Parliamentary Debates
(HANSARD)

FORTY-FIRST PARLIAMENT
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LEGISLATIVE ASSEMBLY

Thursday, 17 November 2022

Legislative Assembly

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THE SPEAKER (Mrs M.H. Roberts) took the chair at 9.00 am, acknowledged country and read prayers.

PAPERS TABLED

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

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

Inquiry into the most effective ways for Western Australia to address food insecurity for children and young people affected by poverty — Extension of Reporting Date — Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [9.01 am]: Members, I have advice on the extension of a reporting date. The Joint Standing Committee on the Commissioner for Children and Young People has resolved to extend to 30 June 2023 its inquiry into the most effective ways for Western Australia to address food insecurity for children and young people affected by poverty.

NRL AND TENNIS EVENTS

Statement by Minister for Tourism

MR R.H. COOK (Kwinana — Minister for Tourism) [9.02 am]: I have spoken at great length in this place about the extraordinary list of world-class events happening in both metropolitan and regional Western Australia next year. I would like to add a couple more to that list if I may. Adding to the jam-packed calendar in 2023, WA will host two National Rugby League matches, kicking off on 5 August between Redcliffe Dolphins and Newcastle Knights, and South Sydney Rabbitohs and Cronulla–Sutherland Sharks, to be played at the award-winning Optus Stadium. If the electric atmosphere at the sold-out 2022 State of Origin match, which injected more than $13.3 million into the WA economy, is anything to go by, this double-header should be a fantastic spectacle. In addition, Tennis Australia recently announced Perth as one of three host cities for the inaugural United Cup, a new global mixed team tennis event that will see a return of international tennis to Perth after more than 30 years of the Hopman Cup and the ATP Cup.

I also want to emphasise what this really means for Western Australia. The tourism and hospitality sectors were among some of the hardest hit during the COVID-19 pandemic. As a result, we are witnessing one of the most competitive tourism markets we have ever seen. That is why turbocharging our tourism industry and supporting the operators that provide visitors from across the country and across the globe with once-in-a-lifetime experiences has been such an important part of the McGowan government's Reconnect WA strategy. A thriving tourism industry means we are re-engaging with the world to build an even stronger, more diversified economy for the benefit of all Western Australian businesses, operators and people. World-class sporting events such as the United Cup, NRL matches, UFC 284 and the recent ICON festival of international football, just to name a few, give people another reason to visit Western Australia, meaning invaluable business for local cafes, restaurants and hotels, and, most importantly, jobs for locals. Western Australia has the landscapes, heritage and experiences that cannot be found anywhere else in the world, and everyone else is starting to realise this.

CHEMCENTRE — CRIME SCENE ANALYSIS TOOL

Statement by Minister for Science

MR R.H. COOK (Kwinana — Minister for Science) [9.04 am]: It is my pleasure to announce that the Western Australian government has recently approved $4.6 million in funding ChemCentre to develop a world-first, powerful new tool for crime scene analysis. ChemCentre is Western Australia's leading provider of specialised chemical and forensic science services and has a rich history of research and innovation for the benefit of Western Australia. It is also a public-facing institution and, as evidenced by its massively successful open day earlier this month, attended by Parliamentary Secretary Jess Shaw, MLA, it provides tangible inspiration for the next generation of scientists, innovators and thinkers. Thanks to funding from the WA government, the project will develop a technique to analyse human hair strands as small as two centimetres in length to determine human identification. This new and innovative process will be used to complement and support the use of DNA evidence when DNA is not available or is degraded, or when the DNA presents as a complex multi-person DNA profile. This protein-based human identification technique will be vital in assisting WA police and forensic investigators to associate evidence with a suspect, victim or missing person. This project has the potential to generate a lucrative royalty stream for the state if the tool is adopted by police and forensic services nationally and overseas, in addition to providing important outcomes for the families of those impacted by forensic investigative cases. This is a massive win for our science community and WA more broadly.

I have spoken a lot recently about the need for us to be smarter, more sustainable and diversified on our journey towards a decarbonised economy. This is just one example of how the McGowan government is facilitating this pursuit by capitalising on our natural competitive advantages and supporting innovative WA industry and ideas to create a set of diversified capabilities that are the envy of the world. I congratulate ChemCentre, under the visionary leadership of CEO Peter McCafferty, on securing this funding to expand the capability of WA's premier chemistry and forensic science facility, and I look forward to seeing the important outcomes it will produce for Western Australia.

PERTH AIRPORT WA TOURISM AWARDS

Statement by Minister for Tourism

MR R.H. COOK (Kwinana — Minister for Tourism) [9.07 am]: I take this opportunity to congratulate all the winners and finalists of the 2022 Perth Airport WA Tourism Awards that took place earlier this month. It was a great evening to be among so many passionate and energetic people who clearly love celebrating our wonderful state. Western Australia has so much to offer to tourists and the range and breadth of our tourism experiences are growing every year, just a few of which I have already mentioned.

I want to give a particular mention to Doc Reynolds, one of the driving forces behind the development of Aboriginal tourism in Western Australia who was recognised with the Sir David Brand Medal for Tourism. Doc Reynolds, the outgoing chair of the Western Australian Indigenous Tourism Operators Council, was awarded the highest honour for his outstanding contribution to the tourism industry by an individual. Doc has been a driving force behind the Western Australian Indigenous Tourism Operators Council, which is the peak strategy group for promoting and developing Aboriginal tours and experiences in WA and is the key implementation body in the WA government's Jina plan, which aims to make WA the premier destination in Australia for authentic Aboriginal cultural experiences. I thank Doc on behalf of the McGowan government.

The awards night recognises Western Australian tourism businesses across 26 award categories. Gold medallists on the night included Fremantle Prison, Willie Creek Pearl Farm, Optus Stadium, Margaret River Region Open Studios, Live Ningaloo, Bungle Bungle Guided Tours, Mandurah Visitor Centre, Pullman Bunker Bay Resort, SeaLink WA, the Hike Collective, City of Fremantle, Core Cider House, Sin Gin Distillery, Experience Lancelin Holiday Park, Bungle Bungle Savannah Lodge, Tree Chalets, Broadwater Resort Busselton, Onslow Beach Resort, COMO The Treasury and Fly Rottnest Island. These deserving gold medallists will go on to represent WA at the Australian Tourism Awards in March next year. The McGowan government's Walking on a Dream campaign is having an enormous impact on raising awareness of WA on an international scale. These awards demonstrate that what tourists find when they get here are some of the best tourism operators and experiences in the world. Congratulations again to all the winners and finalists at the 2022 Perth Airport WA Tourism Awards.

WATER CORPORATION — INFRASTRUCTURE — NORTH-EASTERN SUBURBS

Statement by Minister for Water

MR D.J. KELLY (Bassendean — Minister for Water) [9.10 am]: I rise to inform the house that on Friday, 11 November, I announced a $36.5 million investment in new water infrastructure to support residential growth in our north-eastern suburbs. With this new funding, the Water Corporation will construct an 18-kilometre wastewater pipeline as well as a new pump station. This infrastructure will divert wastewater from the Bullsbrook wastewater treatment plant to the Beenyup water resource recovery facility, allowing the Bullsbrook plant to be decommissioned. The Beenyup water resource recovery facility is one of the largest of its kind in the state, making it better equipped to handle the increasing volumes of wastewater being produced in the City of Swan, the population of which is expected to double to 310 000 residents by 2051. The Water Corporation will also construct a 2.6-kilometre water pipeline along Starflower Road and Park Street in Henley Brook to help transport drinking water to thousands of new and existing households in the fast-growing suburbs of Henley Brook, Ellenbrook and Brabham. Ten local jobs will be created over the course of the project.

The McGowan government recognises that population growth in the last decade has seen a significant increase in new residential development across the Perth and Peel region. The $358 million allocated to new metropolitan water projects in this financial year reflects the steps taken by this government to ensure that we continue to plan ahead for the delivery of essential services. Works in the City of Swan will commence by the end of the year and are expected be finished by late 2023.

WATER-EFFICIENT PUBLIC SCHOOLS PROGRAM

Statement by Minister for Water

MR D.J. KELLY (Bassendean — Minister for Water) [9.11 am]: I rise to inform the house that on Tuesday, 8 November, I had the pleasure of attending Lesmurdie Senior High School to announce the McGowan government's extension of the water-efficient public schools program. Since this program began in October 2020, 65 public schools, 56 of which fall within regional Western Australia, have benefited from participating in water-saving practices. Together with the Department of Education and Water Corporation, the $1.5 million program will help schools to

improve their water efficiency and reduce operating costs over coming years. These school overhauls include plumbing retrofits, irrigation improvements, water audits and rainwater harvesting. Early evaluation of the program has shown that this initiative could reduce annual water use by up to 11 per cent, which is the amount of water required to fill 200 Olympic-size swimming pools. It is estimated that WA public schools use about 4.5 billion litres of scheme water annually.

Due to the program's success, the McGowan government is launching a new initiative to save even more water in Perth and Peel schools to protect our precious groundwater resources. The waterwise school grounds program will see water audits and irrigation checks at metropolitan schools that predominantly use groundwater to irrigate ovals and playing fields. The waterwise school grounds program is one of several initiatives supporting water efficiency under *Kep Katitjin–Gabi Kaadadjan: Waterwise Perth action plan 2* announced in October 2022. With climate change significantly impacting Perth's precious water sources, it has never been more important to implement water-saving principles across our state.

FREMANTLE RAIL LINE — LEVEL CROSSINGS

Grievance

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [9.14 am]: My grievance is to the Minister for Transport; Planning. I thank the minister for taking my grievance. My grievance relates to dangers that level crossings along the Fremantle line between Eric Street and the Swan River present to motorists, cyclists and pedestrians alike. The four crossings at Jarrad Street, Salvado Street, Victoria Street and Tydeman Road are at the same level as the railway line. As we all know, whenever a railway line meets a road or footpath, it presents an increased danger to road users. Level crossing incidents carry a significant risk of serious injury or death, which is why warning signs and signals are in place to keep everyone safe. There has been concern for some time now about the logjam of vehicles along the Fremantle rail line caused by the numerous level crossings along the Fremantle line, particularly at Victoria, Jarrad and Salvado Streets in Cottesloe.

These roads carry a large volume of traffic, especially due to commuters travelling along Curtin Avenue from the south who use these crossings to transition onto Stirling Highway. The large amount of east–west traffic associated with the many schools located in the area is also a major contributor to the large volume of traffic using these railway level crossings. Furthermore, the recent and significant increase in high-density housing throughout the area has also substantially increased the volume of traffic using these road and railway level crossings. With regard to this recent increase in infill, it is also very concerning that no consideration seems to have been given to the impact that the new high-density housing is having on traffic throughout the area, in particular, its impact on the abovementioned level railway crossings. Furthermore, traffic density will increase significantly when the numerous new developments that have already been approved finish construction.

The increase in traffic density has coincided with a significant increase in cycling traffic along the principal shared path. As I have said in this place on several occasions, I congratulate the minister on the extensions to the PSP and look forward to the final connection across the river to Fremantle. The PSP can help a bit with the traffic density issue by taking vehicles off the road. However, the success of the PSP has heightened the risk of cyclist–vehicle interaction at the level crossings. This risk will be significantly increased when the river crossing is completed. At present, the current river crossing for cyclists across Victoria Street is unsafe and discourages cyclists from using that route. The newly constructed PSP allows cyclists to travel at high speed and many cycling commuters do so. Because traffic is so constrained and congested across the abovementioned level crossings, drivers become frustrated. Consequently, they tend to accelerate rapidly when they can safely travel over the rail line to make the green light at the traffic signals that are directly ahead of them. This is a potentially fatal combination. Main Roads Western Australia has placed some moderate indicating strips across the PSP near the intersections. However, this does not force any reduction in the speed of cyclists. I appreciate that the Public Transport Authority warns people to never to ride bicycles, skateboards, skates or rollerblades across any pedestrian crossing, but that is simply not common practice. In fact, I cannot recollect seeing someone dismount their bike or e-scooter to do this.

The Perth–Fremantle PSP has proven very popular and is highly used, with the usage expected to further increase with the imminent opening of the next stage of the PSP through to North Fremantle. This will undoubtedly further increase the risks presented at the level crossings along the Fremantle line and needs to be considered when determining the priority for removing the level crossings along the Fremantle line. These risks have sadly already manifested into incidents and injuries. In fact, recently, on my way to my office on Stirling Highway, I saw an ambulance at the intersection near my office with its officers caring for a cyclist who had been injured by a vehicle.

I recognise that the state government's aim is to remove all 31 level crossings from the Transperth network to increase the safety of people walking, cycling and driving in the area, as well as reduce road congestion and revitalise local communities with improved land-use planning. I appreciate that when the priority order for the removal of level crossings was undertaken by the Public Transport Authority, the Perth–Fremantle PSP had not been completed. Consequently, the level crossings on the Armadale line ranked higher than those on the Fremantle line and their removal was prioritised above the level crossings along the Fremantle line. However, as I mentioned, the pending completion of the Perth–Fremantle PSP will mean that the need for the removal of the level crossings along the

Fremantle line will significantly increase. Although I commend the former federal Liberal government, with the support of the state government, for funding the removal of level crossings along the Armadale line, the people along the Fremantle line are now very anxious to hear from the state government about when they can expect to see the removal of the remaining level crossings along the Fremantle line. I might add that if the road alignment will be a much longer term issue, perhaps the minister could at least look at considering the removal of cyclist traffic from those crossings.

Accordingly, I respectfully request the minister to instigate planning for the removal of the Fremantle line level crossings before someone is seriously injured or, worse, killed. Thank you.

MS R. SAFFIOTI (West Swan — Minister for Transport) [9.19 am]: I thank the member for Cottesloe for his grievance. I will touch upon a couple of issues that relate to this matter—first of all, the principal shared path. We made the decision to build that shared path because of local community concerns about cyclists and pedestrians going onto the road in that very busy area. We created the principal shared path, which will ultimately go through to Fremantle. It has been very popular, as the member outlined; I know he is a big supporter of it, and we have seen a significant increase in usage.

With regard to the interaction between cyclists and vehicles around those areas, I will see whether we need to put up any further signage on those paths, but it is one of those things. Again, everyone needs to be considerate of others. When people receive something like a path or a road they think they no longer need to be concerned about interaction with other people in the community. Our advice, whether you are in a car, on a bicycle or on an e-scooter, is to always be aware of everyone around you and make sure that you are considerate. Of course, it is a very busy area, and I acknowledge that.

As the member outlined, the government has an ambition to remove level crossings. I want to talk about a couple of things in that regard. First of all, we started with the Armadale line because of the Thornlie–Cockburn Link connection through Beckenham, Cannington and into Victoria Park. There are going to be many more trains per hour, and already, if we look at the rankings of the busiest level crossings across the network, we can see that places like William Street in Beckenham or Wharf Street in Cannington rank amongst the busiest for the number of times the boom gates come down, and the cumulative impact that has. The gates in Beckenham come down 266 times a day and the cumulative time that the gates are down is more than three hours and 50 minutes a day.

We ranked those statistics and, as part of that, we created land use outcomes. We are elevating rail, building new rail stations and facilitating land development, whether through the housing diversity pipeline or other planning changes. There will be upzoning around those new stations and a lot more land development. We are also looking at selling land, where we can, near those stations to help fund that infrastructure, through the housing diversity pipeline or other measures. It is an ambitious program, and we are aware of major safety concerns at car and rail crossings in both the metropolitan area and in regional WA.

I was in Port Hedland recently; that is a different scale of level crossing removal, but again, where we can, we are building roads over the rail lines to reduce interaction between freight trains and vehicles. We are also doing what we can across regional WA, including the wheatbelt, to improve the safety of level crossings. In many instances there will not be separation, but we are making sure that people are more aware of what is happening at level crossings.

The Fremantle line is interesting, because a number of projects have been floating around for a number of years, particularly around Victoria Street, which I think the member for Cottesloe mentioned. Victoria Street is in close proximity to Stirling Highway and the train station, and there is a very short distance within which cars can turn into that street. This means that the issue of vehicles banking up is of serious concern. If I had a magic wand, I would get rid of pretty much every level crossing in that area. Some work has been done on Victoria Street. I met with the Town of Cottesloe recently; it has looked at the overall precinct. I think it will be very difficult to effect a level crossing removal at Victoria Street; one option is to move the crossing to Wellington Street and building an underpass there. A number of different plans are in preliminary stages.

I will say this: when we do this work, it creates a lot of disruption, and a lot of new infrastructure is brought into the area. If we go down the path of looking at projects along this line, we do not want everyone saying, "We don't want disruption; we don't want new work in this area." There will also be other land use outcomes. There will possibly be land sold for developments in that area. Land value is high along the Fremantle line, and it could be made economic, with the right settings, to undertake that path. However, if we do this, I do not want to hear every local member saying they do not want disruption or new —

Dr D.J. Honey: It's just me!

Ms R. SAFFIOTI: Well, I do not want the member coming in here and saying, "People don't want the new infrastructure, they don't want the connections, they don't want this or that", because that is what happens. Everyone says, "We want level crossing removal and we want more safety." Then we go and do it and they say, "We don't want you to remove that tree at this point in time. We don't want this PSP in this way." These projects are difficult to deliver, particularly in areas like this where there is a lot of activity. As I said, the case of Victoria Street is interesting because there is an alternative level crossing to move to, which makes a bit of sense. We could remove

all that interaction, and I think that would support the Town of Cottesloe's plans for its town centre. I am very keen to continue to engage and I am exploring all opportunities for securing funding, because these things are expensive. I also look at potential land values in the vicinity and how we can defray costs through that. I have never seen a level crossing that I do not want to remove, so I am very keen to work on that. There are always different solutions for different level crossings. Fremantle has a number of road-rail separations, but I am keen to explore all options.

MUNDIJONG FREIGHT RAIL REALIGNMENT

Grievance

MR H.T. JONES (Darling Range) [9.26 am]: The minister will be happy to know that I get off my bike at level crossings! My grievance to the Minister for Transport is about the Mundijong freight rail realignment. I thank the minister for taking my grievance.

As the minister is well aware, the electorate of Darling Range—specifically the Shire of Serpentine–Jarrahdale—is growing very quickly, with the shire in 2021 being declared the sixth fastest growing local government area in Australia, and the fastest growing in Western Australia, in terms of population. The state government recognises the need for infrastructure investment, and I welcome the minister's role in bringing improvements, including progressing the Tonkin Highway extension and the Byford rail extension, incorporating the Thomas Road over-rail project, which reached a milestone on Tuesday, with traffic now proceeding over the bridge. The assumption of Thomas Road by Main Roads has also seen improvements in road condition, and future duplication will be very welcome.

I had the opportunity to visit Permacast in Cardup on Monday. It is Western Australia's leading supplier of precast and prestressed concrete products, and it is gearing up for the Byford rail extension project, quadrupling its workforce and creating local jobs and local investment. The footprint for production and laydown appears to be twice the size it was when I last visited with the Premier and the Minister for Transport in late 2020.

This record investment in infrastructure in Serpentine–Jarrahdale brings with it inevitable impacts on residents and landowners. The shire has challenges in providing services and its strategic plans are impacted by changing population forecasts and state and federal government investment decisions. The town of Mundijong, just a few minutes south of Byford, is in a growth stage, recently receiving a new police station, and it is on the doorstep of substantial residential developments in Whitby, with others coming soon in the surrounding areas. Mundijong has a rail line passing alongside the town to the east, which carries the *Australind* as well as significant freight movements that rumble through the town. The shire has a longstanding plan to move the freight line to pass to the west of Mundijong town centre to improve safety and amenity and to develop an industrial area and intermodal hub.

In the area of Mardella, the residents had a degree of certainty for the rail alignment south of Mundijong Road, pointing to consecutive structure plans between 2011 and 2018, and investment decisions have been made based upon this. However, the 2020 structure plan provided a different alignment, which passed directly south, causing alarm for impacted residents. In November 2019, Mr Gavin Heley and Mr David Leitch reached out to me, as one of the candidates for election. I met with them and was taken on a tour of the proposed alignment option and their preferred suggestion roughly adjacent to the Tonkin Highway extension. I was struck by the contrast in the construction of residences, with significant homes built in the path of the newly proposed alignment and the lightly fabricated rural buildings to the north of Lampiter Drive in deference to the proposed alignments promulgated between 2011 and 2018. Mr David Leitch raised a petition, which was tabled in the other place by my colleague Hon Matthew Swinbourn on 17 August 2021, that essentially voiced opposition to the altered freight line alignment and requested that affected landowners be consulted and, preferably, a return to the previously promulgated proposal.

Throughout my engagement with the residents in Mardella and those who live west of Mundijong, it has been clear that there are competing interests and that there will be winners and losers. However, my overriding concern has been to achieve certainty for those residents so that they can move on with their lives—they can make improvements to their properties, they can make life decisions, they can stay in their forever homes or they can decide to sell and move on.

Susan Downs and Francis Trichet live to the west of Mundijong and their property will be directly impacted by the realignment, whatever the decision taken south of Mundijong Road. When they came to see me in June 2021, they just wanted a decision to be made and a planning control area to be progressed. I am very glad to see that Main Roads has progressed a planning study to realign the existing freight line that traverses Mundijong and Mardella to provide safety and amenity improvements, but also to give certainty to many residents. There was an extensive public engagement process, culminating in two online surveys and multiple community information sessions that focused on the community identifying a preferred route for the rail alignment.

On behalf of the residents in Mardella and immediately west of Mundijong, I ask that the minister make a determination of the preferred rail alignment and that this be communicated to the residents and the Shire of Serpentine–Jarrahdale, thereby removing the uncertainty that has financial and social impacts on residents. Residents would also like a planning control area process to begin, which will provide further certainty for local landowners.

I thank the impacted residents for continuing to engage in the realignment consultation process and acknowledge the stress that the lack of certainty has caused. I thank the minister for taking my grievance.

MS R. SAFFIOTI (West Swan — Minister for Planning) [9.32 am]: I thank the member for Darling Range for the grievance. At the start, can I say that I understand how difficult it is for the residents and landowners in these areas, particularly areas that are going through a transformation from a rural setting to a more urban setting. There is significant change, and it is much greater than it is for some people in established suburbs. In many of these areas, we are still not only doing the planning, but also delivering new infrastructure, whether it be in the north-east corridor, the area that I represent, or in the south-east corridor. Significant transformation is happening from Byford down to Mundijong and throughout the entire Serpentine–Jarrahdale region. In doing so, of course my agencies undertake planning studies to try to identify the best routes for road and rail.

As we know, the south west freight rail line currently runs through Mundijong, separating the sections of the town. All the planning in the past has recognised the need to realign the freight line to the developing west Mundijong industrial area, adjacent to the future Tonkin Highway extension north of Mundijong Road. A planning study has been carried out to examine the future transport corridor, mainly to improve the safety and amenity of the Mundijong town centre. The realignment of the freight line will remove the freight train operations through the town centre and the freight line infrastructure along Bishop Road. The north–south rail line through the town centre will remain. This line will continue to service the *Australind* and will also be able to be upgraded in the future when the rail line moves beyond Byford to Mundijong, which we are currently planning and building. Determining a preferred rail corridor will ultimately enable a reservation to be set aside in the metropolitan region scheme and provide certainty for the community.

As the member outlined, Main Roads has been consulting on this planning stage since 2019, including ongoing liaison with the Public Transport Authority, Arc Infrastructure, the Shire of Serpentine–Jarrahdale and directly impacted landowners. I know that some of the proposed plans created a lot of angst in the community, particularly some of the new routes that were a greater distance from the Tonkin Highway corridor and bisected the area quite significantly. The planning study has included the assessment of multiple corridor alignments, environmental and heritage studies and extensive stakeholder consultation. I want to say this because it is quite interesting. In developing corridors, we have the landowners, who I believe should be the most important people in the process, but we also have a number of other considerations that have to be taken into account, particularly environmental considerations, which are sometimes very difficult to overcome.

In conjunction with the rail corridor selection, a short section of the future Tonkin Highway extension south of Mundijong Road was incorporated in the planning study. There were two online surveys and some community information sessions to try to identify the preferred route. Originally, the agency presented several options to the community. Based on community feedback and findings from a multi-criteria analysis, two options were shortlisted. Those in the know know them as option 3 and option 0. A second round of community consultation was undertaken for option 0 and option 3. The community feedback showed a difference of only two votes between the two options. A multi-criteria analysis had both options scoring identically across most criteria, with only a two-point difference in the economic criteria. Given there was no significant difference between the two options, a more detailed assessment that was based on land and community impacts then identified option 0 as providing better overall land use and options for the community. It is also noted that option 0 is the alignment that has been shown in the Mundijong–Whitby district structure plan since 2011. Although it was not reserved in any corridor, it was the alignment that many people based their decisions on, as the member outlined. Option 0 was identified as the preferred corridor, and we have approved this route to progress to the planning control area phase. Landowners and all stakeholders will be notified about the preferred route either this week or next week.

I thank the landowners, members and stakeholders for their patience in getting this corridor determined. Now there will be certainty in the community about the future alignment and we can go through broader communication. More detailed design work will be undertaken to understand the exact land impact. Because this will be the corridor, we will go through a more detailed planning phase to understand the exact amount of land that will be required and the exact route. The planning control area will assist in moving forward. Importantly, this will give landowners and residents certainty. This route will be more aligned with the Tonkin Highway extension, so significant infrastructure will be built in that area anyway. This will give more certainty. I think it will work well with what the shire has been working towards. We can now go forward with the next part of the detailed planning phase.

I thank the member for the grievance. I thank the community and the landowners for their patience. This is always very tricky. In a sense, there are always winners and losers in doing this. Not everyone cannot be impacted, but this is very important for the future community. This is what has happened in the past and it will continue as we continue to urbanise many of these centres.

