Parliamentary Debates
(HANSARD)

FORTY-FIRST PARLIAMENT
FIRST SESSION
2022

LEGISLATIVE COUNCIL

Tuesday, 22 March 2022

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

SMALL BUSINESS DEVELOPMENT CORPORATION AMENDMENT (COVID-19 RESPONSE) BILL 2022

Assent

Message from the Governor received and read notifying assent to the bill.

PAPERS TABLED

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

HON STEPHEN PRATT

Leave of Absence

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

> That leave of absence for three sitting days be granted to Hon Stephen Pratt on the ground of urgent personal business.

LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2021

Committee

Resumed from 17 March. The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 216: Register of Australian practising certificates granted by the Board —

Progress was reported after the clause had been partly considered.

Hon MATTHEW SWINBOURN: I would like to address some outstanding issues from the last time we were in Committee of the Whole on this bill before we return to debating clause 216. The first relates to double jeopardy. During debate last week, Hon Nick Goiran queried whether clause 12, "No double jeopardy", could be considered as part of the statutory review of the double jeopardy provisions contained in part 5A of the Criminal Appeals Act 2004. I undertook to inquire with the Attorney General's staff whether consideration of clause 12 could be included in that review. Following the conclusion of debate last week, I did that and was informed that the statutory review had been completed and that the final report would be tabled imminently. As members would be aware, I have just tabled that *Statutory review of part 5A of the Criminal Appeals Act 2004 (WA): Final report*. As a consequence—this is for the sake of the completeness of the discussion in committee for those who follow the committee debates closely—the request of Hon Nick Goiran obviously cannot be actioned because that report has now been finalised and tabled. I am further advised that, had it not been finalised, as the statutory review was conducted under section 52 of the Criminal Appeals Act, the section confined the scope of the review to the operation of amendments made to the Criminal Appeals Act and the Criminal Code by the Criminal Appeals Amendment (Double Jeopardy) Act 2012. Given that section 52 significantly confines the scope of this statutory review, even if the review had not been completed, consideration of clause 12 of this bill would have been outside the scope of that particular review.

Hon Nick Goiran asked whether the Attorney General would consider amending the text of the Legal Profession Uniform Law Application Bill 2021 to expand the cost disclosure requirements in section 174(2) of the Legal Profession Uniform Law so that a law practice has to disclose, at the time of entering into a cost agreement, that a client can obtain a cost assessment in the event of a dispute, as currently required by section 260(1)(i) of the Legal Profession Act 2008. The government is sympathetic to the position that has been expressed by the honourable member that the cost disclosure requirement should not be weakened, even if temporarily, by Western Australia's entry into the Legal Profession Uniform Law scheme. However, the government's position is that it is preferable to await the amendments to the Legal Profession Uniform Law for a couple of reasons. The first is that, although that aspect of the cost disclosure requirement is slightly weaker, any risk to the consumer is offset or mitigated by two other disclosure requirements that a law practice must make in relation to cost. The first of those, as mentioned in debate on 17 March 2020, is that the law practice must disclose, at the time the cost agreement is entered into, that the client can seek the assistance of the designated local regulatory authority—in this case, the Legal Practice Board—in the event of a dispute about legal costs. The board is able to inform clients of the right to apply for a cost assessment and is statutorily required to do so if it is unable to deal with the cost dispute. I refer members to section 291(2) of the Legal Profession Uniform Law. The second relevant disclosure requirement comes at the time a bill is issued. When issuing a bill, a law practice is required to disclose to a client, either on the bill or in information accompanying the bill, that they have a right to apply for a cost assessment. I refer members to section 192 of the Legal Profession Uniform Law. An amendment to the bill to achieve the desired outcome would involve more than just expanding

the cost disclosure requirement in section 174(2) of the Legal Profession Uniform Law Application Bill 2021 and may detrimentally impact the use of standard costs disclosure forms for matters costing between $750 and $3 000. Section 174(5) of the Legal Profession Uniform Law provides that a law practice may discharge its disclosure obligations for matters for which the cost estimate is between $750 and $3 000 by providing the client with the prescribed uniform standard disclosure form. To achieve the desired policy outcome, the disclosure form, which is prescribed by the Legal Profession Uniform General Rules 2015, would also need to be updated. In fact, the Legal Services Council consultation paper on proposed amendments to the Legal Profession Uniform Law notes that an amendment to section 174(2) would involve a consequential amendment to the uniform standard costs disclosure form. Finally, the amendment may lead to inconsistency with the Legal Profession Uniform Law and any amendments made to section 174(2) of the Legal Profession Uniform Law, and the uncertainty that accompanies such inconsistencies.

