some consultation with the WA Police Force, the office of the Attorney General, the Office of the Director of Public Prosecutions and the Department of Justice. It says in the second reading speech, "all of which are in support of this validating legislation." Did any of those four agencies raise any concerns?

Hon SUE ELLERY: I am advised that no concerns were raised on the draft of the bill.

Hon NICK GOIRAN: Is that a way of saying that concerns were raised with respect to the policy of the bill?

Hon SUE ELLERY: No, it is not. It is the honourable member's deeply suspicious and worryingly perverse mind! No.

Hon NICK GOIRAN: Very good. Apart from those four agencies, were others also consulted with respect to this validation bill?

Hon SUE ELLERY: There were seven in total: the Attorney General, the Office of the Director of Public Prosecutions, the Department of Justice, the WA Police Force, the Department of Health, the State Solicitor's Office and the Solicitor-General.

Hon NICK GOIRAN: Seven agencies were consulted on this matter and four of them are specifically mentioned in the bill. Someone decided to mention those four but not the other three. The minister said in her second reading speech that all four of them were in support of the validating legislation and the minister has confirmed that none of those four expressed any concerns in any way. What about the other three?

Hon SUE ELLERY: I am not sure why they were not referenced in what I have said already, but no concerns were raised by any of them.

Hon NICK GOIRAN: Good. I note in particular that the Solicitor-General has been consulted and that the minister is on record reflecting that the Solicitor-General has not expressed concerns with this validating legislation. I was away on urgent parliamentary business at the time, but I understand that in the minister's second reading reply, she set out a couple of recent examples of validation bills. The minister indicated that they were just a couple of examples and that there were others.

Hon Sue Ellery: The two that the honourable member raised in his contribution, as I recall, were the Clive Palmer matter and —

Hon NICK GOIRAN: Was it not the environmental —

Hon Sue Ellery: That was the bill that I named. As I recall, Hon Wilson Tucker referenced two different bills. One was the Clive Palmer bill and the second was—it is in my second reading notes. No, it is one bill, sorry. In my notes I saw it as two, but the correct title is the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill. It is one.

Hon NICK GOIRAN: That was an example of a validation bill raised by the honourable member. As I said, I apologise, but I was away on urgent parliamentary business and the minister, in reply, indicated —

Hon SUE ELLERY: I named two. They were the Waste Avoidance and Resource Recovery Act 2007 and the Environmental Protection (Amendment) Validation Act 2014. I then said there were two others because I was looking with my pathetic 60-year-old eyes and I have not had time to get my glasses adjusted, honourable member, so I saw what was really one bill, which was the Mineralogy bill, and referred to it as two bills.

Hon NICK GOIRAN: I appreciate the clarification. Is it correct to say that on our statute book we have three validation acts and that this will be the fourth?

Hon SUE ELLERY: We do not have a full list. No-one has researched whether there is a full list. I am advised that the Railway (METRONET) Amendment Bill 2022 is the most recent bill to have a commencement date on the day on which it receives royal assent. That was the question that the notes were addressing when going to the issue of the validation matters.

Hon Nick Goiran: About the day of royal assent?

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: Putting that to one side, do we know how many validation bills have passed?

Hon Sue Ellery: No, we do not. At this point, I will not ask them to do a search, but I have given examples.

Hon NICK GOIRAN: That is fine. We do not have a precise number. I assume that we could be in agreement that they are not particularly common.

Hon Sue Ellery: That's correct.

Hon NICK GOIRAN: It is interesting that the minister mentioned, I think, the Mineralogy bill.

Hon Sue Ellery: The Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill.

Hon NICK GOIRAN: I thank the minister. Again, I think it would be fair to say that the Parliament, and certainly the government, was being very clear about what type of court action it was expressly trying to prejudice. There was no doubt about it. It was very clear. It led to some other consequences that we will not spend time talking about today, but that was done in a transparent fashion. Again, it goes to my earlier point—I acknowledge that the minister will try to get some further information in the next half an hour or so—that I do not see why we cannot be clear about this, because whoever the appellant is, they should be under no illusion. They believe they have found a loophole and I believe that everyone in Parliament—there has not been any dissent that I am aware of—is saying that regardless of whether there is a loophole, we are shutting the door on it.

Hon SUE ELLERY: I came in here with a note telling me that we could provide further information —

Hon Nick Goiran: That you could?

Hon SUE ELLERY: Yes. But when I was giving the second reading reply, I got a Sticky Note saying that we could not. I have not had the opportunity to be briefed on that or to test the reasons why, but I will take the time to do that.

Hon WILSON TUCKER: For the record, I support the bill. I understand that it will fix a technicality that should not exist. The points I raised were around the breakdown of the process that we have seen. I asked some questions about what assurances we can be given to ensure that this will not happen again. I will get to that.

The other points I raised were about the danger of retrospectivity. The example that I gave of a sport game was not about exonerating criminals for drug offences; it was a more theoretical or high-level example. Once we use these retrospective powers in other situations, there could be examples when the government changes the rules of play in less morally acceptable circumstances. That was my point. I acknowledge the minister's comments that this is to be used only in exceptional circumstances.

The minister is right that I did not flesh out the comments around natural justice. My point was that it goes to the issue of retrospectivity in general whereby the government is changing the laws and information available to people in a court case, which will move the goalposts for the process of a fair trial.

I have a question about ensuring that this will not happen again. What actions will be taken to ensure that we have correctly diagnosed the problem? The minister mentioned that there was a good working relationship between the state and federal agencies. Can the minister talk a little bit about what happened? Let us start with that. Why did this breakdown in the process occur?

Hon SUE ELLERY: I tried to address that in my second reading reply. The commonwealth made a change but did not notify the Western Australian jurisdiction of that change. It would appear from the circumstances that at this end there was not a mechanism in place to check in every three months and see what was happening. Maybe lessons have been learnt and people will be more proactive in the future. I am not sure about that. I am the representative minister, not the minister in charge. I am not trying to hide anything. The advice that I have been given is that the commonwealth made a change but did not advise the Department of Health and that when the Department of Health became aware of the change, it fixed it going forward but did not look back and consider whether any other legislation would have been impacted by the change during that time.

Hon WILSON TUCKER: Minister, thank you for the explanation. I am a firm believer that we need to understand the problem before we can fix it. It seems like the minister does understand the problem. She mentioned that there could be a provision that allows us to be proactive and to review acts that are dependent or rely upon federal acts. Is the minister able to take that to the appropriate minister? Can we take any other action to ensure that this does not happen again in the future?

Hon SUE ELLERY: As a representative minister, all I can do is raise that issue with the minister. I have no advice available to me at the table to tell me that any systematic change has been put in place.

Hon WILSON TUCKER: That is it for my line of questioning. I appreciate that the minister will take that away. That was the main point I wanted to raise.

Hon MARTIN ALDRIDGE: We have talked about this table of potentially impacted provisions that was provided to the opposition after the briefing. It goes over 12 pages, and apart from having a cursory —

Hon Nick Goiran interjected.

Hon MARTIN ALDRIDGE: The honourable member has a larger edition than I have.

Hon Nick Goiran: This was the version that was given to the opposition after the briefing.

Hon MARTIN ALDRIDGE: Mine is 12 pages long, so perhaps I have lost something along the way.

Hon Sue Ellery: Mine is 13 pages long.

Hon MARTIN ALDRIDGE: Perhaps the first step will be to get the 13-page document tabled. I think that during the minister's second reading reply, she confirmed that this is not an exhaustive list, but an assessment of potentially impacted legislative provisions. I have not interrogated the document any more than to scan it ever so briefly, but it seems to list a range of legislative provisions, both in primary legislation and in regulation, that are impacted or potentially impacted. In the Medicines and Poisons Act 2014, a number of offences relate to manufacture, supply, prescribing and the like of schedule poisons. I am not talking about specific provisions, but is the Medicines and Poisons Act effectively the act that limits when and how a medical practitioner, for instance, can prescribe a medicine to a person?

Hon SUE ELLERY: Broadly speaking, yes; that is what it does.

Hon MARTIN ALDRIDGE: Thank you for that confirmation.

If these provisions were potentially disrupted or ineffective during the 292-day period in 2019, what is the concern? I know that we do not want to leave this to the courts to decide, but what is the concern? Is it that a medical practitioner had no right to prescribe a drug or could they have prescribed whatever they liked without restriction or regulation?

Hon SUE ELLERY: There is a broad range of implications, honourable member. In addition to those matters related to convictions and drug traffickers, there are possible implications for licensing decisions, employee disciplinary offences and associated disciplinary actions, activities undertaken pursuant to statutory authorisation—that goes to the issue that the member raised earlier when he asked about who was authorised to do what—and statutory obligations, insofar as the legislative provisions that established those rights and obligations and powers and liabilities were dependent on the correct definition of the Standard for the Uniform Scheduling of Medicines and Poisons in the Medicines and Poisons Regulations 2016 during that affected period.

Hon MARTIN ALDRIDGE: If the minister answered my question, it is not necessarily clear to me. I think that something was said at my briefing to the effect that nothing was scheduled. If the effect of this anomaly was that no medicine or poison was scheduled, I assume it follows that there was no prohibition on a medical practitioner prescribing any substance.

Hon SUE ELLERY: That is correct, honourable member.

Hon MARTIN ALDRIDGE: Which agency has carriage of the Medicines and Poisons Act 2014?

Hon SUE ELLERY: It is the Department of Health.

Hon MARTIN ALDRIDGE: This is probably the most important question that I want to ask today: if the Department of Health has responsibility for the act and the regulations, and I assume an officer of the Department of Health in June 2019 became aware of this anomaly that in effect resulted in no prohibition or restriction on a medical practitioner from prescribing whatever they liked—this is just one example from the 13 pages that we have been given—how on earth did that person or that department not contemplate that some sort of action would be required other than a correction of the regulation?

Hon SUE ELLERY: Quite right, honourable member; that is the question, and I am unable to provide an answer. At some level, a decision was made to fix the problem. It would appear to me, on the basis of how I have been briefed, that nobody contemplated the need to look back. That might seem extraordinary to diligent legislators like the member and me, but it would appear, on the basis of the information provided to me, that that is what happened.

Hon MARTIN ALDRIDGE: I accept the complexity of this issue. As I demonstrated in my contribution to the second reading debate, it is almost like one has to read five references across state and commonwealth legislation to get to the answer one seeks.

Hon Sue Ellery: It is not "almost like"; it is.

Hon MARTIN ALDRIDGE: I also appreciate that it is probably unreasonable to expect an agency such as the department, as big as it is, to have a 24/7 watching brief on all these things. Things like this will occur from time to

time, as unfortunate as that is. Some other things were obviously happening in 2019. What I cannot accept is that, once aware of the situation and fixing it, the officer or officers did not contemplate the impact of the situation at that time. I do not know whether those employees are still employees of the state, but one would question whether they should be. How did the issue that arose in June 2019 become known? Was it a departmental officer who stumbled across this during a late-night reading of commonwealth regulations? What led to that point in June when somebody turned their mind to this?

The DEPUTY CHAIR (Hon Dr Sally Talbot): Members, can I just remind you that your microphones are still on when you finish speaking.

Hon Martin Aldridge: I will repeat it in a moment.

The DEPUTY CHAIR: I have no doubt!

Hon SUE ELLERY: I am advised that the State Solicitor's Office drew it to the attention of the legal and legislative services branch of the Department of Health in June 2019, and the legal and legislative services branch actioned it on 2 July 2019.

Hon Martin Aldridge: Sorry, actioned what?

Hon SUE ELLERY: I am advised that the State Solicitor's Office told Health in June, and that Health actioned it on 2 July 2019.

Hon MARTIN ALDRIDGE: This makes it even worse. The State Solicitor's Office, which should know better, has said, "We've got a problem. You'd better fix your regulation, but don't worry about the implications of the 292 days", during which, by my example, medical practitioners could prescribe whatever drug they liked without any hindrance or regulation. In June, this issue was drawn to the attention of the State Solicitor's Office, and the State Solicitor's Office drew it to the attention of the legal and legislative services branch of the Department of Health. Is there any understanding of how the State Solicitor's Office became aware of this issue?

Hon SUE ELLERY: I am advised that the State Solicitor's Office was working on another piece of legislation and somehow discovered this anomaly. I do not know that I can take it much further. I am advised that the State Solicitor's Office probably thought that Health would look at retrospectivity as well, but that is not a matter of fact, so I am not sure I can take that much further.

Hon MARTIN ALDRIDGE: I understand the constraints; obviously, this was a couple of years ago as well. In 2019, the State Solicitor's Office was probably quite preoccupied with reading a number of privileged documents of the Legislative Council, so maybe its resources were limited at the time.

The minister said that the matter was actioned on 2 July 2019. Given that the change did not happen until 20 November, as I understand it, what was actioned on 2 July?

Hon SUE ELLERY: It was the commencement of the preparation of drafting instructions for how to change the Western Australian component of this exercise.

Hon MARTIN ALDRIDGE: It was the preparation of drafting instructions. The body of work that was completed on 20 November commenced on 2 July. When was the then Minister for Health briefed on this matter?

Hon SUE ELLERY: I am not in a position to tell the member that. I do not have anyone at the table who was working in his office, so I cannot tell the member that.

Hon MARTIN ALDRIDGE: In the time line that I have been able to establish, my concern is probably not so much about the time taken to get this bill, because, in a legislative sense, August until now is pretty tight. My greater concern is that the Department of Health became aware of this issue in June, yet the issue continued until 20 November. I read in my second reading reply—sorry, not my second reading reply; I am not a minister yet! The effective change was a matter of just a few words. We are changing the definition of "Standard for the Uniform Scheduling of Medicines and Poisons", or SUSMP, from "the standard … set out in schedule 1 of the current Poisons Standard" to "the standard for the uniform scheduling of medicines and poisons set out in the current Poisons Standard".

I understand that the Department of Health was probably not as cognisant as it should have been of the impact of this anomaly until now, or at least until August, but why did it take from June to November to draft and gazette such a simple amendment?

Hon SUE ELLERY: The normal process is that the department requests approval to draft, the minister provides approval for that, instructions go to parliamentary counsel, drafting commences, and then there is often a to and fro about the drafting. I am advised that it was not just this matter that was being considered in that amendment. Although this might have been the simplest and easiest part of it in terms of the actual number of words, another matter was to have been included in the amendment as well. That is the normal sort of timetable to deal with something like that, because it goes to the Parliamentary Counsel's Office, there is the instruction, there is some to and fro—"We don't understand this", "Here's the explanation", "We don't understand this bit", "Here's the explanation"—and then it goes back up the ministerial chain to get approval to print. There are all those elements.

Hon MARTIN ALDRIDGE: This might seem like a silly question, but do regulations require cabinet approval before they are gazetted or is there ministerial discretion to instruct the Governor to gazette?

Hon SUE ELLERY: They do not require cabinet approval, but they do require ministerial sign-off.

Hon MARTIN ALDRIDGE: I looked at the regulations and saw that other issues were clearly contemplated in what was gazetted. What probably did not make this move more swiftly was the lack of a red light flashing in the Department of Health that said, "We have a problem, and the problem is not just fixing it but also contemplating the effect on the laws of Western Australia more generally across this 292-day period." I would have thought that if that had been more fully known at the time, things probably would have or could have moved a bit more quickly between June and November, which is actually a longer period than the February to June period, when this issue was identified.

There are probably going to be limitations on some of the other provisions in here. This table is across government. I was contemplating asking the minister a question about the Emergency Management Act; I think that would be futile.

Hon Sue Ellery: You could give it your best shot, honourable member. I give you a tip what the answer would be!

Hon MARTIN ALDRIDGE: The Minister for Emergency Services is here; the minister could always swap out and we could examine the Minister for Emergency Services on the provisions of his portfolio that are affected. We know that this bill was subject to a cabinet process that resulted in a decision to print on the 21st of this month. Driving this is the offence, but probably my bigger concern is what is in this table. I have only really used the one case, which is medical practitioners prescribing medicines. As the Leader of the House says, there is a range of things. There are a lot of regulations that deal with conduct—conduct of police, conduct of prison officers and conduct of firefighters—and probably a range of other scenarios could be examined at great length. However, obviously, we are not going to do that in one hour and 39 minutes. It is an across-government issue, really. Apart from the offence, we know that no other offences are affected at this point in terms of a live matter before the court or an appeal that is resting on whether we have a schedule of poisons and medicines. My broader concern is with licensing and other regulatory mechanisms. Are there any examples of live issues that are known to the officials at the table, other than this misuse of drug appeal?

Hon SUE ELLERY: No; none is known to the people at the table.

Hon NICK GOIRAN: What is happening here is to clarify what the definition was from 1 February 2019. We are saying that the definition contained in this bill is to be taken at all material times to be the definition, including during the validation period. What is the definition of the SUSMP prior to the validation period—so, prior to 1 February 2019?

Hon Sue Ellery: Can I just be really clear on the period for which the member is asking for the definition?

Hon NICK GOIRAN: Prior to 1 February 2019, so prior to the validation period.