MULLEWA HEALTH CENTRE

Grievance

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [9.38 am]: I grieve today to the Parliamentary Secretary to the Minister for Health, in the absence of the health minister, about the Mullewa health service. The previous government announced a new health centre for Mullewa in 2016. Six years on, it has still not been built.

I delivered a grievance to the health minister two years ago on this very same matter and I can categorically say that there has been no action on the site at Mullewa since. According to the WA Country Health Service website, which was last updated on 30 April 2021, the Mullewa redevelopment project remains in the planning phase. The Mullewa community does not believe its hospital will ever be built; in fact, the signage for the project has now been pulled down. I ask the following of the minister: Will the minister guarantee that the Mullewa community hospital will be built? What is the scope of the project? What is the project budget? When will construction works commence? What is the time line for completion? If the minister is unable to answer the aforementioned questions, will she commit to visiting Mullewa immediately to ascertain the community's needs and priorities?

I will now outline some of the background to this project. On 18 March 2016, the then Nationals WA leader Hon Terry Redman announced the redevelopment of the Mullewa and Dongara health centres with a joint budget of $12 million from royalties for regions. On 30 March 2016, the first consultation with the Mullewa community occurred, which I attended. Construction was to start in the second half of 2017. On 20 December 2016, *The Geraldton Guardian* reported that the start date would be mid-2018, with completion in mid-2019.

In July 2018, the then minister's office advised that the schematic design and project definition plan was almost finalised. On 14 September 2018, a briefing note from the Minister for Health said that the schematic design was complete. In December 2018, residential aged care was no longer to be provided at the Mullewa site. On 20 June 2019, the minister's office advised me that the service model and transition plan was approved to meet current and anticipated needs, the project definition plan was under development and construction was due to commence mid-2020. On 8 October 2019, the health minister's office advised me that architect drawings would be made available to the community reference group, and construction was to commence mid-2020 and be completed late 2021. The project budget was $6.06 million.

On 12 November 2020, the health minister responded to the grievance from me, saying that the design and development report drawings were complete, and the minister anticipated that tenders would be called for in the second quarter of 2021 or the first half of the next year. Construction was to take 12 months. In June 2020, according to interagency minutes from a meeting in Mullewa, the health centre redevelopment plans were finalised and ready for sign-off. The service models were to be reviewed.

On 30 April 2021, the WACHS website announced that planning for the redevelopment of the Mullewa health centre is continuing. On 23 June 2021, correspondence from the Premier to me announced that the broader scope of the project was to include 24-hour respite care, palliative care and community renal services. The facility would be renamed Mullewa Community Hospital. On 15 February 2022, in response to a question on notice, I was told that the design is complete and the tender date is yet to be determined. On 16 February 2022, in response to a question on notice, the approved budget was now $6.3 million and, given current market conditions, the project budget would now exceed this amount.

On 15 November 2022, *The Geraldton Guardian* said that the health centre cost rises and planning were continuing. The refurbishment of the Mullewa and Dongara health services is within the scope of the primary healthcare demonstration site program, and I note that that project still appears in the budget on page 327 of budget paper No 2, with an approximate amount of $8.3 million. The project model set out to provide regional communities with access to health services and providers under one roof. It was about replacing ageing hospitals with a bespoke health system crafted to fit the particular needs of that community. Community involvement was central to this process, but in the case of the Mullewa health refurbishment, community consultation has been sorely, if not almost completely, lacking.

Following six and a half years of briefings, letters to the Premier, ministers, questions in Parliament and advocacy from the local community—I want to take particular notice of the work done by the City of Greater Geraldton councillors Tarleah Thomas and Jen Critch—we still cannot be certain that planning for the Mullewa health centre is complete. Earlier this week, in *The Geraldton Guardian*, the minister said that planning for the Mullewa health centre was still continuing. This is the same as the message on the WACHS website that has been in place for 18 months. However, as I have outlined, an answer to a parliamentary question in February 2022 said that the design was complete.

I raised this matter directly with the Premier in May 2021, in this house, and he invited me to write to him, saying that he liked Mullewa and he would look into the situation. In a subsequent letter to me on 23 June 2021, the Premier advised that community consultation had recommenced and progress was being made to bring this project to fruition. However, in 18 months, there has been no progress whatsoever. In the same correspondence, the Premier announced that the facility would now be referred to as the Mullewa Community Hospital. The Premier went on to say that new project signage would be installed to provide assurance to the community that the project is progressing. The reality is that the Department of Health sign in front of Mullewa's dilapidated 1940s hospital has been torn down. The removal of that sign and the ongoing lack of information on this project has resulted in a great deal of anxiety within the Mullewa community. These are people who live 100 kilometres from Geraldton, and as the catchment extends into the Murchison, many residents do not have a reliable means of getting to Geraldton.

The Premier's letter went on to say that the redevelopment is focused on assisting Mullewa residents to receive the care they need closer to home so that they can keep well in the community. About 40 per cent of the population are Aboriginal persons, and the incidence of chronic disease, including diabetes and kidney disease, is deeply disturbing. Almost 20 per cent of residents are aged over 65 years, indicating a high incidence of vulnerability.

I remind the minister that one of the seven strategic priorities listed in the WA Country Health Service *Strategic plan 2019–24* is "Addressing disadvantage and inequity". The plan reads —

> We are committed to improving the health and wellbeing of vulnerable and disadvantaged people …

How can the minister deliver on this strategy when the existing hospital is not maintained? The building is dilapidated and I am told that you can fit $2 coins in the cracks in the walls. The Department of Health sign that was recently removed from the hospital sends a resounding message to that community: we are not addressing disadvantage and inequity. Community members are done with ambiguity and the drip-feed of contradictory information. They want straightforward assurances that they will get a health facility. They need to know that their disadvantage and the inequity of the situation in Mullewa will be addressed.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [9.45 am]: I rise to respond to the grievance raised by the member for Moore. I thank the member for raising his grievance with me this morning and allowing me to respond.

I want to start by addressing the member's final point and making sure that the community of Mullewa knows that the WA government remains committed to the redevelopment of the Mullewa health centre, and that planning for this redevelopment continues.

I also want to respond to the second-to-last point that the member made regarding the WA Country Health Service *Strategic plan 2019–24*. I think it is apposite that the member raised the plan because I also want to address a couple of things from our sustainable health review. After the McGowan government was elected in 2017, notwithstanding the state of the finances that we inherited from the previous government, we knew that there were two things that we needed to do. We needed to put WA Health on a sustainable financial footing and we needed to make sure that the finances of the government were in order. Therefore, the state government undertook the sustainable health review, which was a large scale of work and took incredible engagement with stakeholders, clinicians, patients and consumers. Much like the WA Country Health Service strategy that the member referred to, the *Sustainable health review: Final report to the Western Australian government* has a number of enduring strategies and recommendations. I refer the member to strategy 1, recommendation 4, which states that the government will —

> **Commit to new approaches to support citizen and community partnership in the design, delivery and evaluation of sustainable health and social care services and reported outcomes.**

Strategy 4, recommendation 12, states that the Department of Health and the WA government seek to —

> **Improve coordination and access for country patients by establishing formal links between regions and metropolitan health service providers for elective services including outpatients and telehealth, patient transfers, clinical support and education and training.**

One of the key underlying principles of the sustainable health review and the objectives of the Department of Health these days is to provide care closer to the community and closer to home. One of the issues that the member raised, which I think needs to be addressed, is that community consultation is lacking. As the member knows, a community reference group is being consulted in the development of this project. Although there is still work for the community reference group to do, the mere fact of its existence demonstrates that the Department of Health has been consulting with the local community on this project. I also acknowledge the member's concern about access to Indigenous health services, and I recognise the work that the McGowan Labor government has done towards meeting the Closing the Gap initiatives.

I will make some more general comments in response to the grievance. I want to talk about investment in community hospitals generally. Over the past 10 years, there has been significant investment in country health services, with the WA Country Health Service delivering a capital works program valued at $1.5 billion. In addition, the WA Country Health Service has progressed innovation in virtual care that enables country patients to stay in their communities, ensuring that care is delivered closer to home when achievable. In 2020–21, WA Country Health Service teams across the state provided care to almost 450 000 emergency patients, facilitated more than 166 000 hospital admissions and discharges, cared for 1 020 people in residential aged care, provided 2 555 older residents with community-based aged-care services—I know this is important to the member in his advocacy on behalf of the Mullewa community—and helped to deliver almost 4 300 babies. WACHS is enhancing the care provided to country communities through significant investment in technology, infrastructure and services. More regional and remote towns now have modern health services and facilities, and new technology is constantly being rolled out to bring care closer to home for those living in country communities.

As I said at the outset, and it bears repeating, the McGowan government remains committed to the redevelopment of Mullewa Hospital, and planning for this redevelopment continues. Once completed, the facility will include

enhanced primary and community care facilities and will provide 24/7 emergency care from a new emergency department. The new community hospital is being planned in consultation with the local community and will provide access to a range of health services under one roof.

The time line for the project will be determined through planning and consideration of funding. As the member identified in his grievance, and I thank him for making this concession, the costs and time lines for the hospital have been impacted by increased labour and supply costs and the effects of the COVID pandemic.

I am instructed that Mullewa Hospital currently provides a 24/7 emergency response, outpatient care, community nursing, allied health, palliative care, primary health, community health, and Commonwealth Home Support Programme services. WACHS services are provided by resident staff, by visiting staff, through digitally enabled services, and in partnership with the local general practitioner, the Geraldton Regional Aboriginal Medical Service and other government agencies and not-for-profit providers. The Mullewa GP is contracted to provide medical coverage for the hospital from Monday to Thursday, with emergency telehealth services and mental health ETS providing 24/7 support to the hospital. The emergency telehealth service in Mullewa has been well received, with approximately 18 to 20 interactions a week, and is well supported with access to midwifery and obstetrics ETS and palliative care ETS.

The project intent is to deliver a new, purpose-built facility that aligns with a community-hospital model of healthcare delivery. It is to be constructed on the existing site. The project scope also includes demolition of all existing clinical structures, which, as the member says, were built in the 1940s. My notes say 1950s, which is roughly the same period.

Mr R.S. Love: There are three separate parts.

Mr S.A. MILLMAN: Yes. I take the member's point.

The alignment with the community-hospital model is suited to a small population such as Mullewa's, and the newly built facility will include a contemporary emergency department, including ETS facilities; group therapy rooms; multipurpose consultation and treatment spaces; short-stay respite and palliative care; and a community-supported home dialysis room.

The WA government remains committed to delivering the Mullewa Hospital redevelopment. We are in a tight labour and construction market globally, and WA is not immune to the effects of this. The midwest is central to the McGowan government's delivery of healthcare services. The Meekatharra Hospital redevelopment has been allocated close to $50 million in capital funding, and the Geraldton Health Campus redevelopment has received an additional $49.4 million in funding.

The final point I make is that the McGowan government is committed to access to quality health services across the state. Country people are entitled to access to those services, but do not forget that we have brilliant tertiary hospitals. When we build the new women's and babies' hospital, it will be for women and babies throughout Western Australia; access to those services will not be closed off to people from country WA.

I thank the member for the grievance. I am glad that he raised the issues.

WATER PRICES

Grievance

MS C.M. ROWE (Belmont) [9.53 am]: My grievance is to the Minister for Water, and it concerns the cost-of-living pressures experienced by many of my constituents in the electorate of Belmont. Everybody in this place recognises that the past few years have been incredibly difficult for Western Australians. When COVID first hit, we saw firsthand the pressures placed on supply chains right around the world, as just one of the major impacts of the pandemic, and, unfortunately, Western Australia was not immune. The economic, financial and social hardship that COVID caused for our communities was substantial.

I am incredibly proud of the decisions the McGowan government has made to help Western Australians and local businesses through this incredibly difficult time. The $400 household electricity rebate has had a massive impact on households, especially those in my community. I received a great deal of feedback that it provided critical and timely relief, especially for the most vulnerable in my community. Unfortunately, the previous Liberal government had an appalling record in easing cost-of-living pressures. It is worth highlighting that the average annual water bill, for example, increased by more than four times the rate under this government. I am proud that the McGowan government has not continued the previous government's unnecessary cost increases for essential household services.

The 2020–21 financial year saw the first reduction in the average household water bill in more than a decade. I commend the Minister for Water for this significant contribution and for his influence in achieving such an outstanding result. These efforts are even more significant given the current volatility of the global environment. The war in Ukraine has exacerbated the economic and financial pressures that Western Australians were already experiencing due to the pandemic. It has impacted fuel prices and in many parts of the world it has caused huge increases in the cost of food. No jurisdiction in Australia has been immune to the inflationary pressures stemming from this terrible war, but, just as with the onset of COVID, the McGowan government's responsible and considered approach in times of crisis has put Western Australia in a much better position than other jurisdictions.

On the east coast, for example, household fees and charges have increased drastically this year. Electricity bills are up 11.3 per cent in Brisbane, 8.5 per cent in Sydney and 7.2 per cent in Adelaide. Thankfully, our government has delivered two electricity credits to all Western Australian households, totalling $1 000, and household fees and charges have decreased by 3.8 per cent this year.

I am proud to be part of a government that is making the necessary decisions to support the most vulnerable members in my community, whether through the household electricity rebate or by supporting our seniors through the safety and security rebate. Clearly, we have a long way to go as we navigate through global events and a strong inflationary environment. I ask the minister to outline the efforts of our government in continuing to make it easier for Western Australians to meet cost-of-living pressures.

MR D.J. KELLY (Bassendean — Minister for Water) [9.56 am]: I am very happy to respond to this grievance and outline to the house what the McGowan government has done to assist Western Australians with their water bills. We know that, in the current environment, households across the world are experiencing real cost-of-living pressures. When I became the Minister for Water, I was determined to do everything possible to assist Western Australian households to meet the significant cost of their water bills.

The member touched on the experience of Western Australian families under the previous government. I want to recap the situation we found when we came to government. During the period of the previous Liberal–National government, water bills went up significantly every year, higher than the rate of inflation. It was an increase of 6.7 per cent in 2009–10 and then, rolling forward, 10.8 per cent, 8.5 per cent, 6.8 per cent, six per cent, 5.2 per cent, 4.5 per cent and then 4.5 per cent, making for a total increase of 66.8 per cent under the previous Liberal–National government.

What was the impact of those massive increases on Western Australian households' ability to pay their water bills? I will refer to one statistic. In opposition, we observed a significant yearly increase in the number of households having their water reduced to a trickle due to not being able to pay their water bills. In the last full year of the previous Liberal–National government, 2 467 Western Australian households—nearly two and a half thousand—had their water reduced to a trickle, effectively cut off, because they could not pay the bill. That is about 50 households a week or 10 households a working day. As the shadow minister, I raised that many times, particularly with the current Leader of the Opposition, who was then the Minister for Water, yet the previous government did nothing. Those disconnections were a direct result of the previous government significantly hiking water charges under its watch.

Water price increases have been much more moderate since we came to government. We inherited a six per cent increase in the budget in our first year. Following that, the increases under this government were 5.5 per cent in 2018–19 and then, rolling forward, 2.5 per cent, minus 1.3 per cent, 1.75 per cent and 2.5 per cent. So far, the total increase in water bills has been only 18 per cent. We have been very conscious of any increase in the price of water. If we compare the record of this government with the record of the previous government, the difference is stark. I am pleased to say that as a result, the number of disconnections for people who are unable to pay their water bills has gone down from nearly 2 500 to approximately 800 in the year before the pandemic. Of course, during the pandemic, we did not do any restrictions at all, but in the full year before the pandemic, it was down to 800. In the last full year, there have been only 334, so there has been a significant reduction. We have done that because we have been proactive with people who are struggling to pay their bills.

We have introduced a number of programs. The one that I think is the most innovative is Medical Assist. We discovered that people who do home dialysis get a massive water bill. Home dialysis is cheaper for the taxpayer because those people are not in hospital, so we now give people who are doing home dialysis 30 000 litres of water for free each year. That is a saving of about $380 annually. That takes the stress out of paying their water bill for people on home dialysis. In October 2020, we extended that program to include households who have a family member who suffers from incontinence, as people in that situation might need to constantly use their washing machine. We have also introduced the Start Over program for people who have long-term debt. If those people go back to paying their bills on a regular basis for a period of two years, we will wipe their long-term debt. All this has significantly reduced the number of Western Australian households that are in financial difficulty because of their water bill. It is not just me who thinks we have done a good job; the Financial Counselling Network of WA, which deals with customers in hardship on a regular basis, wrote to me and said —

> We are writing on behalf of the Financial Counselling Network … to acknowledge the measures the Water Corporation has taken to support customer experiencing financial hardship and payment difficulties.
>
> … We are pleased to note the positive feedback received … in relation to the Water Corporation's customer focused hardship policy and schemes to assist vulnerable customers.

The letter is quite long, but it concludes by commending the Water Corporation for its approach to hardship. Just last week, I was talking to the CEO of a women's refuge and she said that it has been really impressive. She described water as a bland portfolio—I disagree with that. She said, "In a bland portfolio like water, you have managed to drive significant social change and assist Western Australians in hardship because of the different approach that the McGowan government takes to assisting households in hardship." I am very proud of that.

DIRECTORS' LIABILITY REFORM BILL 2022

Second Reading

Resumed from 26 October.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [10.03 am]: I am delighted to be able to speak on this bill, which has been in train since 2015, when it was first discussed in this place. Unfortunately, it had not progressed since then. I will be speaking on behalf of the opposition on this bill, and in doing so I say at the outset that we will be supporting this legislation. The bill, as it is drafted, will do what it is intended to do, in that it will limit and standardise provisions that impose personal liability on directors for corporate offending. In the media release put out on 26 October 2022, the Attorney General said that the bill will standardise and reduce the number of provisions that impose personal criminal liability on officers for offences committed by corporations across the Western Australian statute book. The media release goes on to say —

> Under the proposed reforms, a company officer—which includes directors, secretaries, and other officers—will be held personally liable for certain specified offences committed by a body corporate if the officer failed to take all reasonable steps to prevent the body corporate committing the offence.
>
> Currently in WA, more than 60 pieces of legislation contain provisions that make officers liable for offences committed by bodies corporate. The Bill removes derivative liability completely from 21 Acts.

Further on, it states —

> The Bill does not affect the criminal liability of officers who have committed offences themselves, nor does it impose any new obligations on or create new offences in relation to officers.
>
> Directors' liability reform was one of 27 deregulation priorities under the National Partnership Agreement to Deliver a Seamless National Economy —

That program name is quite a mouthful! It continues —

> a now-concluded project which was overseen by the Council of Australian Governments' Reform Council.

As I said, the genesis of this bill goes back a long way to that COAG reform project. A similar bill was introduced and first and second read on 25 February 2015 before being referred to the Standing Committee on Uniform Legislation and Statutes Review. The committee's report on the bill was tabled on 21 April 2015. That bill did not progress, and this is the first opportunity we have had to discuss the issue of directors' liability reform since that time.

The COAG principles for this reform, which were outlined in that 2008 project, were —

1. Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.
2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.
3. A "designated officer" approach to liability is not suitable for general application.
4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
    (a) there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending);
    (b) liability of the corporation is not likely on its own to sufficiently promote compliance; and
    (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:
        i. the obligation on the corporation, and in turn the director, is clear;
        ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and
        iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.
5. Where principle 4 is satisfied and directors' liability is appropriate, directors could be liable where they:
    (a) have encouraged or assisted in the commission of the offence; or
    (b) have been negligent or reckless in relation to the corporation's offending.
6. In addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable.

The COAG principles also identified three types of director liability provisions. As noted in the second reading speech to the 2015 bill —

> Under type 1, the director will be presumed to have taken all reasonable steps to prevent the body corporate committing the offence—and, therefore, not be liable—unless the prosecution proves that he or she failed to take all reasonable steps … Type 2 provides that a director will be taken to have committed the offence committed by the body corporate unless he or she leads evidence that suggests —

Visitors — Warwick Senior High School

The ACTING SPEAKER (Ms M.M. Quirk): Member, can I just interrupt you for a second. As the students from Warwick Senior High School are on their way out, I want to welcome them to Parliament. They are in the member for Kingsley's electorate, but they were previously in my electorate. I hope you have enjoyed your visit. I am sorry, member; please proceed.

Debate Resumed

Mr R.S. LOVE: Welcome. I have lost my train of thought; I do not know where I got up to. I will have to start type 2 again!

The ACTING SPEAKER: Directors' liability, member.

Mr R.S. LOVE: I know we are on the Directors' Liability Reform Bill 2022. I was reading the three types of directors' liability provisions and I think I was halfway through type 2. I will pick it up from there. The director must ensure —

> … he or she took all reasonable steps to prevent the commission of the offence by the body corporate. Once this evidence is adduced, the prosecution bears the onus of proving that the director did not take all reasonable steps … Type 3 requires the director to prove on the balance of probabilities that he or she took all reasonable steps.

In his second reading speech, the Attorney General outlined some differences between the Directors' Liability Reform Bill 2015 and the current bill. The Directors' Liability Reform Bill 2022 is quite fat for a fairly simple piece of legislation, but it will make many consequential amendments to various pieces of legislation that are all listed, along with the areas in which the changes will occur. It is a little simpler than it first appears, given the actual weight of the matters to be considered. However, given that it has been the subject of so much study, I suppose that it is not as straightforward as I would think as a layperson.

The differences between the Directors' Liability Reform Bill 2015 and the current bill are simple things such as numbering. The government has repealed and replaced some provisions around what was then known as the Mines Safety and Inspection Act 1994. That is no longer required because those issues have been picked up in the Work Health and Safety Act 2020, which the fortieth Parliament passed. I ask the Attorney General to explain in his second reading reply whether the same provisions for liability that are being brought forward in the Directors' Liability Reform Bill 2022 will apply in the Work Health and Safety Act, given that that other amendment has been removed because it is no longer required. I wonder whether the bill's provisions reflect those in the Work Health and Safety Act 2020.

The Directors' Liability Reform Bill 2015 also proposed amendments to the Taxation Administration Act 2003. Those amendments are no longer required as that act provides for accessorial liability and there has been no agreement to remove or standardise that type of liability following the Council of Australian Governments' original director liability reform commitment. There is no longer an amendment to the Mining Act 1978 because it also addressed that type of liability.

The 2015 bill proposed amendments to remove derivative liability from the Emergency Management Act 2005, but that is no longer required following discussions with the Department of Fire and Emergency Services. Can the Attorney General detail why that has occurred and why DFES felt that it should be exempted from this amendment to the Emergency Management Act 2005? I also wonder whether he could reflect upon what that means for any changes that might have occurred to the duties of any person under the act, as it currently exists. I understand that that decision followed consultation with the Department of Fire and Emergency Services. I would also like to know who else the Attorney General consulted in producing this bill and whether he could outline why that information has not been provided. The shadow Attorney General has asked about the consultation process, so if the Attorney General could outline that, it would be greatly appreciated.

A review clause that was not in the 2015 bill has also been inserted into this bill.

I will probably take the bill into consideration in detail because it will be good for the Attorney General to explain some of the provisions in detail. I will refrain from going into much more detail about the bill itself because we can talk about that in consideration in detail. I find it a bit confusing that the bill mentions that directors must take "reasonable steps". It sometimes says "all reasonable steps" but other times it just says "reasonable steps". Perhaps the Attorney General can explain what is intended by that. We can clarify those provisions as we go through some of the clauses of the Directors' Liability Reform Bill 2022.

I assume that when this bill goes to the other place, it will be referred to the Standing Committee on Uniform Legislation and Statutes Review so that it can go through the bill in some detail, given the changes that have been made since 2015. With the proviso that the opposition expects that the bill will be referred to the uniform legislation committee, I commend the bill to the house and reiterate that the opposition is supportive of it. I understand that other people want to speak on the bill, so I will allow them to make their contributions. I look forward to interrogating these matters further in consideration in detail.

The ACTING SPEAKER: I give the call to the versatile member for Mount Lawley!

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [10.16 am]: Thank you, Acting Speaker. I rise to make a contribution on the Directors' Liability Reform Bill 2022. I thank the member for Moore for his contribution on behalf of the opposition. I note that the opposition supports the bill. That comes as no surprise because this is a sensible economic reform that will be undertaken by the McGowan Labor government and picks up on work that was commenced by the previous government. That work was generated by the Council of Australian Governments' Business Regulation and Competition Working Group, which was tasked with implementing the National Partnership Agreement to Deliver a Seamless National Economy. That was a bit of a word mess, so I am going to unpack that a little and explain the situation.

This COAG agreement occurred back in late 2008. For members who do not remember, late 2007 to early 2008 was a golden era in the history of Australian politics.

Mr D.A.E. Scaife: Why was it great?

Mr S.A. MILLMAN: Because we had wall-to-wall Labor state governments and a Labor federal government. The existence of these Labor state governments, together with the Labor federal government, allowed COAG to operate efficiently and effectively. Given the commitment of the Labor state governments and the Labor federal government to micro-economic and macro-economic reform that would turbocharge the Australian economy and each of the state economies, COAG was able to enter into things like the National Partnership Agreement to Deliver a Seamless National Economy. I look forward with anticipation to the emergence of a similar golden era in the next few months. We only have to hope that Daniel Andrews, somebody who was described —

Mr P.J. Rundle: Australia's worst Premier.

Mr S.A. MILLMAN: Was it you, member for Roe, who described him as Australia's worst Premier?

Several members interjected.

Mr S.A. MILLMAN: I was trying to remember whether it was the member for Roe because I was going to sheet it home to the member for Cottesloe! I am glad that he has confessed because the state election is in less than two weeks and if the result is as anticipated, I will make sure to remind him of that comment.