An additional issue that arose was whether there is a possibility of the acceptance of direct briefs by barristers in Victoria and New South Wales. Accepting direct briefs is allowed under the Legal Profession Uniform Law, but the work a barrister can do on direct brief is more limited than is allowed currently in Western Australia. Under both the Western Australian Bar Association rules and the Legal Profession Uniform Conduct (Barrister) Rules, barristers may take direct briefs. I refer members to rules 24A and 24B of the WA Bar Association rules, and rules 21 and 22 of the Legal Profession Uniform Conduct (Barrister) Rules 2015. However, when accepting such briefs, barristers are still prohibited from conducting correspondence in the barrister's name on behalf of any person otherwise than with the opponent; acting as a person's representative in dealings with any court otherwise than when actually appearing as an advocate; being the address for service of any document or accepting service of any document; and, finally, commencing proceedings for file, other than file in court, or serving any process of any court. I refer members to rule 17 of the WA Bar Association rules, and rule 13 of the Legal Profession Uniform Conduct (Barrister) Rules 2015. Rule 18A of the WA Bar Association rules creates an exception to those prohibitions by allowing barristers to perform those basic solicitoral tasks when they are instructed directly by a person who is not a solicitor to act, firstly, pro bono; secondly, pursuant to a direct grant of legal aid in a criminal or quasi-criminal matter; thirdly, pursuant to a direct grant of legal aid to act for children when appointed in the Family Court of Western Australia as the independent children's lawyer, or in the Children's Court as the child representative; or, finally, pursuant to a direct grant of legal aid when acting for a parent or person in loco parentis in protection and care applications made by the department for child protection and family support and provided the matter in relation to which the barrister is acting does not reasonably require the services of an instructing solicitor. No such exemption exists under the Legal Profession Uniform Conduct (Barrister) Rules 2015 that would enable a barrister to perform such solicitoral tasks.

The final point of homework—if I can use that term—was an issue about whether someone who wanted to search for their own credentials or those of someone else would need to go to either the New South Wales or Victorian search engine because the Western Australian Legal Practice Board website will continue to deal with Western Australian admissions. I am not sure that is quite clear, but Hon Nick Goiran essentially asked about the current arrangement whereby a member of the public or anybody can go to the Legal Practice Board's website and search whether a person is on the role of practitioners and has a current practising certificate, and whether persons from New South Wales and Victoria would appear in that search. If a person wants to search for an individual's credentials, they can search the Legal Practice Board website, which will include information on individuals admitted in Victoria and New South Wales but to whom the Legal Practice Board of Western Australia has issued a practising certificate. If the person is a practitioner from New South Wales or Victoria, the Legal Services Council maintains an Australian legal profession register on its website, which contains a searchable list of Australian legal practitioners—that is, those with Australian practising certificates, the type of practising certificate issued, and the state or territory of issue. It is anticipated that the Legal Services Council will also include such information on Australian legal practitioners who are issued a practising certificate in Western Australia by the Legal Practice Board. This register is in addition to the register currently maintained by the Legal Practice Board. The website also refers the public to the relevant local regulatory authority for solicitors and barristers in New South Wales and Victoria.

Hon NICK GOIRAN: Thank you, parliamentary secretary, for a most comprehensive response to the four matters that were left outstanding when we last considered the package of bills before us. Can I deal firstly with a preliminary question that arises on the double jeopardy issue. I will take it up further when we get to clause 219, but I will ask while it is fresh in the parliamentary secretary's mind. I thank the parliamentary secretary for tabling the statutory review on the final report during formal business, which I note is dated October 2021. It was a review into the so-called double jeopardy provisions in the Criminal Appeals Act. It commenced some three and a half years prior—we are just one month shy of it being four years since the statutory review was conducted, but it is good to see that, nearly four years later, the document has arrived in Parliament.