Hon SUE ELLERY: Thank you. I am reading from "Definitions" in the Medicines and Poisons Regulations 2016 as at 1 December 2018 —

> ***Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP)*** means the document set out in Schedule 1 of the current Poisons Standard;

The member will recall the single sheet of paper that I tabled that had the text in it, and I went through those steps.

Hon NICK GOIRAN: Yes. Will this bill change that definition?

Hon SUE ELLERY: For the affected period —

Hon NICK GOIRAN: Is the affected period different from the validation period?

Hon SUE ELLERY: It is the same thing. For the validation period, SUSMP means the Standard for the Uniform Scheduling of Medicines and Poisons set out in the current Poisons Standard.

Hon NICK GOIRAN: I am very clear on that. The minister indicated what the definition was prior to 1 February 2019—that is, prior to the validation period—but will this bill affect that definition prior to 1 February 2019?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: From 1 February 2019, once this bill passes, we will have what I am going to describe as the new definition. When I say "new", it needs to be recognised that it is the current definition as at today. Why do we not make that new or current definition the definition for all time?

Hon SUE ELLERY: I am advised there is no need to because prior to February 2019, the definition was correct.

Hon NICK GOIRAN: That is because the document was set out in schedule 1 of the Poisons Standard.

Hon Sue Ellery: Correct, honourable member.

Hon NICK GOIRAN: The genesis, of course, of this matter is the decision by the commonwealth to shift it to schedule 2. I asked during the briefing if we could find out from the federal government why it keeps changing it because, as I understand it, it did not just change it once, which caused this problem, but it then went backwards and forwards. The good thing is that the definition here puts that beyond doubt. We do not care which schedule it puts it in, as long as it is in the Poisons Standard, but have we had any clarity about why it keeps changing it?

Hon SUE ELLERY: The short answer to that is no. The commonwealth has not provided any explanation of why it changed then and why it has made other changes.

Hon NICK GOIRAN: At any other time after 1 February 2019, was the document set out in schedule 1?

Hon SUE ELLERY: Yes. The Poisons Standard July 2020 was moved to schedule 1.

Hon NICK GOIRAN: Where is it now?

Hon SUE ELLERY: It is there in schedule 1. What a strange world we live in.

Hon NICK GOIRAN: Indeed. With the indulgence of Hon Martin Aldridge, if I might take the last couple of minutes before Committee of the Whole is interrupted for the taking of questions without notice, when did the Medicines and Poisons Amendment Regulations (No. 2) 2019, which were obviously approved by the then Minister for Health, Hon Roger Cook, commence?

Hon SUE ELLERY: They commenced on 20 November 2019.

Hon NICK GOIRAN: I do not normally ask the same question a second time. I have been known to ask it in different ways and so forth but can I, in this instance, ask whether we are absolutely sure that they started on 20 November? We can imagine what a circus it would be if they started on the nineteenth or the twenty-first. Are we very, very clear it has been checked and triple-checked that it was the twentieth and, therefore, the validation period we are putting in this bill does not need to be extended by even one day?

Hon SUE ELLERY: I am advised yes. I am saying yes twice. People at the table are breaking out in a sweat.

Committee interrupted, pursuant to standing orders.

[Continued on page 6124.]

QUESTIONS WITHOUT NOTICE

VOLUNTARY TARGETED SEPARATION SCHEME

1292. Hon Dr STEVE THOMAS to the Leader of the House representing the Premier:

I refer to the state government's voluntary targeted separation scheme announced in the 2017 state budget and promoted in the media as providing for 3 000 voluntary redundancies and saving the state $1 billion. For each of the financial years 2017–18; 2018–19; 2019–20; 2020–21; and 2021–22 —

(1) how many public servants took voluntary redundancy under the VTSS;

(2) what have been the audited and identifiable savings to the state delivered by the McGowan government's targeted voluntary separation scheme implemented on 1 July 2017;

(3) what has been the associated financial cost to the state of implementing the scheme;

(4) how many WA state public servants, full-time, part-time and casual, were employed by the state; and

(5) what was the wages bill for WA public servants?

Hon STEPHEN DAWSON replied:

That is a very long question, so it is quite a long answer, but I will make it as easy as possible. I thank the Leader of the Opposition for some notice of the question. I provide this answer on behalf of the Leader of the House.

(1) I seek leave to have this information incorporated into *Hansard*.

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

	Number of separations
2017–18	2,311
2018–19	245
2019–20	89
2020–21	251
2021–22	82

(2) Gross savings identified by agencies total $701.5 million to 30 June 2022, with a further $182 million estimated for 2022–23, the first full year after the end of the scheme. I seek leave to have the savings to date by year incorporated into *Hansard*.

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

	Gross savings ($m)
2017–18	59.9
2018–19	137.8
2019–20	161.9
2020–21	164.7
2021–22	177.2

(3) Agencies have reported total costs of $356 million to 30 June 2022. I seek leave to have the costs, by year, incorporated into *Hansard*.

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

	Costs ($m)
2017–18	279.6
2018–19	33.1
2019–20	8.1
2020–21	25.3
2021–22	9.9

(4)–(5) This information is provided in multiple publicly available reports. However, for the honourable member's convenience, I seek leave to have this information incorporated into *Hansard*.

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

	Public sector FTE	Public sector wages ($m)
2017–18	110,155	12,193
2018–19	110,972	12,269
2019–20	114,734	12,887
2020–21	119,273	13,469
2021–22	124,160	14,279

WATER CORPORATION — WATER PIPES — BEAUFORT ST, INGLEWOOD

1293. Hon Dr STEVE THOMAS to the minister representing the Minister for Water:

I thank the Minister for Emergency Services; the previous answer was very generous.

I refer to the Water Corporation's upgrade of pipes along Beaufort Street, Inglewood, between Central Avenue and Dundas Road that commenced on 21 August 2022 and, according to the information given to businesses in the area, was due to finish within six weeks.

(1) What was the budget for this part of the pipe renewal project?

(2) Did the contract specify a time frame for this part of the project; and, if so, what was that time frame?

(3) What were the key performance indicators in the tender contract in relation to the start date and the finish date, and have these been met?

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

(5) If no to (3), what penalties does the contract impose?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(5) The answer is not available in time for today; however, it will be provided prior to 1 December 2022. I am obviously going to have difficulty delivering on that, but perhaps I can commit to providing it by 1 December 2022.

EDUCATION — REGIONAL INCENTIVE FRAMEWORK

1294. Hon COLIN de GRUSSA to the Minister for Education and Training:

I refer to the regional incentive framework.

(1) Will the minister please table the assessment methodology through which schools were ranked against the criteria outlined in response to questions without notice 1182 and 1279?

(2) Will the minister please table the briefing note between the department and the minister setting out the criteria and methodology for the framework?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. I provide this answer on behalf of the Minister for Education and Training.

(1)–(2) I refer the honourable member to responses provided to Legislative Council questions without notice 1182 and 1279.

CHILD PROTECTION — OUT-OF-HOME CARE

1295. Hon NICK GOIRAN to the Leader of the House representing the Minister for Child Protection:

I refer to the department's annual report, which states that 5 093 children were supported in out-of-home care in the last financial year.

(1) How many children are currently in the care of the state?

(2) How many of those children have not had their care plans updated for more than three years?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer is provided on behalf of the Leader of the House representing the Minister for Child Protection.

(1) As at 31 October 2022, there were 5 099 children and young people in the care of the CEO. The Department of Communities provides monthly reporting on this figure; further reporting requires significant resourcing.

(2) There are 16.

HEALTH — CHILD HEALTH NURSES — FUNDING

1296. Hon DONNA FARAGHER to the Leader of the House representing the Minister for Health:

I refer to the answers provided to question without notice 897 asked on 12 October 2022, and question without notice 1269 asked yesterday relating to existing funding agreements between WA Health and non-government organisations to provide child health nurse services.

(1) Given the minister's advice yesterday that the service agreement with the Salvation Army will not be renewed, will the minister confirm whether service agreements will be renewed or extended with the eight remaining organisations referred to in the answer to question without notice 897?

(2) If any of the eight service agreements referred to in (1) are intended to be renewed or extended, will the minister list the organisations and advise when the new contracts will expire?

(3) If any of the eight service agreements referred to in (1) are not intended to be renewed or extended, will the minister list those organisations that will be impacted and explain why their agreements with WA Health will not continue?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer is provided on behalf of the Leader of the House who represents the Minister for Health.

(1)–(3) The current service agreements expire on 31 December 2023. These service agreements will be reviewed in partnership with service providers commencing January 2023. New service agreements may include extensions to existing service agreements and will commence on 1 January 2024, with a minimum five-year initial term established as per the WA delivering community services in partnership policy.

POLICE ACADEMY — LINE MANAGEMENT

1297. Hon PETER COLLIER to the minister representing the Minister for Police:

(1) Have there been any changes in the staff who have line management responsibility at the Western Australia Police Academy in 2022?

(2) If yes, what are these changes?

Hon STEPHEN DAWSON replied:

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

The Western Australia Police Force advises —

(1) No.

(2) Not applicable.

JUSTICE — "FOLDING UP" RESTRAINT METHODOLOGY — REVIEW

1298. Hon Dr BRAD PETTITT to the Leader of the House representing the Premier:

Two weeks ago, the Premier said that the "folding up" restraint would be reviewed.

(1) Is this review designed to find alternatives to "folding up", or is the government open to it being retained as a restraint on children?

(2) What deadline, if any, has the Premier given to the Department of Justice to complete its review of "folding up" by?

(3) Is the "folding up" technique still used by the Department of Justice?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer is provided on behalf of the Leader of the House representing the Premier.

(1)–(3) I refer the honourable member to the statement made by the Minister for Corrective Services in the Legislative Assembly on 16 November 2022 in which he stated that the Department of Justice has been asked to cease using this methodology.

BANKSIA HILL DETENTION CENTRE — PREMIER'S MEETING — PREMIER'S NOTES

1299. Hon WILSON TUCKER to the Leader of the House representing the Premier:

It has been reported in the media that the Premier told the Commissioner for Children and Young People, Jacqueline McGowan-Jones, that he had taken 21 pages of notes from his meeting with youth corrective services stakeholders during the Banksia Hill summit last week. Will the Premier please table those notes?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. I answer on behalf of the Leader of the House. The following answer is provided on behalf of the Premier. The answer is no.

CROWN PERTH — INDEPENDENT MONITOR

1300. Hon SOPHIA MOERMOND to the minister representing the Minister for Racing and Gaming:

Former WA assistant police commissioner Paul Steel was appointed independent monitor to oversee and report on the remediation plan of Crown Perth in late October this year. Mr Steel how now commenced in that role.

(a) What is the total remuneration for Mr Steel in his role as independent monitor?

(b) What is the overall annual budget for the independent monitor's office?

(c) How often will the independent monitor report to the minister, and in turn Parliament, on the progress of the remediation plan for Crown casino?

(d) What is the process for the government to recoup the costs of the independent monitor, his staff and resources from Crown casino annually?

Hon STEPHEN DAWSON replied:

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

(a) The independent monitor's total remuneration package is $450 000 per annum, including an annual salary of $371 069. This package was reported in *The West Australian* on 12 October.

(b) All costs of the office of the independent monitor will be recouped from Crown casino.

(c) The reporting requirements of the independent monitor are outlined in section 21P of the Casino Control Act 1984.

(d) Crown casino will be invoiced on a periodic basis to recoup the costs of the independent monitor.

CANNABIS — POLICE SEIZURES

1301. Hon Dr BRIAN WALKER to the minister representing the Minister for Police:

I refer the minister to various recent cannabis arrests, including that of a man in Camillo, Armadale, in my electorate, in late October of this year.

(1) What is the total weight and/or number of cannabis plants seized by the Western Australia Police Force to date in this calendar year?

(2) How does that amount compare to that seized over each of the last five years?

(3) What street value does WA Police place on this year's seized material?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following information has been provided to me by the Minister for Police. The Western Australia Police Force advise as follows.

(1) A total of 7 464 cannabis plants were seized.

(2) The number of cannabis plants recorded as seized or found by the WA Police Force between 1 January and 29 November inclusive for the years between 2017 and 2021 was: 14 136 in 2017; 24 704 in 2018; 17 278 in 2019; 34 460 in 2020; and 9 856 in 2021.

(3) The street value of seized cannabis plants is unable to be accurately determined.

The figures in the answers to questions (1) and (2) are provisional and subject to revision.

POST-TRAUMATIC STRESS DISORDER PRESUMPTION — FIRST RESPONDERS

1302. Hon MARTIN ALDRIDGE to the Minister for Emergency Services:

I refer to the minister's response to question without notice 1190 asked on 22 November regarding presumptive post-traumatic stress injury protections for fire and emergency services personnel, to which he stated, "I am not responsible for ambulance workers."

(1) How many firefighters have assisted with driving ambulances this year?

(2) Given that it has been almost one year since the government announced presumptive protection for ambulance workers, when will the minister provide comparable protection to volunteers and employees in the fire and emergency services organisations?

(3) Has the government advised the United Professional Firefighters Union that an expansion of presumptive protections must be bargained for as part of enterprise bargaining agreement negotiations?

(4) If yes to (3), was this the case for ambulance workers?

Hon STEPHEN DAWSON replied:

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

(1) A total of 77 firefighters assisted.

(2) The Department of Fire and Emergency Services' existing arrangements are effective and efficient in managing current PTSI claims. DFES continues to seek advice and assess the implementation of post-traumatic stress illness presumption in Western Australia. Volunteers are not part of the workers' compensation system.

(3) The state government engages with the United Professional Firefighters Union on a wide range of matters raised by its members. Enterprise bargaining creates another forum in which both unions and employers can discuss a wide variety of matters that are important to the workforce.

(4) Not applicable.

CHARLES STREET PLANNING STUDY

1303. Hon NEIL THOMSON to the Leader of the House representing the Minister for Planning:

I refer to the suspension of consultation on the Charles Street upgrade.

(1) Does the decision to suspend the consultation delay the important transport project in any way?

(2) If yes to (1), how many months' delay is anticipated?

(3) Does the minister still retain confidence in Main Roads to undertake such an important urban planning study and community consultation process?

(4) Why did the minister not involve the Western Australian Planning Commission earlier in the process of engaging the community?

(5) Has the minister sidelined the WAPC in the process of strategic land use planning and public consultation?

Hon SUE ELLERY replied:

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

(1)–(5) The Charles Street planning study was to inform a future project. That project was not anticipated to be delivered for at least 10 years. There is an existing planning control area over Charles Street, and that will remain.

In relation to the Western Australian Planning Commission, the member should know that Main Roads undertakes a planning study that then would inform changes to planning control areas or reservations. These planning tools are controlled by the WAPC.

PUBLIC HOUSING — WAITLIST

1304. Hon STEVE MARTIN to the Leader of the House representing the Minister for Housing:

I refer to the public housing waitlist.

(1) How many applications were on the public housing waitlist at the end of October 2022 and November 2022 to date, and how many individuals does that represent?

(2) How many applications were on the public housing priority waitlist at the end of October 2022 and November 2022 to date, and how many individuals does that represent?

Hon SUE ELLERY replied:

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

(1)–(2) As at 31 October 2022, there were 19 020 applications on the public housing waitlist, representing 33 759 people. This included 4 377 priority applications, representing 8 884 people.

Public housing waitlist reporting is undertaken monthly. As the current month has not ended, the November 2022 statistics are not yet available. This information will be available from 2 December 2022.

WESTERN POWER — PROPERTY, PLANT AND EQUIPMENT

1305. Hon Dr STEVE THOMAS to the parliamentary secretary representing the Minister for Energy:

I refer to Western Power's 2022 annual report, which on page 108 has total property, plant and equipment listed at a capital value of $11.977 billion as at 30 June 2022.

(1) How much of the $11.977 billion is represented by —

(a) poles;

(b) cables;

(c) substations; and

(d) transformers?

(2) Given that the estimated useful life of substations, transformers, poles and cables is 45 to 50 years, what proportion of each of these categories is over 50 years old?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The following answer has been provided to me by the Minister for Energy.

(1) (a)–(b) $8.9 billion;

(c) $1.6 billion; and

(d) $0.23 billion.

(2) Western Power publishes an annual "state of the infrastructure report" which provides, amongst other things, a snapshot of the age profile, condition and risk of key transmission and distribution assets.

I table the most recent edition of the state of the infrastructure report for the member.

[See paper 1915.]

MAIN ROADS — DECLARED PESTS

1306. Hon COLIN de GRUSSA to the Minister for Agriculture and Food:

I refer to questions without notice 1194 and 1241 to the Minister for Transport.

(1) In view of the Minister for Transport's response, has the Department of Primary Industries and Regional Development initiated any investigations into potential breaches by Main Roads Western Australia of the Biosecurity and Agricultural Management Act 2007 related to the control of declared pests within MRWA-controlled road reserves in the Esperance region?