Mr P.J. Rundle: The people of Victoria need to have a good, hard look at themselves.

Mr S.A. MILLMAN: If Dan Andrews can overcome the slings and arrows of outrageous fortune that have been fired at him by the member for Roe, persuasive and influential as he is in the Victorian democratic scene, and if Chris Minns, the well-travelled and extremely competent Leader of the Opposition in New South Wales, can overcome Dominic Perrottet to become Premier of New South Wales next March—my apologies to Tasmania—we will once again have wall-to-wall Labor governments.

Several members interjected.

Mr S.A. MILLMAN: There will be wall-to-wall mainland Labor governments! I look forward to once again having the sort of era of economic reforms for which Labor has become renowned over the last 30 to 40 years with the Hawke–Keating reforms and then the Gillard–Rudd reforms, with the state and federal governments working collaboratively towards harmonising our regulatory framework. That is what this bill does; the Directors' Liability Reform Bill 2022 will help to harmonise our regulatory framework. It will reduce complexity for board directors and corporations and businesses carrying on their activities.

In late 2008, the Council of Australian Governments agreed to increase harmonisation across Australian jurisdictions regarding the imposition of personal criminal liability on directors for corporate fault. There was a drive to reduce provisions that impose personal criminal liability on directors for corporate offending and to harmonise those provisions using a principles-based approach. This is not the first time that this government has brought to this chamber for debate legislation that is designed to harmonise our laws and ease the transaction costs of doing business by reducing the regulation that governs the way in which businesses can operate. I thanked the member for Moore for his contribution. He went through some of the important principles that are outlined in this legislation and that will be necessary for streamlining that regulation. I want to focus on one of the corollary effects of having simplified and streamlined legislation: when directors do the wrong thing, the regulatory authorities responsible for ensuring compliance with the law will be well armed with the necessary elements to institute prosecutions. One of the reasons that I think that is important is from my previous experience working in asbestos litigation.

I want to refer members to a book called *Killer Company* by Matt Peacock. I congratulate Mr Peacock who, next year, will be celebrating 50 years of a journalistic career, having commenced with the ABC in 1973. For the purposes of *Hansard*, the book is called *Killer Company*: *James Hardie Exposed* and it was first published in Australia by HarperCollins Publishers in 2009. It goes through a lot of the history of asbestos litigation and exposure to asbestos in Australia. Members have heard me speak before about this issue, most often in connection with CSR and its liability for exposure of workers to asbestos at the Wittenoom mine. This book concentrates entirely on James Hardie Industries and its negligence in exposing workers, such as factory workers and tradesmen, and home handymen and family members to deadly asbestos dust and fibres that were contained in James Hardie's building products. Chapter 9, "Plotting from the War Room", is a pertinent chapter from Mr Peacock's book. If members will allow me, I want to briefly read an extract.

> The year was 1998 and the board of James Hardie Industries Limited had given the go-ahead to a plan to relocate headquarters to the Netherlands, where it hoped to pay less tax on dividends it would receive from a new company to be formed to run its burgeoning US business.
>
> A key element of the plan —

This is pertinent to today's discussion —

> was to shed its asbestos liabilities by hiving off Hardie's two former asbestos subsidiaries—the now defunct brake-lining company Jsekarb ('brakes' spelt backwards), and the much larger manufacturer of fibro cement, James Hardie & Coy (called 'Coy' for short)—from their parent.
>
> The James Hardie spinners began to meet secretly after work in the basement of the old Asbestos House, the company's Sydney headquarters. They would leave their offices casually at five o'clock as though they were going home and then quietly regroup downstairs in the 'war room'. The room was behind an unmarked door where nobody was likely to notice their frenetic activity.
>
> Those in the PR team were the only ones in the company who knew of the relocation plan, —

It was a secret plan to avoid their liability —

> other than the board and a handful of senior executives. If word leaked out, they believed the move would be doomed before it began because of the anticipated outrage from asbestos victims and their representatives. Their job was to craft a communications strategy to help it succeed. So sensitive was their task that Hardie's new general manager of corporate affairs, Greg Baxter, did not even mention asbestos in his brief for the board, where he referred to asbestos by the codename 'Apple':

This is a quote from his memo to the board —

> > The separation of operating businesses from contingent liabilities could arouse suspicion, criticism and opposition. Critics will have numerous public forums, such as a willing media, in which to air their concerns, particularly in relation to Apple and tax.
>
> Baxter, a tough, phlegmatic media-minder, was part of a new management team installed when Hardie began to move into the huge US market. Other key figures in the team included Peter Macdonald, —

I am going to come back to Mr Macdonald —

> then head of US operations—a reformed smoker who joined conference calls from his Californian home while on the exercise treadmill—and Hardie's general counsel, Peter Shafron, an extremely bright, affable lawyer —

As we all are —

> recruited from Allens.

This secret team met in a clandestine operation in the basement of Asbestos House in Sydney to devise their strategy to shift their operations off to the Netherlands and evade their Australian taxation liabilities and avoid their liabilities to victims of their deadly asbestos products. The problem for James Hardie was that because it was a publicly listed company on the Australian Securities Exchange, it had to provide information to the ASX about its proposal to shift its operations offshore. The extract I just read from *Killer Company* was about 1998. I want to skip forward to 2002. Although other companies were involved in similar asbestos-related activities, most notably CSR, which I have already mentioned, more than 50 per cent of the claims in the Dust Diseases Tribunal of New South Wales in 2002 were brought against companies in the James Hardie group.

I am now going to move on to talk about the Medical Research and Compensation Foundation and James Hardie's move to the Netherlands. James Hardie had been structured as a parent company operating through subsidiaries. All asbestos operations, including the provision of compensation, were undertaken by James Hardie's subsidiaries. Between 1995 and 2000, James Hardie, the parent company, began to remove the assets of the subsidiaries whilst leaving them with most of the asbestos liabilities of the James Hardie group. The company has assets and legal

proceedings were brought against it. The plaintiff succeeded in demonstrating that James Hardie had been negligent, as regularly happens and happened when I was doing this work. The company needed to meet the liability using its assets—assets pay for liabilities—except that the parent company was now stripping all the assets out of the companies that had the liability. They were left with the liabilities but without the capacity to pay the compensation. In 2001, the two companies were separated from James Hardie and acquired by the Medical Research and Compensation Foundation—MRCF—which was essentially created in order to act as an administrator for Hardie's asbestos liabilities. Then CEO of James Hardie, Peter Macdonald, whom I mentioned before when talking about *Killer Company*, made public announcements emphasising that the MRCF had sufficient funds to meet all future claims and that James Hardie would not give it any further substantial funds. Indeed, the net assets of the MRCF were $293 million, mostly in real estate and loans, and that exceeded the "best estimate" of $286 million in liabilities that had been estimated in an actuarial report. The problem with the actuarial report was that it had been commissioned by James Hardie and it made a number of very optimistic assumptions. The Jackson report, which was the report commissioned by the New South Wales government, found that this best estimate was "wildly optimistic" and that the estimates of future liabilities was far too low.

After this separation, James Hardie moved offshore to the Netherlands for what it claimed were significant tax advantages for the company and its shareholders. To make this move, the company had to assure Australian courts, as it was listed on the Australian Securities Exchange, that the MRCF would be able to meet future liabilities.

The courts were assured of this, and that more money would be made available to the company's Australian asbestos victims through the issue of partly paid shares to the MRCF, obliging the new Dutch parent company to meet a call for funds if they were needed. The value of the call at the time was $1.9 billion. The move to the Netherlands therefore proceeded. However, the tax benefits that James Hardie expected to receive as a result of its move did not eventuate following the revision of tax laws in the United States and the United States signing a new trade agreement with the Netherlands in 2006.

I refer to the funding shortfall. Shortly after the move, an actuarial report found that James Hardie's asbestos liabilities were likely to reach $574 million. Remember that under its own report, it was thought that its liabilities would reach about $280 million. The new independent report found that the liabilities were more likely to reach $574 million. The MRCF sought extra funding from James Hardie and was offered $18 million in assets, which the MRCF rejected. The estimate of asbestos liabilities was then revised up to $752 million in 2002, and $1.58 billion in 2003. In 2004, the funding shortfall became an increasing concern as it became clear that eligible victims would miss out on receiving compensation after it was found that James Hardie had cancelled the partly paid shares. In discussing the shortfall, James Hardie refused to accept further responsibility for the liabilities on the basis that MRCF and James Hardie were now separate legal entities.

What happened next was that in 2004, the New South Wales government held a judicial inquiry. The findings were very critical of James Hardie. Following the results of the inquiry, James Hardie entered into negotiations with governments and trade unions in an effort to establish some kind of compensation system. I will not go through all the detail of those efforts, but eventually they were successful. Immense pressure was put on the federal government by state governments, union leaders and victims to remove the problem. The final step in giving the voluntary fund a legal structure was approval of the scheme by James Hardie shareholders, and, in February 2007, 99.6 per cent of the shareholders voted in favour of the scheme. It began operating days later and, as I understand, it, continues to operate.

The point I want to make is this. Between 1995 and 2007, the James Hardie directors engaged in conduct that was all specifically designed to try to avoid the company's asbestos liabilities. In February 2007, every member of the 2001 board and some members of the senior management were charged by the Australian Securities and Investments Commission with a range of breaches of the Corporations Act—I have that here—including breaches of directors' duties for failing to act with care and diligence. In 2009, the Supreme Court of New South Wales found that the directors had misled the Australian Securities Exchange about James Hardie's ability to fund claims, and they were banned from serving as board members for five years. Former chief executive Peter Macdonald, who was mentioned in the clandestine group that I quoted in Matt Peacock's book and was the CEO at the time, was banned for 15 years and fined $350 000 for his role in informing the MRCF and publicising it. All the former directors except for Macdonald—he took his penalty—appealed, and the New South Wales Court of Appeal overturned the ruling against those directors. The Australian Securities and Investments Commission appealed that ruling in the High Court. In May 2012, the High Court upheld the 2009 New South Wales court decision and found that seven former James Hardie non-executive directors had misled the stock exchange over the asbestos victims' compensation fund.

This is why it is important that we hold directors liable. That was the High Court decision in Australian Securities and Investments Commission v Hellicar. People who were around at the time will remember Meredith Hellicar. For *Hansard*, the citation is [2012] HCA 17. I am not going to need an extension.

The ACTING SPEAKER: Extension granted.

[Member's time extended.]

Mr S.A. MILLMAN: Okay, sure—thank you! I am almost done. Where was I? Macdonald accepted his fate, probably appropriately, given the way he had conducted himself between 1995 and 2004. He accepted his fine of $350 000 and his suspension from being a director for 15 years. The other directors, including Hellicar, appealed to the New South Wales Court of Appeal, and their appeal was upheld. The Australian Securities and Investments Commission appealed that decision to the High Court, and the High Court sided with ASIC in Australian Securities and Investments Commission v Hellicar [2012] HCA 17. The High Court allowed ASIC's appeal and held that each director had breached his or her duties as a director of the company by approving the company's release of a misleading announcement to the Australian Securities Exchange. The media release stated that the company had fully funded its asbestos diseases liabilities; in fact, there was a funding shortfall of more than $1 billion. The High Court allowed ASIC's appeal and held that inaccuracies in the February board meeting minutes did not counter their probative value as a contemporaneous and formally adopted record of what was done in the February meeting. The High Court decided that the board did approve the announcement and that the announcement was misleading.

These directors wanted to reduce their tax liability. Despite having benefited from decades of operating in the Australian market and being an Australian corporation, these directors wanted to diminish their liability for Australian tax and insulate their company from its civil liabilities as a result of negligently exposing workers and their wives, do-it-yourself home handymen and thousands of others to deadly asbestos fibres. They wanted to evade their company's liabilities for that negligence. They sought to relocate their corporation offshore and, in doing so, deliberately misled the Australian public and the Australian Securities and Investments Commission, and they were held liable.

I come back to the point that I made at the start. This important macro-economic reform is being undertaken in concert with other jurisdictions by a government that understands the important role of reforms like this in streamlining our economic environment. But it also creates a context in which regulatory authorities have a clear understanding of the sorts of conduct that will give rise to breaches, thereby creating an environment in which successful prosecutions are more likely. This legislation will create a simplified structure that will benefit all the good directors who are doing the right thing, but also allow for those who have done the wrong thing to be clearly and unambiguously the subject of prosecution.

I want to touch on another point, and I will finish on this, because I raised this point earlier, as well. This is not the first time we have seen legislation introduced into this place to assist with giving effect to the program of streamlining the national and state economies. One example was given in the member for Moore's contribution when he spoke to the Attorney General about the Work Health and Safety Bill 2019 and the imposition of liabilities on directors under the Work Health and Safety Bill, which I spoke in favour of when this chamber passed that legislation. In modernising not only this statute but also other statutes, harmonising them and bringing them into the twenty-first century, we are creating a legislative regulatory framework under which our market-based economy can operate efficiently, effectively and seamlessly with other states and the national economy. We need to do that because we are facing significant headwinds in the international economy. We have done an incredible job of maintaining the prosperity of Western Australia, despite the ravages of the global pandemic, but we need to remain diligent, assiduous and focused on the task at hand of making sure that businesses in Western Australia have the best possible opportunity to succeed. We are creating a regulatory environment in which businesses will know what they are doing and understand their duties, obligations, rights and responsibilities. That is exactly the sort of thing a responsible government should be doing to allow that market to operate efficiently and effectively. It is for all those reasons and all the reasons that I have outlined, including the capricious behaviour of the directors of James Hardie, that I commend the Attorney General for bringing this legislation before the house and I commend the bill to the house.

MR D.A.E. SCAIFE (Cockburn) [10.38 am]: I rise today to speak on the Directors' Liability Reform Bill 2022. The member for Moore asked me whether I was also going to read from a book in my contribution. I can assure the chamber that I will not be doing so. I cannot say that will make my contribution any more interesting. I do not have the member for Mount Lawley's reservoir of knowledge on issues like asbestos and the history of asbestos litigation in Australia. I was never personally involved in any asbestos litigation, unlike the member for Mount Lawley.

Mrs L.A. Munday: You've got your own great style, member for Cockburn.

Mr D.A.E. SCAIFE: Thank you, member for Dawesville.

My background was purely in industrial relations whereas the member for Mount Lawley moonlighted in workers' compensation and asbestos litigation. He was a jack-of-all-trades. I want to speak on this bill for a few reasons, but the one I want to note at the outset is that I had the great fortune of being a company director immediately before I was elected to this place. I was a particular type of director called a legal practitioner director. People might hear about a law firm in the sense of it being a partnership, and about people becoming a partner at a law firm. Traditionally, throughout the world and in Australia, law firms were exclusively partnerships and in parts of the world still are. The reason is that a lawyer's fundamental paramount duty is to the court and their secondary duty is to the client. For many years, the view was that there could not be an incorporated legal practice because an incorporated legal practice's first duty must be to its shareholders and a lawyer's first duty has to be to the court and their second to the client. We moved past that model of law firms several years ago and now allow for incorporated legal practices,

but a condition of forming an incorporated legal practice is that at least one of the directors must be what is known as a legal practitioner director. They must be an admitted lawyer who personally owes those obligations that all lawyers owe, which is the paramount duty to the court and the secondary duty to the client.

I was a legal practitioner director of Eureka Lawyers from 2016 until my election in 2021. I was in a position in which I had to make considered decisions about the financial operation of the business. I had to satisfy myself that the business was not trading while insolvent. I had to satisfy my duties not only to the court and clients, but also as a director of the company. It is a very weighty responsibility put on directors, because directors are stewards of assets that are relied upon by shareholders, lenders and consumers. For example, in the case of the law firm of which I was a director, if it had become insolvent while we had carriage of a client's case, we would no longer be able to run that client's case and the client would have to find new lawyers and start all over again at great expense. The stability and financial viability of companies, and the responsibility directors take for those matters, are important. The point is that they are important from not purely a commercial perspective, but also a social justice perspective. Good, well-managed and well-governed companies are essential for providing goods and services to consumers. They are essential to ensure that employees are well treated, have secure jobs and do not face the problems that come with insolvency.

I am sure that many members of this place who have had experience representing workers know that when a company goes insolvent, that has all sorts of consequences for employees. Employees often have significant accrued entitlements such as long service leave, annual leave and perhaps redundancy entitlements. When a company goes insolvent and is unable to satisfy those debts that it owes to its employees, those employees could miss out and may have to rely on what is known as the fair entitlements guarantee, which is a federal government guarantee that pays out a minimum amount of entitlements for people when a company goes insolvent and the entitlements cannot be recovered. However, entitlements under the fair entitlements guarantee are often not worth as much as the entitlements would be if they had been paid out in the ordinary course of events by the company. I know that sometimes people come to legislation like this and see it as being very dry and focused only on commercial matters that do not have a relation to the day-to-day challenges that people face, but making sure that companies run well and that they are governed responsibly by directors is a fundamentally important thing for consumers, workers and the public at large.

This bill is important because a number of economic benefits flow from it. The first is that it preserves the concept of the corporate veil, which is that a corporation is a distinct legal entity from the shareholders who run it. Obviously, in some cases, directors are not shareholders, but in many cases, directors are also shareholders of the company and so I think the corporate veil is relevant in that regard. The corporate veil is important for a number of reasons. Sometimes the corporate veil can be seen as a bit of a trick that protects, say, wealthy directors or wealthy shareholders from the consequences of their actions. It is true that the corporate veil is a shield. It is a shield that means that a company has limited liability and so the company is liable only for the mistakes or the misadventures of the company itself. That is an important principle because it is one of the many economic principles that effectively democratised the market economy for people.

If a person of relatively limited means wants to be a bit of an entrepreneur and start a business to innovate and capitalise on a new great idea, they might take out a loan for several million dollars in their own name in order to finance that and perhaps secure it against a property such as the family home. If their business goes poorly, they are personally on the hook for the loan and they could stand to lose their assets and their family home. It deters people of lesser means from taking their ideas forward, investing in them and being entrepreneurs, because the only people who have the means to take the higher risk of being responsible if things go badly are wealthy people who could take a hit of $1 million because they might have other assets worth $50 million. The corporate veil allows working people and people of lesser means to set up vehicles that allow them to attract capital through the vehicle of the corporation and go on to be entrepreneurs. But, of course, we cannot do that without regulating the responsibilities of those responsible for directing, managing and governing the company because otherwise people could just go out there, use the corporate veil as a shield from liability, and engage in fairly reckless conduct. That would be damaging for the economy as well. That is one of the reasons that we generally accept a corporation as a separate legal entity. That is a good thing, economically and generally speaking, for society but it is also a good thing for people of lesser economic means.

Another aspect of this bill is that it will harmonise the approach to directors' derivative liability across the whole of Australia. As the member for Mount Lawley has said, that is because this bill is part of a national approach. That is important because we want Australia to be a place in which it is easy to do business. We do not want Australia to be a place, and I certainly do not want Australia to be a place, in which it is easy to do business for the reason that there are extremely low corporate tax rates or a very lax regulatory environment. One of the ways in which we can make Australia an attractive place to do business, without sacrificing the protections given to workers or to the environment, is by making our regulatory system as streamlined as possible. That does not mean that we make the regulations weaker; it means that we make them easier to navigate.

I am sure that members of this chamber who have looked at the United States over the last few years would have seen the patchwork of laws on a lot of different issues. One example is policing. The laws in the United States

vary not only from state to state, but also from county to county, or essentially from one local government area to another local government area. That makes things extraordinarily complicated. A person in one part of the country could move a few hundred kilometres away and completely different laws and rules would apply on criminal liability and all sorts of other things. That creates a disincentive for companies in the United States that want to do business in the national market, because they will have to become aware of the laws and requirements in each of the different jurisdictions and change their business practices accordingly. That is particularly challenging in the United States, with 50 states and, therefore, 50 different sets of laws. It is not quite so challenging in Australia, given that we have only six states and two territories. However, it would still be challenging if a business that wanted to operate across Australia had different obligations depending on whether it was conducting its business in New South Wales or Western Australia.

I believe that, by and large, the harmonisation of laws across Australia will be a good thing. My attitude to harmonisation is that it should be based on the best practice that we can find in the various jurisdictions. We do not want it to be based on the lowest common denominator, because that will weaken the laws in jurisdictions that already have very good laws. That is what this bill will do. This bill will take good, high standards of governance in directors' duties and harmonise those across each state and territory.

As the member for Mount Lawley said, this bill arises from a Council of Australian Governments process that dates all the way back to 2008. The member for Mount Lawley also made the point that that was during the heyday of Labor governments in Australia. I remember the election material that the Liberal Party ran at the 2007 federal election. It had bunting on the polling booths that said "Don't let Labor have wall-to-wall power across Australia"—in other words, do not let Labor have Labor governments all across Australia. Of course the people of Australia decided that they liked the idea of having wall-to-wall Labor governments and elected the Rudd Labor government, which was then able to undertake some very important reforms. Unfortunately, the jurisdiction that first dropped the ball was Western Australia when the Carpenter Labor government lost the 2008 state election. That government was the first domino to fall from the "red wall" in those days. As the member for Mount Lawley said, we have slowly reassembled the wall, and we are now able to deliver the important macro-economic reforms that the Labor Party is well known for.

The member for Mount Lawley also mentioned the reforms of the Hawke and Keating governments. Those reforms are certainly important. However, the Labor Party has been the party of economic reform since it was founded, with things like the widow pension and the disabled and invalid pension, which were introduced by Labor governments both pre and post-war. Those were some of the major economic reforms that established the modern welfare state. It is good that we are able to continue that work, albeit in a slightly drier but, in my opinion, no less important way.

I touched at the beginning of my contribution on the importance of limiting the liability of corporations. However, there have always been exceptions to the principle of limited liability. There have always been principles that allow what we call piercing of the corporate veil. These provisions exist for a variety of reasons. They exist as a matter of preserving fairness. They exist also for when a corporation has been used as a facade or sham, such as when a shareholder has engaged in dodgy activity in operating the business and has been using the company structure as a shield.

Another exception has traditionally been the prohibition on trading while insolvent. Directors have always been liable for their actions if they are aware, or ought to have been aware, that the company was trading while insolvent.

[Member's time extended.]

Mr D.A.E. SCAIFE: The reason for that prohibition is obvious. If a director is aware, or ought to have been aware, that the company was trading while insolvent, the director would be making decisions and directing the company to take actions knowing that the company could not satisfy the consequences of those actions if they were to go wrong. Therefore, the director should be held personally liable because they engaged in conduct in circumstances in which the business could not satisfy the consequences of misconduct and they used the corporate limited liability as a shield.

I note that this bill does not cover a type of derivative liability known as accessorial liability. Directors' derivative liability, as the term is used in this bill, refers to a circumstance in which a director is carrying out their duties as a director of a company, or doing their ordinary work in the management and governance of the company, but a determination has been made that because of the circumstances of the company, the director should be held liable for the conduct of the company. Accessorial liability is different, because it refers to a circumstance in which the director of a company was directly involved in unlawful conduct in the company. In the work that I used to do in the industrial relations field, a classic example was a director who was knowingly involved in underpayment or other unlawful behaviour in the workplace. That was unfortunately something that I came across from time to time. I believe that most company directors do the right thing. In the line of work that I was doing at the time, generally speaking, clients did not come to see me when the company or the director was doing the right thing by them, so, unfortunately, I tended to see the worst types of behaviour. I am sure that is true of a number of members in this place who represented workers as union officials or advocates. Working in our field sometimes gives a person a jaded

view of the workplace because we do not see when things are going well; we only see when things are going badly. I would like to think that I had a balanced experience by virtue of being both an industrial relations lawyer for workers and being the workplace boss at the firm of which I was a director. One of my responsibilities was to process and pay the wages every fortnight. I was always keenly aware of the complexities of running a business. The truth is that I saw some pretty bad behaviour. I have spoken before about some of that behaviour and I would like to mention again a couple of the cases that I worked on.

I worked on a case for a young man called Alastair Enkel. He worked for a car dealership and was paid on a commission basis for selling car finance products, but he worked in excess of full-time hours. The commission that he made off sales as a very junior employee was not nearly sufficient to cover his minimum wage under the relevant finance industry award. In that case, the director had knowingly done a number of things. Firstly, the director had knowingly given and signed off on the terms of employment that provided for commission-only payments. Secondly, that contract of employment specified that Alastair's terms of employment were governed by the finance industry award, so the director knew that minimum standards applied to Alastair's employment, but nonetheless went ahead and engaged in a business model —

Several members interjected.

Point of Order

Mr R.S. LOVE: I am very interested in the contribution of the member, but I cannot hear it for the loud interjections.

The DEPUTY SPEAKER: Yes, thank you, member. I agree with you. Ministers and Attorney General, can you keep it down, please.

Debate Resumed

Mr D.A.E. SCAIFE: In that case, the director of the firm had signed off on the conditions of employment that were below the award conditions. The contract also specified that the award applied. In drawing up the contract, the director actually knew that the award applied to Alastair's employment, but nonetheless offered him terms of employment that were below the terms of the award. Even more disturbingly, when Alastair—who was a very young worker at 21 years of age or thereabouts who did not have a lot of confidence or experience in the workplace—got up the confidence to say, "I've actually gone to the Fair Work Ombudsman. I have taken advice and done some of my own research and been told that the award in my contract applies to me and I haven't been earning that much money", he was met with emails that can only be charitably described as obfuscation. The director denied any kind of problem. Later on, the director accepted that there was a problem, but essentially pleaded—I do not quite know the words to use—the defence that Alastair should be grateful that he had been given a job in the first place. The excuse was that Alastair should have been thankful to the director for all the opportunities that had been given to him, notwithstanding, essentially, the director's acceptance that he had done the wrong thing and refused to pay the difference.