Quite understandably, the parliamentary secretary indicated that the statutory review had already been completed, as I said, in October 2021, and therefore it was not possible for that review to consider the issue that arose from clause 12. In any event, as the parliamentary secretary pointed out, the terms of reference, which are constrained by the Criminal Appeals Act 2004, would not have permitted it to be expressly considered. Nevertheless, the parliamentary secretary indicated that the government has some sympathy for the concerns about the costs disclosure

issue that has been raised. Has the government had any further discussion on the concerns raised on clause 12, which is described as double jeopardy but which appears to be more of a no-double-punishment provision? Is there sympathy for those concerns and is it something that the government intends to take up? Given that there is no amendment on the supplementary notice paper about this issue, I assume that the government has no intention of moving any amendments to address those concerns. However, does the government have any concerns about that; and, if so, what does the government intend to do about it?

Hon MATTHEW SWINBOURN: I do not think the government shares the member's level of concern regarding that. There are no moves to make any changes and, as the member noted, there is nothing on the supplementary notice paper. It is probably cold comfort, but the bill has a five-year review clause, so if issues with that provision become evident, it can obviously be subject to review. Also, if there are broader issues with the uniform law and with the practices that are occurring across Western Australia, Victoria and New South Wales, they could be raised with the Legal Services Council and the standing committee, but we will retain the right to make amendments to our own application bill. They are more general comments, but we do not share the same level of disquiet as the member about the double jeopardy clause. I do not want to misrepresent that for the sake of making progress. It will obviously be looked at in the course of looking at the bill overall.

Hon NICK GOIRAN: I thank the parliamentary secretary. I will take up that issue when we get to clause 219 to perhaps demonstrate the point and the reason that the concern still remains.

I thank the parliamentary secretary for indicating that the government has some sympathy for the concerns raised about weakening the law for cost disclosures. At the moment, legal practitioners in Western Australia are required to provide a specific type of disclosure to clients. That will not be the case once the uniform law passes, albeit that the Legal Services Council identified that this is an issue that led it to make a recommendation to amend the bill. The parliamentary secretary will appreciate the problem, which is that although the government expresses sympathy, at the same time, it is unwilling, or perhaps it might argue that it is unable, to disclose whether it intends to support the Legal Services Council's amendment, which is recommendation 17. That recommendation deals with the need to expand the disclosure obligations. The expansion that the Legal Services Council recommends would simply bring the uniform law in the other jurisdictions up to the standard Western Australia already has but is now temporarily abandoning. It is difficult to be sufficiently comforted by the government's response given that the government cannot disclose whether it supports recommendation 17 or whether the Attorney General intends to take it up with his colleagues who sit around the table of what I think has been described as the "standing committee". In response this afternoon, it has been said that the concern about the weakening of the Western Australian law, which will have an impact on clients, is partly offset by law practices having to disclose the existence of the Legal Practice Board as a place where clients can go to have their dispute considered or to contact the Legal Practice Board for assistance about a dispute. The parliamentary secretary indicated that that would be the case when entering into a cost agreement, but what will happen when no cost agreement is entered into and legal services are provided to the client?

Hon MATTHEW SWINBOURN: I am advised that the same disclosure obligation applies as if a cost agreement had been entered into.

Hon NICK GOIRAN: Further to that, the parliamentary secretary indicated that under the uniform law, there will be a requirement for a practitioner to disclose to the client the client's right to seek a cost assessment when a bill is issued. In response, the parliamentary secretary referred to a section of the uniform law. I think it might have been section 190, or something to that effect. Perhaps in due course the parliamentary secretary could clarify the provision. In any event, the substantive question is: how will that intersect with the Legal Services Council's concern that led to recommendation 17? If, under the uniform law, a practitioner will have to advise their client that the client has a right to a cost assessment, why is recommendation 17 even needed?