(2) Can the minister confirm that the current review of the BAM act includes increased statutory and regulatory mechanisms of accountability for state government agencies specific to the control of declared pests and weeds on land under their control?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. I note that rabbits move around, so I am not quite sure why the member is so convinced that the rabbits are breeding on the roads and not on the farms adjoining them. It is an interesting idea.

(1) No investigations have been initiated at this time. It should be understood that breeding conditions for rabbits have been ideal through winter and spring, resulting in higher populations in Esperance, and also elsewhere. DPIRD has released biological control in population hotspots five times over recent months. DPIRD has

supported the Shire of Esperance and the Tjaltjraak Aboriginal rangers to also release biocontrol on lands under their management. Sampling has confirmed that the biological control agent is causing mortality in rabbits. Rabbits are not currently a priority pest of the Esperance Biosecurity Association but could be something it takes up if it has community and stakeholder support.

(2) As part of the statutory review of the BAM act, I have appointed an independent panel to conduct a review that will investigate and report on the operation and effectiveness of the act, the adequacy of penalties and any other matters of significance. Under the BAM act, all land managers, including the state government, have a duty to manage declared pests on their land. Specific provisions exist relating to the performance of public authorities in relation to declared pest control. The management of widespread and established pests across all land tenures is being considered as part of the review.

CASE LOAD MANAGEMENT REPORTS

1307. Hon NICK GOIRAN to the Leader of the House representing the Minister for Child Protection:

I refer to the "point in time" case load management reporting that is run on the first Friday of every month.

(1) On what date was the report run in November?

(2) On what date was the report finalised in November?

(3) Does the finalised report include an explanation for any "amendments" made from the raw data generated in the original report?

(4) Will the minister table the report?

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

Hon SUE ELLERY replied:

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

(1) The report was run on 4 November 2022.

(2) The report was finalised on 18 November 2022.

(3) Yes.

(4) Yes. I table the November case load management report.

[See paper 1916.]

(5) Not applicable.

COMMUNITY CHILD HEALTH NURSES

1308. Hon DONNA FARAGHER to the Leader of the House representing the Minister for Health:

I refer to community child health nurses and current opening hours for child health centres across WA.

(1) How many positions are currently vacant for community child health nurses, by FTE, in —

(a) the Child and Adolescent Health Service; and

(b) the WA Country Health Service?

(2) Is the minister aware of any reduced operating hours at child health centres, in both metropolitan and regional WA, due to staffing shortages?

(3) If yes to (2), will the minister list the centres that have had their operating hours reduced?

Hon SUE ELLERY replied:

(1) (a) Approximately 20 FTE.

(b) Approximately 20 FTE.

(2) No centres have had their operating hours permanently reduced. Some centres may temporarily amend their operating hours due to unexpected personal leave, short notice vacancies or a decrease in a visiting service frequency.

(3) There are temporary minor changes in operating hours at Tom Price, Paraburdoo, Onslow and Karratha.

POLICE — COMMISSIONED OFFICERS

1309. Hon PETER COLLIER to the minister representing the Minister for Police:

(1) What is the current allocated number of —

(i) assistant commissioners;

(ii) commanders; and

(iii) superintendents?

(2) How many vacancies currently exist for —

(i) assistant commissioner;

(ii) commander; and

(iii) superintendent?

(3) What is the current number of women who hold the position of —

(i) assistant commissioner;

(ii) commander; and

(iii) superintendent?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of this question. The following information has been provided to me by the Minister for Police. The Western Australia Police Force advises —

(1) (i) 10 FTE.

(ii) 17 FTE.

(iii) 46 FTE.

(2) (i) Three.

(ii) Four.

(iii) Three.

(3) (i) Two.

(ii) Two.

(iii) Six.

BANKSIA HILL DETENTION CENTRE AND UNIT 18, CASUARINA PRISON — SPECIAL OPERATIONS GROUP

1310. Hon Dr BRAD PETTITT to the parliamentary secretary representing the Minister for Corrective Services:

I refer to the special operations group—SOG.

(1) On how many occasions since 20 July 2022 to date have SOG been utilised at unit 18?

(2) On how many occasions this calendar year to date have SOG been utilised at Banksia Hill Detention Centre?

(3) How many SOG officers typically attend when utilised at either unit 18 or Banksia Hill Detention Centre, respectively?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The following answer has been provided to me by the Minister for Corrective Services.

(1) On 23 occasions.

(2) On 89 occasions.

(3) It is anywhere from three to 10 staff, depending upon the nature of the incident.

SCHOOLS CLEAN ENERGY TECHNOLOGY FUND

1311. Hon SOPHIA MOERMOND to the Minister for Education and Training:

I refer the minister to the McGowan government's $45 million schools clean energy technology fund.

(1) How many new schools have had new solar systems installed in 2022 because of the schools clean energy technology fund?

(2) How many schools have been able to extend their solar coverage from existing systems as result of the fund?

(3) What financial benefits does the minister estimate local schools have achieved through this initiative?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question about a very well received government commitment.

(1)–(2) As part of the McGowan government's $44.6 million school clean energy fund election commitment, 180 public schools have been selected to receive new solar systems or extensions to existing solar systems.

Installation of new solar systems at 84 schools selected in round 1 of the program will commence in December 2022 and be completed by mid-2023. The 96 schools selected in round 2 will have their solar systems installed during 2023.

(3) Installed solar systems will typically account for 25 to 30 per cent of a school's electricity use and will reduce energy costs commensurately.

LEACH HIGHWAY–WELSHPOOL ROAD INTERCHANGE PROJECT

1312. Hon Dr BRIAN WALKER to the Leader of the House representing the Minister for Transport:

I refer the minister to the Leach Highway–Welshpool Road interchange project commenced by Main Roads in early 2021 and scheduled for completion in early 2023 at an estimated cost of some $136 million.

(1) Is the project on track for completion in the coming months; and, if not, what revised completion date is envisaged?

(2) Is the project likely to come in on budget; and, if not, what revised figures are available?

Hon SUE ELLERY replied:

(1) Yes.

(2) The figures for the project are being reviewed in light of cost escalations across the entire construction industry.

EMERGENCY SERVICES — PRE-SEASON FIRE BRIEFING

1313. Hon MARTIN ALDRIDGE to the Minister for Emergency Services:

I refer to the release of the Australasian Fire and Emergency Service Authorities Council *Seasonal bushfire outlook* this week, which has forecast above normal fire potential for parts of WA and my requests for a pre-season fire briefing to the minister's office on 1 August, 1 September, 10 October, 2 November, 14 November and 28 November 2022.

(1) Will a pre-season fire briefing be available to the opposition; and, if so, on what date and at what time?

(2) Why has it taken no less than six requests and a question in Parliament in an attempt to secure this important briefing ahead of the fire season?

(3) When can my office expect a response to the requests made on 17 and 28 November for an opposition briefing into the cyclone Seroja recovery?

Hon STEPHEN DAWSON replied:

(1)–(2) The AFAC *Seasonal bushfire outlook* for summer 2022–23 was released yesterday, 29 November 2022. A briefing to all members of Parliament will be offered next week.

(3) I am advised that the request from your office was logged and is being processed through our correspondence system. I ask you to send your request to minister.dawson@dpc.wa.gov.au in future, please.

CHARLES STREET PLANNING STUDY

1314. Hon NEIL THOMSON to the Leader of the House representing the Minister for Transport:

I quote the Main Roads video which was used in the consultation process for Charles Street, which said —

> This area will become a lively activity hub, a destination no longer just a thoroughfare. A place for locals to stay and play with the important public transport role of Charles Street now and into the future. Less traffic at the surface will facilitate improved bus movement through the intersections close to city bound bus lane offers a more efficient and reliable public transport service for the corridor further.

(1) Now that the project is suspended, how will the minister deliver on the promise to deliver a lively activity hub with less traffic on the surface?

(2) When will the next design be put out for public consultation?

Hon SUE ELLERY replied:

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

(1)–(2) The feedback received to date will be assessed and inform long-term options for Charles Street.

ENERGY SAFETY — POWERLINE BAYS

1315. Hon STEVE MARTIN to the minister representing the Minister for Commerce:

I refer to the announcement made by the WA Director of Energy Safety on 16 November.

(1) What are the locations of the three powerline bays referred to in the announcement?

(2) On what date were the three bays remediated?

(3) How many other bays similar to the three mentioned in the report were identified for remediation; and

(a) on what dates were the bays referred to in (3) temporarily treated; and

(b) when is remediation expected to be completed for each of the bays referred to in (3)?

Hon ALANNAH MacTIERNAN replied:

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

(1) They are Balbarrup, Dingup and Picton.

(2) The Director of Energy Safety has been advised by Western Power that remediation work is scheduled to be completed as follows: Balbarrup by 30 November 2022, Dingup by l December 2022 and Picton by 13 December 2022.

(3) The three bays mentioned are of similar lengths and construction to the one in Narrogin. There were 73 other powerline bays of similar construction but shorter lengths also identified for remediation.

(a) The three bays are being permanently remediated. Refer to the answer to (2).

(b) Refer to the answer to (2).

HARDSHIP UTILITY GRANT SCHEME — ENERGY DISCONNECTIONS

1316. Hon Dr STEVE THOMAS to the parliamentary secretary representing the Minister for Energy:

I refer to the calendar months of September and October 2022.

(1) How many residential disconnection notices have been issued?

(2) How many residential disconnections have occurred?

(3) What was the number of applications received and hardship utility grants scheme payments made?

Hon MATTHEW SWINBOURN replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Minister for Energy.

(1)–(3) It is in tabular form so I seek leave to have the response incorporated into *Hansard*.

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

	NUMBER OF DISCONNECTION NOTICES ISSUED		NUMBER OF DISCONNECTIONS COMPLETED		RE-ENERGISATIONS		HARDSHIP UTILITY GRANT PROGRAM (**HUGS**)	
MONTH	Non-Payment	Non-Application	Non-Payment	Non-Application	Number of residential re-energisations completed	Number of other re-energisations	Number of HUGS applications received	Number of HUGS payments made
Sept 2022	1182	1015	656	639	541	662	536	652
Oct 2022	1047	3875	770	2073	558	1472	615	344

ROTTNEST ISLAND — ACCOMMODATION

1317. Hon COLIN de GRUSSA to the minister representing the Minister for Tourism:

I refer to the Rottnest Island Authority *Annual report 2021–2022* and correspondence sent to the minister in October 2022 and answered by his office in relation to accommodation services on the island.

(1) Please detail the breakdown by topic of the 285 formal complaints in the last financial year.

(2) Given there were only 123 formal complaints received in 2019–20, what is the minister doing to address the 230 per cent increase in complaints?

(3) What steps is the minister taking to act on the black market accommodation swapping and selling group, which is potentially in contravention of the Rottnest Island Authority Act 1987?

(4) If no steps are being taken, will the minister seek to deregulate the market of accommodation on Rottnest Island?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information is provided by the Minister for Tourism.

(1) The breakdown of the 285 formal complaints is in tabular form and I seek leave to have the response incorporated into *Hansard*.

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

Complaint category	Number
Accommodation (cleaning, missing inventory, views, pests, maintenance, renovations)	57
Public facilities / amenities (cleaning, shelter, safety, toilets, seating)	30
Commercial business (service, quality, closures, noise)	41
Antisocial behaviour	3
Customer service	13
Luggage (lost, misplaced or delayed, luggage restrictions' luggage labels)	3
Booking process (wait times on phone, payments, ballot, check-in, online booking system, availability)	48
Boating / moorings	5
Prices too high (accommodation costs, ferry cost, tour costs, food & beverage, landing fees at airport)	2
Environmental (quokka, birds, crows, seagull, peacocks)	26
Covid-19	2
Construction works	23
Other	32
Total	**285**

(2) During 2019–20, numbers were impacted by a 72-day closure of the island and additional lockdown periods resulting in reduced visitation and subsequent reduction in total complaints. Complaints across all years represent less than 0.1 per cent of visitation numbers. When trends in complaints are identified, these are addressed.

(3) In February 2022, the Rottnest Island Authority accommodation terms and conditions were updated to include a clause that allows the RIA to decline a transfer of accommodation if it is deemed to have breached the terms and conditions. If instances of inappropriate reselling of RIA accommodation are identified, RIA has the ability to refuse a transfer.

(4) Not applicable, see (3) above.

THERAPEUTIC GOODS ADMINISTRATION — SODIUM NITRATE AND SODIUM NITRITE

1318. Hon NICK GOIRAN to the parliamentary secretary representing the Attorney General:

I refer to the 2021–22 annual report from the Office of the State Coroner, which states—

> The Office … has also entered into a working relationship with the Therapeutic Goods Administration … in recognition of the importance of identifying any reportable deaths that may have been associated with the use of medicines, vaccines or medical devices. To assist the TGA … the Office … has developed a notification system whereby relevant information is de-identified and provided to the TGA.

How many of the 127 TGA notifications were made in reference to sodium nitrate and sodium nitrite?

Hon MATTHEW SWINBOURN replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Attorney General. It is not possible to provide the member with a response within the time available and I ask that he place this question on notice.

EQUAL OPPORTUNITY ACT — REVIEW

1319. Hon Dr BRAD PETTITT to the parliamentary secretary representing the Attorney General:

I refer to the Attorney General's media statement "WA's anti-discrimination laws set for overhaul" three and a half months ago on 16 August 2022.

(1) Has the new Equal Opportunity Act been drafted, and when does the government plan to introduce it to Parliament?

(2) Will the government commit to abolishing the Gender Reassignment Board?

(3) Will the government act on birth certificate reforms, a reform that was originally called for in 2018 with Project 108?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The following answer has been provided to me by the Attorney General.

(1)–(3) The rewrite of Western Australia's outdated Equal Opportunity Act will be a significant social reform of this government. The government is aiming to introduce the new bill during the first half of the 2023 parliamentary year noting, however, that it is a large and complex task. The final bill, including the full impact on the functions of the Gender Reassignment Board, is still subject to drafting and cabinet-in-confidence.

REGIONAL DEVELOPMENT — LOCAL TRAINEESHIPS

1320. Hon SOPHIA MOERMOND to the Minister for Regional Development:

The WA regional traineeship program has created a range of employment opportunities in the South West Region in the last number of years. The support that has been offered to WA community resource centres has been particularly welcomed by local communities.

(1) How many regional CRCs have been supported in the most recent $2 million round of funding provided?

(2) How many new traineeships have been created through the program in 2022?

(3) Does the Department of Primary Industries and Regional Development intend to increase its funding for regional traineeship programs throughout this term of government?

Hon ALANNAH MacTIERNAN replied:

(1)–(3) I thank the member for that question and I agree with her that the traineeship system has been a great success. We have made sure that it has been very focused on actually providing traineeships to people entering or re-entering the workforce. We have done a lot of work to ensure that this is properly targeted and also have extended it to small shires that do not have the benefit of having a CRC. I am pleased to announce that in total in the round that is being delivered in 2022 we have had 48 traineeships, 42 of these being delivered through the CRCs and six being delivered by small local authorities without CRCs. We will be announcing the successful recipients for the 2023 round very shortly. Funding was increased this year from $37 000 per trainee to $38 000 per trainee.

FIRM CONSTRUCTION — DEPARTMENT OF FINANCE
ABORIGINAL CULTURAL HERITAGE ACT

Questions without Notice 1288 and 1289 — Answers

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [5.06 pm]: I would like to provide answers for Hon Dr Steve Thomas's question without notice 1288 and Hon Colin de Grussa's question without notice 1289 asked yesterday, and I seek leave to have both incorporated into *Hansard*.

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

Question without notice 1288 —

Prior to it going into voluntary administration, the Department of Finance was working closely with Firm Construction Pty Ltd to ensure subcontractor obligations on government projects are fulfilled and those projects are delivered. The Department is now working closely with the Administrator, RSM.

Officers from the Department proactively contacted subcontractors then working with Firm to validate invoices and assist with making these payments via Project Bank Accounts.

This reflects the important protections offered through Project Bank Accounts, which are in place on all government projects above $1.5 million.

Significant work was undertaken to ensure projects such as the Wellard Village Primary School can continue with the least possible disruption to subbies, local families and future students. McCorkall Construction have been appointed to continue the delivery of the school with the new contract requiring the engagement of as many ex-Firm subcontractors as possible. Other delivery arrangements are being put in place for the other government projects Firm Construction was awarded.

(1) The Department of Finance advises the following projects were awarded to FIRM Construction at the specified contract values:

Westminster Primary School New Build and Refurbishment - $10.9 million;

Lakeland Senior High School Redevelopment - $5.1 million;

Kalgoorlie TAFE Heavy Plant and Engineering Workshop - $6.1 million;

Ocean Reef Senior High School Sports Hall - $4.8 million;

Wellard Village Primary School New Build - $24.2 million; and

Kalamunda Senior High School Redevelopment - $24.1 million.

(2) The Department of Finance's Department advises value-for-money assessment considers a range of cost and non-cost factors, including the financial information provided by the applicant / tenderer during the prequalification stage, and during any subsequent procurement processes.