In that case, Alastair came to see me and we ran the case, at first instance, in the Industrial Magistrates Court. Alastair was successful in getting most of the orders he sought against the company, but we had also sought orders against the director on the basis that the director was liable as an accessory because the director was directly involved in authorising the conduct that was unlawful. We failed on that claim at first instance. The industrial magistrate concluded that there was not sufficient evidence that the director was knowingly involved in the unlawful behaviour of the company. I have to say that this is a lesson in terms of how to litigate matters. I told Alastair that although I thought the decision of the industrial magistrate was wrong, he had got most of what he wanted and should basically quit while he was ahead and not run an appeal on the finding that the director was not liable.

Unfortunately, for the director, he obviously had some quite poor advisers because he then appealed the judgement. I advised Alastair, "If it's on, then it's on" and that we would lodge a cross-appeal. Later, the director, without any negotiations, discontinued his appeal without getting anything for it and then essentially asked Alastair whether he was willing to discontinue his cross-appeal, to which Alastair said no because he had already gone to all the expense of getting it up. We were successful on three out of our four grounds on the cross-appeal, which would never have happened if the employer had not appealed. The Federal Court of Australia found that the director was knowingly involved as an accessory in the misconduct of the unlawful behaviour of the company and remitted the case back to the industrial magistrate for redetermination. I cannot remember the precise figures, but the company was ordered to pay the entitlements and, on top of that, it was ordered to pay a penalty of something like $40 000 or $50 000 to Alastair as the wronged party. The director was also ordered to pay a fine of something like $15 000 to Alastair.

That is a lesson in litigation strategy for some people and how sometimes one should not appeal because it invites the potential consequences of a cross-appeal. It is also a lesson in accessorial liability and how accessorial liability is distinct from the type of derivative liability found in the Directors' Liability Reform Bill because it envisages a director who is directly involved in the unlawful behaviour. Generally speaking, that really only happens in small and medium–sized businesses. In most cases, in large listed companies the company director is not going to be

engaged in decisions about whether to terminate an employee from the business or in setting the terms and conditions of employment. The person doing that is likely to be a middle manager of the company, but the accessorial liabilities in the Fair Work Act apply equally to people who are not directors of companies. A person could be a human resources manager or a recruitment specialist at a company and fall foul of the accessorial liability provisions. That is a different type of liability. It is important that accessorial liability is retained, but it is also important that it be distinguished from derivative liability generally as it is dealt with in this bill, which is a type of liability whereby the director may not have been directly involved in the unlawful behaviour of the company, but there is a reason for affixing responsibility to the director—for example, they were negligent, they were reckless, they did not know something they ought to have known et cetera.

This bill does not propose to amend the Work Health and Safety Act 2020 or affect derivative liability in this area. In 2010, when the Council of Australian Governments considered directors' liability reform, it was acknowledged that the model work health and safety laws, which is the model harmonised legislation, contained provisions that specifically dealt with the liability of officers and provided for its own process when directors or a person conducting a business or undertaking are found to be liable for their conduct. In 2008, it was agreed that these reforms would not affect the provisions in the model work health and safety laws.

I would like to reiterate that for all the aforementioned reasons, the Directors' Liability Reform Bill 2022 is a very good bill in terms of economic reforms and ensuring good governance of companies, which, in turn, affects the rights of consumers and workers. I commend the bill to the house.

MS M.J. HAMMAT (Mirrabooka) [11.09 am]: I also rise to make a contribution to the debate on the Directors' Liability Reform Bill 2022. I feel that I should say at the outset that I am not a lawyer. We have had two quite good and substantial contributions from people who have been lawyers. They made quite good contributions about some of the issues canvassed in the bill, so I feel that I should say that as a disclaimer at the outset. I have, however, in the past been a director of a variety of different organisations, including at one stage a superannuation fund. I was for a time a director on the state government's MyLeave board, which is the construction industry's long service leave fund, which I know you will be familiar with, Deputy Speaker. I also served as a director on the not-for-profit incorporated board of Triathlon WA for some four years. I have also done various other things. It is really from that perspective that I intend to make my contribution today—not as someone who has been a lawyer, but as someone who has, at different times, sat on boards and been mindful of obligations that directors of any kind have. I should say that much of my knowledge was gained not from studying law, but from completing the very well regarded course run by the Australian Institute of Company Directors. I understand that its one-week company directorship course is still considered to be the gold standard, although it was some years ago that I completed it. Again, I feel as though people should not accept my submissions as any kind of legal advice today.

What I want to reflect on, perhaps by way of introduction, is how this bill comes before us, and I think others have covered it. It is part of a process of achieving harmonisation across the country in relation to directors' liabilities. It arises from a COAG agreement in November 2008 to ensure that we have consistent provisions for personal criminal liabilities for directors in relation to corporate fault. The COAG process is very important in ensuring consistency, and that COAG agreement has had quite a journey to arrive in this house for the second reading of this bill.

What is interesting to me about this bill is how the expectations of the community at large about the duties imposed on company directors have really evolved fairly substantially over a period. The bill comes before us today as another step in a fairly long journey to recognise an increasing community expectation around good governance and transparency and ensuring that companies and directors on company boards maintain high standards in their corporate behaviour. One of the things that is also interesting is that we often do not see how corporations behave, how decisions are made and how individual directors approach their task until things go wrong. Mostly, corporations' directors go about their day-to-day business in a way that is not seen by the community at large, but when things go wrong, and they can go wrong badly, there are often inquiries. Those inquiries allow us to see the detail of how individuals behave, how directors make decisions and how a whole company approaches tasks based on its governance and corporation requirements. It is that aspect that I am going to dwell on somewhat today—what we have learnt from some of those events. The member for Mount Lawley talked substantially about James Hardie and its behaviour in providing compensation to people who have been exposed to asbestos over the years.

It is worth noting that the commonwealth Corporations Act sets out and largely codifies common-law provisions around directors' responsibilities and duties. It is about understanding that a director's obligation is to act in the best interests of the company, not in their own personal interests. Because directors have a fiduciary duty, that means that they are required to give their undivided loyalty to the company—that is, to act honestly, in good faith and to the best of their abilities in the company's interests.

The Corporations Act sets out some fundamental duties for directors, which are at the heart of our understanding of how directors should go about their job. They are required to act with care and diligence. The standard for that, which I will talk a bit more about, is that expected from a reasonable person in undertaking that care and diligence. They are also required to act in good faith in the best interests of the company and for a proper purpose. This is an

obligation that recognises that boards operate in very complex environments and that the role of a director is to exercise their judgement. It is a role that requires the exercise of good judgement about the best interests of the corporation. Again, I will talk a little more about that as I go on.

Directors are required to manage conflicts of interest by identifying and disclosing those conflicts, and taking active steps to manage them, and making sure that they do not improperly use any information or their position. Of course, they are also required to ensure that the organisation does not trade while insolvent. If they fail in their obligation to do that, directors may be personally liable for the debts that they incur while trading while insolvent. This often attracts a lot of attention, because clearly those kinds of debts can be significant, and many directors are very mindful of that. All the duties that I have outlined are equally important in ensuring that companies are well run and well governed.

As I said at the outset, our understanding and expectations of how directors go about their jobs have evolved over time. For many years, the case that set the standard was the 1925 case of Re City Equitable Fire Insurance Co Ltd. It set out that a director was required to exhibit the degree of skill that might reasonably be expected from a person of their knowledge and experience. It was a requirement that they go about the business based on what would be expected from them—what would be a reasonable degree of skill to accept from someone with their knowledge and experience. That set the standard for many years and, as I have said, a lot of the requirements have been codified in the Corporations Act.

In more recent times, as corporations grew in both their complexity and the substantial resources that they were responsible for, courts have had a closer look at this. I want to make reference to one of the cases in which the dial was not so much shifted, but in which the courts sought to clarify how that responsibility should be addressed. I will refer to an Australian judgement that is referred to as the Centro case. It went to the question of how directors go about that responsibility and what the required level of skill should look like. To give the background to that case, in the 2007 financial statements signed off and submitted by the company directors of the Centro Properties Group, they failed to properly disclose $US1.5 billion worth of short-term liabilities. It was a very complex company structure. The accounts had been through an audit committee and when they finally went to the board, it signed off on those liabilities not as short-term liabilities, but as non-current liabilities, and they were the financial accounts that were submitted to the market. The difference between a non-current liability and a short-term liability is significant. Unfortunately for the Centro group, those liabilities fell due as the world was grappling with the financial crisis. People will recall that that made it very difficult for the company and individuals to access finance, and, as a result, the company fell into substantial difficulties.

Some of the things that the court looked at in that case were the responsibilities of the directors, because these accounts—again, it was a very complex set of companies—had come up through management and had also been to an audit committee before they were finally signed off on by the board. Indeed, they were very complex board papers, running to many hundreds of pages. The court considered what is reasonable, and it found that the director was responsible. Even though it had been through the stages of management and through the audit process, the director was ultimately responsible for the material the company put out. It found the director should at least have a rudimentary understanding of the business of the corporation. They should be familiar with the fundamentals and they should keep themselves informed about the activities of the corporation. Although they do not necessarily need to have an understanding of the day-to-day operations, understanding the difference between a non-current liability and a short-term liability is significant, and it is something that the group of directors, at the board level, should have turned their minds to. It is not good enough to say, "I didn't know. The papers were complex. Someone else sent a recommendation up, and I signed off on it." The buck stops with the directors, and it is their responsibility to take that obligation seriously. They are responsible for exercising a duty of care and skill. Although there needs to be a reasonable level of care and skill, saying that the papers were complex and the issue is complex does not remove their responsibility to inform themselves and to actively oversee the company.

The good member for Mount Lawley spoke about the James Hardie case, which also goes to the question of what the responsibilities of the directors are. I think he gave a very detailed overview of that case and the circumstances arising from it. James Hardie set about restructuring. It moved companies with significant asbestos-related liabilities to the Netherlands and established the James Hardie Medical Research Compensation Foundation in Australia to fund its obligations to those seeking compensation as result of working with or around asbestos products. The key issue was the statement outlining the proposal that was sent to the Australian stock exchange after it had been approved by the board of directors. As we know now, that announcement contained misleading statements about the sufficiency of the funds. The member for Mount Lawley laid bare the substantial shortfall of funds that case.

The matter was considered initially in the New South Wales Supreme Court and then further courts. Again, it goes to the responsibilities of directors and their obligation to do their duty, and the court did not let them off. It is their duty to read and understand the contents of reports that they approve or adopt, including financial statements and, in this case, a statement to the Australian stock exchange. It does not matter whether those papers are dense or run to hundreds and hundreds of pages; the obligation remains the same. Directors are also required to have an inquiring mind and to consider whether such statements are consistent with their own knowledge of the company's

financial position. Rather than blindly accepting information, they should question it, based on their own knowledge and their own understanding, and, if necessary, make inquiries to the managers who are putting the information forward. They also need to have sufficient financial skills to perform those tasks. Although it is not necessary for people to be accountants or to have the same level of understanding, a working knowledge of the company and its obligations and liabilities is incredibly important.

The James Hardie case is very interesting. Not only did it point to the failure of the directors in relation to the accuracy of the statement that was made about the sufficiency of funds; it is clear that their actions caused the company significant reputational damage. One of the obligations that all company directors have is to put the best interests of the company, the corporation, first and to act in a way that sees to those interests. This case highlights the fact that the obligation is to take a very long-term view of the interests of the company, not to just consider the short-term interests.

Because it is such a substantial piece of work, I want to refer to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, undertaken by the federal government. The very substantial report—over a thousand pages, with 76 recommendations looking at a whole range of different case studies—examined the behaviour of the financial sector in Australia, not just banks but also the superannuation industry. I think people will recall a number of the very shocking stories that emerged from that royal commission. I hasten to add that those stories came from the banking sector rather than the industry superannuation sector, which demonstrated fairly high levels of governance. The final report talked about a number of things, including governance and corporate culture, especially the role of boards and their decision-making position in some of the things that were uncovered in the banking industry at the time.

The final report talked about the boards of those corporations having the right information to undertake their duties. Again, it is very clear that it is not good enough to say, "We didn't know. We didn't understand. Banks are complex entities and so it wasn't something we ever turned our minds to." Directors need to test and challenge the reports they receive from management. They need to be mindful of their obligation to set the culture for the whole organisation. Culture is set from the top, at the board level, and that is part of the directors' responsibilities.

[Member's time extended.]

Ms M.J. HAMMAT: In the report, Commissioner Hayne set out six principles for boards. Some of them might seem self-evident, but he felt it necessary to write them down. They were —

- obey the law —

That would seem, at first blush, not to need to be stated, but there you go. It was the first principle he identified —

- do not mislead or deceive;
- act fairly;
- provide services that are fit for purpose;
- deliver services with reasonable care and skill; and
- when acting for another, act in the best interests of that other.

Commissioner Hayne went on to say that acting in the best interests of the company, which is one of the obligations of directors, is not a binary decision between customers and shareholders. In the end, it is about recognising that shareholders may have a short-term outlook but, if a director takes a longer term perspective, is quite likely that looking after the best interests of the customers will also be in the best interests of the shareholders as well as the employees and the company's other stakeholders. This goes back to the point about serving the best interests of the corporation and understanding that it is not always best assessed by looking at the short-term interests, but by taking a long-term view. That is something that I will come back to shortly.

I think it is impossible not to stop and reflect on the significant review of Crown Resorts Ltd in New South Wales. The Bergin inquiry looked quite deeply into the operation of Crown Resorts in that state and how the board went about its business. The review called into question some of the actions of the directors of that company, finding that they did not act in a way that was consistent with their obligations as directors, particularly on the question of fiduciary duties and the requirement to act in the best interests of the corporation. People will recall that one of the things called into question was the relationship between some board members and their major shareholder, which was Consolidated Press Holdings and James Packer. That issue was clearly ventilated in the review of Crown Resorts, which found that acting in the best interests of the corporation should not be encumbered by the interests of a major shareholder or other stakeholders, and that that needs to be very clear. It is not surprising that in the aftermath of that royal commission, a number of those directors resigned their position.

I want to now turn my mind to something that is sort of future-looking by reflecting on the process of clarifying director obligations, because several issues that are on the horizon will start to be on the minds of directors and people who are on boards. One of those is climate change. This is interesting because, when weighing up the best

interests of a company, directors are obliged to consider the long-term interests of a corporation and not necessarily just the short-term interests. A very interesting paper was produced by the Australian Institute of Company Directors called *Climate risk governance guide*, which is a resource for directors on climate-risk governance. This guide sets out how climate change is an emerging issue that directors and boards really need to turn their minds to. The guide identifies two risks for boards as a result of climate change, regardless of the industry. One is the physical risks that might emerge as a result of the kind of impacts of climate change that we are seeing, such as damage to assets, but also, increasingly, supply chain disruption. There is plenty of evidence of how extreme weather events can significantly disrupt our supply chains and can lead to companies running into problems with uninsurability. There are physical risks, but there are also economic transition risks. Basically, companies need to be cognisant of the fact that increasing attention and care is being paid to climate change and that they cannot afford to stick their heads in the sand and think that it is not happening. Governments around the world, including our own, are turning their minds to how to manage climate change. With that comes responses at a policy and regulation level. Indeed, any business that trades with other countries will quite likely have come up against changing expectations in those countries about climate change and how companies meet that need. A whole range of change is happening in this space. It is important that directors think about climate change, and that they do that in the context of understanding the long-term interests of their company. Their requirement to act in the best interests of a company requires them to think about both long-term and short-term issues. As part of their considerations, they will need to turn their mind to the question of how climate change might impact their business. Obviously, that will look different in different industries—some are certainly more exposed to climate change than others—but this should be front of mind of any director of a company. It is great to see that there are excellent resources available to boards and directors to help them start thinking about how to approach climate change.

One thing that I thought was quite interesting in this report is that it outlines the change in expectations. The AICD report states —

> Historically, 'climate change' was often considered a 'stakeholder issue'—a purely environmental, 'non-financial, ethical' issue, and its consistency with the 'best interests' of the organisation questioned.

The report makes this point —

> The stakeholder debate has moved on however, with recognition that consideration of stakeholders such as customers, employees, the environment and the community is often consistent with organisational long-term interests. Put more bluntly, a failure to appropriately manage those stakeholder interests often risks the best interests—including financial interests—of the company and its shareholders/members.

This is a significant shift in how boards should think about climate change, as not just an ethical issue, but also a fundamental issue to consider as part of their obligations as directors.

The other interesting thing that I want to talk about in the time remaining is the emerging issue around data security and privacy. There have been some significant breaches of data, both with Optus and, more recently, Medibank. Lots of people's personal details have been hacked. There is an active discussion in the federal sphere about whether tighter requirements on companies to have appropriate management in place for the security of personal data should or could be achieved by having more significant penalties. I am sure that this issue will be concentrated in the minds of many directors around the country.

By way of conclusion, I think we have seen an increasing expectation from the community that directors and boards should go about their business using very good governance arrangements. This is partly because corporations have grown significantly in size, complexity and influence, but also because they often have under their management substantial funds or interests of everyday people. It is incredibly important that corporations do not fail and do not lose the hard-earned savings or benefits of everyday people. When things go wrong, there are consequences for many people—investors and clients, who are often everyday people. There are many examples of people having lost substantial sums as a result of corporate failure.

We have also seen the role of director become more professionalised. As I mentioned at the beginning of my contribution, the Australian Institute of Company Directors now offers training and accreditation—I think the Governance Institute is also in this space—to ensure that people are well qualified to step into those roles. It is absolutely appropriate that governments take an active interest in good governance. It is absolutely appropriate that the state government work with the federal government and, through COAG, other state government agencies to ensure that we have an appropriate system of regulation for companies and an appropriate system that ensures that directors take their obligations very seriously and go about their work very carefully. This bill is part of a broader national approach. It is very important for making sure that there is rigour in the system and that everyday people can have confidence in the corporations that make up such a significant part of the Australian economy. With that, I will end my comments. I commend the bill to the house.

MR C.J. TALLENTIRE (Thornlie) [11.36 am]: I am very pleased to rise to speak on the Directors' Liability Reform Bill 2022. I was collecting my thoughts on this bill this morning as I was about to suffer a little prick into a vein to give blood for a blood test. It was a wonderful distraction, so I am very thankful to the Whip for giving me

this opportunity to prepare for this bill and, therefore, distract myself from that little bit of pain. What was interesting was that I spoke to the phlebotomist about the bill and she was quite struck by the significance of this legislation, because in briefly outlining it to her, it became evident that the rules of governance around the operations of people who are on boards and the responsibilities that directors have need to be fully understood. There is a community expectation of that. I note the remarks of the member for Mirrabooka on this very point: the community expectation is that people who hold directorships take their role seriously and be across the papers that are provided to them prior to board meetings so that they are well informed for any decisions they have to make. That is really important. I note that the legislation confines itself to the operations of directors as defined through our corporations law as people who are officers of bodies corporate. However, I think this issue will be of some interest to those of us who hold a position on a board in some sort of volunteer capacity and, indeed, those of us who hold a position on a school board. There is clearly a responsibility for people on those boards to look at the details of financial statements and issues around decisions on the employment of staff and such things. Responsibilities are very much a part of the role of a director, and directors need to be aware of those responsibilities.

For those in the corporate sector, being a director is obviously a very well remunerated position. People are paid extremely well to be directors on company boards. They are perhaps in a position to invest the time to be confident about the decision-making that they are involved in. Being aware of the risks to which they might be exposed becomes a part of their responsibility set. To some extent, this legislation will clarify the limits around their risks and responsibilities. The member for Cockburn touched on this. I believe the community expectation, and what we need to be sure of, is that officers are not shielded and cannot say, "Well, I took this cost-cutting measure because it was in the interests of the company's finances." They should not be able to feel like they can get away with making a decision because the corporation would be held legally responsible if something went wrong. There are number of domains in which this risk exists, including the spheres of the environment, health and safety and transport, to name just three. These are clearly areas in which people can make decisions that will impact the broader wellbeing of society and our community. I know it can sometimes be frustrating for someone who is working in an organisation when an idea is suddenly throw up but they are told they are not allowed to do it because it is going to be a problem.

An expression that can be especially irritating to hear is: "That's more than my job's worth." I find it to be a fascinating expression. People who say that are colloquially referred to as jobsworths. I must refer the origins of the expression to the fellow on the ABC *Breakfast* program, Daniel Midgley, who does a very good job on the segment "Speakeasy" and his podcast *Because Language*. It is always entertaining to hear his analysis of the origins of various expressions. The idea of people being obstructive is not what this legislation is about. It is very much about clarifying where responsibilities lie. If an officer in an organisation is unhappy about a measure that is being brought in because although it will reduce costs, it will also potentially have some sort of pollution event or some sort of habitat destruction associated with it—a type of environmental event—they clearly have a responsibility to make it known that there is a problem. In the end, that will be their best defence should there be some sort of prosecution down the track. To delve into this a little more, there are various such offences in the Biodiversity Conservation Act. These are referred to in the Directors' Liability Reform Bill because certain amendments will be made to them. It is worth looking at some of them. There is an offence around modifying the occurrence of a threatened ecological community. The provision in the Biodiversity Conservation Act reads —

> A person must not modify an occurrence of a threatened ecological community unless the person is authorised …

Clearly, an authorisation is someone's best defence here, but otherwise they would be committing an offence. It is not valid to hide behind the idea that it is the corporation that did it, not them. A level of responsibility has to be taken. That example was from the Biodiversity Conservation Act relating to threatened ecological communities. Similar examples relate to the contravention of habitat conservation notices and taking or processing threatened fauna and flora or sandalwood. Throughout the legislation, a requirement is placed on people to ensure that they act within the law and are not in a position in which they can say, "It was a decision made by my company." The idea that somebody could be shielded by a shell company, perhaps worth only a few dollars, is completely wrong. Likewise, there should not be any hiding behind the name of a bigger corporation. The community expectation is that people have to be held responsible and often the way to enforce our very useful, valid and important legislation such as the Biodiversity Conservation Act is to ensure there is enforceability and that an individual has to take responsibility.

Moving on to the Environmental Protection Act, which is also well cited in the legislation before us, in which the offences are around pollution events. It could well be that a company not maintaining the scrubbers on its stacks could save it a lot of money, but that should not be entertained because there are mechanisms that would make those people responsible for such offences and eventually culpable. These measures are very important. As a society, I think we are still grappling with decisions that could lead to what we might call death by a thousand cuts. This is often the case for a whole range of environmental matters. To use an example, a trucking fleet could decide that it will not maintain its diesel engines on the recommended frequency. A bit of extra mileage might be sought between various servicing times. As a consequence of that, there is extra pollution. It seems quite minor on the scale

of an individual truck. Someone might be stuck behind the truck at the traffic lights. If the various filters in their car are open, or perhaps the windows are down, the fumes will go into their car. Sure, they can overtake the vehicle and it will all be over within 30 seconds. They can rely on their metabolism to get rid of those pollutants and they will probably suffer no consequence at all—let us hope so. However, if we multiply this by a whole trucking fleet that is circulating around the Perth area, to use the capital city as an example, perhaps that is a whole series of pollution events.

I must commend the RAC for its latest work on Perth's air quality and the amount of air quality monitoring it is doing. For this form of point-source pollution that is occurring, it is timely that we are seeing the advent of clean energy options. That is well and truly within our sights in the future and the vast majority of the passenger vehicle fleet is likely to be electric and therefore there will be no risk of this form of pollution. For the trucking fleet it is likely that, in time, we will have hydrogen-powered vehicles, if not electric ones in some cases. Clearly, new options will be available to us and that is very timely. If decisions are made in this way that will allow this death by a thousand cuts with a hundred vehicles on the road, each polluting a little bit and each member of society being exposed to a just little amount of the sulphur dioxide and particulate matter—PM10 or PM2.5—there is an increased risk right across the population of those particles being lodged in the bloodstream and causing some serious health problem to an individual. With the multiplication of these things, we get that risk. There is an issue for us to ensure that directors' liability works at this individual level but also across something as seemingly benign as the maintenance of, say, a trucking fleet. It is very important that those decisions are made. The same would apply to decisions made in the food sector around the quality of ingredients going into pre-packaged food. It is very important that that is of the highest order and no risks are taken there.

I now want to switch to something else—that is, people who might knowingly advocate against the public good. I guess this is something that we will hear more about down the track. I know that the member for Mirrabooka touched on this when she mentioned the need for directors of corporations to be aware of their decision-making around the threat posed by climate change. It is true that the director of a company that is about to embark on a major project that will have very extensive greenhouse gas emissions must have a good knowledge of it, as everyone now should have. As it is something that will further exacerbate the climate change threat, they cannot say that they do not have good knowledge of the risk. If they begin to knowingly advocate against the threat, they are perhaps following in the footsteps of those who gave out information about the threat of cigarette smoking but then chose to downplay and advocate against it and say that there was not in fact a risk involved. There are similarities; these patterns of behaviour emerge again and again. Things that happened in the corporate world 50 years ago are now emerging in other spheres.

Smoking does not seem to go away. I heard on 6PR this morning that the vaping sector is looking to mount a further campaign to justify vaping. Simon Beaumont sounded happy to give them some airspace—pardon the pun! I am pleased that he qualified it by saying that the new campaign will be funded by British American Tobacco. When there is an overwhelming body of scientific evidence against something, I think it is very important that it is made clear.