Hon MATTHEW SWINBOURN: Just to confirm, it was section 192 of the Legal Profession Uniform Law. I understand the point the member was trying to make—that if the agreement is already there when the practice issues its bill, why would it need to do it at the beginning when entering into the costs agreement? Essentially—it is not the word of the advisers; it is probably my word—it is a bit of boilerplate or doubling up of that requirement. If we think about it in terms of time, it is important at the time someone is entering into a costs agreement that they understand their rights. There can be some time between entering into that agreement, receiving the first bill and having that reinforced once they have received their bill, particularly if they are working with a firm that has a no-win, no-fee arrangement as well. That can be one of those more obvious ones. When a firm is dealing with sophisticated clients, it probably issues a bill every month, but if they are a small litigant—if I can use that term on that no-win, no-fee basis—chances are that most of their legal bill will not be incurred until they have been successful, which could be some years after they first commence. It is really about making sure that a consumer of legal services is aware of their rights up-front, that it is in their cost disclosure document, and then, if it comes to that point some time later, when the dispute is likely to arise at the issuing of the bill, that it is also reinforced at that particular point in time.

Hon NICK GOIRAN: With regard to the third matter arising, dealing with the taking on of direct briefs, I have no further questions following on from that. I thank the parliamentary secretary for confirming the distinction between

the jurisdictions for barristers. But the fourth and final matter arising deals with the register. That, of course, is where we are up to in the bill. We are at clause 216, which is the commencement of part 10 and the provisions dealing with registers in general. The concern that I raised on Thursday last week was a scenario in which practitioners from New South Wales and Victoria would be able to practise in our state, notwithstanding that they have not been admitted in our state and, therefore, might not have a practising certificate issued to them by the Legal Practice Board of Western Australia. In the absence of one comprehensive register, it would then be difficult, or perhaps cumbersome or inefficient, for any person in Western Australia to satisfy themselves about whether this person who is purportedly in a position to give legal advice is authorised by law to do so.

It has been helpful for the parliamentary secretary this afternoon to indicate, as I understand it, that there is no intention, at least by the Legal Practice Board of Western Australia, to maintain such a comprehensive database. It will continue to maintain, if you like, its Western Australian database, but the responsibility for maintaining the comprehensive database will rest with the Legal Services Council. Can the parliamentary secretary confirm then, to tie up this loose end, that at the moment a register already exists; it is maintained by the Legal Services Council; the Legal Services Council register lists all those practitioners who are able at the moment to practise under the uniform law, that being all the New South Wales and Victorian practitioners; the register at the moment does not include Western Australian practitioners, unless they so happen to also have been admitted in New South Wales and Victoria; and it is the intention, as the parliamentary secretary and the government understands it, that the Legal Services Council will update its database, its register, to include all the names of the practitioners who are currently registered with the Legal Practice Board of Western Australia? If the parliamentary secretary can clarify that that is the case, will what would then be, if you like, the updated Legal Services Council database include only Western Australian practitioners who have a practising certificate, or will it include all the practitioners on the roll of practitioners?

Hon MATTHEW SWINBOURN: The member had a lot in his question; I will hopefully be able to cover off all that. The register exists and it is maintained by the Legal Services Council. It lists all New South Wales and Victorian practitioners who hold practising certificates. It does not yet include any of our practitioners who have not registered as practitioners in those other jurisdictions. Our understanding is that it will be updated to include all Western Australian legal practitioners who hold practising certificates, but it will not include people on the roll who do not have a practising certificate. Our register in Western Australia will continue to have that information. If someone is on the roll of practitioners with the Supreme Court of Western Australia but they do not have a practising certificate, they will continue to be in our publicly available searchable information, but they will not be on that main Legal Services Council database. I hope that covers everything.

Hon NICK GOIRAN: Will that updating of the Legal Services Council register occur on or before the proposed commencement date that we know will not be any sooner than 1 July this year?

Hon MATTHEW SWINBOURN: We are not able to confirm as an absolute that that will be the case, because that is an administrative process that will occur between the Legal Practice Board and the Legal Services Council. They can start doing the work before the commencement of the regime. That is a matter that they will work out before then. That is an important element, and we can reasonably expect that they will start doing that work with a view to making sure that that happens, but it is not an absolute requirement that it happens before the commencement of the uniform law provisions.

Clause put and passed.

Clause 217 put and passed.