The Department of Finance's financial assessment processes consider a company's net tangible assets to turnover ratio, working capital to tender value, and workload capacity. The Department advises it is would not be appropriate for the agency to publicly disclose the financial information of a commercial entity.

(3) The Department of Finance had been working closely with the company to resolve payment concerns raised by subcontractors prior to it being placed in administration.

(4)–(5) The Department is working closely with the company's administrator to verify debts owed by the company to subcontractors and facilitate those payments via project bank accounts.

The Department of Finance employs a wide range of measures, including project bank accounts, throughout the project life cycle to improve security of payment for subcontractors working on its projects. However, the Department of Finance cannot prevent a company from experiencing financial distress, particularly where the company is active in the private sector and may be subject to financial losses or contractual disputes on these projects.

Question without notice 1289 —

(1) An expression of interest is currently open for those interested in becoming a Local Aboriginal Cultural Heritage Service (LACHS).

(2)–(3) The Department currently has transitional arrangements in place while policies and procedures are defined. The finalised operational structure will be formed by mid-2023.

(4) Development of the information and management systems has commenced and is on track to go live in July 2023.

AGRICULTURE AND FOOD — BIOSECURITY

Question without Notice 1204 — Answer

HON ALANNAH MacTIERNAN (South West — Minister for Agriculture and Food) [5.06 pm]: Yesterday at the conclusion of questions without notice, I provided an answer to question without notice 1204 asked by Hon Dr Steve Thomas, MLC, to me, the Minister for Agriculture and Food. I said in that answer that I would ask for further checking on part (4) of the response to that question. That further checking has now occurred and I am advised that 10 reports received through the biosecurity blitz may involve the class of permitted organisms referred to in the question. I seek leave to incorporate a list of those organisms into *Hansard*.

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

Species name	# of reports
Barnardius zonarius (Australian ringneck	1
Chenonetta jubata (Australian wood duck)	2
Corvus coronoides (Australian raven)	2
Emex australis (Doublegee)	1
Heliotropium europaeum (Heliotrope)	1
Macropus robustus erubescens (Common wallaroo)	1

FOREST PRODUCTS COMMISSION — JARRAH REGROWTH

Question without Notice 1181 — Supplementary Information

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [5.07 pm]: I would like to provide an updated answer to Hon Dr Steve Thomas's question without notice, formerly known as C1301 but now described as 1181, asked last week on 22 November to me, representing the Minister for Forestry. I seek leave to have the answer incorporated into *Hansard* and the documents tabled.

[See paper 1917.]

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

(1) The supporting information is contained within the following references:

CSIRO and Bureau of Meteorology Climate Change in Australia, Projections for Australia's NRM Regions, Technical Report.

Hope, P. et al. 2015, Southern and South-Western Flatlands Cluster Report, Climate Change in Australia Projections for Australia's Natural Resource Management Regions: Cluster Reports, eds. Ekström, M. et al., CSIRO and Bureau of Meteorology, Australia.

Bradshaw FJ (2015) Reference material for jarrah forest silviculture Forest Management Series FEM061. Department of Parks and Wildlife, Perth.

Maher D, McCaw L and Yates C (2010) *Vulnerability of forests in south-west Western Australia to timber harvesting under the influence of climate change*. Sustainable Forest Management Series, SFM Technical Report No. 5. Department of Environment and Conservation, Western Australia.

Burrows, N., Baker, P., Harper, R., and Silberstein, R. (2022) A report on silvicultural guidelines for the 2024-2033 Forest Management Plan to the Western Australian Department of Biodiversity, Conservation and Attractions, 44 pages.

(2)–(3) Climate change impacts are global therefore these questions are impossible to answer.

MEDICINES AND POISONS (VALIDATION) BILL 2022

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Brian Walker) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon SUE ELLERY: When we began the committee stage a little while ago, the first series of questions were about the actual matter on foot that has led to this bill being brought to the chamber. I have sought further advice and I am able to confirm the following. The first thing is to note that there was a miscommunication. There was no intention not to provide members with the information I am about to provide. It is limited information that I can provide

members but I think that was just miscommunicated. The relevant appeal has been brought by Mr Daniel Rusiecki. The respondent is the state of Western Australia as is usual in criminal matters of this type. The Director of Public Prosecutions has conduct of the appeal on behalf of the state. The proceedings are currently before the WA Court of Appeal and the appeal relates to Mr Rusiecki's conviction in the District Court in November 2021. It is important to note that I do not have details beyond that.

Although the Department of Health and the Western Australia Police Force both worked on the bill, they are not directly involved in the case. I have made the point that the case is being conducted by the Director of Public Prosecutions, who is, of course, independent from government. Those agencies have only been provided with limited information about the case; they are not privy to details. I think I had also made the point that at this stage, the appeal has not been set down for a hearing. As I indicated earlier, on the current information that we have, we do not expect it to be heard this year.

Although members have rightly pointed out that the appeal will be heard by judges and not a jury, it is important to note that does not necessarily give us a licence to freely discuss active court cases. If the appeal was successful and the conviction was overturned, the case may then be retried before a jury. Therefore, just because the matter now is before a judge, that does not mean that it will not end up back before a jury.

Hon NICK GOIRAN: I thank the Leader of the House for that explanation. It is good to know. This is the case that is really driving the bill that is presently before us, courtesy of the advice that was provided by the Acting DPP, as he then was, to the Attorney General in August this year. During the briefing, I asked whether the issue of the definition of the standard had been raised in the original District Court proceeding in November 2021. We were told that this could be dealt with in Committee of the Whole House. Was this issue raised in first instance in the District Court?

Hon SUE ELLERY: I do not know, and I am not going to find out—I am not going to be told. The information that I have just provided to the house is the information that is available to me to share with the house.

Hon NICK GOIRAN: Yes, okay. I appreciate that this is not going to change anything, because time is now of the essence and there will not be further time to get instructions from those who might have this information. The reason it is relevant is that, of course, if the District Court conviction in November 2021 included consideration of this issue, and ultimately still led to a conviction, it would, amongst other things, indicate that the state was aware of this issue from November of last year.

If, however, this has only been brought up for the first time as a point of appeal in the most recent proceeding, that would then indicate when the state—certainly at least the DPP—were first made aware of this matter. Does the minister have any information on when the Court of Appeal matter that is presently on foot was lodged?

Hon SUE ELLERY: I am really not trying to be difficult. The information that I have shared is everything that I have got. Everything I have, I have given to Hon Nick Goiran.

Hon MARTIN ALDRIDGE: I just want to go back to the offences that we have been talking about. At the briefing, we were told that there were effectively 5 263 alleged offences. The greater concern was the 350 convictions, one of which was subject to appeal. I think this number was qualified as offences when a brief was created for the DPP. Can I get some understanding on whether the 350 convictions are a subset of the 5 263, or if they are additional to them?

Hon SUE ELLERY: Sorry honourable member, I was just being spoken to. Can the member repeat the actual question at the end there?

Hon MARTIN ALDRIDGE: I just wanted to confirm that my numbers are correct. I also wanted to understand whether the 350 convictions are a subset of the 5 263, or if they are additional to it?

Hon SUE ELLERY: There are two separate numbers. The Office of the Director of Public Prosecutions advises that approximately 350 prosecutions conducted by that office involved convictions for relevant drug offences during the affected period. The police advise, in matters prosecuted by them, that during the validation period, there were about 5 000 charges whereby an offence was committed against the Misuse of Drugs Act, and an associated brief was created by police. Police created a brief in respect to 4 419 offences related to methamphetamine, 216 to amphetamine, 103 to dexamphetamine, two to LSD and 523 to MDMA. That is how we get the 5 000.

Hon MARTIN ALDRIDGE: The minister may have to help me here. I assume there has been some allegation of an offence—perhaps somebody has been charged. The police have prepared a brief. However, those matters have not proceeded any further. Is the brief to the DPP, and then the DPP make a decision independent of the police, to say "Well, there is a case" or "There isn't a case" and proceed with the prosecution?

Hon SUE ELLERY: The prosecutions are conducted by two separate organisations. The DPP says that their stats show approximately 315 prosecutions conducted by that office in the period. The police stats say that during that period, the numbers that I have read out to the member that are around about 5 000, are the number of charges when an offence was committed against the Misuse of Drugs Act whereby the police created a brief.

Have all of those 5 000 briefs created by the police been through to completion? I do not have that information.

Hon MARTIN ALDRIDGE: That is a good clarification because the 350 is prosecutions —

Hon Sue Ellery: Conducted during that period.

Hon MARTIN ALDRIDGE: Yes. Conducted by the DPP.

Hon Nick Goiran: But they are not convictions.

Hon MARTIN ALDRIDGE: Sorry?

Hon Nick Goiran: They are not convictions.

Hon MARTIN ALDRIDGE: They are not convictions, so I assume there well may be a greater number of prosecutions that may not have necessarily resolved in conviction. They may still be live before the court. What we do not know is of the 5 263 charges by police, how many of those have resulted in conviction? We do not know a number at all.

Hon SUE ELLERY: No. I do not have that number, and could not get that number.

Hon MARTIN ALDRIDGE: The second reading speech states —

> The Office of the Director of Public Prosecutions has informed that approximately 350 prosecutions conducted by the ODPP involved affected convictions for offences under the Misuse of Drugs Act during the affected period. The WA Police Force advise there was a significantly higher number of charges for summary offences within that period.

Are the 5 263 charges the summary offences that are referenced in the second speech?

Hon Sue Ellery: Correct.

Hon MARTIN ALDRIDGE: Is there a reason that the police have not been able to provide that relevant information, whereas the DPP has?

Hon SUE ELLERY: I am advised that there is a different system and that the police would need to check against each of the charges. The police have not done that. That is a big piece of work for the police to do.

Hon NICK GOIRAN: Nevertheless, noting in the second reading speech the reference to the WA Police Force advising that there was a significantly higher number of charges—that being the 5 263 that Hon Martin Aldridge referred to, which the minister has previously broken down or itemised—did the DPP say approximately 350? Do we know the exact number of prosecutions?

Hon Sue Ellery: The information I have includes the word "approximately".

Hon NICK GOIRAN: Is there an explanation for why the DPP has an inexact number and the WA Police Force has a precise number?

Hon SUE ELLERY: No, there is not. We could say that the DPP is quite precise about some elements of that information and the WA Police Force is not, and the same could be said in reverse. I doubt whether there is a conspiracy. I genuinely do not know.

Hon NICK GOIRAN: We can agree that this Rusiecki appeal, which is currently on foot, has the potential to impact a large number of convictions and summary offences. I think we can at least say that, hence the importance of the bill presently before the chamber.

The matter that I raised with the minister prior to questions without notice was the commencement date of the Medicines and Poisons Amendment Regulations (No. 2) 2019. When was that gazetted?

Hon SUE ELLERY: It was gazetted on 19 November 2019.

Hon NICK GOIRAN: Was that due to commence the day after gazettal?

Hon SUE ELLERY: Yes, on the day after that day.

Hon MARTIN ALDRIDGE: In my second reading contribution, I said that I wrongly assumed that cabinet was considering this matter on Monday, hence the briefing for the opposition in the late morning before moving onto the bill on Tuesday. Cabinet actually considered the matter in the week prior, on 21 November. Notwithstanding that, is there a reason that the government did not proceed with this bill as an urgent matter last week? Is it urgent but not so urgent that it needs to be done, effectively, before we rise because the government does not want to leave it to chance that an appeal might be heard between now and 15 February and therefore the government does not want to risk it during that time? It did not need to be done last week, but this week was acceptable, notwithstanding that cabinet approved the bill on 21 November.

Hon SUE ELLERY: Based on my experience, I think we probably needed time to prepare the material for Parliament to rely on. I think I said in the debate on the suspension of standing orders that as soon as I became aware of it at the cabinet meeting, I asked the relevant minister—the Minister for Health—to advise the Leader of the Opposition as soon as it was practically possible, and she did that on the Thursday.

Hon MARTIN ALDRIDGE: I think that is sound advice. I thank the minister for passing that on to the relevant minister, notwithstanding that the decision was made on the Monday and I think the Leader of the Opposition found out about it on Thursday. Nevertheless, it did occur. We have learnt a couple of things today. One is that a date has not been set down to hear an appeal. I think the minister might have said earlier that there was some concern that it could be heard between now and when we recommence sittings next year and therefore the matter needs to be dealt with.

I understand that it is unusual that this bill will come into force on the day on which it receives royal assent rather than the day after. Keeping in mind that this process started back in August, cabinet approval was given last Monday and we are dealing with it today, what is the justification for the bill breaking the usual convention of coming into force on the day after it receives royal assent? It is so urgent that the Governor is literally waiting in the corridor, as we have experienced with some bills; it has that level of urgency. It seems like we have taken sufficient time to get this right, but we seem to be putting in this extraordinary provision that requires the bill to come into force on the day it receives royal assent.

Hon SUE ELLERY: I touched on this earlier. The first thing to note is that this bill does not require supporting regulations to be developed. The second is that it is not unusual for an act to commence on the day that it receives royal assent when it is a validation bill. This clause has been drafted for each of the validation bills we have dealt with recently. Commencement clauses would more usually provide for an act, as the member says, to commence on the day after the day of assent or upon proclamation. This bill, however, will have a retrospective application and will commence on the day on which it receives royal assent.

Hon MARTIN ALDRIDGE: I note that the minister said earlier that an exhaustive project was not undertaken on this matter, but the minister mentioned three other validation bills. Did they all come into effect on the day of royal assent?

Hon Sue Ellery: I am advised yes.

Hon MARTIN ALDRIDGE: I made a flippant comment before about the Governor, but is the Governor available to give royal assent?

Hon SUE ELLERY: I am told yes.

Hon MARTIN ALDRIDGE: Once the bill passes—I assume it will be passed unamended because no amendments are either proposed or listed—how much time will be required to prepare the bill for the Governor's signature? Let us say it passes today; could it be done this evening or would it be done tomorrow?

Hon SUE ELLERY: I am advised that it could be done this evening, although it will not be because we will finish the process this evening, but it can be done relatively quickly.

Hon NICK GOIRAN: We have spent a little bit of time considering the Medicines and Poisons Amendment Regulations (No. 2) 2019. We were told that the regulations were gazetted on 19 November 2019 and were scheduled to commence on the day after gazettal, being 20 November 2019, which explains the end of the validation period set out in clause 4(1) at lines 24 and 25 on page 2 of the bill. As the minister indicated earlier, the responsibility for those regulations rested with the Department of Health. At the time they were prepared, was consultation undertaken with the Department of Justice?

Hon SUE ELLERY: I am not sure that we can give the member a definitive answer. I am advised that there is no record of that occurring, but I would not swear my life on that.

Hon NICK GOIRAN: In order to understand the process, regulation making is not uncommon to the Department of Health. Indeed, I think the minister referred to the department as having a legal and legislative branch. Part of that branch's role and responsibility from time to time is to work on these types of regulations. Is there a normal process that those staff embark upon when they make regulations? Obviously, part of that normal process would be to get Parliamentary Counsel's Office to draft the regulations, but in terms of consultation with other agencies, particularly the Department of Justice, is that normal practice or is it done on an ad hoc basis?

Hon SUE ELLERY: I am advised that it is not standard practice to refer to the Department of Justice. It will depend entirely on the circumstances. Normally, the Department of Health's people will rely on the policy people within Health and then the PCO for the technical drafting advice.

Hon NICK GOIRAN: Once that standard process is undertaken, the regulations ultimately go to the minister. Would the minister have approved them going to the PCO in the first place?

Hon SUE ELLERY: I am trying to think about what happens within my ministerial portfolio. I think I sign to proceed to draft the regs. I am then sent a copy of the regs, which is a very formal document, and I sign that as well.

Hon NICK GOIRAN: I imagine that the 2019 brief that was prepared for the minister in respect of the Medicines and Poisons Amendment Regulations (No. 2) 2019 is not a document that the minister has at her fingertips at the moment. In any event, would the minister be able to table it at a later stage?

Hon SUE ELLERY: The member is it right; I do not have it available to me now. The best I can do is to give the member an undertaking that I will raise it with the minister, but I cannot guarantee that she will make it available.

Hon NICK GOIRAN: We know of the impact that the bill will have on the appeal that is currently before the courts, or at least we know of its intent. The minister indicated earlier that she has given us every single piece of information that she has, but I will seek to squeeze one further piece of information out of her that might be available. With regard to the appeal that is on foot, is this definitional issue the only ground of appeal before the court or are there also other grounds of appeal?

Hon SUE ELLERY: I do not know. Based on what I said to the member about how the Director of Public Prosecutions is quite deliberately keeping Health and the Western Australia Police Force at arm's length on this, we would not know.

Hon NICK GOIRAN: Apart from the appellant being impacted by this legislation, we are told that if we do not do something, a range of provisions on the statute book will potentially be impacted by what is going on here. Obviously, the bill will have a material impact upon those provisions. We have been told that the Working with Children (Criminal Record Checking) Act 2004 will be impacted by this bill. Does the minister have any information available on the extent to which the Working with Children (Criminal Record Checking) Act 2004, which, as we know, has just been amended by a bill that passed through this place last night, will be impacted by the bill that is presently before the chamber?