The notion of a director and the definitions around directorships is a very interesting one. We have to consider the breadth of responsibilities that people have in various roles. I was bemused, if not quite irritated, by decisions made by directors at ABC news on 26 October when electricity prices were a topic of the day. Our local ABC 720 ran a news bulletin with a story straight from the east coast about how electricity prices were set to spike, but it made no reference to the fact that we have no connection with the national electricity market. It made no comment about the fact that good decisions made in this place by the Minister for Energy, and indeed by his predecessors, and the excellent work by many people in the energy sector in this state, have saved us from the electricity price hikes that perhaps are going to be seen on the east coast; I profess no knowledge of what happens on the east coast. But a director of news made the decision to run that bulletin as though it applied to Western Australians without any qualification. I think that suggests a degree of negligence and laziness on the part of that news director. I think we have to ensure that this idea of directors' liability is seen in a broader context and realise that others have responsibility.

It is not just those who are directors of corporations who are in positions of great power. The news directors of various broadcasting bodies have enormous power and influence, and there is a need to ensure that they are held accountable and that there is no irresponsible, misleading or confusing broadcasting. That is another area that I find very interesting about this legislation. It is perhaps an ongoing discussion in many ways because there will be further discussion about the nuance of this set of amendments, the implications of them and how these things will work into the future.

I shall conclude my remarks by commending the bill to the house. I look forward to seeing how its passage and its position on the statute book will ensure that there is greater clarity for directors in Western Australia.

MRS L.M. O'MALLEY (Bicton) [11.54 am]: I begin my contribution to the Directors' Liability Reform Bill 2022 by stating at the outset, as the member for Mirrabooka did, that I am no lawyer.

Ms M.M. Quirk: That's a plus, isn't it?

Mrs L.M. O'MALLEY: Diversity! Diversity, member, is going to be one of the themes I will speak to. That is certainly an important reflection.

The ACTING SPEAKER (Mr D.A.E. Scaife): You should never be ashamed of not being a lawyer.

Mrs L.M. O'MALLEY: Absolutely not, Acting Speaker!

My experience with the theme and the points of this bill really come from being a community member and a former local government councillor. Like the member for Mirrabooka and others in this house, I also participated in the Australian Institute of Company Directors course some time ago. One of the key features that I will talk about is the importance of really understanding the roles and responsibilities of participants of a board or executive committee and how courses like the one offered by the AICD can assist those participants to understand those roles. There is a barrier to that of course; that is, they are hellishly expensive. I will also speak about those barriers to participation and how that comes back to the all-important aspect of diversity on boards. Mr Acting Speaker, you spoke earlier about some ways—what was it?

The ACTING SPEAKER: Bail—corporate bail.

Mrs L.M. O'MALLEY: Yes. I was not aware of how that can really support participation for those who may find financial aspects a barrier to participating on boards.

My reflections will be much about the body corporate board or executive group itself. I note that there are many terms that could be appropriately applied to an executive group that performs the role relevant to this bill. I will use the term "board" while speaking to the bill that we are here to debate today. I offer the following to provide some background and context to this bill. Quite simply —

> **"Board" is one of several names used to signify the group of people assigned the responsibility to govern an organisation, company or other similar entity. A board is a legal requirement of a number of different forms of for-profit and non-profit organisations.**
>
> Your organisation's board might be called the board of directors, board of trustees, committee, management committee, council, governing body, responsible entity, or one of a variety of other names, depending on your organisation's legal form or constitutions. The individuals who serve on the board might be called board members, directors, committee members, non-executive directors or trustees.
>
> …
>
> The purpose and responsibilities of the board as well as the restrictions and limitations placed on it will vary between organisations, depending on the specifications of the organisation's constitution. In general, the purpose of a board is to provide the organisation it serves with strategic direction and purpose.

It thereby reflects the needs of the masses, as they may be called. Continuing —

> An effective board is proactive and drives the work of the organisation, rather than responding to it. The board also has ultimate responsibility for the finances of the organisation and holds legal responsibility for its ventures and actions. The board's main contact with the organisation is through the chief executive officer (CEO) or equivalent and it is responsible for appointing and managing this individual.
>
> For these reasons the proper functioning of a board and the diligence of its members is closely linked to the organisation's capacity to operate effectively.

As I mentioned at the outset, my interest in this area is in diversity and how a shift in the numbers within a board—the balance—can shift the culture of the board or that organisation. Diversity on boards is important for a number of reasons, one being that boards are like any other group in that they are simply reflective of society. Society is made up of a diverse mix; therefore, to operate most effectively, a board should reflect that. I am talking about diversity in gender, race, ability and many other things so that a board can be really effective and reflect society. A board that more closely reflects society will make better, more informed decisions, which can have a positive impact on a company's bottom line. A little something I found on the Harvard University website refers to boards having more women and states —

> **Having women on your board is good for your bottom line.**
>
> Many studies have shown that having a more diverse board is good for business. For example, of the 842 active companies on the Fortune 1000, women hold 18.8 percent of board seats—an increase from 17.7 percent in 2014 —

These figures are slightly outdated, of course. We would hope that more modern figures would show an even greater increase. It continues —

> and 14.6 percent in 2011—and 45 percent of all companies on the Fortune 1000 have 20 percent or greater women on their board. In addition, over 55 percent of the companies that became inactive on the index had one or zero women on their boards.

Let us talk about removing barriers to participation so that we increase diversity and, therefore, create stronger cultural balance on boards. I spoke previously about financial barriers. Barriers can also be simply about opportunity. I reflect on some of the boards that I am more familiar with in my capacity as a local member—those associated with sporting clubs, in particular Australian Football League clubs. This traditionally male-dominated sport has undergone a massive change in the last few years, from the football field to officials and now, increasingly, boards. There are barriers to that change, and a lot of the barriers come down to a simple fear of change. The membership of many of the football club boards that I see has been continuous for a long time—decades. That is not to detract from the passion that those board members have for their clubs and the organisation, but there is a reluctance to share the space to increase diversity, and particularly gender diversity. One of the things the government has done around participation on boards is the OnBoardWA program, which has had some impact. I certainly think it reflects very strongly that aspirational goals are not working and that affirmative action is needed to continue to increase diversity.

Boards are typically required to have a minimum of three members, also known as directors. According to the *Better boards: NFP board member remuneration report 2016* —

> … boards of Australian non-profit organisations are usually made up of between 7 and 10 members and 8 on average. New members of a board might be elected by the organisation's membership (if it has one), or appointed by current members.
>
> The board is usually made up of individuals who are not employed by the organisation. They might have a particular interest or personal stake in the organisation's mission; they might have been called to serve on the board because of a particular skill-set required by the board … or they might represent the interests of a certain group of stakeholders …
>
> A board director may be held personally liable for the actions of the organisation if found negligent in carrying out his or her duties.

That, of course, speaks to the bill before us. Effective and legally compliant boards will have several key features, including good governance, responsibility, accountability, consensus, strategic direction and diversity. The importance of those features to the delivery of the organisation that boards, both public and private, oversee cannot be understated. I will expand on some of those features when I conclude my remarks today.

Looking at the bill itself and its background, as we heard previously, directors' liability reform was one of 27 regulation priorities that formed part of the National Partnership Agreement to Deliver a Seamless National Economy, an intergovernmental agreement that was entered into by the commonwealth and all states and territories in 2008. The Council of Australian Governments—COAG—coordinated the implementation of the national agreement, which included driving the reform project's key milestones and ensuring that states and territories complied with the priorities of the agreement. One of the key features I will take a look at is the increased protective features, such as the imposition of personal criminal liability on a director for the misconduct of a corporation, which this bill states should be confined to certain situations.

I come back to the barriers to participation. As I said, I have been a local government councillor and I have undertaken the Australian Institute of Company Directors course. The structure of a council within local government closely reflects a board, so this is appropriate education that can assist councillors and local government authorities to undertake and understand their roles and responsibilities. I am also a small business owner—I like to say that. It is actually my husband who does all the work; I am just able to claim it. He is the one who built the business, predominantly, over the last 20 years. I am really proud of the business we have, which is part of a larger national organisation, and that my husband has now stepped onto the board of owners. In doing so, he has incredibly strong knowledge from being a business owner and operator, and all that comes with that. In stepping onto the board, he has taken on the additional responsibilities that come with that. Fortunately, the national company has been able to ensure that he has gone through quite a stringent education process. I am sure he would not mind me saying that he is a self-made man who left school at the conclusion of year 10. He did an apprenticeship and has since gone on to be a very successful business owner. What he is able to contribute in his role, which is around financial governance, is incredibly important and a huge responsibility. He takes it incredibly seriously, as do many other directors and board members I know of. There are those who do not take it so seriously, and we have heard those stories shared by other members. It was a big decision for him to put his hand up to participate in this role, and he will do so for the next three years—he is one year in. I think his contribution to the board of owners has been really important in that he is able to advocate on their behalf and bring to the national company an understanding of the challenges that exist within the delivery of small business.

In reflecting upon that, it was only because he had a good framework for undertaking that particular role that he said yes to doing that. I am aware that that does not necessarily exist in many other corporations and organisations.

I again want to pivot to what I am very familiar with, namely local West Australian Football League clubs. Those clubs have aspirations to have greater diversity on their boards, but the mechanisms by which they are attempting to do that at this time are somewhat lacking and need to be strengthened.

I now go back to the COAG national agreement. Principle 4(c) states —

> it is reasonable in all the circumstances for the director to be liable having regard to factors including:
>
> i. the obligation on the corporation, and in turn the director, is clear;
>
> ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and
>
> iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.

Bringing Western Australia into line with the national agreement is an important step in ensuring that people who are willing and wish to participate on boards not only understand their roles and responsibilities, but also will continue to be given protection, so long as they have taken all reasonable steps, given that not everyone will have a law background. The roles and responsibilities of directors have not previously been considered as onerous as they should have been.

[Member's time extended.]

Mrs L.M. O'MALLEY: We have been talking about effective boards. Effective boards are able to reach consensus. The directors of the board and its officers need to have a strong understanding of their roles as leaders and consensus builders. They also need to reflect the diversity of skill, experience, attributes and background necessary to provide effectiveness in creating a culture of inclusion, upholding basic fiduciary principles, establishing a strong governance model, and providing appropriate oversight and a focus on accountability.

The Directors' Liability Reform Bill 2022 will provide important national consistency and strengthen the governance arrangements and legal frameworks that surround bodies corporate or boards, and I thank the Attorney General for bringing this bill to the house.

MS H.M. BEAZLEY (Victoria Park) [12.13 pm]: I stand today to address the chamber on the Directors' Liability Reform Bill 2022. We have a responsibility in this place to ensure transparency and accountability for every facet of society, particularly in our corporate sector. The Directors' Liability Reform Bill 2022 will rectify areas of law in which transparency and accountability relating to bodies corporate has been too general or unclear, and will reduce an unjust onus being placed on an individual or director of a corporation. These reforms intend to standardise across the nation the process of inflicting consequence on directors of bodies corporate. This bill proposes to reduce and standardise offences in the Western Australian statute book that impose personal criminal liability on directors or officers of corporate bodies, for offences committed by those bodies from a failure to take necessary steps to prevent such offences from occurring.

Directors' liability reform was one of 27 deregulation priorities that formed part of the National Partnership Agreement to Deliver a Seamless National Economy. In November 2008, the Council of Australian Governments, or COAG, agreed to introduce increased harmonisation across the country when imposing personal criminal liability on directors for corporate fault. This reform has been a long time coming, but this is also a good time to harmonise our financial governance guideposts across the country as we face the challenging economic headwinds ahead.

COAG also agreed to a set of six principles under which directors would be deemed criminally liable for offences committed by corporations and bodies corporate. The COAG principles are —

1. Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.
2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.
3. A "designated officer" approach to liability is not suitable for general application.
4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
   (a) there are compelling public policy reasons for doing so (e.g. in terms of the potential for significant public harm that might be caused by the particular corporate offending);
   (b) liability of the corporation is not likely on its own to sufficiently promote compliance; and
   (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:
      i. the obligation on the corporation, and in turn the director, is clear;
      ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and
      iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.

I might take this time to apologise to the primary school kids in the gallery, because this is incredibly dry legislation for you to be here to listen to. I hope you enjoy your lunch.

I continue —

> 5. Where principle 4 is satisfied and directors' liability is appropriate, directors could be liable where they:
>
> (a) have encouraged or assisted in the commission of the offence; or,
>
> (b) have been negligent or reckless in relation to the corporation's offending.

The students have left the chamber. I put them off straightaway! I continue —

> 6. In addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable.

The intent of this bill is therefore to apply the COAG principles to the Western Australian statute book. Exclusively applying these six COAG principles to hold individuals to account for the actions of a body corporate when the actions of the individual were justifiably neglectful will ensure more critical deliberation about the designation of blame and the weight of consequences. This will enable a tightening of cases in which an individual may be accused of neglect for cases that generally may be minor individual neglect from the director specifically.

Extensive progress has been made on this bill since its initial introduction in 2015, with further alterations still required, as reflected in these reforms. Specifically, the reforms focus on limiting and standardising derivative liability. Derivative liability encompasses personal criminal liability of officers for the offending of a body corporate when they have failed to take all reasonable steps to prevent the body corporate from committing an offence. This is different from the liability of officers who have committed offences themselves and are therefore directly liable. It is also different from accessorial liability, which means that a director is found to be an accessory to crimes committed by the body corporate.

The bill aims to limit and standardise all provisions that impose derivative liability on directors and other officers of bodies corporate offences and proposes to amend 69 state acts to do so. This bill also aims to reduce across 21 acts the liability of directors to hold responsibility for the acts of a corporation, and instead will condense any definition of liability to the Criminal Code only. This will allow for overarching responsibility to be removed, retaining only specifically serious conditions in which an individual is liable for the actions of a corporation.

These reforms include three additions to the Criminal Code. The first, or type 1, is that a director is presumed to have taken all reasonable steps to prevent the body corporate committing the offence, and therefore is not liable, unless the prosecution proves that he or she failed to take all reasonable steps. The second, or type 2, is that a director is presumed to have committed the offence committed by the body corporate unless he or she leads evidence that suggests a reasonable possibility that he or she took all reasonable steps to prevent the commission of the offence by the body corporate. The third, or type 3, requires a director to prove on the balance of probabilities that he or she took all reasonable steps to prevent the body corporate's offending.

In 2020, we tightened work health and safety legislation in response to fatal workplace accidents in Western Australia. These changes focused on increased penalties for neglect of workers, with stricter responsibilities on the individual or director. This was in response to legitimate concerns that the penalties at the time were too relaxed and did not reflect the severity of the offence and the reality for the workers and their families who were impacted. These reforms now place significant penalties upon individuals and businesses that severely neglect to comply with workplace safety guidelines and knowingly conduct risky business that could cause death or serious harm.

Legislation like the Work Health and Safety Act 2020 protects workers from harm and ensures that the responsibility stays with the perpetrator. Labor has remained consistent with its deep-rooted advocacy for workers' rights and welfare. Bills like the Directors' Liability Reform Bill 2022 work alongside other legislation such as the Industrial Relations Legislation Amendment Act and the Work Health and Safety Act to ensure that workers have a safe place in which to work and that directors are also safe from the unlawful and unethical activities of corporations they represent. I commend the bill to the house.

MS C.M. TONKIN (Churchlands) [12.21 pm]: I rise today in support of the Directors' Liability Reform Bill 2022. Apparently this bill has anaesthetic qualities, if the member for Thornlie is to be believed, and I hope that my contribution does not have a sedative effect on those listening! The useful thing about contributing to this debate is that I have had to gain a much deeper understanding of directors' liability. It has been a learning process but one about which I should be informed because of not only my role in this place, but also the reach of this legislation into many aspects of business and community life. This reform bill amends a total of 69 Western Australian statutes, reflecting the principles agreed through the Council of Australian Governments in 2008 as part of the National Partnership Agreement to Deliver a Seamless National Economy.

With consultations beginning in 2013 under the Barnett Liberal–National government, this reform bill has had a very long gestation. Come to think of it, my grandson was born in 2013 and next year he goes into year 5 at school.

That is a long time. In 2013, extensive consultations were held with every agency responsible for the acts that seek to impose personal liability on directors of bodies corporate. This process involved the department of justice conducting a detailed audit of the statutes at that time. That must have been a scintillating effort! This often involved further amendments to the draft bill as new acts were proclaimed.

In 2015, a version of the Directors' Liability Reform Bill was introduced into the Legislative Council by the former Attorney General. It was immediately referred to a parliamentary committee to consider the implications for the state of the intergovernmental agreement. However, the bill did not progress and lapsed when the thirty-ninth Parliament was prorogued in 2017. The current bill is substantially the same in policy as the 2015 bill, with substantial work being done since 2020 to update the bill with references to relevant legislation that has commenced operation since 2015, and to accommodate statutes that are in the process of being amended or repealed.

The Directors' Liability Reform Bill 2022 proposes to reduce the number of and standardise offences in the Western Australian statutes that impose personal criminal liability on officers of bodies corporate for offences committed by those bodies corporate when those officers have failed to take reasonable steps to prevent the body corporate's offending. It is another of those elegant pieces of legislation with which I am particularly enamoured. I like this type of legislation because it makes the law as it applies to directors or officers of bodies corporate clear and consistent nationally, as well as within this state. Such clarity and consistency makes doing business easier by improving the quality of corporate governance. The bill supports the harmonisation of statutes across Australia in line with nationally agreed principles and ensures that all Western Australian statutes reflect this principled and harmonised position. This is the third bill on which I have recently contributed to debate that seeks to put a harmonised national approach into Western Australian law. I like this sort of legislation; it is good stuff. The other bills were the Trans-Tasman Mutual Recognition (Western Australia) Amendment Bill 2022 and the Fair Trading Amendment Bill 2021.

It is important to note that although the bill uses in its title "directors' liability", it adopts the definition of "officer" in relation to a body corporate as set out in the commonwealth Corporations Act 2001 and includes—it is a long list—a director or secretary of the corporation; a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; a person who has the capacity to affect significantly the corporation's financial standing; a person in accordance with whose instructions or wishes the directors of the corporation are accustomed to act, excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation;·a receiver, or receiver and manager, of the property of the corporation; an administrator of the corporation; an administrator of a deed of company arrangement executed by the corporation; a restructuring practitioner for the corporation; a restructuring practitioner for a restructuring plan made by the corporation; a liquidator of the corporation; or a trustee or other person administering a compromise or arrangement made between the corporation and someone else. A person having any of the listed functions is an officer of a body corporate for the purpose of this legislation, regardless of what they choose to call themselves. Elon Musk recently described himself in his Twitter profile as "chief twit", before later changing the description to "complaint hotline operator". Regardless of what he calls himself, in Australia, Elon Musk would be an officer of a body corporate and therefore subject to application of the directors' liability reform legislation in this state.

The bill reflects some very important COAG principles. I know that my colleagues have listed these important principles, but for the sake of my own clarity of thinking, I will list them again. First, when a corporation contravenes a statutory requirement, that corporation should be held liable in the first instance. Second, directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire act. That is significant in the way in which these principles will be applied to a number of other acts. Third, a "designated officer" approach to liability is not suitable for general application. Fourth, the imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations in which there are compelling public policy reasons for doing so—for example, the potential for significant public harm that might be caused by the particular corporate offending; liability of the corporation is not likely on its own to sufficiently promote compliance; and it is reasonable in all the circumstances for the director to be liable having regard to factors including the obligation on the corporation and, in turn, the director is clear, the director has the capacity to influence the conduct of the corporation in relation to the offending, and there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation. The fifth principle says that when the fourth principle is satisfied and directors' liability is appropriate, directors could be liable when they have encouraged or assisted in the commission of an offence or have been negligent or reckless in a corporation's offending. In addition, in some circumstances, it may be appropriate for directors to prove that they have taken reasonable steps to prevent a corporation's offending if they are not to be held personally liable. In fact, that reverses the usual onus of proving the elements of an offence.

There is nowhere to run and there is nowhere to hide. These principles make clear the circumstances in which directors may be held personally and criminally liable for a body corporate's offending when they have failed to take reasonable steps to prevent the body corporate from committing an offence. This is termed "derivative liability",

which is distinct from direct liability whereby directors themselves have committed an offence. The liability derives from their role as a director. Derivative liability is also distinct from accessorial liability, which is when directors are liable because they have been accessories to the body corporate's offences.

The bill is not principal legislation. It will not be a standalone act. Instead, it will insert standard provisions relating to derivative liability into the Criminal Code and apply these provisions to specified offences in existing acts when appropriate so that officers will be personally liable when the offences have been committed by bodies corporate and officers have failed to take reasonable steps to prevent the offending. That is crystal clear and it has been made crystal clear in this bill.

How will the bill amend the Criminal Code? The bill sets out standard provisions relating to liability that will be inserted into the Criminal Code to reflect the three types of acceptable derivative liability identified by COAG through its principles. Type 1 provides that a director is presumed to have taken all reasonable steps to prevent the body corporate from committing an offence and therefore is not liable, unless the prosecution proves that he or she failed to take all reasonable steps. This category is embodied in proposed section 39 of the Criminal Code, as set out in the bill. Type 2 provides that a director is presumed to have committed the offence committed by the body corporate, unless he or she leads evidence that suggests a reasonable possibility that he or she took all reasonable steps to prevent the commission of the offence by the body corporate. Once this evidence is adduced, the prosecution will bear the onus of proving that the director did not take all reasonable steps. This category is embodied in proposed section 40 of the Criminal Code, as set out in the bill. Type 3 requires the director to prove on the balance of probabilities that he or she took all reasonable steps to prevent the body corporate's offending. This category is embodied in proposed section 41 of the Criminal Code, as set out in the bill.

How will this bill amend other acts? The overall scheme of the bill is to limit and standardise provisions so that this additional layer of derivative liability will apply only to offences that warrant it. Accordingly, it will remove officers' liability altogether from 21 acts. The bill proposes to delete all provisions that impose blanket liability on officers for all offences under an act, with some exceptions. That blanket liability is mentioned in the key principles underpinning this legislation. The bill does not seek to impose type 2 liability for any offences, but proposed section 40 will be included in the Criminal Code to give agencies the flexibility to apply that liability in the future, if required. This legislation is going to be bulletproof and futureproof.

All that is to say that how these three types of acceptable derivative liability that are to be inserted into the Criminal Code will be reflected in other acts will be nuanced. The specifics of how the bill will amend these other acts are set out in divisions 1 to 69. Because of the nuanced treatment of other acts, I will leave discussion of these to my good colleagues who have a much better grasp of the legal significance of these than I have. In particular, I look to the Attorney General in that regard. This is important but complex legislation and I commend the bill to the house.

MS C.M. ROWE (Belmont) [12.38 pm]: I rise today to make a contribution to the debate on the important Directors' Liability Reform Bill 2022. I firmly believe that strong regulations that drive and strengthen corporate governance in every capacity is an essential pillar to underpin our economy.

I will take everybody back in time to 2007. At that time, I was starting out as a relatively fresh-faced financial planner. Little did I know that I was about to move into pretty uncharted waters for the financial services industry and, indeed, the global industry as a whole. As many members in this place will recall, that was the year that we tipped over into what is now referred to as the global financial crisis. There are different assessments of which day it was triggered, but it is important to talk a little bit about some of the factors that led to that crisis. It is a very clear example of how catastrophic it can be when insufficient mechanisms are in place around corporate governance and how companies can operate. Millions of innocent people lost their jobs, their retirement savings, their life savings and, indeed, their homes.

In financial services, it is well known that there are two things that drive the market—greed and fear. In the lead-up to this period, things were looking particularly strong globally. In the US, there was strong economic growth, low inflationary pressure and relatively low unemployment. Importantly, the cost of buying a home was rising, but everything else was looking fairly positive, so the outlook was very optimistic. Banks started to consider putting money into housing. I am talking about investment banks in particular. The fourth largest at the time was Lehman Brothers, which no longer exists, and it decided to move in a dramatic way into the housing space. A lot of Americans were finding it incredibly difficult to borrow money for properties. Of course, good old corporate greed kicked in in a really gross way in the US, and Lehman Brothers, amongst others, decided to invest in low-documentation loans. Basically, that meant people did not have to provide a great deal of proof that they could afford to meet the repayments required on that loan.

Everybody here who has bought a home knows that to get a loan, they have to prove their capacity to make the repayments on a regular basis. Prudent mortgage brokers and bankers will do a stress test to see what a prospective borrower's capacity would be if interest rates were to rise one or possibly two per cent. I am a financial planner by background, and I certainly do my due diligence when I look at these things. We have seen some pretty radical increases in interest rates—and decreases; we are just coming out of that period.

At that time, there was a move towards low-doc loans. Prior to going into financial planning, I did a stint working for a mortgage lender. I was fresh-faced and just out of university, but even in my naivety I could recognise that this did not bode well. We were lending money to people who probably should not have been given a loan. I was just the admin person at the time, but I was privy to a lot of meetings. That is not to cast shade or make accusations; it was a great organisation. Its practice was well and truly standard, and it was operating well within the legislative framework of the time.

As things went on and low-doc loans became immensely popular, there was a huge influx of new home owners and investors in the property market in America and then in Europe. I had forgotten about this, but, in researching and refreshing my memory about this time, I recalled the ninja loans. They were shocking—"No income? No assets? No problems." That is how they were advertised. If it seems too good to be true, it obviously is. All the big investment banks lurched towards these loans with absolute fervour. It became known as the subprime crisis. Suddenly things started to change. A lot of the bigger banks took on too many of these high-risk assets, which had been bundled up by hedge funds. Hedge funds are not known for being particularly prudent in anything, really. A lot of the bigger institutions started to feel the heat from the increase in defaults on these low-doc ninja loans. That had catastrophic effects, and it all started to unravel.