Clause 218: Terms used —

Hon NICK GOIRAN: We move now to division 2. Division 1 deals with the register or certificates—that is, who are the people who are admitted as practitioners and who are allowed to practise as practitioners under the uniform law? Division 2 deals with a different subcategory of individuals—that is, those who have been the subject of disciplinary action. It is intended that there be a register of disciplinary action. Does such a disciplinary action register currently exist in Western Australia?

Hon MATTHEW SWINBOURN: Yes, such a thing does exist, and it is available on the Legal Practice Board's website.

Hon NICK GOIRAN: Will it continue to exist once this bill passes and the operative provisions are commenced?

Hon MATTHEW SWINBOURN: Yes, that is provided for under clause 324 and the transitional provisions.

Clause put and passed.

Clause 219: Register of disciplinary action —

Hon NICK GOIRAN: We are dealing here with the register of disciplinary action. The parliamentary secretary indicated in the preceding clause that such a register exists and that it will continue to exist, in part because of the transitional provision—I think clause 324 was quoted. I turn specifically to clause 219. What particulars are intended to be prescribed under clause 219(4)(e)?

Hon MATTHEW SWINBOURN: For the purposes of clause 219(4)(e), the following particulars must be included in the register of disciplinary action: the date and jurisdiction of the disciplined person's first admission to the Australian legal profession, each subsequent admission of the disciplined person to the Australian legal profession, and the disciplined person's date of birth.

Hon NICK GOIRAN: Is the parliamentary secretary saying that the three things he just recited are the particulars that will be prescribed by the local regulations under clause 219(4)(e)?

Hon Matthew Swinbourn: By way of interjection, yes, that's what's currently intended.

Hon NICK GOIRAN: So why does it not say that here? Paragraph (e) just refers to "other particulars prescribed by the local regulations", but it seems that the government is very clear on what particulars it intends to prescribe. Clause 219(4) lists four other things that the register must include. If I add them to the three that the parliamentary secretary has already mentioned, it is a list of seven. It is not clear why they are not included at this time. Is there some explanation as to why it is necessary to leave that to regulation rather than simply making it an amendment at clause 219(4)(e)?

Hon MATTHEW SWINBOURN: It is essentially for flexibility reasons if something else arises. What I read out earlier to the member is reflected in regulation 111 of the Legal Profession Regulations 2009. The same information is set out there. We do not currently intend to add anything, but there could be within the realm of possibility circumstances in which a further matter might be prescribed, so that is the rationale for why it is the way it currently is. I suppose another point could be that those things I mentioned are sufficiently certain that they could be included in the legislation, and it probably was open to us to do it that way, but I cannot take my answer any further as to why it was not included in the legislation. I will just appeal to the "PCO defence", if I can call it that, and say that that is probably why it has been done that way. There is no great mystery here.

Hon NICK GOIRAN: Amongst the information that must be included according to clause 219(4) is the full name of the person against whom the disciplinary action or previous disciplinary action was taken. It is my understanding that the parliamentary secretary is indicating that that is the case at the moment and that it is still the law in Western Australia that the full name of the person must be included in the disciplinary register, and that that will continue by virtue of clause 219(4)(a). Paragraph (b) then refers to "the disciplined person's business address or former business address". Again, I understand from the parliamentary secretary that that is just a continuation of the existing law in Western Australia and that if a legal practitioner has been disciplined, not only is their full name on the register, but also either their business address or former business address. Further, there is a provision that the disciplined person's home jurisdiction or most recent home jurisdiction will be included. I take it that that is a new provision. The register currently deals only with Western Australian practitioners, so it would not be necessary to list a person's home jurisdiction or most recent home jurisdiction.

Hon MATTHEW SWINBOURN: I think the member is making a broader point here, but on a point of clarification, I spoke about regulation 111 of the current Legal Profession Regulations, but the main operative part in the Legal Profession Act is section 252(2). That provides that the register is to include the full name of the person against whom the disciplinary action was taken, the person's business address or former business address, and the person's home jurisdiction or most recent home jurisdiction. That is not a new addition. Paragraph (d) refers to particulars of the disciplinary action taken and paragraph (e) refers to other particulars prescribed by the local regulations, which is what I just spoke about and will be reflected in the new local regulations. I think there are some additional words in here, but I do not think there is anything substantive. It is just form over substance in terms of any different wording. For example, proposed section 219(4)(a) refers to the full name of the person and then, in brackets, it has "the disciplined person". That is not in the current legislation, but it has no real carriage in that matter.