Hon SUE ELLERY: I am advised that it will potentially affect the definition of a "Class 2 offence" in clauses 4 and 7 of the act; schedule 2, class 2 offences; and references to offences under the Misuse of Drugs Act 1981.

Hon NICK GOIRAN: The minister did indicate that this is not intended to be an exhaustive —

Hon Sue Ellery: It is not.

Hon NICK GOIRAN: It is not an exhaustive list. Does the reference to this 13-page tabled paper not being an exhaustive list mean that there may be other provisions within the Working with Children (Criminal Record Checking) Act 2004 that are impacted, or is it more in reference to the number of statutes impacted?

Hon SUE ELLERY: It is probably a reference to the number of statutes, but we probably both know of the act to which the member is referring quite well. I would expect that it is limited to the reference in the schedules because it is offences that determine whether a person is eligible for a working with children card. I do not think that we should elevate that table any higher than its heading states, which is that it is a table of potentially impacted provisions.

Hon NICK GOIRAN: I have one further question on this line. I note that the table refers to the School Education Regulations 2000. To what extent does the bill before us impact the School Education Regulations?

Hon SUE ELLERY: In the School Education Regulations, regulation 148A, "Anaphylactic reaction in child, treatment by staff member" is affected and the definition of schedule 3 poisons.

Hon MARTIN ALDRIDGE: The post-briefing information that we received from the minister's office went to the question of whether this bill is a uniform legislation bill. I do not want to ask a question about that, but I want to ask about some of the information that was provided, which refers to the principal act—the Medicines and Poisons Act 2014—being referred to a committee in 2013. I assume that it was a 2013 vintage bill that received assent in 2014. Was this the first time that we implemented a uniform scheme for the scheduling of poisons and medicines?

Hon SUE ELLERY: We will check that, but no-one at the table is aware. If the member is genuinely interested to know, he might need to look at the report of the committee that would set it out for him.

Hon MARTIN ALDRIDGE: That will not prevent me from pursuing where I was going with this line of questioning. I am trying to understand the history behind this scheme. I assume that at some point in time, states and territories made their own decisions around the scheduling and regulation of medicines and poisons. At some point a decision was made that it would be far more advantageous to do that nationally. When that happened is beside the point. It may well have happened more recently, as I suggested, or some time ago.

During the second reading debate, I raised a matter around the futureproofing of these definitions. During my briefing, I picked up on words to the effect that the bill now adopts a definition that will be a bit more resilient to changes made by the commonwealth. But I demonstrated in my second reading contribution the complex web of definitions that refer to definitions that refer to definitions. In effect, the current arrangement is that in the Medicine and Poisons Regulations 2016, the definition of "SUSMP" refers to the current Poisons Standard, which is defined as —

> … the meaning given in the *Therapeutic Goods Act 1989* (Commonwealth) section 3(1);

Section 3(1) of the commonwealth act is effectively the definitions section. That refers us to section 52A, which then refers us to section 52D. I guess these are provisions in primary legislation. The issue here arose when regulations were amended at the commonwealth level. I assume that this will probably be a matter that may have more visibility to the state and its department.

Hon Sue Ellery: It is certainly harder to make a change with nobody noticing.

Hon MARTIN ALDRIDGE: Correct. I guess my question is: noting that this is probably an issue that will have a longer gestation period and there will probably be more consultation, although the minister has admitted that processes with the commonwealth have improved since these events, what has changed in the Department of Health since 2019 that will prevent a circumstance like this arising in the future?

Hon SUE ELLERY: There are two things. I am advised that action has been taken to review the structure when the Poisons Standard is amended. Secondly, for example, there is a chief pharmacy officer. People at that level are acutely aware of the situation that was created in this circumstance, so I think that lessons have been learnt. I think I was asked that question in a second reading contribution and I tried to provide an answer. I think I also answered a question from Hon Wilson Tucker, and I gave him an undertaking that I would certainly raise his concern that there needed to be a bit more rigour—perhaps a system put in place to check this. I gave him an undertaking, I have raised that with the minister, and that is what I will do.

Hon MARTIN ALDRIDGE: I just make this observation. The Department of Health is not small, by any stretch of the imagination; in fact, it is probably the biggest agency in the public service in terms of money and FTE. I might be wrong, but that is my best guess. Education is probably competing with it.

Hon Sue Ellery: It is $11 billion; I am $5 billion.

Hon MARTIN ALDRIDGE: Yes. I assume that it has a legislative division. It would have many, many statutes in its portfolio of responsibility.

Hon Nick Goiran: Not as many as the Attorney General's portfolio.

Hon MARTIN ALDRIDGE: Maybe not. Perhaps it is an issue of resourcing; perhaps it is an issue of demand on the agency, as well, particularly in recent years, but I would have thought that processes probably ought to be formalised to assess the impact of particularly obvious things like these, whereby we have uniform schemes in place but we have effectively devolved responsibility to the commonwealth statute. We have done that for not only the Medicines and Poisons Act, but also many other acts.

I asked earlier about consultation. Obviously, consultation on this bill was limited. The justification for that was that this issue was not only urgent but also sensitive. If we look at the number of offences under the Misuse of Drugs Act alone, which is only one of the pieces of legislation that was potentially impacted, many cases could be compromised. I suspect there has not been a lot of time, but since this issue has become publicly known, has there been any contact or communication with the minister's office about this bill from other stakeholders perhaps external to government?

Hon SUE ELLERY: Other than me, no.

Hon MARTIN ALDRIDGE: Hon Wilson Tucker raised an issue in the debate that I took up at the end of my second reading contribution. I stress that I do not want to verbal what Hon Wilson Tucker said, but I do not have the uncorrected *Hansard* to report it accurately. He effectively expressed some concern that the state was legislating to limit its liability. That is certainly not my understanding of the bill that is before us. In fact, I think it is very limited in its application; it is effectively just validating the many laws of Western Australia that may be impacted by this anomaly, as opposed to somehow trying to erode somebody's legal rights to pursue the state over a particular matter, or something like that. Can the minister perhaps confirm that my understanding is accurate?

Hon SUE ELLERY: Yes, the member's understanding is correct. The provisions of the bill as the member has described them are accurate. There is nothing in this bill that goes to restricting, removing or in any way limiting anybody else's rights to take any action against the state.

Hon NICK GOIRAN: Perhaps at this time it might be convenient to ask, noting that we do not have very much time to debate this bill, whether the minister is happy for us to deal with clause 4 matters under the debate on clause 1?

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: I thank the minister for that. I refer to proposed section 4(3). What has driven the necessity for this particular provision, which seems to be going out of its way to underscore that a number of subsections are to be considered as supplements to proposed subsection (2)?

Hon SUE ELLERY: Proposed section 4(3) makes clear that the subsections following it are intended to supplement and not limit the general rule in proposed section 4(2). Of course, proposed section 4(2) establishes that general rule to validate the relevant definition during the validation period. It sets out the definition of the SUSMP that will be taken to have applied during that period. It will broadly address the anomaly that occurred in the regulations between 1 February and 19 November 2019. Proposed section 4(2) will essentially replace the definition that was put in place at that time with the definition set out in this subsection —

> … the Standard for the Uniform Scheduling of Medicines and Poisons set out in the current Poisons Standard;

When we read proposed section 4(2) with 4(3), it makes it clear that the proposed subsections following after proposed section 4(2) are not meant to limit what is set out in 4(2) but to be seen as supplementary.

Hon NICK GOIRAN: What is in proposed subsections (4), (5), (7), (8) and (9) that will limit proposed subsection (2)?

Hon SUE ELLERY: There is not an assumption that anything in them creates a limit. It is just to make it absolutely clear that nothing in them is seen to be creating a limit.

Hon NICK GOIRAN: Is this a drafting convention that has been used from time to time?

Hon SUE ELLERY: It looks to me like a Parliamentary Counsel's Office special, but people at the table here do not know whether these exact provisions were in those other bills that we referred to as being validation bills.

Hon NICK GOIRAN: I wish that hardworking agency that, I believe from a response to an answer to a question on notice that was delivered yesterday, has some 85 bills presently before it and a larger number of regulations than that —

Hon SUE ELLERY: Are you referring to the PCO?

Hon NICK GOIRAN: Yes, the hardworking agency that we do not mention by name. I just wish from time to time when it does things such as this, that being clause 4(3) that it provided a comprehensive explanation, ideally in the explanatory memorandum, or at least some guidance notes to the minister or the parliamentary secretary handling the bill. My concern when something such as this emerges is immediately that if we are doing this here to make it supposedly crystal clear that there is no limiting effect on the other subsections, every time we do not do this, does that imply there might be some limiting effect? Unless it is absolutely necessary, I would prefer we do not do this; and, if it is absolutely necessary, we should be seeing it in many more statutes moving forward. Anyway, I offer that by way of an observation to the hardworking agency that is not present at this time.

Continuing to look at the provisions in clause 4, the very last provision, subclause (10), appears significant. Why is subclause (10) necessary?

Hon SUE ELLERY: It is a function of the retrospectivity of the bill before us. Clause 4(8) through to (10) of the bill will overcome the prohibitions in section 11 of the Criminal Code. Section 11 of the Criminal Code provides —

> A person cannot be punished for doing or omitting to do an act, unless the act or omission constituted an offence under the law in force when it occurred, nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence.

Clause 4(10) will expressly override that provision.

Hon NICK GOIRAN: That is significant. Has this been done before?

Hon SUE ELLERY: I am advised that examples of existing legislation that override section 11 of the Criminal Code include the Biodiversity Conservation Act 2016 and the Business Names Act 1962—sidebar, great year!

Hon NICK GOIRAN: Are they the two examples?

Hon SUE ELLERY: I will not say that is an exhaustive list because I do not know, but they are the two examples I have been given.

Hon NICK GOIRAN: We are saying that as a result of clause 4(10) in particular, if anyone was in any doubt about whether methamphetamine was a prohibited drug during the validation period—which is the period between 1 February 2019 and 19 November 2019, including those two dates—they should be in no doubt because it was a prohibited drug and it was an offence. If someone commits such an offence, they are capable of being punished as a result of that. I doubt anyone wants to quibble about that other than perhaps the persons who are said to have committed these 4 419 charges during the validation period. They might have a different view on this. I do not think they would get too much sympathy from other Western Australians, but it is nevertheless significant.

I put to my colleagues the other day an analogy, albeit an exaggerated one. The Leader of the House will appreciate that we are in a political alliance. If the law were to change at a later date to say that two political parties are not able to associate with one another, that would have a material impact on people going about their ordinary business. That is why we do not retrospectively apply the Criminal Code in this fashion. With specific reference to the methamphetamine example, given that is the genesis of the case presently before the Supreme Court, for what period of time—it does not need to be exact if that is not available—prior to 1 February 2019 was methamphetamine a prohibited drug?

Hon SUE ELLERY: I am not sure that I can give the member that here. Someone can probably go back and track it. I could ask if someone could do that. I am not going to hold up the passage of the bill for the purposes of achieving that, but I do not have that information here. I suggest to the honourable member that it would be a significant period. It is basically from when did law enforcement find people using this chemical mix and determine that it was not a good thing? And that has been around for a while.

Hon NICK GOIRAN: We are in furious agreement about that. I concur with the Leader of the House that it has been a significant period. If that work could be done, presumably it would be just a quick query to Western Australia

Police Force to ascertain this information. It may even be known by the Director of Public Prosecutions though I appreciate there is almost what is referred to in legal circles as a Chinese wall there, so we are not communicating with the DPP specifically in relation to this matter. We would like to think WA police would have this information readily available. It is a significant period of time as the Leader of the House indicated. It would be good to get it on the record because it would underscore why it is appropriate for Parliament to be taking this extraordinary measure. With all due respect to this gentleman that has his matter before the Court of Appeal, we have all known for a long time that methamphetamine is a prohibited drug and it cannot possibly be the case that he was shocked to find out that in February 2019, "Oh, my goodness, this is a prohibited drug, these terrible lawmakers are now retrospectively making that the case." We have all known that was the case.

There is this anomaly, as the government has put it, that occurred because of the sequence of events that we have set out exhaustively. No-one could be in any doubt. To the extent that we might be said to be trampling on anyone's rights, I think that we can confidently say everyone knew full well in 2019 that methamphetamine was a prohibited drug. That is an obvious example and it is one that is pertinent to the case that is the genesis of the bill before us. Nevertheless, I imagine there are a number of other potential offences that people might have committed during the validation period, which we are overriding via clause 4(10). Do we have a list of those offences?

Hon SUE ELLERY: No, we do not. As the honourable member can appreciate, we have been referring to a table of potentially impacted provisions —

Hon Nick Goiran: The 13-page one?

Hon SUE ELLERY: Yes. Within each one of those there may be several offences; there may be more than several offences. I am just not able to give the member a finite number, or even do the work to extrapolate out of that table. I am not sure that I can take the answer much further.

Hon NICK GOIRAN: I wonder whether that work has been done, albeit that I acknowledge that if it has been done, it will not be readily available at this time. What is going on here is significant. It is no small matter for the Parliament to come along at a later date and say to the people of Western Australia, "We are retrospectively changing the application of the criminal law." With regard to the example I gave earlier, I do not think anyone other than those responsible for the 4 000 methamphetamine offences would quibble with that. However, I suspect there would be some who would, according to the list we have been provided with—for example, those who were responsible for the 103 dexamphetamine offences. We know that, in total, there were 5 263 offences. This has not been confirmed, but I take it that the 350 matters the Director of Public Prosecutions referred to are actually a subset of the 5 263. I find it interesting that the Western Australia Police Force has specifically set out those five categories of drug offences that were committed against the Misuse of Drugs Act. It seems to suggest that some work has been done. The police have provided information only with regard to the Misuse of Drugs Act. Is there any reason for that? Is it perhaps because it is the only piece of legislation affected by this that the police are responsible for prosecuting?

Hon SUE ELLERY: The honourable member may be right about that. I do not know that I can provide him with an answer to that question. Given that the genesis of this was the appeal relating to the misuse of drugs provisions, I guess that is why that kind of information was put together.

Hon NICK GOIRAN: The table we have referred to from time to time sets out quite extensively provisions under the Medicines and Poisons Act 2014 and the Medicines and Poisons Regulations 2016—very extensively, in both cases. It also extensively deals with the Misuse of Drugs Act 1981 and the Misuse of Drugs Regulations 1981. I compare that with everything else in the document that comes under other legislative provisions contingent upon the definitions under the Medicines and Poisons Act 2014. It seems at first instance, in the absence of a better explanation, that a lot of the other matters are ancillary and do not tend to refer to an offence having occurred. It may well be that the types of offences are largely limited to those two primary pieces of legislation—that is, the Medicines and Poisons Act 2014 and the Misuse of Drugs Act 1981—and their respective subsidiary legislation. As the Leader of the House pointed out earlier, in the case of the Working with Children (Criminal Record Checking) Act 2004, we are not necessarily talking about an offence as such; it is more the classification of an offence, and how it might have a bearing upon whether a person gets a card or not. That is not going to be particularly relevant to clause 4(10). I set that out in some length because we have already identified that the police are responsible for the enforcement of the Misuse of Drugs Act. Who deals with the enforcement of the Medicines and Poisons Act 2014?

Hon SUE ELLERY: I am advised that the Department of Health has responsibility for that, but there are some delegations to WA police.

Hon NICK GOIRAN: During the validation period, did the Department of Health pursue any offences under the Medicines and Poisons Act 2014?

Hon SUE ELLERY: Yes. I am advised that they were all done by the police under their delegation through sections 14 and 21 of the Medicines and Poisons Act 2014, for offences committed between 1 February 2019 and 19 November 2019. There were 525 convictions.

Hon NICK GOIRAN: Those 525 convictions relate to offences under the Medicines and Poisons Act 2014. I am having a quick look at the provisions under the regulations. Were they simply convictions under the act, or might they have been under the regulations?

Hon SUE ELLERY: Just the act.

Hon NICK GOIRAN: As we would expect. Were the 525 convictions in addition to the 5 263 from the police, or were they a subset of those?

Hon Sue Ellery: Completely different, honourable member.

Hon NICK GOIRAN: So they were in addition. Were any of the 525 convictions under the Medicines and Poisons Act 2014 part of the approximately 350 matters handled by the DPP?

Hon SUE ELLERY: No. The DPP was dealing with the Misuse of Drugs Act; we are now talking about the Medicines and Poisons Act 2014.

Hon NICK GOIRAN: Noting the time, I am not expecting the minister to be in a position this evening to be able to itemise the 525 convictions that took place under the Medicines and Poisons Act 2014, but might she be able to give us a sense or a flavour of the types of offences that we are dealing with, along the lines of what the Western Australia Police Force did when it broke down its 5 263 offences into five categories?