In the US, the government responded swiftly due to the concept that the banks were too big to fail, which is interesting. One wonders who that was designed to save. Was it designed to save the everyday Americans who had their own retirement savings tied up in these investments, or the big corporates? Nonetheless, the Federal Reserve and the government at the time introduced a specific fund to sweep in and bail out the big banks. Lehman Brothers, though, was not one of them. In September 2008, the morning that Lehman Brothers filed for bankruptcy, financial markets went into freefall right across the globe because it signalled that things had gotten out of hand. That had catastrophic effects, which flowed on to Europe and much of Asia, and we were not immune to that here, either.

For everyday Americans, that meant that a huge number of jobs were lost. A documentary was made about the aftermath, and it showed people crying, having lost everything. It was hard to be sympathetic towards the people who had worked for Lehman Brothers and the big corporate investment banks; they had been so cavalier. I am incredibly critical of those individuals, but, equally, we have to be critical of governments across the globe that allowed this environment to develop and flourish. It was not until this crisis swept the globe that there was a reaction and safeguards were put in.

The reason I wanted to speak on this bill was to highlight the impacts of not having a secure and strong foundation in the corporate world to protect everyday people—Western Australians, in this instance. This is really critical. In financial planning, in the aftermath of this, it was harrowing. I remember having clients whose superannuation assets were frozen because they were tied up in property investments in the US. I had people who were on the cusp of retiring, and they were not necessarily people who had millions of dollars. They were ordinary working people who had saved conscientiously through their superannuation, and they had to make hard decisions about putting off retirement. They had to think about selling and downsizing, not because they wanted to but because all of a sudden their superannuation had taken a huge hit and that was going to have a major impact on how long it would support them through their retirement years. I saw that. That caused intense—I cannot stress that enough—insecurity amongst the seniors I was dealing with at the time. They had worked hard and done everything right. They had paid off their mortgages, and they were not afforded the opportunity to rely upon their savings, because of the rampant greed of big investment banks across the globe. I think that is a salient lesson to the world.

That was many years ago now, but I like to think that the types of reforms that we are looking at today carry on that idea of putting in place protection mechanisms and safeguards when people are in positions of power and authority. There should be enormous safeguards around dealing with people's life savings. Even though it happened in 2007, I think I had put a lot of it out of my mind. Going back, it is clear to see how destructive that was at the time. It had a very powerful impact.

I would like to take the opportunity to thank and acknowledge the Attorney General for bringing this really important bill to the house for us to debate today. The bill looks to harmonise legislation across the country. This is important, because as the member for Cockburn said in his contribution, we want to make sure that Western Australia makes itself a really attractive place for people to do business. We certainly want to make sure that we encourage people to invest in Western Australia. I thank members for the opportunity to speak on this bill.

Debate interrupted, pursuant to standing orders.

[Continued on page 5559.]

YOUTH INNOVATION HUB — LANDSDALE

Statement by Member for Landsdale

MS M.M. QUIRK (Landsdale) [12.50 pm]: I recently had the unedifying experience of watching the debate online of the City of Wanneroo council meeting of 1 November. It was unedifying because the merits of the construction of the Dordaak Kepap library and youth innovation hub planned for Landsdale were disputed by some. Instead,

disruptive attempts were made by a minority to derail the project on specious grounds. The recommendation before council was to proceed to detailed design. A $3 million commitment for a youth activity hub was promised to the city by the McGowan government in 2017. This is sorely needed in Landsdale, as roughly 29 per cent of its population is under the age of 18. The original plan was to build a police and community youth centre, but as a suitable site was not available, this was revised. Discussions between the city and the state government meant that these funds were not forfeited but were set aside for a youth innovation hub attached to the planned library in Landsdale. The city is contributing over $7 million. Comprehensive community consultation has occurred since June 2019, and concept plans were modified to incorporate constructive feedback. Many students from local schools are actively involved. Despite this, four councillors, three of whom represent wards outside Landsdale, attempted to undermine the project at the eleventh hour. Surely, they understand that Landsdale is a high-growth suburb that is bereft of community infrastructure. I thank the majority of the enlightened councillors who support this important project, as well as the hardworking council staff who have put their heart and soul into the project.

PAUL DE PIERRES, OAM — TRIBUTE

Statement by Member for Central Wheatbelt

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [12.51 pm]: I rise to pay tribute to Paul de Pierres, OAM, who sadly passed away on 28 August this year after a valiant fight with cancer. Paul, husband of Colleen, father to Madeleine and Juliane, and beloved gramps to Amelie and Demi, lived a full and rich life. A proud resident of Wyalkatchem, Paul was a third-generation farmer on the family property, Derdebin. Paul was no bystander in life—he was a husband, a father, a grandfather, a farmer, an author, a keen sportsman and stalwart of the Wylie Bulldogs, a Vietnam veteran, a St John Ambulance officer, a man of deep faith, an entertainer and musician, and a historian. He received the Medal of the Order of Australia in 2016 for service to the community of Wyalkatchem—recognition of his commitment to the town he loved so much. Paul had an enthusiasm for 60s music. Along with Colleen and a merry band of musicians, he created a number of highly entertaining musicals under the guise of Big Jim and the Jockstraps, which filled the Wyalkatchem Town Hall to the brim with families and visitors to sing, laugh and dance along as they fundraised to give back to the community. A self-published author, his books captured local and military history, sporting and family history—a wonderful legacy for future generations. He moved through life with an attitude of determination, respect and kindness. Uncle Paul was our family's neighbour and father of my best and lifelong friends, and he is greatly missed. He was an exceptional human being who remained humble through service and commitment to his community.

DIWALI

Statement by Member for Jandakot

MR Y. MUBARAKAI (Jandakot — Parliamentary Secretary) [12.53 pm]: Diwali is a very special time for our Indian diaspora in Western Australia. On behalf of the McGowan government and my parliamentary colleagues, with special mention of Dr Jags Krishnan and Kevin Michel, I take this opportunity to congratulate all community groups for holding wonderful and inclusive Diwali events across our beautiful state. Diwali is the festival of lights that signifies the victory of good over evil, light over darkness and love over hate. It also marks the new year in the Hindu calendar. On 22 October, the Indian Society of Western Australia held its annual Diwali Mela at Claremont Showground, which was a huge success. I congratulate president Satish Nair and his team for putting together another great event. On behalf of the McGowan government, on 27 October we were pleased to welcome members of BAPS Swaminarayan Sanstha Australia to Parliament House for the annual Diwali morning tea. I give special mention to Hasmukh and Dylan Wadia and their supporters. On 29 October, the member for Darling Range, Hugh Jones, and I attended the Virsa Club (WA)'s Diwali Sports and Multicultural Festival in Forrestfield, organised by president Paramdeep Gill.

On 6 November, Hon Bill Johnston and I attended the Deepavali Festival held by the Western Australian Hindu Council of Australia in Cannington. To WA president Damji Koria and secretary and vice president Dr Sadhana Bose, my many thanks for your hospitality. I hope everyone celebrating in Western Australia had a wonderful Diwali. My best wishes into the year and may it be full of light.

INPEX — CARBON FARMING

Statement by Member for Cottesloe

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [12.55 pm]: I recently had the wonderful opportunity to meet with members of the Inpex team to discuss their new and exciting carbon farming and renewable biofuels project in Western Australia's wheatbelt. In partnership with ANZ Bank and Qantas, Inpex is looking to integrate drought-resilient native trees into existing farms, hoping to bolster this state's strong position as a leading carbon farmer. Additionally, Inpex is exploring the possibility of using native biomass and crop residues to locally manufacture low-carbon and renewable biofuels. Projects like these demonstrate that Western Australian businesses, including our world-class mining sector, are taking the lead in developing responsible and substantial environmental initiatives. This proposal in particular promises to support and enrich the unique flora and fauna of the wheatbelt, which is an iconic landscape in rural Western Australia. Initiatives developed by the private sector have demonstrated

that significant environmental projects can also support local farmers and enrich the WA economy. It was encouraging to hear that Inpex is looking to increase carbon farming opportunities by minimising the financial risks that farmers normally face. Projects like these provide enormous support to regional economies by increasing employment and improving rural infrastructure. With the first planting of trees expected to take place in 2023, I wish Inpex and its partners the best of luck with an exciting and important new project that promises to benefit our economy and the environment.

RIDING FOR THE DISABLED ASSOCIATION OF WESTERN AUSTRALIA — CARINE

Statement by Member for Carine

MR P. LILBURNE (Carine) [12.56 pm]: The Riding for the Disabled Association of Western Australia in Carine is a voluntary not-for-profit charitable organisation. Its programs are run by nationally accredited coaches and trained occupational therapists and physiotherapists supported by highly trained volunteers. RDA Carine aims to provide services to people of all ages with disabilities to enable them to enjoy safe, healthy, stimulating, therapeutic, horse-related activities. Lessons are planned to be fun and stimulating to build confidence and independence and to develop a sense of achievement. Activities at RDA Carine include therapeutic riding, recreational and educational riding, vaulting and hippotherapy programs. Through these programs, the warmth and three-dimensional movement of the horse is transferred to the rider's body, making it more relaxed and supple, strengthening core stability and improving balance, posture and coordination. The physical benefits of RDA include improved balance, strengthening of core muscles, improved coordination of both fine and gross motor reflexes, improved respiration and circulation, sensory integration and improvement of hand–eye coordination. RDA Carine is delighted to have me as a sponsor and advocate for this crucial therapy in the Carine electorate. The organisation is such a great cause. I invite all people to become sponsors for this wonderful service within the Carine district.

MID WEST CHAMBER OF COMMERCE AND INDUSTRY BUSINESS EXCELLENCE AWARDS

Statement by Member for Moore

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [12.57 pm]: I rise to congratulate CEO Joanne Fabling and the Mid West Chamber of Commerce and Industry team who hosted the Business Excellence Awards at the Geraldton port on 12 November. Transformed for the gala event, the maintenance shed at the port was unrecognisable. Of course, events such as these are not possible without sponsors such as the port authority. This fantastic evening saw local businesses acknowledged for excellence in business growth, innovation, customer experience, philanthropic ideals and ethical behaviour. I commend not only the award winners, but also all midwest businesses that took the time to nominate. With over 475 deserving recipients since 1996, the Mid West Chamber of Commerce and Industry's Business Excellence Awards have helped local businesses secure a level of credibility and acknowledgement within the local business community, enabling more businesses to connect with opportunities. In particular, I want to acknowledge the Northern Agricultural Catchments Council natural resource management organisation—NACC NRM—which took out three of the 18 awards at the event, including the Business of the Year, Not for Profit and Aboriginal Engagement awards. The Business of the Year title recognised NACC's more than 20-year history, its work with and in the community, its strengths as a not-for-profit organisation and its sustainability. NACC NRM is one of 54 natural resource management organisations around Australia and one of seven in WA. Congratulations to NACC and all those who participated in the evening. Congratulations to the Mid West Chamber of Commerce and Industry.

Sitting suspended from 1.00 to 2.00 pm

QUESTIONS WITHOUT NOTICE

YOUTH DETENTION — INQUIRY

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

I refer to the Premier's claim that inquiries are nothing more than expensive talkfests and the public is over them.

(1) Is it the Premier's view that the FIFO inquiry conducted by the Community Development and Justice Standing Committee that resulted in sweeping reform in the mining sector to combat sexual conduct was an expensive talkfest and a waste of time?

Several members interjected.

The SPEAKER: Order, please!

Ms M.J. DAVIES: I continue —

(2) If not, why does the Premier continue to refuse to support an open and transparent inquiry to address the serious issues impacting young people with complex needs and behaviours in our state's justice system?

The SPEAKER: Just before I give you the call, Premier, I will ask the member for Wanneroo not to interject and I will ask the member for Burns Beach not to repeatedly interject while someone is actually asking a question.

Mr M. McGOWAN replied:

(1)–(2) Clearly, I was directly responding, as I recall, to a question on Banksia Hill, not in response to other issues. I answered a question on the basis that there has already been a whole range of inquiries into Banksia Hill over many years. A meeting will be held next Wednesday between myself, senior public servants and a range of interested parties and if any good ideas come from that, we will be able to take them forward.

YOUTH DETENTION — INQUIRY

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

I have a supplementary question. Is the Premier dismissing calls for an inquiry because he knows it will show that he and his government have failed the children, our community and custodial officers, or does he simply not care?

Mr M. McGOWAN replied:

The answer is clearly no. It is a silly question—a very silly question. Obviously, we have put enormous effort into youth justice issues and prevention issues over the years. It was this government that brought forward the Target 120 program, which tries to intervene in families with support measures so that children do not go into the youth justice system—actual prevention measures. Those were not in place when the last government was in office. It sent 70 kids to Hakea adult prison. There are currently 10 detainees in unit 18. If the Leader of the Opposition wants to do a direct mathematical comparison, the former government had seven times as many youths in adult prison.

HOSPITALS — LONG-STAY PATIENTS

716. Dr J. KRISHNAN to the Minister for Health:

I refer to the McGowan Labor government's significant efforts to transition long-stay patients out of state hospitals and into more appropriate forms of care.

(1) Can the minister outline to the house what steps the government has taken to address the challenges of long-stay patients prior to the Auditor General's report that was published yesterday.

(2) Can the minister advise the house whether the member for Vasse has ever raised this issue with her?

Ms A. SANDERSON replied:

I thank the member for Riverton for his question on this issue. The member has a deep understanding of the Western Australian health system.

(1)–(2) The Auditor General's report that was tabled yesterday made some important observations around the need for better data and long-stay patients. I largely agree with those observations. The government is already well underway in implementing a number of those recommendations. Significant cross-jurisdictional work is already underway to measure and report long-stay patients nationally. It is very important that we have a consistent definition across every jurisdiction so that we are all measuring against the same measurement instead of measuring different things in different ways. In the meantime, while we are waiting for that development of the national cross-jurisdictional definition, we are introducing a data flag for medically ready for discharge patients and identification of why a patient may not be able to be discharged. We have also invested $18.2 million over four years in a new real-time data platform that will give us the real visibility that we need across the whole health system, including those medically fit for discharge long-stay patients.

The opposition trying to conflate findings about data collection with not doing anything about long-stay patients is a conflation of two different issues —

Ms L. Mettam interjected.

The SPEAKER: Order, please, member for Vasse!

Ms A. SANDERSON: It is a conflation of two completely different issues and demonstrates that the member for Vasse has a total lack of understanding of the system.

Ms L. Mettam interjected.

The SPEAKER: Member for Vasse, I have just called you to order. You have not asked the question, so please do not continue to interject.

Ms A. SANDERSON: A press release dated 16 November stated that we failed to make health a priority and failed to properly address this issue. Let me outline again for the member for Vasse what this government is doing. It is interesting that I have not had one single question on this issue from that member. But I have been on my feet numerous times since I have been health minister talking about medically fit for discharge patients and the challenges around that, as did my predecessor in this portfolio. We spoke regularly about it and we have outlined our investment in that particular issue, at which point she was probably having another snooze. It is as though the issue does not exist until it is on 6PR; it does not exist until someone has written a question. Never has this issue been raised with me.

In my keynote address to *Business News* in May, which the member for Vasse attended, I outlined in some detail the challenges around long-stay and medically fit for discharge patients and what the state government is doing to address the barriers to aged care and the National Disability Insurance Scheme. I went into that in quite a lot of detail. On 20 September, the member for Churchlands asked me to update the house on measures to transition long-stay patients out of hospital. Perhaps the member for Vasse was not paying attention then. In fact, Western Australia is leading the way in this area. We are leading the way, and the Aged and Community Care Providers Association made public comments yesterday to that effect, saying that the work the WA government is doing in this space is amazing. I think the member for Vasse might know the individual who made those comments.

Minister Shorten visited our From Hospital to Home transition, which was established under my predecessor, Roger Cook, the member for Kwinana, and he said that this was nation leading. That transition alone has already freed up almost 4 000 bed days, and we have established a second pilot. An amount of $59.5 million was allocated in the last budget alone for 120 aged-care places as part of the Transition Care Program. That is a commonwealth space that the state is funding. That is what we are doing to support these patients out of hospitals. I acknowledge and agree with the Auditor General that it is not good for them in hospitals. It is not stimulating. It is not a good environment. They should be out. One of the patients who came out of the From Hospital to Home program was in Graylands Hospital for five years. It is a good story that that person is now out of there and into a transition at home. The government has invested $5.8 million over the next two years to support the long-stay patient fund and enable purchases of $800 000 per person for bespoke solutions to get those people home. We have a cross-agency focus with the Department of Health and Department of Communities to essentially individually case manage each of those patients. I urge the member for Vasse to stay awake and pay attention because we are working through this issue. We are funding in the areas that are outside the state's jurisdiction to give those patients a better quality of life.

Visitors — Mullaloo Heights Primary School

The SPEAKER: Before I give the next call, on behalf of the member for Hillarys I would very much like to acknowledge the year 6 councillors from Mullaloo Heights Primary School and their teacher to the Speaker's gallery this afternoon. Welcome to you all.

PERTH CASINO — AUDITS

717. Dr D.J. HONEY to the Minister for Racing and Gaming:

I refer to the admission by Crown casino Melbourne in the Finkelstein royal commission of a decade of underpaid taxes and remind the minister of reports last year that Perth Crown casino had initiated an independent audit by Ernst and Young of its past tax payments and the Perth casino royal commission report referring to a departmental tax review.

(1) Has the casino provided the government with the Ernst and Young audit and what did it find?

(2) Has the government received a departmental audit of Perth Crown casino's past tax payments; and, if not, why not?

(3) If an audit was undertaken by the government, what were the findings?

Dr A.D. BUTI replied:

(1)–(3) In regard to the questions about the tax audit and issues with Crown Perth, as the member knows, a comprehensive royal commission came up with 59 recommendations. We are progressing each of those recommendations and some have already been progressed. We introduced legislation in the WA Parliament not so long ago to appoint an independent monitor and create the position of an independent chair of the Gaming and Wagering Commission. In regard to matters dealing with taxation, I am not going to divulge that sort of information here in Parliament.

PERTH CASINO — AUDITS

718. Dr D.J. HONEY to the Minister for Racing and Gaming:

I have a supplementary question. Considerable time has elapsed since those audits were disclosed. Why does the minister not have the results of those audits or why can he not disclose them here?

Dr A.D. BUTI replied:

I did not say anything about what we know and do not know; I said that I am not going to divulge it in Parliament at this stage.

ORGANISED CRIME AND OUTLAW MOTORCYCLE GANGS

719. Mr P. LILBURNE to the Minister for Police:

I refer to the McGowan government's unprecedented efforts to crack down on organised crime and outlaw motorcycle gangs.

(1) Can the minister update the house on how the measures introduced by this government are disrupting organised crime and outlaw motorcycle gangs in Western Australia and outline why these measures continue to be needed?

(2) Can the minister advise the house whether he is aware of anyone who believes that the government is wasting its time cracking down on bikies?

Mr P. PAPALIA replied:

I thank the member for his question and his personal zero tolerance for organised crime in Western Australia.

(1)–(2) The reason we needed legislation and a focus on organised crime and OMCGs in particular is that during a meeting that the Attorney General, Premier and I attended with the then Commissioner of Police and Deputy Commissioner of Police in March last year immediately after the state election, it was brought to our attention that in 2020 in particular, during the height of border closures, it was proven that there was a direct correlation, a relationship, between meth use in Western Australia, meth availability in Western Australia and the border powers that were available to police during that time. There was a massive reduction in meth use, as proven by sewage testing, and a correlating reduction in crime. There was about a 53 per cent reduction in meth use and about a 41 per cent reduction in crime, the likes of which the then commissioner had never seen in his entire career.

The police asked us whether we could provide powers to replicate that as much as possible, and to do that we would focus on bikies—OMCGs—because they are the distribution technique; the meth comes into the state and they distribute it around the state and do harm to people. We have complied and are in the process of delivering those powers to try to replicate as much as possible what happened in 2020.

The Attorney General delivered on consorting powers with the best legislation in the country. I imagine that everyone in this chamber would have noticed the difference; we do not see OMCG members wandering around in their colours anymore. We see them regularly confronted by police when they are reported for revealing insignia that is now banned. There are several very key players in the OMCGs, leaders in those organisations, who cannot consort with their own gang members anymore because of the legislation that the AG brought in.

We passed an amendment to the Firearms Act 1973, which created firearm prohibition orders, and some of them will be handed out very soon. As soon as the regulations pass into law, they will be employed by the relevant police to further curtail the activities of OMCGs.

We are working on a number of other laws such as amendments to the Misuse of Drugs Act, which will create designated border search areas; the Criminal Investigation Act, which will enable data access orders; and the Surveillance Devices Act, which will also create model laws. All those things are happening and they are needed because we have not disrupted the OMCGs to the extent that we desire and that the police have asked us to. We will continue to provide the powers the police require.

Member for Carine, I am aware of somebody who does not agree with the focus on OMCGs and who seems to be advocating for bikies. I cannot say that I hang on every word of this individual, but it has been brought to my attention that the opposition police spokesperson recently penned an opinion piece in *The West Australian* in which he made the observation —

> … the Minister for Police spends an exorbitant amount of his time devoted to beating up on the bikies …

I am not sure whether that was supposed to hurt me, whether I was supposed to feel slighted in some way, because I have that focus on bikies, but I can assure the member in the other place that that is not how I feel. I am quite comfortable with that criticism if that is what he wants to level at me. But I offer this advice: if only the opposition spokesman for police did not spend an exorbitant amount of time on WhatsApp undermining his colleagues, perhaps we might have a far more functional opposition who might contribute to the effort to curtail the activities of outlaw motorcycle gangs.

Visitors — Bob Hawke College Social Justice Club

The SPEAKER: Before I give you the call, member for Vasse, I would like to acknowledge some guests in the public gallery from the social justice club of Bob Hawke College. I acknowledge them on behalf of the members for Nedlands, Churchlands and Perth. On behalf of everyone, welcome; I hope you enjoy being here for question time.

ST JOHN AMBULANCE — SERVICE DELIVERY

720. Ms L. METTAM to the Minister for Health:

I refer to the minister's media release, "New era for ambulance services to deliver contemporary care", about contract negotiations with St John Ambulance and the minister's inability to answer questions in the other place about these negotiations.

(1) Are negotiations for a new contract with St John Ambulance underway?

(2) Do these negotiations include any clauses that will prevent St John Ambulance from reporting problems directly to the public, criticising the government or its policies or making ambulance ramping figures publicly available?

Ms A. SANDERSON replied:

(1)–(2) I have been very clear that negotiations with St John Ambulance are underway; I have said that numerous times. I will not comment on the details of those negotiations while they are underway. It would be totally inappropriate for both the department, on behalf of the taxpayers for whom we are negotiating, and St John Ambulance. It would be completely inappropriate for me to divulge any details of those negotiations and it is inappropriate for the member for Vasse to ask me to.

ST JOHN AMBULANCE — SERVICE DELIVERY

721. Ms L. METTAM to the Minister for Health:

I have a supplementary question. On behalf of taxpayers, will the minister guarantee that in line with the promise of gold-standard transparency that the government claims to operate under, all data that is currently reported by St John Ambulance, including ambulance ramping figures, will continue to be publicly available under the future contract?

Ms A. SANDERSON replied:

WA Health is one of the most transparent reporters of data of any government entity. On any single day, the member can go on to the website and see the waiting time in emergency departments—I probably should not tell her this because she probably has not figured it out!—in every single hospital. It goes right down to the nitty-gritty of every single hospital and health facility that does emergency care in the state.

It is totally inappropriate for the member for Vasse to ask me to divulge those contract negotiations, but I can give the Western Australian taxpayers this commitment: this will be a modern, fit-for-purpose, transparent contract that will deliver the best ambulance service in Western Australia.

SMALL BARS

722. Dr K. STRATTON to the Minister for Racing and Gaming:

I give a personal welcome to the social justice club from Bob Hawke College, and in this Pride month I particularly acknowledge your advocacy for the LGBTQIA+ community. Thank you.

I refer to the McGowan Labor government's record of creating more opportunities for small businesses and driving the local economy through its reforms of liquor licensing laws. Can the minister update the house on the success of this government's reforms of small bars and licences in Western Australia and outline what they have meant for local businesses, local jobs and the local economy?

Dr A.D. BUTI replied:

I thank the member for Nedlands for her question.

Back around the time of the election last year, in 2021, the McGowan government committed to undertake a consultation with the hospitality industry and other stakeholders about further reform of the Liquor Control Act. This builds on the commitment that was made way back in 2006 and the reform that was brought in then for small bars by the then Minister for Racing and Gaming. Of course, we know who the Minister for Racing and Gaming was back in 2006; it was the current Premier. Since those reforms were brought back in 2006 and the first small bar licence was issued in late 2007, we now have 241 small bar licences in Western Australia. Nearly half of those have opened in the last five years. There is no doubt that the small bar reform has been a major reform in the liquor area and that it has changed the drinking culture of people in Western Australia. They have become much more sophisticated and, may I say, a bit more continental. With my background and those of the minister in front of me and the former Minister for Racing and Gaming, I am sure we can attest to the more sophisticated continental aspects of our drinking culture. It is more vibrant, more stylish, more diverse and more creative. There is no doubt that the reform instigated by the then Minister for Racing and Gaming back in 2006 has been incredibly important. But then the Minister for Racing and Gaming in 2018—the current Minister for Police—instigated further reform that sought to reduce red tape and also tried to link the cultural and tourism value of licensed premises. That was also an important set of reforms back in 2018.

We are now at a stage when the Premier and I today launched a consultation process for further reform in the area. A consultation paper has been produced by the Department of Local Government, Sport and Cultural Industries titled *The next chapter of WA's liquor laws—Have your say* in which we are inviting the industry and other stakeholders to come to the party to engage with government to tell us what they want. We are looking at how we can reduce red tape even further, reduce the complexity of all the different licensing categories, remove restrictions in some of the licensing categories and make sure that we have a more efficient, faster and less expensive application process to obtain a licence.