Hon NICK GOIRAN: That is very helpful, parliamentary secretary, and it takes me to the fourth of the five criteria that are currently in the Western Australian law and will continue by virtue of clause 219(4). The fourth paragraph refers to "particulars of the disciplinary action, or previous disciplinary action, taken". Does this phrase "particulars of the disciplinary action" include the sanction or the punishment?

Hon MATTHEW SWINBOURN: We are looking at the register now to give the member an answer. Without reviewing every single entry in the register, it appears that the particulars of the disciplinary action are included as an item, although because the register obviously covers a long period, some records do not include the particulars of the disciplinary action. I am not sure why that is the case. It may have something to do with when the action was taken and whether it was required, but I am just speculating and it is probably not worthwhile relying on that as the official answer. As I look at the current register, it includes particulars of the disciplinary action. The ones that I am looking at refer to "professional misconduct and reprimand", "unsatisfactory professional conduct" and things of that nature. It would obviously be our expectation that any future and ongoing register would include those particulars, because I think that is important for any consumer who is looking at the register and wishes to engage a legal practitioner to understand whether they have a history of discipline and the nature of that discipline in deciding whether they want to continue to engage that practitioner based on their history.

Hon NICK GOIRAN: However, parliamentary secretary, the question was about the particulars of the punishment or the sanction. Clause 219(4)(d) says that the register must include particulars of the disciplinary action, but it is

not clear whether the particulars of the disciplinary action are intended to be broad enough to capture the sanction or the punishment. One could argue that the particulars of the disciplinary action might include the punishment or sanction, but it does not appear that that is currently captured. I wonder whether that is something that the government intends to have prescribed under clause 219(4)(e).

I will give the parliamentary secretary a practical example. At the moment on the register of disciplinary action, one of the entries has the full name of the practitioner as John Robert Quigley. It lists his date of birth as 1 December 1948. The business address is said to be level 7, International House, 26 St Georges Terrace, Perth, WA, 6000. The jurisdiction and date of admission are listed as Western Australia and 23 December 1975. The home jurisdiction is Western Australia, which is no surprise. The decision-maker is the State Administrative Tribunal.

It then has the particulars of the disciplinary action, which I will come back to in a moment. It says that the date of the disciplinary action decision was 13, 14 and 16 June 2005, which is interesting in and of itself as there are three dates for the disciplinary action decision. It then has the reference, which is Legal Practitioners Complaints Committee v Quigley [2005] WASAT 215. The register lists the particulars of the disciplinary action as unprofessional conduct. If a Western Australian goes to the disciplinary register, they will note that this practitioner by the name of John Robert Quigley has been found guilty of unprofessional conduct, but the sanction or penalty for this individual is not clear.

This goes to my earlier concern that the parliamentary secretary kindly took up while we were in recess over the last few days about the double jeopardy clause. He will recall that under the provisions that we are passing, a person is not liable to be punished for an offence against the Legal Profession Uniform Law (WA) if the act or omission that constitutes the offence also constitutes an offence against a law of another participating jurisdiction and the person has been punished for the offence under the law of the other jurisdiction. If we take this practitioner John Robert Quigley as a practical example, because the particulars of the disciplinary action on the register do not tell us at the moment what the sanction or penalty was—as the parliamentary secretary indicated when we were discussing clause 12, clause 12 seems to be more of a no double punishment than a no double jeopardy provision—it is not clear whether this John Robert Quigley practitioner may or may not be subject to further punishment by one of the other jurisdictions if it is considered that the act or omission that he is said to have committed in accordance with this decision on 13, 14 and 16 June 2005 might also be some kind of offence under that jurisdiction.

I wonder whether this might be cause for the government to consider either providing some definition of "particulars of the disciplinary action", as is the phrase at line 19 on page 117 of the bill, or prescribing in the local regulations some other particulars. The parliamentary secretary listed earlier in response to this line of questioning three matters that the government intends to include. Might it be worthwhile for the government to also include the punishment or sanction that is applied to the practitioner if for no other reason than to ameliorate the concern I raised earlier about the no double jeopardy provision?