Hon SUE ELLERY: Broadly, I cannot give the member that kind of detail. The offences listed in section 14 of the Medicines and Poisons Act are offences relating to the manufacture, supply, prescribing and possession of schedule 4 and schedule 8 poisons. It also includes offences under section 21, "Fraudulent behaviour to obtain supply of poison", of the Medicines and Poisons Act 2014.

Hon NICK GOIRAN: That is very helpful. Can we get any further examples or can the minister elaborate? What type of matters are we talking about? What type of behaviour is going on that people are trying to manufacture, supply, prescribe or possess a schedule 4 or schedule 8 poison? There are 525 of them. Has some typical notorious behaviour occurred during February that has led to this?

Hon SUE ELLERY: I do not have any more detail. The honourable member can cast his mind to it. With regard to fraudulent behaviour to obtain a supply of poison, for example, sometimes we have seen cases of health practitioners who misused the powers available to them in the course of their work to obtain things that are on the schedule list that are not used on patients.

Hon NICK GOIRAN: I return to the original example I gave about the methamphetamine case. Potentially, we might get some information overnight on how long methamphetamine has been a prohibited drug. If we look at that particular example and we are in agreement that no Western Australian should have been in any doubt in February 2019 that that was a prohibited drug, might the same apply to the types of matters captured by the 525 drugs under the Medicines and Poisons Act? If I compare it with the list provided by the police and those five categories, I cannot make a case for anybody to say they were a little confused in 2019. They were not confused at all; they knew exactly what they were doing and now they are playing a game. Can we have that same level of confidence with the Medicines and Poisons Act?

Hon SUE ELLERY: I think the member can. I am not sure whether I will be able to get any more information overnight to illustrate that. The matters listed in these schedules have been listed for a very long time. That is my experience from about 1 000 years ago when I worked for the Australian Nursing Federation.

Hon Nick Goiran: Oh!

Hon SUE ELLERY: Correct. I watch current events with interest.

Hon Nick Goiran: There's a rabbit warren we could take you down.

Hon SUE ELLERY: Go for your life!

It was a serious matter for the nursing profession—dealing with the medicines and poisons that are on the respective schedules, for example.

Hon MARTIN ALDRIDGE: I have a few questions on three of the four subclauses in clause 4. I will start with the definition in subclause (1), which states —

> ***non-legislative instrument*** means any of the following that is made, issued or given under a written law but that is not itself a written law —
>
> (a) a consent, licence, permit, approval or other form of authorisation;
>
> (b) a decision, determination, direction, exemption or instruction;
>
> (c) a code, notice, order, protocol, rule or standard;
>
> (d) an instrument not covered by paragraphs (a) to (c);

I turn to the first thing that struck me when I read the bill. Why do we go to the extent of providing quite extensive detail in paragraphs (a) to (c) and then say in (d) that it is any instrument?

Hon Sue Ellery: Anything else we haven't thought of?

Hon MARTIN ALDRIDGE: Yes. In terms of simplifying legislation, why could it not simply be an instrument? Why is a non-legislative instrument detailed and then it says "an instrument not covered by paragraphs (a) to (c)"? It is an all-encompassing provision.

Hon SUE ELLERY: I feel a certain sense of deja vu. I normally have this conversation with Hon Nick Goiran. It is a drafting measure. It is about what occurs "in the event". It is a catch-all, a safety net, in the event that something has not been contemplated but ought to have been covered by this. That is sometimes less than satisfactory to Hon Nick Goiran. It might be less than satisfactory to Hon Martin Aldridge too, but that is the explanation.

Hon MARTIN ALDRIDGE: I could also have raised the matter of "things". I know that the government has changed its position on "things" over time.

The question that follows is: is there an instrument that is contemplated that would be captured by paragraph (d) at this point?

Hon SUE ELLERY: No.

Hon MARTIN ALDRIDGE: Clause 4(2) states —

> The relevant definition is taken to have been as follows at all times during the validation period —
>
> ***Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP)*** means the Standard for the Uniform Scheduling of Medicines and Poisons set out in the current Poisons Standard;

Are we confident that the commonwealth will not change that standard between this bill passing and receiving assent?

Hon SUE ELLERY: We have a fabulous commonwealth government in place right now. I thank the member for giving me the opportunity of putting on the record my great admiration for cousin Albo.

Hon Nick Goiran: Is he also in the nurses' union?

Hon SUE ELLERY: No, but his mother was an Ellery.

Hon Nick Goiran: There you go!

Hon SUE ELLERY: There you go.

Hon Nick Goiran: We are learning a lot today.

Hon SUE ELLERY: Yes. Me thinks we are running out of detail to talk about on the bill.

I am advised—I have made the point already—that the view of the department is there is a much better relationship now with the commonwealth on these sorts of matters. I cannot reasonably stand here and give some kind of guarantee about a government I am not a part of. It is fair to say that lessons have been learnt at this end. I have undertaken to ask the minister to give consideration to making sure there is some kind of systemic change. The relationship with the commonwealth is better. I am not sure that I can offer much more than that.

Hon MARTIN ALDRIDGE: I thank the minister for the response. As small as the risk may be, given the significance of the issue that we are dealing with urgently, could there have been a better way, particularly with the issue of definitions, of expressing this definition at a point in time rather than setting it out in the current Poisons Standard? We are effectively falling into the same trap that captured us last time. The risk is small. The commonwealth may not change the Poisons Standard in the next 48 hours, but if it did, we would have a problem.

Hon NICK GOIRAN: The minister drew to our attention section 14, "Offences relating to manufacture, supply, prescribing and possession of Schedule 4 and Schedule 8 poisons", of the Medicines and Poisons Act 2014. Were any poisons added to schedule 4 or schedule 8 during the validation period?

Hon SUE ELLERY: I would need to seek advice on that. I do not have the Chief Pharmacist at the table. I can give the member an undertaking to try to find that overnight.

Hon NICK GOIRAN: Can we make every endeavour to get that information? If something was added during the validation period, that is a significantly different scenario from methamphetamine. For the purposes of the debate, let us say that it has been a prohibited drug for many years. Something being inserted into the schedule during this tenuous validation period is significant, particularly when we consider what we are proposing in clause 4(10), which is to retrospectively apply the Criminal Code not only with regard to charges, but also with the capability to be punished as a result. If that could be looked at overnight, that would be of some assistance, and I suspect we would then be in a position to move quite quickly tomorrow.

Progress reported and leave granted to sit again, pursuant to standing orders.

GRIFFIN COAL — COLLIE

Statement

HON DR STEVE THOMAS (South West — Leader of the Opposition) [6.20 pm]: I will try to be brief because a lot of other people want to speak tonight. Two weeks ago I raised concerns about the operations of Griffin Coal in Collie, a town I am very concerned about and a company that I think is struggling to survive. For members' interest, I raised concerns that one of the creditors listed for Griffin Coal is Oceania Resources Pty Ltd, a company that had a $60 million United States loan from ICICI Bank, the company that has underwritten the Collie company, Griffin Coal Mining Company. That is also a $60 million loan facility available to Griffin. It is money in with one hand and out with the other. I find it very disturbing that that is the situation in which we find ourselves.

From additional research since that date, I have discovered that there is a company sitting in between those two companies. A company called Param Mitra Resources Pty Ltd sits underneath the company that I thought was the ultimate owner of Oceania Resources, and I think it might still be: Sindhu Trade Links Ltd. Sindhu Trade Links Ltd seems to have a company in the middle called Param Mitra, and Param Mitra interestingly has operations in Griffin. If members look at the *Business Standard* report on Sindhu Trade Links Ltd, they will see that it has a comment on its operations. It says that one of its subsidiaries is Param Mitra Resources Pty Ltd, which is a leading coal and power player in Indonesia, and it states that in Australia —

> … Param Mitra has recently entered into a mine management agreement withan operating mine in Western Australia for producing 3 mn tons per annum.

That sounds like Griffin to me. I do not know whether people in Collie and Griffin, particularly the workers, are aware that an Asian company that is ultimately sitting on a $60 million loan with a subsidiary company to the ultimate company would appear to be Sindhu Trade Links Ltd, which has a subsidiary, Param Mitra Resources Pty Ltd, which has a subsidiary, Oceania Resources Pty Ltd. That is reflected in the look-up reference to Oceania Resources Pty Ltd, which I took the liberty of looking up. It has as its direct parent company Param Mitra Resources Pty Ltd and as the ultimate parent, which is a weird genealogical position to find oneself, Sindhu Trade Links Ltd.

This has been a long and complicated process of working out who actually own an interest in the Griffin Coal mine, because it would appear that the $60 million that Oceania holds as a loan for Griffin, which is taken from a loan from ICICI Bank, which has underwritten the Griffin enterprises to the tune of $1.4 billion, is a company that is very difficult to pin down.

The other interesting thing I note is that it looks as though one of the directors, Mr Dev Sindhu, is the director of Oceania Resources Pty Ltd and the managing director of Param Mitra Resources. He is a director in the subsidiary company and the managing director in the immediate parent company. I presume there is some sort of link to the ultimate parent company in Sindhu. This is a very murky and unclear situation to find ourselves in, with a company that is struggling to survive.

I have had some experience with this before, President. Many years ago there was a proposal to develop a urea factory in Collie and we had a very similar issue. A company called Global Fertilisers Industries B.V. was going to be holding 47 per cent of a $3 billion to $4 billion project that was operating in Collie. When I went looking for Global Fertilisers Industries B.V., I found it as a shelf company in Rotterdam—an interesting place to find it. I discovered that it had current assets of cash in bank of €3 299, and a net financial position for a company of minus €49 681, which means it was a minus €50 000 company that was about to get 47 per cent of a $4 billion project. These sorts of deals need to be looked at closely because the community of Collie, the workers in Griffin and in the power industry that feed off the coal industry and all the businesses that work off that need some understanding of the structure of the company in which they have invested their time, in many cases their lives, with their work.

The question I leave members with is: what on earth is the Australian Securities and Investments Commission and the Foreign Investment Review Board doing? I wrote to the Foreign Investment Review Board about Global Fertilisers Industries B.V. and asked whether it looked at this company, because it ticked off this company as a reasonable investment firm that had €3 000 in the bank. I am not sure that FIRB actually knows what it is doing. I have some concerns that the Australian Securities Investment Commission is not much better, because the people of Collie deserve better. They deserve to know the business structure of the company that is employing hundreds of local people. It is the biggest local employer, I think, of Collie people. Griffin has always been a heartland of local employment in Collie. There is no clarity about who owns what and what the long-term investment is. Maybe ICICI Bank will continue to prop up Griffin Coal for the next eight years, and then it will probably get to a point at which it will say, "Well, the coal industry is over and we'll run away." It is losing $50 million a year in its investment. Griffin only survives because ICICI Bank plonks another $50 million each year in and pays the debts. It could go for another eight years. As long as we are burning up Indian money, I guess it is okay, it does not really matter.

What sort of security, tenure and risk do the people and workers have in Collie? It is simply not good enough. If ASIC and the Foreign Investment Review Board do not step up, I fear for the future of those workers and the Collie community. It is about time we saw some real honest examination of what is going on at Griffin.

ST ANDREW'S DAY

Statement

HON LORNA HARPER (East Metropolitan) [6.27 pm]: I rise this evening to make a comment because it is 30 November. To many in here, it is Wednesday, 30 November, but to myself and a few million other people, it is St Andrew's Day. St Andrew is the patron saint of Scotland. He was a Galilean fisherman before he and his brother Simon Peter became disciples of Jesus Christ. He was crucified by the Romans on an X-shaped cross in Greece and hundreds of years later his remains were moved to Constantinople and then, in the thirteenth century, to Amalfi in southern Italy, where they are kept to this day.

Legend has it that a Greek monk known as St Rule was ordered in a vision to take a few relics of St Andrew to the ends of the earth for safekeeping. He set off on a sea journey to eventually come ashore on the coast of Fife at a settlement that is now the modern town of St Andrews. In 832AD St Andrew is said to have appeared in a vision to a Pictish king the night before a battle against some English. On the day of the battle, a saltire—an X-shaped cross—appeared in the sky above the battlefield and the Picts were victorious. The saltire, or St Andrew's Cross, was then adopted as the national emblem and flag of Scotland. St Andrew was first recognised as an official patron saint of Scotland in 1320 at the signing of the Declaration of Arbroath, an appeal to the Pope by Scottish noblemen asserting Scotland's independence from England.

I could go on and tell members about other relics and bones and things, but I will not. What I want to do, since it is St Andrew's Day, for the patron saint of Scotland, I want to recite a little poem that talks about how well the Scots have done over the years. This poem is a wee bit old, so not all the language translates today. It is called *Wha's like us? Damn few' and they're A' deid*. It reads —

> The typical English man in his home he calls his castle, finishes his breakfast of toast and MARMALADE invented by Mrs Kieller of Dundee Scotland, and slips into his RAINCOAT patented by Charles Macintosh from Glasgow Scotland.
>
> He walks to his office along an English lane which is surfaced by TARMAC, invented by John Loudon Macadam of Ayr Scotland—or he drives his English car which is fitted with PNEUMATIC TYRES patented by John Boyd Dunlop of Dreghorn Scotland.
>
> Before he acquired a car he used to travel to his office by train which was powered by a STEAM ENGINE invented by James Watt of Greenock Scotland.
>
> In his office he deals with the mail bearing ADHESIVE STAMPS invented by John Chalmers of Dundee Scotland, and makes frequent use of the TELEPHONE invented by Alexander Graham Bell born in Edinburgh Scotland.
>
> At home in the evening he dines on his favourite traditional ROAST BEEF from Aberdeen Angus raised in Aberdeenshire Scotland and he watches an item on the TELEVISION an invention of John Logie Baird of Helensburgh Scotland.
>
> His son prefers to read TREASURE ISLAND written by Robert Louis Stevenson born in Edinburgh Scotland, whilst his daughter plays in the garden with her BICYCLE, an invention of Kirkpatrick MacMillan, of Thornhill Scotland.
>
> It is impossible for an Englishman to escape the ingenuity of the Scots! In desperation he turns to his BIBLE only to find that the first person mentioned in the good book is a Scot King James VI, who authorised it's translation.
>
> He could of course turn to drink, but Scotland makes the finest WHISKY in the world. Nearing the end of his tether he could uplift a rifle to end it all but the BREECH LOADING RIFLE was invented by Captain Patrick Ferguson of Pitfours Scotland.
>
> Anyway if he escaped death he could find himself injected with PENICILLIN discovered by Sir Alexander Flemming, Bacteriologist of Darvel Scotland, or given CHLOROFORM, an anaesthetic first used by Sir James Young Simpson of Bathgate Scotland.
>
> Out of the anaesthetic his mood would not be improved if his surgeon told him he was as safe as the BANK OF ENGLAND founded by William Paterson of Dumfries Scotland.
>
> Perhaps, in order to get some peace, he should request a transfusion of guid Scottish blood so he too would be entitled to ask ...
>
> Wha's like us?
>
> Damn few and they're A' deid!

I remind members that I may be teeny-tiny, but I am also very Scottish and come from a long line of overachieving people.

CANNABIS — POST-TRAUMATIC STRESS DISORDER

Statement

HON SOPHIA MOERMOND (South West) [6.32 pm]: I refer to a news article written by a constituent of mine. I have full permission to read it out in this place. It reads —

> My daughter Ashlee came toddling into the living room, and I smiled when I saw what was on her head.
>
> 'Well, aren't you the cutest little bunny rabbit?' I said, and she grinned back at me. I'd bought her a set of bunny ears for Easter and she loved them so much, she'd barely taken them off since.
>
> Ashlee was the youngest of my three children—and my only girl.
>
> When I'd got together with her dad, Ron Jonker, I was already a mum to David. Then we'd gone on to Aaron.
>
> The two boys were best of friends.
>
> 'When I get big, I'm going to buy a house with David, so we can live together,' Aaron would tell me.
>
> I adored my boys, but I'd wanted a girl too.
>
> So, after Ron and I married, we'd tried for another, and that's when our little Ashlee had come along.
>
> Her big brothers, now aged four and six, doted on her as much I did.
>
> But while I loved being a mum to my kids, my relationship with Ron wasn't good.
>
> He was verbally abusive towards me, and would sometimes push and shove me around.
>
> But then he started taking his anger out on the kids too.
>
> One day, when my dad was over visiting, Ron had yanked David by the ear to discipline him.
>
> Dad, who was a kind, gentle man and had always had a close bond with David—who called him 'Gampa'—was absolutely horrified.
>
> Then, when Aaron was five, Ron smacked him for taking too long to get his shoes undone.
>
> He hit him so hard, he had handprints on his back and bottom.
>
> I knew this couldn't go on, so I told Ron: 'It's over.'
>
> He didn't take it well.
>
> 'I want you out of the house now!' he said.
>
> So, I took the kids and moved in with Dad.
>
> Although Ron was angry, I tried my best to keep things civil and even arranged for him to have the kids.
>
> After they'd been with him for the weekend, he called and said: 'Can I have them for a few more days?'
>
> 'OK,' I replied, hoping he was trying to be a better dad.
>
> But when I popped over to the house later to see the children, Ron flew into a rage and grabbed me around the throat.
>
> 'I want to hit you, but you're not worth it,' he said.
>
> Days later, he called to tell me that he was going for full custody of the children.
>
> I was distraught.
>
> I loved my kids so much that, if I thought he'd make a better parent, I'd have let him raise them alone—like Dad had raised me and my brother.
>
> But knowing what Ron could be like, I knew that they'd be better off with me.
>
> Only now, he refused to give them back and made horrible threats whenever I tried to contact him.
>
> 'You'll never see your kids again,' he said. 'If you win in court, I'll make sure you lose in the end.'
>
> Three weeks after our split, we were in court for the custody hearing.
>
> Thankfully, the judge awarded me custody, allowing Ron two weekends out of three.
>
> He ordered Ron to return the kids to me in a few days' time.
>
> But outside court, I could see Ron was seething.
>
> His eyes bored into me, empty and black.
>
> It was like looking at evil.