I welcome the media release issued by the Australian Hotels Association today. It reads —

> The Australian Hotels Association (WA) has welcomed the WA Government's review of the state's liquor laws, to help ensure the legislation, policies and regulations governing hospitality venues are modern, fit for purpose, and in line with customer expectations and needs.

> AHA(WA) CEO Bradley Woods said the industry had already begun engaging in meaningful consultation with Government and departmental officials, which will continue over the coming year.
>
> …
>
> "WA's hotels, bars, taverns and restaurants are looking for ways to reduce unnecessary regulatory burdens that are placed on them, and we will be working to ensure this is prioritised over the next 12 months."
>
> "The AHA welcomes several key changes to WA's liquor laws that have already been announced, including the Protected Entertainment Precincts legislation as well as major proposed amendments to enhance the Banned Drinkers Register."
>
> "We have been particularly encouraged by the genuine —

The SPEAKER: Minister, I am just going to take a point of order.

Tabling of Paper

Mr R.S. LOVE: I wonder whether the minister could be asked to table the document he is reading from —

Dr A.D. Buti: More than happy!

Mr R.S. LOVE: — and save us the need to listen to his lengthy question and answer session.

Several members interjected.

The SPEAKER: It is a while since we have had a point of order, but can I just remind everyone that points of order are actually heard in silence. We have had the point of order. I will ask the minister whether he intends to table the document that the member has referred to. I am not requiring you to, by the way; I am asking you.

Dr A.D. BUTI: I am more than happy to table this. It includes a compliment about me, so I am more than happy to table it!

[See paper 1686.]

Several members interjected.

The SPEAKER: Order, please! Attention to the minister, please.

Questions without Notice Resumed

Dr A.D. BUTI: As I said, we are really very keen to ensure that our hospitality industry is not burdened by an excessive amount of red tape. It is really interesting that this happens only on the Labor side. When we look at this portfolio, going back to 2006, when the Premier was the Minister for Racing and Gaming, then the current Minister for Police, then the now Minister for Environment, we see that we are the party and the executive government that reduces red tape. The so-called party of free enterprise does not reduce red tape. Yesterday, there was an interesting exercise in parliamentary debate in which the member for Roe got up and said, "We are supporting the protected entertainment precincts", and then went on for 20 minutes to say why the legislation was bad.

Several members interjected.

The SPEAKER: Order, please! Minister, that interjection was unruly, and I am rather keen to move on to the next question.

Dr A.D. BUTI: I understand, Madam Speaker.

It was great to be celebrating 15 years of small bar reforms in Western Australia today and to launch the consultation period. I invite people to encourage stakeholders and the industry to get involved.

CHARLES STREET PLANNING STUDY

723. Mr R.S. LOVE to the Minister for Transport:

I refer to Main Roads' proposed radical redesign of Charles Street—a design that was a complete surprise to the community and could see a hundred properties negatively impacted. Given the City of Vincent has strongly opposed the works, describing them as "frankly shocking" and suggesting that the plans should never have seen the light of day, will the minister ask or order Main Roads to cease the progression of this plan?

Ms R. SAFFIOTI replied:

I thank the member for the question.

In dealing with the future, we have to start planning now. In relation to roads and rail across the state, we are constantly looking at how to plan for the future. For some of our roads, in particular Canning Highway, Charles Street and other areas where we have a lot of built form, we have to look at how we can ensure that those areas are not gridlocked in 20 to 30 years. Planning has been underway to look at alternatives for Charles Street. We could build significant overpasses, but we know that that would not be well supported.

As part of any future planning, we undertake a planning study, whereby we put out an option to the public and the public gets to have its say, and that is what is happening. We are not building it tomorrow; it is the first stage of a planning study. We will seek feedback and make some decisions from that. That is what we are doing. It is called a planning study. It would inform future reservations if we were to adopt it, but we are not making any commitments on it yet because it is currently a planning study with which we go and seek feedback. There is the idea that people are shocked by it, but it is a first stage. It is what planners do. They present a plan and then seek feedback.

The member wants us to do nothing. This is the opposition of do nothing. When this opposition was in government, it did bumper stickers, and that is all it did. Royalties for regions bumper stickers was its biggest achievement in eight and a half years. As I said, these are always challenging projects. I always say that they are challenging, and we will put out some ideas, see how they go and make some decisions. If people do not want these types of plans, that is fine. There will be gridlock there for decades, and that is fine for another incoming government to deal with. I am happy about that. If I do not need to make any more tough decisions, I am happy about that, too, but we have to test concepts and we have to test new technology and see what we can do. We are constantly testing ideas and testing concepts. Yes, we challenge things all the time. We challenge ideas, but this is what we are all about. Like I said, we could do nothing—just sit there and watch all these roads become gridlocked. That is what the opposition did. Members opposite did no work on the freeways. Remember how the Kwinana Freeway was when we got into government? There had been no work done on it. There was gridlock everywhere. We had to go and invest and retrofit infrastructure. It was the same with the Mitchell Freeway. The former government did nothing on those freeways—nothing.

We are testing ideas. I know there is community concern. A current reservation is in place, but in relation to this proposal, we are testing the ideas, and we are seeking feedback. We have gone to council to get its views. As I said, if people do not want it, we will take that into account. If people want alternative views explored, like elevated roads or flyovers, I do not mind. We will test all those ideas. The whole concept of planning is that you put ideas out, people provide feedback, and then you make decisions.

CHARLES STREET PLANNING STUDY

724. Mr R.S. LOVE to the Minister for Transport:

I have a supplementary question. Can the minister find in her consultation process a better way of initiating discussion than going out and shocking the community and causing fear and upset to hundreds of people who fear that their homes are going to be bulldozed?

Ms S.E. Winton interjected.

The SPEAKER: Order, member for Wanneroo!

Ms R. SAFFIOTI replied:

I am not sure how we can inform someone of a plan if we do not show them the plan. I do not understand how to do that. I do not understand how we engage with people unless there is a concept. There is a concept, and people will provide feedback. People should be very aware that we will not be bulldozing their homes. That is not what we do. It is a concept.

As I said, members of the opposition do nothing. They do nothing in opposition. Honestly! My team are saying, "You're not cracking any more gags." There is nothing to crack! There are no gags there. Look at them! There are six of them, and they are doing nothing. I keep trying to find some hooks, but they are doing nothing to actually reflect on. Look at them!

Several members interjected.

Ms R. SAFFIOTI: It is depressing looking at you! The six of you are sitting there looking down, picking up some stupid comment from somewhere and framing a question. The member for Vasse's question was like the full toss that she gives to the Minister for Health all the time: is there currently a review of the St John Ambulance contract? The minister has said it a hundred times! But that is the member's number one question! I mean, it is so bad!

Several members interjected.

Point of Order

Mr R.S. LOVE: Point of order, Speaker.

The SPEAKER: Order, please! Member, if your point of order is about relevance, I am about to advise the minister that she has strayed from answering the original question.

Mr R.S. LOVE: Thank you.

The SPEAKER: And I am guessing that she has either finished or is close to finishing her response. Have you finished, minister?

Ms R. SAFFIOTI: Yes, I am done.

INFRASTRUCTURE INVESTMENT — REGIONS

725. Mr K.J.J. MICHEL to the Minister for Ports:

This is a much more interesting question than the previous one.

Several members interjected.

The SPEAKER: Order, please! Member for Pilbara, it may be your opinion that this is a more interesting question than the previous one, but I do not need commentary on the question. I really just want the question. Thank you.

Mr K.J.J. MICHEL: I refer to the McGowan Labor government's significant investment in economy-driving infrastructure across regional Western Australia.

(1) Can the minister update the house on this government's investment in infrastructure in Port Hedland, including the Spoilbank Marina and the proposed Lumsden Point development, and outline what this investment means for local jobs and the local economy?

(2) Can the minister outline to the house how this government's record of investing in the regions compares with that of the previous Liberal–National government?

Ms R. SAFFIOTI replied:

(1)–(2) I thank the member for Pilbara. When we go up to the Pilbara, there is the energy of the member for Pilbara delivering for Western Australia and delivering for his electorate. That can be compared with the six opposition members. As I said, in government they were very good at bumper stickers. They stuck them on Transwa buses, which I realised only recently, although some of their royalties for regions stickers have been pulled off. They were very good on bumper stickers, but they did not deliver much. That is why we now have the excellent member for Pilbara; it is because his predecessor did not deliver.

Let us go through just some of the projects—a morsel—that we looked at last week. We opened stage 1 of the Hedland road and rail improvement project. That is level crossing removal in the Pilbara, members. Basically, we have built a bridge over the rail at one intersection, because sometimes when the boom gates went down, trucks and cars would have to wait for seven minutes for those trains to go through. That was a partnership between BHP and the state, and I thank BHP for its contribution to that project. I also thank the commonwealth in relation to stage 2. That project is underway. That is the deviation of Great Northern Highway and another level crossing removal in that district. Again, significant work is happening there.

We then went to the Spoilbank Marina. The member for Pilbara was a strong advocate for that project. He really made it happen. Significant progress has been made, with 80 per cent of the marina now dug out, and we can see it shaping up. I also thank the Pilbara Ports Authority and the contractor, who is working really strongly.

We then went to Pilbara Ports Authority—the powerhouse of the national economy. We sat there and looked at all the ships coming in and out and at the proposed Lumsden Point expansion. The state has committed funding to that project. Some funding has also been committed by the federal government—not some, over $500 million; that is quite a bit!—between the Pilbara, Port Hedland and Dampier. These are exciting initiatives that will continue not only the expansion of trade, but also the diversification of trade in that area. It will also help with the decarbonisation program that many companies have put forward. These projects will continue to drive both the Western Australian and national economies. It is so pleasant being with members who have energy and drive and are getting things done, and who are, as I said, focused not on bumper stickers but on delivering real projects for regional WA.

SVITZER AUSTRALIA — TUG OPERATORS

726. Mr R.S. LOVE to the Minister for Ports:

I refer to tugboat operators at Western Australian ports and to the threatened lockout by Svitzer, which is putting our job-creating export industries at risk of standstill.

(1) Is this issue addressed in the various port authority business continuity plans?

(2) Has the minister been briefed on these plans and any contingencies for disruption at WA ports?

(3) Will the minister guarantee that WA ports will not come to a standstill if this action goes ahead, causing untold damage to our major import and export industries?

Several members interjected.

The SPEAKER: The Minister for Ports—not Water, thank you.

Ms R. SAFFIOTI replied:

Although they do actually have a relationship!

(1)–(3) I thank the member for the question. In relation to this issue, a Fair Work Commission hearing is underway at the moment. We are waiting to see the outcome of that. I really hope that this dispute can be avoided.

I think the member is asking: should we contract on the basis that we assume that contractors and private companies will take unprecedented action to lock out workers six weeks before Christmas? No, we do not. The idea that a company can say that it will lock out workers and cause enormous disruption to both the national and state economies is not something that we assume in contracting. I will say that if we did do that, we would not contract out any services. If you want us to socialise all forms of government, fair enough! If you believe socialism is the way to go, that is fine. It has not worked in some parts of the world, but that is what you are advocating. We have contingency plans. Ports are very, very mindful of all the different things that can happen. Were we planning that a tugboat operator would lock out all its workers as a way to trigger some Fair Work Commission hearings? I was not assuming that.

In relation to some of the comments that have been made, there are single tugboat operators in many of our ports, and there always have been—because of the volume, it is hard to have two different operators there. Member, I think what has transpired does not look good for the tugboat operator. The idea that it would send out a letter saying that it is going to lock out all the tugboat workers on Friday, as a means of testing some issues federally, I do not believe was the way to go. The Fair Work Commission is currently hearing those issues. Do all our ministers now have to plan and assume, for every contract, that every company will lock out its workers and have an impact on economic activity in that way? I do not think we would assume that to be the normal course of operating in Western Australia.

SVITZER AUSTRALIA — TUG OPERATORS

727. Mr R.S. LOVE to the Minister for Ports:

I have a supplementary question. Have discussions been held with other tugboat operators to fill potential gaps at ports that have non-exclusive arrangements in place?

Several members interjected.

The SPEAKER: Order, please!

Ms R. SAFFIOTI replied:

It is currently before the Fair Work Commission. I sincerely hope and trust that this action will be avoided. When we learnt about this, we spoke directly with the company involved, with the union and with our federal counterparts. We were part of a federal submission to the Fair Work Commission to try to prevent this action being undertaken. We have done everything possible. My team worked with the Premier's team late last night to ensure that we submitted all the information necessary to show the economic disruption that would occur. As I said, this is not how we should be operating in Australia; I do not think it encourages goodwill in these sorts of issues in the future. I hope that it is resolved this afternoon and that all actions are prevented. The concept is just not that easy. As I said, as if we would have thought that a company would lock out all its workers and create this sort of economic disruption. No-one could have foreseen this.

SQUARE KILOMETRE ARRAY

728. Ms D.G. D'ANNA to the Minister for Science:

I refer to the McGowan Labor government's significant investment in diversifying the Western Australian economy, including its support for growing Western Australia's space industry. Can the minister update the house on the Square Kilometre Array project, including the recent land use agreement made with the commonwealth government and native title holders; and can the minister outline to the house how the government's significant investment is helping transform WA into a global space and technology hub?

Mr R.H. COOK replied:

I thank the member for the question. It is an important one, and it is exciting to be on my feet this afternoon to talk about more great science that is taking place in Western Australia. It is exciting not only because these projects are in themselves important exercises in science, but also because of the way in which they stimulate jobs and other industries that go towards diversifying our economy. The Square Kilometre Array, or SKA, is one of the biggest global, multigenerational mega-science projects on the globe. It is a $2.9 billion investment to build the world's largest radio-telescope, to be located in Western Australia and South Africa.

All members will have heard of the Large Hadron Collider, which straddles the border of France and Switzerland. In terms of global science, this is on the same scale. To give members an idea of the sort of scale we are talking about, Professor Peter Quinn from the International Centre for Radio Astronomy Research, which is guiding this project, has told us that the telescope will generate the same amount of data in a single day as the entire world does in a year. To provide some more context, once operational, the SKA will collect around 11 exabytes of data per day; five exabytes is the equivalent of all the words ever spoken by human beings.

This is a significant project, and we can see that computers like the Pawsey supercomputer are going to be at the front end of receiving some of the early data and starting the process of processing it. We can see just how big this

project will be in terms of not only the 132 000 low-frequency antennas that will need to be constructed as part of this project, but also the construction and science jobs that will be created and the legacy that the project will leave Western Australia.

I congratulate the Minister for Aboriginal Affairs and the McGowan government on signing the Indigenous land use agreement with the federal Albanese government in conjunction with the original scientists of the Yamatji area, the Wajarri-Yamatji community. This is a significant milestone that will pave the way for this project to take off. The training, education, culture and knowledge sharing that will occur with this scientific endeavour will be passed on to generations of Western Australians. We are already a world leader in terrestrial remote operations, automation and robotics across the resources sector, and now we will see a lot of those learnings, experiences and skills being transferred into this project and developed into a wider industrial diversity strategy.

We have identified the space industry as one of the nine areas in which Diversify WA wants to make a real difference to the lives, jobs and future of all Western Australians. The striking of the ILUA for the SKA paves the way for construction to begin, and Western Australia will be front and centre of global science and the great discoveries that will happen as a result of this incredible project. I am very much looking forward to the jobs that it will generate today and into the future, for future generations.

The SPEAKER: The member for North West Central with the last question.

YOUTH CRIME — REGIONS

729. Ms M. BEARD to the Premier:

I refer to claims by Derby shire president Geoff Haerewa that youth crime is a massive problem and that it is the number one issue in his region, and that the department for child protection and family support is failing in delivering its services to these people at home—those wraparound services that are needed. I also refer to the numerous calls from the shire president of Carnarvon for intervention programs and support to deal with youth crime and antisocial behaviour in his community. Why is the government ignoring calls for help from respected community leaders in regional Western Australia?

Mr M. McGOWAN replied:

The government is putting enormous effort into providing additional resources across regional Western Australia to support families that need that help in dealing with youth. We have rolled out the Target 120 program in regional Western Australia. Just so the member understands what the Target 120 program is, as she is new here, it is a program that we came up with in opposition that the Minister for Community Services is responsible for. It provides intensive support for families that have been identified as having children at risk of going into the youth justice system. It provides interventions with social workers, child psychologists, child support workers, welfare officers and so forth, to assist families with strategies to assist their children. Across the state it has assisted in the vicinity of 300 families, I think, because it is an intensive program and it is about the families that most need it. We have rolled it out to regional Western Australia. A range of communities in the north west, in particular, have this program rolling out.

More broadly, we had police and community youth centres approach us because their funding was running out under the last government. Geoff Stooke, the chair of WA PCYC, approached us and we backfilled its funding and rebuilt PCYCs across regional Western Australia. For a lot of young people one meets out there, it is a very structured and exciting opportunity that gives them structure in their lives. With regard to the training and education system, when we came to office we actually had to reinstate a whole lot of Aboriginal education officers—AIEOs—and education assistants across regional WA that were cut by the last government. They work with Aboriginal children at school. The last government cut 400 or 500 of them, and we reinstated them when we came to office. In regional Western Australia, including in the member's communities, intensive support mechanisms for students are there.

When it comes to remote Aboriginal communities, of which there are some in the member's electorate, we have actually put $350 million in for housing. Do members know what happened? The previous federal Liberal government cut all funding for remote communities. Across the member's electorate and the electorates of Kimberley, Pilbara and Kalgoorlie, more than 200 remote communities lost all federal funding. The federal government had funded remote communities since 1968. Do members remember that Tony Abbott was going to be the Prime Minister for Aboriginal Australians? What did he do? He cut funding to remote communities, the most vulnerable people in Australia. What have we done? We have put $350 million into remote communities for water, power, rebuilds, roads, maintenance and new housing. When it comes to homelessness services, we have improved homelessness services across the state. When it comes to police officers who work with families in need—obviously, they have to enforce the law—we are employing an additional 1 000 police officers. Many of those will be in regional Western Australia, including in the member's electorate. All those initiatives are there.

I know that the member will ask whatever is written before her in her supplementary question. She will not have listened to any of my answer. I look forward to her supplementary question. I think I have just outlined a whole range of initiatives that the government has put in place, but I look forward to hearing the member read her supplementary question.

YOUTH CRIME — REGIONS

730. Ms M. BEARD to the Premier:

I have a supplementary question. The Shire of Derby–West Kimberley seemingly has not been contacted by the Premier or any minister since the airing of Monday's *Four Corners* program. Is the Premier's government really taking this issue seriously?

Mr M. McGOWAN replied:

I just outlined to the member a whole range of initiatives that we have taken. I note that the program on Monday night —

Several members interjected.

The SPEAKER: Order, please!

Mr M. McGOWAN: I note that the program on Monday night did not identify that the president of the Shire of Derby–West Kimberley was the Liberal candidate in the last state election. I would have thought that the ABC, of all organisations, in the interests of balance, would have —

Ms M.J. Davies interjected.

Mr M. McGOWAN: Can I please answer the question.

Several members interjected.

The SPEAKER: Order, please, members!

Mr M. McGOWAN: I just outlined to the member about eight initiatives that we have taken to support regional —

Ms M.J. Davies interjected.

Mr M. McGOWAN: Oh my goodness! I think the Minister for Transport correctly identified the problem with the opposition.

I would have thought that in the interests of balance that the ABC and *Four Corners*, of all organisations, would actually have identified that one of the principal complainants was a Liberal candidate in the last election and was defeated. That is a relevant factor, I would have thought.

Several members interjected.

Mr M. McGOWAN: Yes, he was a Liberal candidate in the last election and was defeated. It is a fact, and he criticises the state government.

Several members interjected.

The SPEAKER: Order, please! There was one member who asked this question, and now I have members of both opposition parties just continuing to interject. It is not acceptable.

Mr M. McGOWAN: I would have thought that that is a relevant consideration and is something in the interests of balance that should have been part of the story. Unfortunately, it was not, but there were a lot of inaccuracies in the story. The story began with the journalist saying that there should not be any detention! Okay; that is just a recipe for there being no consequences for anything, and I just do not agree with that. I do not agree with the fundamental premise, but we do an enormous number of things to try to divert young people and to try to give them structure in their lives and provide them with opportunities for the future, and I just outlined to the member six or eight of them across regional WA.

The SPEAKER: Members, that concludes question time.

HUMAN TISSUE AND TRANSPLANT AMENDMENT BILL 2022

Minister for Health — Personal Explanation

MS A. SANDERSON (Morley — Minister for Health) [2.52 pm]: Madam Speaker, I rise under standing order 148 to make a personal explanation.

The SPEAKER: Permission granted.

Ms A. SANDERSON: Thank you, Madam Speaker. I rise under standing order 148 to correct the record on two questions asked in this house during the consideration in detail stage of the Human Tissue and Transplant Amendment Bill 2022 on clauses 18 and 19. They were asked by the member for Vasse on 27 October 2022.

With regard to clause 18 of the bill, the member asked how this amendment will allow the legislation to operate in a way that it has not been able to operate before. The correct answer is that the amendment will expand the purpose for which tissue removed pursuant to that section may be used to include for the purposes of training, education or quality assurance. This will allow for consent to be provided, under the act, for the removal and use of tissue to support training and quality assurance processes for pathology services.

With regard to clause 19 of the bill, the member requested an outline of the material differences, if any, of any changes that will be brought about by the amendment to section 24 of the act, the basis for that change and whether

any representations were made to government. The correct answer is that this amendment will expand on the types of tissues that may be removed from the body of a deceased donor by a non-medical practitioner. The current provision allows that only an authorised person other than a medical practitioner to remove tissue for corneal transplantation. The amendments to section 24 will provide that in addition to permitted medical practitioners, authorised persons appointed under new section 24A may remove skin and musculoskeletal tissue in addition to ocular tissue from deceased persons for a permitted purpose or use. Authorised persons are highly trained retrieval technicians working in tissue banks licensed under the Therapeutic Goods Act, and must be appointed by the WA Minister for Health for the purposes of this provision. This change is necessary because tissue retrieval must be completed within set time requirements. Allowing authorised persons to remove these tissues will enable retrieval to be performed in a safe, timely and efficient manner, and reduce the loss of potential donor tissue that may occur when a medical practitioner is not available. Consultation specific to section 24 was undertaken in 2017 with key stakeholders across WA Health, the broader eye and tissue sector, and state and national professional bodies.

I regret any inconvenience and apologise to members for this inconvenience.

DIRECTORS' LIABILITY REFORM BILL 2022

Second Reading

Resumed from an earlier stage of the sitting.

MR P. LILBURNE (Carine) [2.55 pm]: I would like to contribute towards the support for the Directors' Liability Reform Bill 2022 that is before the lower house this afternoon. I would like to acknowledge the contributions of my colleagues today. This afternoon I will not reiterate the valuable points discussed by my fellow members of Parliament, but instead I will discuss how the applicability of the Directors' Liability Reform Bill 2022 correlates to modern accepted practice for directors in Western Australia.

Directors' liability reform was one of 27 deregulation priorities that formed part of the National Partnership Agreement to Deliver a Seamless National Economy, which was an intergovernmental agreement that was entered into by the commonwealth and all states and territories in 2008. The Council of Australian Governments coordinated the implementation of the national agreement, which included driving the reform project's key milestones and ensuring that states and territories complied with the priorities of the agreement. As part of the reform to directors' liability, in November 2008, COAG agreed to increased harmonisation across the country when imposing personal criminal liability on directors for corporate fault. COAG also agreed to a set of principles, and, later, guidelines, wherein directors would be deemed criminally liable for offences committed by corporations and bodies corporate.

As a director of a company registered under the Corporations Act 2001, I understand the implications of responsibility to those that benefit from my decisions and behaviour and how my behaviour and judgement will be assessed and scrutinised by regulatory authorities such as the ATO and the Australian Federal Police. That responsibility can be summarised with the word "values". That single word dictates the reason why decisions are made and acts as a moderating factor in risk and cost–benefit analyses. Choices that I make as a director relate exactly with the expectations outlined in the Directors' Liability Reform Bill 2022.

The bill aims to limit and standardise all provisions that impose derivative liability on directors and other officers of bodies corporate. "Derivative liability" means the personal criminal liability of officers for a body corporate's offending when they have failed to take all reasonable steps to prevent the body corporate from committing an offence. Concepts such as negligent or reckless behaviour are the results of choices made by a director. If a decision is judged to be poor or reckless by an authority, the values that drive the choice made are at the core of the fault mechanism. For example, within the Council of Australian Governments' document, principle 4 states that directors could be liable when they have encouraged or assisted in the commission of the offence, or have been negligent or reckless in relation to the corporation's offending.

An important value for a director of a company in Australia is to be kept informed about the company's financial position and performance, ensuring that the company can pay its debts on time. In Australia, an oversight mechanism exists that will quickly detect an act if the amount of moneys available to pay debt is insufficient. This group, of course, is known collectively as the banks. These financial behemoths will quickly place a stop on the availability of credit to companies if directors do not place value on accountability and record keeping of funds. The Directors' Liability Reform Bill 2022 codifies the importance of corporate governance. In my role as a director, I must account for the money spent on my business's functioning through the submission of business activity statements and yearly tax returns, for example. My choice of behaviour in complying with these regulations is a reflection on the values that I personally abide by.