Hon MATTHEW SWINBOURN: Obviously, the member gave a very interesting example to highlight the point that he is trying to make, and he will appreciate that I will not provide any particular commentary about those circumstances. I think the member's final question is the pertinent one: might it be worthwhile for the government to give consideration to including that information in the regulations? The two people sitting with me at the table are involved in the regulation drafting process, so I can confirm that we will give consideration to whether it is appropriate to include the matters that the member has identified as additional matters to be included on the register.

Hon NICK GOIRAN: I thank the parliamentary secretary for taking that on. I think that is important.

The government has expressed some intention to proceed down that path and, moving forward, the register might be slightly more enhanced. That is not intended to be a criticism of the existing register; it is just that the scrutiny of this bill has identified a way in which the register could be enhanced. I gave to the parliamentary secretary that practical example of that practitioner. Is the intention that all the elements of the current register of disciplinary action will continue to be maintained once this bill passes? I appreciate that the parliamentary secretary has indicated that the government is considering or will consider as it drafts the regulations the inclusion of an extra category that I would describe as an enhancement to the existing register. I want to make sure that we do not enhance with one hand and dilute with the other. That example I gave earlier consists of nine categories. Will those nine categories be maintained moving forward?

Hon MATTHEW SWINBOURN: Our understanding is that that is the intention, but I think for completeness of the answer, it is within the realm of the board's power to add more or have fewer, so long as they meet the statutory and regulatory requirements that are dictated. I will not say that the position is locked in concrete forever and a day, because I think that goes against what the act requires and permits. I think the member is trying to confirm the intention, and the government's intention is for that information to continue to be available. One of the policy considerations for the uniform law is empowering consumers of legal services to have a better understanding about who they are engaging, the terms in which they are engaging them and having consistency across Australia in that regard. Anything that steps away from that policy consideration is not consistent with our intention here, which is to make sure that consumers, particularly of legal services, understand who represents them and the terms and conditions under which they are represented so that they can make an informed decision about that person.

Hon NICK GOIRAN: The parliamentary secretary makes a good point. I appreciate that some of the information might be considered to be ancillary to all these things. I think that the parliamentary secretary picked it up in his very quick review at the table of the register; I note that the register is not, shall I say, consistent. Different provisions or elements have been put in, and I am just trying to get a grip on exactly what will be maintained, no matter what, moving forward. The parliamentary secretary has indicated that it will be simply whatever is in effect in the legislation, which means we can be certain that under clause 219(4) the disciplinary register will continue to have —

(a) the full name of the person …

(b) the disciplined person's business address or former business address; and

(c) the disciplined person's home jurisdiction …

(d) particulars of the disciplinary action …

(e) other particulars prescribed by the local regulations.

In theory, particulars prescribed by the local regulations could be nil, albeit the government has indicated it intends to include three things. A future regulation could be moved and amended that would remove those provisions. The only thing the chamber can be certain of when we pass clause 219 is that those four elements will be included: the full name, the business address, the home jurisdiction and the particulars of the disciplinary action.

When I look at, say, for example, the matter that I referred to earlier, nine elements are included here. Sure, it has the full name of the person. One of the things that is included at the moment is the date of birth of the person. It looks like it will not be a mandatory inclusion in the register. Does much turn on that? I do not know that too much turns on that, but I would like to think that to the extent that anything turns on it, maybe it is important to have the date of birth in conjunction with the date of the disciplinary action decision. That is what is included at the moment. As I said earlier, a practitioner had a date of disciplinary action decision as 13, 14 and 16 June 2005. Why that might be important is that, as the parliamentary secretary says, a consumer might go to the register and find out that somebody has had some disciplinary action very early in their legal career, maybe in the earliest of days, and many years have since passed and perhaps they can then satisfy themselves that it has been a long time since any indiscretions have occurred. The parliamentary secretary will see that the issue I have here is that neither the date of birth nor the date of the disciplinary action decision will be a mandated requirement under clause 219(4). Perhaps even by way of interjection, the parliamentary secretary might be able to confirm the three categories that the government intends to include in the regulations. Are any of them the date of the birth of the practitioner or the date of the disciplinary action decision?