Suddenly, I had an horrific premonition.

'He's going to kill the kids,' I sobbed to my lawyer. 'Please, do something.'

But she said there was nothing she could do, as there was no sign Ron was going to hurt them.

I was so scared, that I rang the police.

They sent an officer round, but when he reported that Ron was no threat to the kids or himself, I called social services.

'Please, just take the children out of his care,' I begged. Put them in the system if you have to—but just take them away from him.'

But no one would listen.

Next day, Ron let the kids ring me.

I spoke to Aaron and David briefly, and they seemed to be OK.

And when Ron indicated that he was bringing them back, I felt relieved.

Later that evening, he called and spoke to Dad, telling him to go to the bottom of the drive where he was waiting.

I assumed Ron was handing over the kids, but Dad returned with a letter from him.

It read: I *did warn you that if you won in court, you would lose. Unless some divine miracle happens, the next time you see my kids will be to make a positive ID at the Coroner's Office*.

I became hysterical, but somehow I managed to phone the police.

Fifteen minutes later two officers arrived and told me to call Ron to arrange a meeting.

When I finally got through to him, he agreed to meet me at a local tourist spot later that evening.

'I'll see you coming, so I'll know if the cops are involved,' he warned.

I wanted to go, but the police said it was too dangerous and that they'd go instead.

Ten minutes before the arranged meeting time, Ron called the house asking where I was.

'She's on her way,' Dad said, trying to stall him.

I hoped the police would arrive soon.

But 20 minutes later, Ron called again to ask where I was.

Dad told him I should already be there already.

'She's in a state, Ron,' Dad said. 'Maybe she's had an accident. Come back, mate.'

He could hear the boys crying in the background.

They were shouting: 'Gampa, help us!'

Not knowing what was happening was torture.

But soon after, Ron called me and yelled: 'I told you, no police! I think I've lost them.'

Then he hung up, and I broke down in tears.

When she next saw her children, they were dead. He had gassed them to death in his vehicle. The police failed to be there on time. The police helicopter was being serviced and all the safety procedures that were in place failed this woman and her children. This was about 15 or 20 years ago. It caused unnecessary suffering for her and her children, obviously. Initially, she managed her symptoms of post-traumatic stress disorder with cannabis. Cannabis is still expensive and she still uses it. War veterans can now buy subsidised cannabis subscriptions for PTSD. That is great, and it would be absolutely fantastic to see that extended to victims of crimes or other unfortunate circumstances. I can only hope that other therapies using MDMA will become available, as MDMA can rewire the brain in one or two guided counselling sessions. Imagine how many lives can be improved and how much suffering can be stopped.

CHILD HEALTH SERVICES

Statement

HON DONNA FARAGHER (East Metropolitan) [6.39 pm]: I am still coming to terms with what Hon Sophia Moermond just spoke about. I rise to make a few comments about child health services in this state because for some time I have been asking questions of the government about these services. I have been asking those questions because I recognise very clearly that child health nurses provide a very important service to families. I and others have been concerned for some time about the challenges currently being experienced in this area. I regularly hear that there are not enough nurses and about how that is impacting the access of parents and children to these services.

The Department of Health itself has even acknowledged in previous answers to me through the estimates hearings process that access to services can be impacted by workforce limitations, including vacancies. Answers provided to me this week tell me that the Child and Adolescent Health Service currently employs 172.29 FTE community child health nurses and the WA Country Health Service employs 71.49 FTE. Today, I was informed in question time that approximately 40 FTE child health nurse vacancies exist across CAHS and WACHS—around 20 vacancies in each. It is clear that there is a shortfall. Of course, there are shortfalls and shortages across many areas, not just in nursing, so it is not necessarily unexpected. But I am told it is having an impact on operating hours and access. I was informed by the minister that 233 clients are currently on a standby list for a child health check. I accept that there might be some reasons for this, but the fact is that there is a waitlist and 233 children are on it. The Swan region in particular, which is in my electorate, is the worst with 92 children on standby. That figure is up from 26 children as at June 2022. That is not the fault of or a reflection on the capacity of the child health nurses; they are clearly under considerable pressure to keep up with demand. The simple fact is that every day babies are born. Every day babies will need to access and undergo vital health checks, and those babies and their families will receive other supports.

With that in mind, when the minister provided me with answers a few months ago, I was interested to see her reference the fact that service agreements were in place between the Department of Health and a number of non-government organisations to deliver child health services. One agreement existed between CAHS and the Salvation Army in metropolitan Perth, and a further eight agreements were held with the WA Country Health Service. The agreement between CAHS and the Salvation Army is due to expire on 30 June 2023. I have visited the Salvation Army Balga Corps and I want to commend it on the suite of services that it provides everyday particularly for families and young children, but also for many other vulnerable members of the community. Its early years program has a fantastic early learning centre, a community garden in which it holds a number of playgroups and other workshops, and also what it describes as a boutique-style child health centre. It is that centre that has the service agreement with the Department of Health.

As I understand it, the agreement arose out of an identified need for the area around eight years ago. The Salvation Army runs the centre in partnership with the department. The Salvation Army value-adds to that contract and delivers child and maternal health services to families living in Balga, Girrawheen, Koondoola and Nollamara. The service has two full-time child health nurses who not only undertake the universal child health checks, but also provide other services that cater for the local community including appointments outside usual business hours, antenatal education sessions, garden-based playgroups, first-aid training, toilet training education sessions, sing and grow playgroup sessions, mums and bubs fitness classes, sensory playgroups, family fun days and many more. On average, the service has around 3 160 contacts a year and very strong connections within the community.

I was continuing this week to ask questions of the minister, as I had been prior to my visit, about these non-government contracts. I was somewhat shocked and disappointed this week to learn that the contract with the Salvation Army that has been in place for eight years will not be renewed. In response to my question, the minister said in part —

> … CAHS will bring these services back in-house to be delivered by CAHS, which will ensure the services are integrated with CAHS existing clinical governance structures, services and programs to support continuity of care for clients.

I say to the department and the government that that answer implies in my view that the service is not working within the CAHS framework. But I know that it is because I was told during my visit and I have seen it in the report that the Salvation Army kindly provided to me when I was there: it is overseen by the relevant CAHS governance policies, there is regular reporting and there absolutely is a continuity of care. On all those counts, I would absolutely agree with the department and CAHS that it is important that the Salvation Army follow those requirements; I have no issue with that. The fact is that it is doing that. Given the fact that there is a shortage of child health nurses and there are waitlists for children who are on a standby list, I ask the government to reconsider this decision. Many of the families are vulnerable families. I cannot see how the department can guarantee that the service will remain the same. Can the department guarantee that two full-time child health nurses will be provided, as there are now? Can it guarantee that there will be even one full-time child health nurse? I do not think that it can.

I am not raising the matter at the request of the Salvation Army; I am raising it as a local member for this area who is genuinely concerned that the services that these families are used to and have been receiving for eight years will diminish. As I said at the beginning of my contribution, I do not see that as a fault of or a reflection of the child health nurses—far from it. It is simply a reality that when the system is under pressure, the services will diminish. We know that there are 40 vacancies in child health services across metropolitan and country WA right now. We know that children are on waitlists right now just to have a universal child health check.

Given this information, I am concerned about the remaining contracts through the WA Country Health Service. I appreciate that there is a longer lag time for those contracts, but I will be watching what happens and asking questions about that when we return to Parliament next year. I genuinely ask that the minister look into this matter. I appreciate that she has a lot going on and may not be aware of this issue—I do not know—but that is why I am raising it today. Other members in this house are also members for East Metropolitan Region. I ask that they also raise this with the minister and that those members and the minister consider the value of this service and retain it.

DONATELIFE WESTERN AUSTRALIA — SERVICE OF REMEMBRANCE

Statement

HON STEPHEN PRATT (South Metropolitan) [6.48 pm]: On Sunday, 27 November, I was fortunate enough to represent the Minister for Health, Amber-Jade Sanderson, at the DonateLife Western Australia Service of Remembrance overlooking picturesque City Beach. The Service of Remembrance is an annual commemorative service hosted by DonateLife WA and supported by the Town of Cambridge to honour organ and tissue donors and their families. It also provides an opportunity for donor families to come together and remember their loved ones who have selflessly saved and transformed the lives of thousands of Western Australians. The service was one of a series of national events to mark DonateLife Thank You Day. DonateLife WA works in partnership with the Australian Organ and Tissue Authority to achieve a world's best practice approach to organ and tissue donation for transplantation. Community recognition of the contribution made by donors and their families is vitally important and helps raise awareness of organ and tissue donation.

The service was incredibly moving and featured an inspiring speech by Jake Prince, a 16-year-old Western Australian who just two years ago became Australia's 2 000th liver transplant recipient. When Jake was three years old, he was diagnosed with alpha-1 antitrypsin deficiency, a condition that usually affects the lungs and occasionally damages the liver. In Jake's case, it unfortunately did damage to his liver, which rapidly deteriorated in the space of 18 months. After managing the rare condition through numerous medications and regular check-ups, an experience all too familiar for families of those who suffer from genetic illnesses, it became clear that Jake required a liver transplant. Due to a donor's selfless decision to donate, Jake received a new liver, which ultimately saved his life. Jake is now training to compete in next year's World Transplant Games, which will be held in Perth in April 2023. For those who are unaware, the World Transplant Games is the world's largest awareness event for the gift of life and is a beacon for transplant recipients and their families and supporters, donor families and living donors. Ultimately, it is a celebration of a second chance at life, demonstrating the success of transplant surgery and promoting the need to raise public awareness of organ and tissue donation.

Additionally, the service featured a moving speech from Ms Rowena Alexander, who represented donor families on behalf of her daughter Micaiah, who, after sadly passing away, gave new life to others through the donation of her lungs and kidneys. Rowena urges people to talk about their organ donation wishes with their families, and particularly Indigenous people, who are underrepresented among organ donors.

We also heard from Dr Rob Larbalestier about the amazing work that he and his team carry out, saving lives at Fiona Stanley Hospital. He has had a distinguished career in cardiothoracic surgery and heart and lung transplantation.

There is significant support for organ donation in the community. However, there is also a large gap between support and actual registration. According to the Australia Talks national survey in 2021, 81 per cent of respondents said they would be likely to donate their organs when they die, but according to DonateLife, only one-third of us have registered our intentions with the Organ and Tissue Authority. DonateLife WA does fantastic work in partnership with the Department of Health to increase registration levels. I encourage all who are considering it to sign up and, importantly, discuss their wishes with their family or next of kin. With Christmas just around the corner, it presents the perfect opportunity to have that conversation as we spend time with friends and family over the break. You would be giving a WA family the most precious gift of all—the gift of life; a second chance. For people like Jake, that means the opportunity to dream of a very bright future.

Jake's speech was incredibly moving. I just want to finish with a couple of quotes from his speech. He noted that he was celebrating a 100 per cent attendance record at school in 2022, for the first time in his life. I will finish with a quote. He said —

> In the depths of your grief, hope has been born.
>
> Your loved ones will never be forgotten.
>
> It is because of you and your families that we are gathered here today …
>
> … thank you.

Members: Hear, hear!

DAYLIGHT SAVING TIME

Statement

HON WILSON TUCKER (Mining and Pastoral) [6.53 pm]: I realise the time is fairly short. With the time remaining, I would actually like to talk about the time—that is a fantastic segue!—and spend some time talking about daylight saving, because this topic has not been given the emphasis that it should have been given in a long time. The last referendum on daylight saving was held in 2009—over 12 years ago. I ask members to cast their minds back to 1975, when the first referendum was held. We have had four in this state, with the last one in 2009. We have been in darkness on the subject of daylight saving for 12 years!

Several members interjected.

Hon WILSON TUCKER: If members remember, the referendum was narrowly defeated.

Hon Martin Pritchard interjected.

Hon WILSON TUCKER: The no vote was 54 per cent in the last referendum; it was very close. I will refresh everyone's memory on this. In the East Metropolitan Region, 44 per cent said yes and 55 per cent said no.

Hon Matthew Swinbourn: Did you say 44 per cent?

Hon WILSON TUCKER: We are going to get to the good stuff. In the North Metropolitan Region, 55 per cent said yes and 44 per cent no. In the South Metropolitan Region, 51 per cent said yes and 48 per cent said no. In the Agricultural Region, as expected, only 17 per cent voted yes. I think Geraldton was actually the lowest.

Hon Kyle McGinn: Give us the numbers.

Hon WILSON TUCKER: In the Agricultural Region, 17 per cent said yes and 82 per cent said no. As we would expect, in the Mining and Pastoral Region—we are not going to get into this right now—34 per cent said yes and 65 per cent said no.

Hon Darren West: That is your electorate.

Hon WILSON TUCKER: The vote in the South West Region was 34 per cent yes and 65 per cent no. A very effective no campaign was waged during the 2009 referendum that literally scared the daylights out of the regional members —

Hon Darren West: And the cows.

Hon WILSON TUCKER: And the cows and the curtains. Look, they did a fantastic job. I recently spoke to Matt Birney, who was the catalyst for this; he put the Daylight Saving Bill (No. 2) 2006 through. In his words, he was almost the father of daylight! The only thing that brought him down, in his words, was the fact that the referendum was held not in winter but in summer. It was held at the end of a particularly hot summer. I think everyone had endured 40-plus degree days, and then we had a referendum on who wanted more daylight!

Hon Dr Steve Thomas: Are you saying that the daylight saving referendum being held in summer was the issue?

Hon WILSON TUCKER: That is correct, Leader of the Opposition; public perception changes after people have been belted by the sun for consecutive days, at 40-plus degrees. All I am saying is that we should have held it in winter. If we had, in Matt Birney's opinion, it would have passed. Also, referendums in WA typically fall to the negative. There is some psychology there, but I am not going to get into it; I certainly do not have the time. Be that as it may, the people have spoken. They spoke in 2009 and said no. That is fine. The previous Premier, Colin Barnett, said that this issue was dead for a generation and that we should not touch it. That is fair enough. He is no longer here. It is now 12 years later. Just to put this in perspective, people who were five years old when that vote happened are now 18, and they can vote. Those people have not had a say on the issue of daylight saving. I am not here to change perceptions —

Hon Dan Caddy: Yes, you are.

Hon WILSON TUCKER: Well, potentially. I have a bill that has been tabled and ready to go on daylight saving, but I want to leave members with two facts to distil over the summer period as they sit on a beach, perhaps drinking a cold beer, and want one extra hour of daylight as the sun sets at 7.30. WA has some of the best beaches in the world and a spectacular coastline; it is a fantastic state. If members are sitting there, wanting just one more hour of daylight, I ask them to think about these two little factoids that I am going to give them right now. The first is that we have a younger population coming through. Millennials now equal the boomer population. The median age in WA is 38.

Hon Dan Caddy: I'm old, then.

Hon WILSON TUCKER: Yes; I will not comment on that. We have a younger population coming through. Younger people want more vibrancy in this state.

Hon Kyle McGinn: More daylight.

Hon WILSON TUCKER: More daylight.

Hon Matthew Swinbourn: What are the two facts?

Hon WILSON TUCKER: The first is the fact that we have a younger population. The second is that we are moving towards a more location-agnostic working environment. Where one works does not really matter as much as it did previously. It is a fact that Western Australia is beholden to the east coast time zone. We saw it with the grand final, and we see it every day. It is only one hour, but it does add up. It is a three-hour difference, and we could reduce that to two hours. These are the facts that have changed in the last 12 years. I will leave them with members to ponder, pontificate on and absorb as they sit on the beach and drink, hopefully, a cold beer over the next couple of months, and think about the fact that we do need daylight saving back in this state.

WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) AMENDMENT BILL 2022

Assembly's Message

Message from the Assembly received and read notifying that it had agreed to the amendments made by the Council.

ROAD TRAFFIC (VEHICLES) AMENDMENT (OFFENSIVE ADVERTISING) BILL 2022

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.01 pm]: I move —

That the bill be now read a second time.