An important value as a director of a company in Australia is to make decisions in good faith and for a proper purpose. The people of Western Australia regularly hear in the news about international drug smugglers who have been caught by the Australian Federal Police attempting to import large commercial quantities of illegal narcotics into Australia under the premise or disguise of a legitimate corporate business importing parts or chemicals, for example. Once again, the values of the directors in charge of these shell companies have been compromised by the behaviour of greed and criminality. The Australian law enforcement establishment has proven incredibly effective at disrupting these corporate cowboys and bringing them before Australian courts for judgement and justice.

In effect, the Directors' Liability Reform Bill 2022 reinforces and emphasises the liability element of people's decisions. It is an important value as a director of a company in Australia to find out and assess how any decision will affect the company's business performance, especially if it involves a lot of the company's money or could have a material impact on the company's reputation. Research and development of a new business opportunity, business diversification and sourcing new resource bases are a crucial part of directors' responsibilities.

During the COVID pandemic, supply-side issues pressurised both the availability and transportation of core materials for construction and fabrication. Corporate activity must value the importance of maintaining quality assurance mechanisms and programs during resource stress. COAG's fourth principle states that there are steps a reasonable director might take to ensure a corporation's compliance with the legislative obligation. Here I highlight the link between the quality of the good or service being provided and the obligation that directors must adhere to regardless of the business environment a company may find itself in.

A professional director of a corporate entity may find themselves in a position whereby they have identified criminality or the possibility of liability. I again refer to the theme of my speech today, which is the values that those directors then find themselves in; that will dictate how they react to the discovery of criminality. An important value as a director of a company in Australia is to get trusted professional advice when it is needed to make an informed decision. The Directors' Liability Reform Bill 2022 states that there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation. An individual director may seek private legal advice from a trusted lawyer or association if they feel that their personal obligations may be compromised by a corporation's actions. Indeed, authorised support structures such as the Australian Securities and Investments Commission provide reinforcement and guidance information for directors who find themselves in a compromised position. The Australian Criminal Intelligence Commission estimates that the cost of organised crime to Australia is more than $36 billion a year. ACIC creates a national intelligence picture of crime, targets serious and organised crime, and delivers information capability and services to frontline policing and law enforcement.

In this way, ACIC helps to make Australia safer by improving our national ability to connect, discover, understand and respond to the corporate crime and criminal justice issues impacting Australia. A director of a compromised corporation may seek the confidential advice from any such organisation in Australia that will protect them against liability within the context of the Directors' Liability Reform Bill 2022.

Harvard University advocates this doctrine of good corporate governance and oversight to the students attending its courses. In one publication, it states that the mission of Harvard Business School is to educate leaders who make a difference in the world. Achieving this mission requires an environment of trust and mutual respect, free expression and inquiry, and a commitment to truth, excellence and lifelong learning. Harvard Business School advocates that directors can and should be a living model of these values. It is refreshing to see a learned place of learning such as Harvard Business School publicly reinforcing a positive message to its graduates. The fourth COAG principle encourages directors to act in good faith and report areas of concern if corporations do not display appropriate compliance. That principle reduces the possibility for liability if a director acts with due diligence. For example, the imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations when there are compelling public policy reasons for doing so—for example, the potential for significant public harm that might be caused by the corporate offending.

Recently, I had a guided tour of Edith Cowan University's Joondalup campus where many of my constituents attend courses. During the presentation from an associate professor of law, he explained to me how ECU highlights during the curriculum lectures the importance of good corporate values within business structures. The Directors' Liability Reform Bill 2022 reinforces this core belief by stating that if a director is not involved in corporate offending, the director's liability should be nil. The fifth COAG principle states that when the fourth principle is satisfied and directors' liability is appropriate, directors could be liable when they have either encouraged or assisted in the commission of an offence or have been negligent or reckless in relation to the corporation's offending.

The bill proposes to amend 69 state acts to remove or standardise provisions that impose personal liability for corporate fault. During the extensive consultation that occurred when drafting the 2015 bill, agencies assessed existing offences under their legislation that imposed derivative liability against the COAG principles to determine whether it was appropriate for officers' liability to apply. This bill is not the principal legislation. It will not be a standalone act to which people will refer in the future. Instead, it will insert standard provisions relating to derivative liability into the Criminal Code and then apply those provisions to specified offences in existing acts, when appropriate, so that the officers will be personally liable when the offences are committed by bodies corporate and officers have failed to take all reasonable steps to prevent such offending. In future, people in WA will need to refer to the Criminal Code to get an understanding of the position on derivative liability.

Effective directors of corporations are adept at expanding the array of choices under consideration. Directors ideally remain grounded in the real world, making sensible decisions based on their values. I commend the Directors' Liability Reform Bill 2022 to the house.

The DEPUTY SPEAKER: I give the call to the member for Willagee.

MR P.C. TINLEY (Willagee) [3.10 pm]: Thank you, Deputy Speaker. I note the member for Bicton has wandered out of the chamber now.

It is indeed a great pleasure to stand to speak on the Directors' Liability Reform Bill 2022. Every member of this chamber, if they are diligent local members, would be involved and intersecting with a range of commercial and not-for-profit governance boards, all of which derive their moral and ethical underpinnings from what is proposed in the foundations of the bill before the house. The salient point is that this legislation has changed over time, certainly since commercial activities started, and as a model has permeated across our society. Retirement villages with resident representation, or strata title companies, have derived their underpinning ethics and morals, and basis for operation from this legislation as it has evolved. The commonwealth Corporations Act details specific matters on the roles of a company. It identifies a company as a person so it can be sued and prosecuted as a legal entity. I am told that is a legal fiction. We all enjoy a legal dichotomy that makes us scratch our heads. Getting a lawyer to explain a legal fiction is even more confusing!

The growth of corporate governance has a long history. It is worthy to note that history because much of the detail in this bill goes way back. We find corporations law largely in western democracies such as the United States and the United Kingdom. We got our corporations law from the Westminster system. It is a vast subject that has a very long and rich history. It brings together managerial accountability, board structure and shareholder rights, which at times intersect, align or conflict with each other depending on the board, the shareholders and the ambitions of the particular entity. In this case, it is a commercial entity. As I said, it can also be the not-for-profits and more relaxed boards of schools and other institutions that we as local members work with.

Corporate governance started when corporations began. It goes back to the East India Company, for example. In the US, there was the Hudson's Bay Company. The was the Levant Company and other major charter companies in the sixteenth and seventeenth centuries. It was a really interesting time when globalisation was in its infancy but nonetheless growing.

After World War II, the US had particularly strong economic growth. Something we circle around but do not often land on is the idea of the post Industrial Revolution. During the Industrial Revolution, some countries had gross domestic product per person output relative to population three times that of the US. For example, a worker in England had a GDP value of around 20¢ a day in today's dollars. It was an agrarian subsistence economy with pieceworkers and those sorts of things. During the Industrial Revolution, the GDP output of the United Kingdom per person, with 12 million people, was three times that of the United States. Obviously the United States caught up. Its per person GDP output is massive. This is important. In the UK, it went from 20¢ a day to $20 a day. That massive economic capacity allowed the country to protect itself and to grow. The dominance of the UK across much the world came through some of its increased productivity.

Productivity is a fundamental driver of profit and a country's economic strength, which obviously gives it geopolitical strength. As the number of organisations increased and they became more connected and complex, and the free market was more than just a subsistence farmer taking their product to a village market, they became very much globalised and more complex. Of course, there was the entry and growth of more and more sophisticated taxation systems, ensuring that the collective wealth was proportionally distributed by government to the people. The world became a more complex place.

After World War II, we saw massive increases in productivity and the global economic strength of various countries. We also saw an interesting dichotomy between managers and boards of directors. The CEOs and senior managers highly influenced the selection of directors and basically put in place their own boards. Unless they were dealing with matters like dividends and stock prices, investors tended to steer away from the whole idea of governance. If we contrast that concept of governance with what happens today, I note that we now have ethical investment funds for which the environmental, social and governance investment strategy of a particular company is fundamentally important. We have seen a significant shift in governance and what directors take responsibility for. The idea is that the corporate entity as a legal entity in its own right—or as a person, as they say—has taken on real significance.

We need only look at the issues around Juukan Gorge and the impact that had on Rio Tinto's share price. It also lost directors, managers and, more importantly, community confidence. They are the far-reaching issues that directors of companies and entities need to grapple with these days. The idea of a director going on a board as part of a representational model is now completely defunct. The Directors' Liability Reform Bill 2022 very much underscores the evolution of governance.

Importantly, in the 1970s, the Securities and Exchange Commission in the US started to gain traction. It brought to the forefront issues of corporate governance and had a broad stance on corporate governance reform. In 1976, the term "corporate governance" first appeared in the *Federal Register*, which is the official journal of the government of the United States. It started in 1976. In the lifetime of many members of this chamber, it has gone from an almost laissez-faire style of representation to one that has started to gain significant legal traction.

In the 1960s, there was an interesting case in the US with Penn Central Transportation Co. The company had diversified, like every business with a view to the future, looking for new technologies and opportunities to invest.

Penn Central diversified into pipelines, hotels, industrial parks and lands, and commercial real estate. However, when the company filed for bankruptcy in 1970, the board came under public fire, and rightly so given the pace of change. In 1974, the SEC brought proceedings against three outside directors for misrepresenting the company's financial condition and a wide range of acts of misconduct by Penn Central executives. This was the first official case in the US. Much of the movement in the corporate governance world was in the US. It was taken up by many US universities as a discipline of study.

This was the first major prosecution of a regulator over a governance body, and there were several consequences for it—payments to foreign officials for falsifying corporate records et cetera. We saw a consequence of this in the United States for some of those who raised funds by political donations from different companies. All listed US companies are governed, even internationally, by the Foreign Corrupt Practices Act of the Congress that prevents them from donating to political parties, for example, and being involved in domestic political matters. That came from hard-fought problems of corruption among officials and working in developing countries where that sort of bribery and corruption was rife.

The 1980s brought an end to the 1970s movement of corporate governance reform due to a political shift in the right. In the US there was a more conservative approach through the 80s and it was not the best of times for proper transparent governance across the biggest economy in the world. We saw from the 80s onwards the rise of shareholder activism, and we see it here in Australia with organisations such as GetUp, for example, and shareholder representation groups that take small positions in listed companies in order to ensure that they bring a voice of transparency onto the floor of an AGM of a listed company. The financial crisis of 2008 is a watershed moment for corporate governance. We saw massive shifts in the global economy and massive downturns, and many businesses being called into question about what they did or did not know at a certain time. To this day, in some part those cases are ongoing.

As I have outlined, particularly more from a US point of view, but it reflects itself across the developed world, certainly in the European economies and increasingly in the development of Asian economies with some significant differences, the amendment bill before us today is of itself part of a long line of shifting from what was a very easy, relatively unregulated world of laissez-faire governance through to a much more structured governance. One of the biggest shifts in Australia was the Corporations Act. I cannot recall exactly when it was when it talked about a director's responsibility.

Ms M.M. Quirk: It was the early 2000s.

Mr P.C. TINLEY: Yes, it was around that time. The very important step was taken when the liability of any director was on the basis of what they could reasonably have known. If a company fell into trouble and the role of the directors, the minutes of the board meetings and all those things that matter were examined forensically, there would always be a point at which a director would be able to determine as a defence, if you like, that it was not reasonable that they would have known the information that caused the downfall or disruption to a company, or the shareholder price, or those sorts of things. That was removed. The idea that "a director could have reasonably known" was changed to "a director should have known". I am happy to have those words corrected. I am sure the member for Landsdale will have the exact words when she rises. It is like a captain of a ship: everything became the responsibility of those directors. The default position became, "If you did not know, then you should have known." It was not that they could have reasonably known. As a result, everything mattered. That is a very harsh measurement considering what the director is expected to know.

Members can imagine that with the scale and size of a Wesfarmers, Rio Tinto or BHP—which are global companies with the stretch of supply chains and a range of immersion in different economies and in different sectors of different economies, particularly in the mixed businesses—for a director to be across everything that is required is a very onerous task. I sometimes question the number of directorships that some people have in the corporate world. A very select group of people just go around and around the same companies and, in my view, they seem to have a significant amount of risk, given the number of companies and the span of the companies they are on. Some would be chair of a board, which takes on another particularly unique challenge in the world of commercial corporate governance.

Another matter that is worth talking about, as I began my remarks with, is that we all intersect with some form of boards of governance in our daily lives as members of Parliament. Many members of this house are on a school board. I was chair of the Hamilton Hill Senior High School board and have been on the board of one of my primary schools, Caralee Community School. They are serious roles to take on, even though obviously they have a certain diminished impact. The impact the activities of those organisations have on the lives of those in the organisations is no less significant. As a former Minister for Veterans Issues, I came into contact with different boards of larger organisations, especially service organisations and those that deal with significant funds from taxpayers and members. Directors' lack of understanding of both their personal liability and their role as a director of those entities never ceased to amaze me. Peak bodies are notorious in this state and across the country for having governing bodies that are more member representational bodies. If I am a member of a professional organisation, a peak body of a not-for-profit grouping, quite often the make-up of the boards are not independent directors; in some ways

they are very much compromised because they have a conflict of interest from the moment they sit on those boards as typically they come from one of the member organisations that provides a certain input into those decisions, so they cannot see themselves as impartial.

[Member's time extended.]

Mr P.C. TINLEY: I have been a director of different commercial companies in my own time, but the greatest privilege I had was to be a director of another board called cabinet. The rules of cabinet as a governing body are extremely strict and extremely detailed, but the moral and ethical underpinning of that body is on the basis of it doing the common good for its shareholders, who are the citizens of Australia or, in this case, the residents of Western Australia, and to ensure that as a governing body we are considering all who are impacted by our decisions and not just a selected group with a particular advantage. It is entirely debatable whether cabinets in the past have always had the best interests of the people of Western Australia at heart. That is why this body exists—to scrutinise the decisions of executive government and to ensure that it is acting in a transparent way or in a way that is in the best interests of all Western Australians. Quite frankly, we are all members of one of the most significant governance bodies in this state. For the past 100 years, laws that have been made in this chamber have had a direct impact on those outside this building—at times, the very next day, after they receive royal assent.

The area this bill does not go to is more the intent and ambition of corporate governance to ensure that boards of directors and people in those positions who exert influence, power or decision-making over others apply the same principles that have been talked about as the Council of Australian Governments principles that were agreed to that form the basis of this amendment.

I have briefly talked about conflicts of interest when member organisations of peak bodies are resident or installed on boards but are, in fact, not really independent. They are more, as I said, associated with a representation of those memberships rather than independent governance. The other aspect I see, particularly in boards that are poorly led, is that they take an activist role in operations. In that classic sense, they ignore the executive. The executive of a business or an entity has a particular role and the board of directors has a different role as one of oversight. The executive presents plans, objectives, statements, accounts and all those things that are talked about between management and shareholders, and the executive presents that to the board. The board receives enough information to make a decision and provide strategic direction to the executive to undertake the work it does on a daily basis. As we permeate through different types of governance models, we see that some of those boards of directors are taking on executive decision-making and interfering with the executive, which creates complete ambiguity and problems for the executive as it tries to do its job. We see this most visibly in local government. The officers of a particular city or shire go about doing what they do, representing what they do to the council, but the council is deliberating on far too much detail and far too many operational matters. If we look at it on face value, that detail is already agreed to in the strategic plans of a particular town, city or shire and is simply being acted on by the executive. The activist role that I see some councillors making at the local government level is a problem that we should all be alive to. I know that the Minister for Local Government is focused on this, as was the former Minister for Local Government, to ensure that the behaviour of councillors is consistent with their role to provide strategic direction for a town, city or shire. As a result, we are seeing diffusion and confusion of what a local government authority should be doing.

We also see that in the not-for-profit areas, which does not make for efficient and effective leadership of an organisation, nor efficient and effective outcomes for the shareholders, no matter who they might be. Even though we often talk about shareholders as those with paid-up capital in a particular business, we are also talking about those people who have paid-up interest or who have paid up in kind—that is, a sporting club that a person joins and gives their time and invested effort to, and at which their child plays sport. They look for a particular return. The governance body of an organisation must act in the interests of the intent of the articles or items of that business or entity. If someone's local footy club is not fielding teams that are consistent with the selection process of that club, such as playing kids out of age or having alcohol available on a junior night when it should not under its arrangements, that is a failure of the governance model. If the club is not making inclusive arrangements for all to participate, even though its charter says that it has an inclusive approach to people in sport—I am using that as an example—its directors are failing in their duties. In my estimation, there is not enough awareness and education across the different organisations that have been identified here that are operating inside the context of what has been contemplated with this amendment.

As members can see, I have gone through a potted history of the role of governance from the sixteenth century and I have finally arrived at 2022 to talk about the complex nature of what it is to be a director. I touched only on the concept of environmental social governance. We saw this in the starkest terms with the committee report on sexual assault in the mining industry. In anybody's estimation, there was a clear failure, because the leadership in those organisations did not have any awareness of what was going on or had wilful blindness—we are not quite sure in all cases—and now there is a mad scramble to redress the issue to create a safe workplace for all. As a result, the organisations lost board members and executives, but, more importantly, they lost the confidence of the public to undertake their role as major employers in Western Australia. With those remarks and on that basis, I commend the bill to the house.

MS M.M. QUIRK (Landsdale) [3.35 pm]: We have heard a lot about the history of the Directors' Liability Reform Bill 2022, but I want to stress a couple of issues before I talk more generally about directors' duties. We have heard that this legislation has had a long gestation, but I want to go back to some of the preliminary discussions that took place in the Council of Australian Governments because there were concerns about the inconsistencies and standards of personal responsibility both within and across jurisdictions that resulted in undue complexity and a lack of clarity about responsibilities and requirements for compliance. This bill certainly attempts to clarify the issue for Western Australia and catch up with other jurisdictions. It is important to say at the outset that it is not an expansion, nor an overreach, by the state into the behaviour or criminal conduct of directors when previously it may not have applied. In this regard, COAG developed a set of principles to guide the reforms and it is important to stress that the first principle states —

> Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.

That is very important to remember. The second principle states —

> Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.

The fourth principle states —

> The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
>
> a. there are compelling public policy reasons …
>
> b. liability of the corporation is not likely on its own to sufficiently promote compliance …
>
> c. it is reasonable in all the circumstances for the director to be liable having regard to factors …

The member for Mount Lawley outlined in some detail the criminal conduct of the directors of CSR after the board tried to obfuscate and obscure its level of liability in assessed asbestos cases. That is a good example of when directors should be held liable in addition to any sanctions that are imposed on the company. The COAG principles also state that directors could be held liable when they have encouraged or assisted in the commission of an offence or have been negligent or reckless in relation to the corporation's offending. That brings me to what we consider established principles for directors. Certainly these days, directors of listed companies are remunerated very well and what we expect of them is that they diligently comply with these duties. They include, for example, the duty of confidentiality. I recently read the Perth Casino Royal Commission report. I came across what I certainly considered to be a breach of confidentiality whereby one of the board members was paid a retainer to notify a third party—not a member of the board—of board activities.

Secondly, the directors must make due inquiry into the matters before them. It is not sufficient to rely on being told by a third party about certain facts; they must make some level of inquiry as to the veracity of the information they are making decisions on.

Thirdly, the directors must contemplate and consider risk to the company and must have mechanisms for managing risk. It always surprises me when I hear of big enterprises that have no risk management subcommittee. Again, going back to the casino example, one can think of the risk of money laundering or other illicit practices taking place, yet that board did not have a risk management committee.

The directors also owe duties to the company, and that includes the shareholders, employees and creditors, as well as the regulators. They must act honestly and carefully. They must know what the company is doing, although that needs to be distinguished. They do not have to delve into the operational activities of the company or the management per se, but they need to at least know what the company is doing and—it makes sense; it is obvious—they need to take care, because they are effectively handling other people's money. A very obvious example is that the company must be able to pay its debts as and when they fall due. The directors need to ensure that proper financial records are kept and, of course, submitted to the regulatory authorities.

As I noted, risk management is a key role of a director, and good corporate management governance programs are essential. Time and resources need to be devoted to ensuring that there is good compliance. That again makes commercial sense, because the resources spent in defending litigation or prosecutions are likely to be much greater than if sufficient resources were invested into corporate compliance in the first place.

Other members have spoken about community expectations of companies. I think that community expectations are increasing, and directors need to be mindful of this. Shareholder action groups and even institutional investors like super funds are requiring a level of corporate responsibility and for companies to act in an ethical fashion. For ethical investment, I suppose that there is an expectation of not only compliance with the legal obligations, but also a strong foundation of corporate citizenship. We are all very familiar with the destruction of Juukan Gorge by Rio Tinto. The investors there basically led a revolt, and I will talk briefly about that.

What happened with Juukan Gorge and the conduct of Rio Tinto made world news. I refer to a BBC news article titled "Juukan Gorge: Rio Tinto investors in pay revolt over sacred cave blast". The article states —

> **Mining giant Rio Tinto has faced a shareholder revolt over a $10m … bonus for its outgoing boss.**
>
> In a rare development, 61% of votes cast at its annual meeting opposed the firm's executive remuneration package.
>
> The backlash comes after the company destroyed sacred Aboriginal rock shelters in Western Australia last May.
>
> Rio Tinto blasted the 46,000-year-old rock shelters at Juukan Gorge to expand an iron ore mine, sparking an outcry and leading to several resignations.
>
> The pay package covers $55m earmarked in salary and bonuses for the company's top 14 executives.
>
> Despite the shareholder rebellion, the executives are still expected to receive their payouts …
>
> …
>
> In September, chief executive Jean-Sébastien Jacques —

That is my French pronunciation. I understand that he is South African, so I apologise if my pronunciation is flawed —

> and other senior executives, including the heads of its iron ore and corporate relations divisions, said they would be leaving the company.
>
> And earlier this year chairman Simon Thompson and non-executive director Michael L'Estrange also said that they would leave the company.

This is the important admission —

> "I am ultimately accountable for the failings that led to this tragic event", Mr Thompson said in the statement.

As I said, institutional investors have been much more active in the issue of companies complying with their corporate responsibilities. For example, large institutional investor HESTA issued a press release in March 2021 stating —

> **Investor collaboration following heritage destruction at Juukan Gorge achieves agreement with Rio Tinto on improved disclosure and governance arrangements**

The media release continued —

> "Investors put forward very clear requests around what disclosure and governance arrangements we needed to see to ensure that the tragic heritage destruction at Juukan Gorge never happens again," …
>
> "It's pleasing that we've had constructive discussions with Rio Tinto that can support progress towards managing this clear financial risk for investors. The steps the company has agreed to will support broader improvements in practices, disclosure and oversight urgently needed across the mining sector."
>
> "Rio is at the start of a very long process of rebuilding trust. It will require long-term commitment to deep-seated cultural change and strong frameworks and processes in place to support genuine, open and ongoing partnership with Indigenous communities, no matter who is in management or Board roles."

The head of HESTA went on to say —

> … the investor group welcomed Rio's commitment to continue dialogue with investors on disclosure and governance improvements.
>
> "It's vital that we see ongoing public reporting so investors can monitor progress over time and all stakeholders can have confidence that what Rio commits to is implemented and is effective," …

Of course, members will be familiar with the fact that there was also a parliamentary inquiry that was scathing of Rio's conduct.

Communities have an expectation that companies will consider the needs of the environment. Directors need to strike a balance between the needs of shareholders and the needs of the environment. Companies need to try to reduce pollution waste, natural resource consumption and emissions through their processes. They need to recycle goods and materials through their own processes. They need to offset the negative impacts of their own conduct by replenishing natural resources. Of course, a lot of companies do quite aggressive tree planting in that context. Companies need to adopt measures to neutralise the impact of their company activities on the environment. Further, they can look at how they distribute goods.

[Quorum formed.]

Ms M.M. QUIRK: I will continue, after that rude interruption, by expanding further on some of the areas of environmental impact that companies need to be mindful of. One of those is distributing goods by methods that produce fewer emissions, and creating products that enhance the value of sustainability.

Companies also have ethical responsibilities. For example, they need to treat all customers fairly irrespective of their race, age, culture or sexual orientation. They need to treat all their employees in a positive way. That includes favourable pay, benefits and conditions in excess of mandated minimums. Companies should also consider expanding their vendor use so that they deploy a more diverse range of suppliers. Companies must disclose to investors honestly, and in a timely and respectful manner, any concerns that they have. Companies may also choose to communicate and have a relationship with external shareholders beyond what is legally required.

Of course, these days many companies also involve themselves in philanthropic endeavours. Companies need to look at how they can spend their resources to make the community a better place; whether the company donates profits to charities or causes it believes in; whether the company enters into transactions only with suppliers or vendors who are aligned with the company philosophy; whether the company supports employee philanthropic activity such as fundraising or taking time off work to undertake charitable work; and whether the company sponsors fundraising events or has a presence in the community for related events. These are all values and activities that, because of the evolution of corporate responsibility and community expectations, directors should be across and promote.

The final point is financial responsibility. That should include the undertaking of research and development for new products that will promote sustainability, and the recruitment of different types of talent to ensure a diverse workforce. I will add to what I am saying the remarks of the member for Bicton, who made the point that we need to have more women directors. Diversity should extend to not only employers, but also boards of companies, and include a range of skills. In order to maximise company performance, companies should undertake initiatives to train employees about the values of the company and promote positive cultural values in the company. Companies should also ensure that transparent and timely financial reporting occurs, including external audits.

Members have all commented that this bill is somewhat dry. I have to say that part of government is passing laws that will grease the wheels of compliance and regulation and make all our lives better and less dysfunctional. I am one of those people who think that introducing lots of non-sexy bills when there is a great need is an excellent thing to do. If anyone wants to ask me, I can give them a list of half a dozen bills that are overdue and will materially affect other people's lives, work and existence. I would equally commend those bills to the house, as I do this bill.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.

House adjourned at 3.55 pm