The Road Traffic (Vehicles) Amendment (Offensive Advertising) Bill 2022 will implement necessary legislative measures to protect against offensive advertising on vehicles in Western Australia. The focus of the bill is to address offensive advertising on vehicles that put at risk vulnerable social groups such as minority groups, young people and the victims of domestic violence. The Minister for Transport and the Minister for Women's Interests have both received numerous complaints over the years asking the state government to stamp out this behaviour.

Advertising on vehicles is visible to all road users. Unlike other forms of advertising, you cannot switch it off, turn the page or unsubscribe to avoid it, or if you would rather your children were not exposed to it. It is true that the overwhelming majority of advertising on vehicles is perfectly acceptable and is a legitimate means to advertise a business. There has, however, been some longstanding community concern about sexually explicit, misogynistic or otherwise offensive advertising that has appeared on some vehicles, an example being Wicked Campers. Vehicles displaying advertising for this company featured spray-painted designs, often containing pop culture references and slogans that were of a derogatory or offensive nature.

The advertising industry in Australia is self-regulated. The Australian Association of National Advertisers administers the self-regulation of advertising through its Ad Standards branch. Ad Standards has received numerous complaints about vehicles displaying offensive advertising and, in July 2014, a petition opposing sexist and misogynist slogans depicted in vehicle advertising attracted over 100 000 signatures and protests in the Australian Senate. Since this time, all other Australian jurisdictions have introduced legislation or policies to protect against offensive advertising on vehicles. The government is concerned that failure to participate in the national approach may result in Western Australia becoming the jurisdiction of choice for licensing vehicles displaying offensive advertising. It is important to acknowledge the distinction between advertising and an individual's right to freedom of expression. This bill does not seek to erode an individual's right to express themselves freely and the powers introduced by this bill will be limited to vehicles displaying advertising that is deemed offensive.

Current Western Australian vehicle legislation is concerned with the licensing and safety standards of vehicles. It does not provide for the power to cancel a vehicle licence when advertising featured on the vehicle is deemed offensive. Amendments to the Road Traffic (Vehicles) Act 2012 will provide the CEO with the power to cancel, refuse to grant, or transfer a vehicle licence if Ad Standards has determined that advertising on a vehicle is offensive.

Complaints about offensive advertising can be made to Ad Standards. Ad Standards applies an established process, based on international best practice, for considering and resolving those complaints. Three features of that process are notable. Firstly, advertising is assessed against the Australian Association of National Advertisers Code of Ethics, otherwise known as the Advertising Code. The Advertising Code has been established to ensure that advertisements are, amongst other things, decent and truthful. For example, the Advertising Code requires that advertising does not depict material in a way that is discriminatory. Sexual appeal should not be employed in a way that is degrading to any individual or group, and sex, sexuality and nudity should be treated with sensitivity relative to the audience. Secondly, complaints made to Ad Standards are assessed by the Ad Standards Community Panel, which comprises members who are representative of the Australian community. Members of the panel are required to be independent of the advertising industry. Thirdly, the Ad Standards process provides procedural fairness. Advertisers are able to respond to any complaints made about their advertisement before the panel makes a final determination. The Ad Standards process also provides for an independent review if the advertiser or the complainant does not agree with the panel's determination. In the vast majority of cases, when the panel makes an adverse determination about a particular advertisement, the advertiser either withdraws the advertisement or modifies it to remove the offensive aspect.

This self-regulation model works extremely well, but relies on cooperation and support from advertisers. If an advertiser chooses not to comply with an adverse determination, Ad Standards has no power to require an advertisement to be modified or removed. The bill being introduced will allow further action to be taken when an advertiser ignores a determination made by Ad Standards. Specifically, the bill provides that Western Australian vehicle licence holders who fail to comply with an Ad Standards final determination will face the prospect of having the licence of the offending vehicle cancelled.

The proposed objectives of this bill have received widespread support in the media, including from Ad Standards. The bill delivers the government's commitment in a measured, fair and pragmatic way. The provisions allowing cancellation of a vehicle licence will be activated only once the Ad Standards process, including any review, has

been completed, and the Department of Transport has received notification that an adverse determination has been made against a Western Australian licensed vehicle. Even after the Department of Transport is notified, the licence will not be automatically cancelled. The Department of Transport will be required to provide written notification to the licence holder that the licence may be cancelled on a date stated in the notice. This will be at least 14 days from the date of the notice. Importantly, the cancellation of the licence will not proceed if the licence holder satisfies the chief executive officer of the Department of Transport that the offensive advertising has been removed prior to the date stated in the notice. The licence holder will be given warning of the proposed cancellation of the vehicle licence and a further opportunity to remove the advertisement to ensure the vehicle can continue to be used. The provisions will also provide discretion for the chief executive officer of the Department of Transport to delay the cancellation of a vehicle licence in extenuating circumstances, such as when a licence holder is unable to access the vehicle to remove an advertisement in the time given.

For the record, the objective of this bill is not the cancellation of vehicle licences. The bill is designed to achieve the removal of offensive advertising from vehicles. Ultimately, if a licence holder refuses to remove an offensive advertisement, the vehicle licence will be cancelled. Once a licence is cancelled, the vehicle cannot be relicensed until the offensive advertising is removed.

To ensure these new provisions cannot be circumvented by the licence holder, the bill also includes provisions to ensure that, after the Department of Transport has issued a licence warning, the vehicle licence cannot be transferred unless the notice is subsequently withdrawn because the offensive advertisement has been removed. There will also be no refund of vehicle licence fees if the licence is cancelled. Underpinning these amendments is the commercial imperative of all businesses to keep their vehicles on the road and to avoid adverse public comment from their customers.

The Ad Standards process, together with the new process contained in this bill, will ensure that there are multiple opportunities for offensive advertisements to be removed from vehicles. The bill will provide considerable motivation for offensive advertising to be removed voluntarily, but also concrete follow-up action when an advertiser refuses to remove an offensive advertisement. The legislation will not impact the overwhelming majority of vehicle advertising, but is targeted at only the worst examples that have no place whatsoever on our roads.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1918.]

Debate adjourned, pursuant to standing orders.

House adjourned at 7.09 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

CYCLONE SEROJA — RECOVERY GRANTS

1060. Hon Martin Aldridge to the Minister for Emergency Services:

(1) I refer to the Cyclone Seroja recovery grants and financial assistance and I ask, for the 'Recovery and Resiliency Grants for Insured Residents' program please identify:

(a) the total funding pool available;

(b) the number of applications to date;

(c) the number of approvals to date;

(d) total funds disbursed to date; and

(e) please provide a breakdown of approved funding by local government area?

(2) For the 'Clean Up Assistance for Uninsured Residents' program please identify:

(a) the total funding pool available;

(b) the number of applications to date;

(c) the number of approvals to date;

(d) total funds disbursed to date; and

(e) please provide a breakdown of approved funding by local government area?

Hon Stephen Dawson replied:

The below answer is in response to Legislative Council Questions on Notice 1060, 1062, 1063, 1064, and 1065.

The Recovery and Resilience Grant program is administered by the Department of Emergency Services (DFES). It is for insured homeowners is a reimbursement grant. Payments cannot be undertaken until the invoice has been paid by the owner. Once an applicant is assessed as being eligible the timing of the grant payments is dependent on progress of works and is not within the control of DFES.

(1) As of 01 November 2022:

(a) $45 million has been set aside for reimbursement to eligible parties upon completion of works;

(b) 492 applications have been received;

(c) 123 applications have been approved;

(d) $531,178.03 has been disbursed; and

(e)

Local Government Area	**Funds Disbursed**
City of Greater Geraldton	$13,109.42
Shire of Chapman Valley	$19,380.03
Shire of Mingenew	$40,000.00
Shire of Northampton	$438,688.58
Shire of Perenjori	$20,000.00
Total	**$531,178.03**

(2) As of 01 November 2022:

(a) The 'Clean Up Assistance for Uninsured Residents' program is funded through Category A of the joint Commonwealth–State Disaster Recovery Funding Arrangements (DRFA) and is uncapped;

(b) 23 applications have been received;

(c) 14 applications have been approved;

(d) $146,683.82 has been disbursed; and

(e)

Local Government Area	**Funds Disbursed**
Shire of Chapman Valley	$44,785.53
Shire of Northampton	$101,898.29
Total	**$146,683.82**

For the Primary Producer Recovery Grant

The Primary Producer Recovery Grant is administered by the Department of Primary Industries and Regional Development (DPIRD).

(1) As of 01 November 2022:

(a) $26.3 million has been allocated;

(b) 115 applications have been received;

(c) 97 applications have been approved;

(d) $1,895,468.34 has been disbursed; and

(e)

Local Government Area	**Funds Disbursed**
Shire of Carnarvon	$44,150.89
Shire of Carnamah	$76,080.78
Shire of Chapman Valley	$196,694.91
Shire of Dalwallinu	$40,000.00
City of Greater Geraldton	$409,788.78
Shire of Koorda	$25,000.00
Shire of Mingenew	$151,921.14
Shire of Morawa	$119,357.50
Shire of Mt Marshall	$12,387.85
Shire of Murchison	$25,000.00
Shire of Northampton	$582,411.88
Shire of Perenjori	$187,674.61
Shire of three Springs	$25,000.00
Total	**$1,895,468.34**

For the Measures to Assist Primary Producers program.

(2) As of 01 November 2022:

(a) These are demand-driven assistance measures. There is no capped total funding for the assistance measures in this category;

(b) 29 applications have been received;

(c) 20 applications have been approved;

(d) $274,621.79 has been disbursed; and

(e)

Local Government Area	**Funds Disbursed**
Shire of Chapman Valley	$10,353.34
Shire of Coorow	$9,362.80
City of Greater Geraldton	$35,232.27
Shire of Mingenew	$97,219.92
Shire of Northampton	$15,655.75
Shire of Perenjori	$106,797.71
Total	**$274,621.79**

For the Cultural and Heritage Asset Clean-Up and Repair Grant program.

The Cultural and Heritage Asset Clean-Up and Repair Grant is administered by the Department of Planning Lands and Heritage (DPLH).

(1) As of 01 November 2022:

(a) $1,960,000 million has been allocated;

(b) 46 applications have been received;

(c) 1 application has been approved;

(d) $22,000 has been disbursed; and

(e)

Local Government Area	**Funds Disbursed**
City of Greater Geraldton	$22,000
Total	**$22,000**

For Community and Recreational Clean-Up and Restoration Grant program

The Community and Recreational Asset Clean-Up and Restoration Program is a reimbursement scheme as opposed to a grants program and is jointly funded through the Commonwealth–State Disaster Recovery Funding Arrangements.

(1) As of 01 November 2022:

(a) $2.2 million has been allocated to the Community and Recreational Asset Clean-Up and Restoration Program (DLGSC–Local Government). $2.1 million has been allocated to the Department of Biodiversity, Conservation, and Attractions (DBCA) for the restoration of tourism sites and recreational assets that are managed and owned by the State;

(b) Applications are not made under this program, however there were ten **claims** received.

(c) Nine **claims** have been paid.

(d) $133,038.32 reimbursed for local government claims; and

(e)

Local Government Area	**Funds Disbursed**
Shire of Chapman Valley	$922.82
City of Greater Geraldton	$1,125.60
Shire of Mingenew	$59,065.80
Shire of Mt Marshall	$5,635.00
Shire of Northampton	$66,289.10
Total	**$133,038.32**

For the Small Business Recovery Grant Program

The Small Business Recovery Grant Program is administered by the Small Business Development Corporation (SBDC).

(1) As of 01 November 2022:

(a) $ 17.7 million has been allocated;

(b) 82 applications have been received;

(c) 53 applications have been approved;

(d) $837,696.57 has been disbursed; and

(e)

Local Government Area	**Funds Disbursed**
Shire of Perenjori	$39,742.00
City of Greater Geraldton	$122,900.95
Shire of Morawa	$25,000.00
Shire of Chapman Valley	$25,257.00
Shire of Mt Marshall	$6,368.00
Shire of Northampton	$618,428.62
Total	**$837,696.57**

The Department of Communities (DOC) is responsible for the tropical cyclone Seroja community outreach and welfare program.

(1) Seven.

(2) Shire of Northampton (including Kalbarri)

Shire of Chapman Valley

Shire of Morawa

Shire of Perenjori

Shire of Three Springs

Shire of Mingenew

Shire of Carnamah

City of Greater Geraldton (including Mullewa)

Shire of Koorda

Shire of Shark Bay

Shire of Dalwallinu

Shire of Irwin

Shire of Mount Marshall

(3) As of 1 November 2022, $3,131,320.

(4) As of 1 November 2022, $1,404,914 funded 12 FTE DoC staff to coordinate and deliver ongoing recovery activities. A further $1,073,022 funded specialist and mental health service providers to deliver against recovery priorities structured around the following areas: personal support such as social, emotional, and psychological support services; community resilience, training, and development. The operational expenses for the program to 1 November 2022 were $653,384.

Ongoing recovery activities include:

Coordination of financial assistance to low income and uninsured residents to replace or repair essential household items and/or repair homes to be habitable, safe, and secure.

Coordination of specialist service providers (Red Cross and GIVIT) to support the social wellbeing of people who have been severely impacted.

Coordination of mental health services through the following local providers: Centacare, Dessert Blue Connect and Mission Australia.

Provision of support for complex case coordination for at-risk people.

(5) (a) 30 June 2023.

(b) No.

(c) No. The DoC is currently working with stakeholders, service providers and the community to evaluate the existing program and assess the need for further services post June 2023.

(d) Any unspent funds cannot be utilised for additional or other programs.

CYCLONE SEROJA — RECOVERY GRANTS

1062. Hon Martin Aldridge to the Minister for Agriculture and Food:

(1) I refer to the Cyclone Seroja recovery grants and financial assistance, and I ask, for the ‘Primary Producer Recovery Grant’ program please identify:

(a) the total funding pool available;

(b) the number of applications to date;

(c) the number of approvals to date;

(d) total funds disbursed to date; and

(e) please provide a breakdown of funds disbursed by local government area?

(2) For the ‘Measures to Assist Primary Producers’ program please identify:

(a) the total funding pool available;

(b) the number of applications to date;

(c) the number of approvals to date;

(d) total funds disbursed to date; and

(e) please provide a breakdown of funds disbursed by local government area?

Hon Alannah MacTiernan replied:

Please refer to Legislative Council Question on Notice 1060.

CYCLONE SEROJA — RECOVERY GRANTS

1063. Hon Martin Aldridge to the Leader of the House representing the Minister for Heritage:

I refer to the Cyclone Seroja recovery grants and financial assistance, and I ask, for the 'Cultural and Heritage Asset Clean-Up and Repair Grant' program please identify:

(a) the total funding pool available;

(b) the number of applications to date;

(c) the number of approvals to date;

(d) total funds disbursed to date; and

(e) please provide a breakdown of approved grants by local government area?

Hon Sue Ellery replied:

(a)–(e) Please refer to Legislative Council question on notice 1060.

CYCLONE SEROJA — RECOVERY GRANTS

1064. Hon Martin Aldridge to the minister representing the Minister for Environment:

I refer to the Cyclone Seroja recovery grants and financial assistance, and I ask, for the 'Community and Recreational Clean-Up and Restoration Grant' program please identify:

(a) the total funding pool available;

(b) the number of applications to date;

(c) the number of approvals to date;

(d) total funds disbursed to date; and

(e) please provide a breakdown of approved grants by local government area?

Hon Stephen Dawson replied:

Please refer to Legislative Council Question on Notice 1060.

CYCLONE SEROJA — RECOVERY GRANTS

1065. Hon Martin Aldridge to the parliamentary secretary representing the Minister for Small Business:

I refer to the Cyclone Seroja recovery grants and financial assistance, and I ask, for the 'Small Business Recovery Grant' program please identity:

(a) the total funding pool available;

(b) the number of applications to date;

(c) the number of approvals to date;

(d) total funds disbursed to date; and

(e) please provide a breakdown of approved grants by local government area?

Hon Kyle McGinn replied:

Please refer to Legislative Council Question on Notice 1060.

CYCLONE SEROJA — COMMUNITY WELFARE AND OUTREACH PROGRAM

1066. Hon Martin Aldridge to the Leader of the House representing the Minister for Community Services:

(1) I refer to the $9 million severe tropical cyclone Seroja community welfare and outreach program. How many additional mental health staff, by FTE, have been provided to support communities impacted by cyclone Seroja through this funding allocation?

(2) Please identify which local government areas are currently receiving additional mental health staff through this program?

(3) How much of the $9 million has been disbursed to date?

(4) Please provide a breakdown of how the $9 million program is being spent, including specific programs or projects that are being funded?

(5) Noting in your answer to question 1203 answered on 15 December 2021 that this was a two year program:

   (a) on what date will funding for this program end;

   (b) is it anticipated the full $9 million will be spent by the date identified in (a);

   (c) has the Minister written to the Commonwealth to seek an extension for this program; and

   (d) what will happen to any unspent funds at the end of the two year program?

Hon Sue Ellery replied:

Please refer to Legislative Council Question On Notice 1060.