Hon MATTHEW SWINBOURN: Yes. The disciplined person's date of birth is one of those issues. It is the date and jurisdiction of the additional person's first admission to the Australian legal profession and each additional admission to the legal profession. Obviously, some people come back into the profession. It would be a rare occurrence, but I suppose that can happen. The second one of those, the standalone one, is the disciplined person's date of birth. I think the member speculated about why that could be included. I suppose one of the other reasons to have included the date of birth may be that people have identical names and it might separate them. Obviously, the member and I will probably never face that possibility, but if someone's name is Jane Smith, they might come across that or something like that. But our plan is to prescribe that.

Hon NICK GOIRAN: That is a fair point in regard to identity because sometimes there will be one or more people or practitioners with the same name. Indeed, at the moment in the register of disciplinary action, there is another entry here also by the full name of practitioner John Robert Quigley. The birth date of 1 December 1948 is the same in that second entry, so I think that it is helpful to have the date of birth in there because if there were more than one John Robert Quigley who is a legal practitioner in Western Australia and who has been subject to disciplinary action, you would like to think that it is unlikely that it is a person who happened to also be born on the same day.

Looking at this, including the business address and, importantly, the date and jurisdiction of the admission, which is 23 December 1975, I would think that it is one and the same person who appears on the register. It just appears that this person has been the subject of two disciplinary matters and the only difference, it would appear, according to this register, is the date of the disciplinary action. The decision—the first one—was on 13, 14 and 16 June 2005 and then some six years later on 17 October 2011 this practitioner had a second disciplinary action decision go against them. This register tells us that, unlike the first one, which was for unprofessional conduct, this one was for unsatisfactory professional conduct. Therefore, the register seems to serve a purpose as it is at the moment. The only thing that seems to be missing is the sanction and punishments, and I am comforted by the parliamentary secretary's indication that the sanction or punishment will be things that the government will take on board as it drafts the local regulations.

Clause put and passed.

Clauses 220 to 223 put and passed.

Clause 224: Effect of secrecy provisions and non-disclosure orders —

Hon NICK GOIRAN: Clause 224 is the clause before us and here we are dealing with the effect of secrecy provisions and non-disclosure orders. As I understand it, this clause was amended by the other place; the parliamentary secretary might have indicated that during our consideration of clause 1. Who identified the need to amend clause 224? What brought this about?

Hon MATTHEW SWINBOURN: The member is correct. This is a matter that he raised at clause 1 and I confirmed that this clause was amended in the Legislative Assembly. I can confirm that the issue that led to the amendment was identified to the Attorney General by a senior counsel, but I cannot take the member any further than that in terms of who that person was and the circumstances in which it was identified. There was reference to it, I think, in the Attorney General's second reading speech, which is essentially that as a result of representations received by the government and, once again, conferring advice from the Solicitor-General, it was decided that the tribunal or court can keep a disciplinary finding a secret in only exceptional circumstances. Therefore, the process was that a senior counsel brought it to the attention of the Attorney General, the Attorney General then, obviously, considered it in conjunction with the Solicitor-General and a decision was made to amend the act to allow for this limited secrecy provision.

Hon NICK GOIRAN: Is the secrecy provision consistent with the existing law in our state?

Hon MATTHEW SWINBOURN: No. I am advised that this is a departure from the existing law.

Hon NICK GOIRAN: Is it consistent with the existing law in New South Wales and Victoria, which have the uniform law?

Hon MATTHEW SWINBOURN: It does not arise under the legal profession uniform law itself; there is not a provision that relates to this. But whether New South Wales or Victoria have provisions in their application acts, we at the table do not know the answer to that question because that would require us going over those acts. It would be fair to say that this issue arose as a local issue rather than as a uniform issue, and it clearly falls within one of those exceptions in which a local jurisdiction can depart from any uniformity on this particular point. We could get an answer for the member on what is in the Victorian and New South Wales acts. We probably have people listening to the broadcast who can confirm that. But, as I say, the people at the table obviously would have to trawl through those rather copious acts. However, as one comes through, I am happy to give it to the member at a later stage.

Hon NICK GOIRAN: This sounds like it is all new. The parliamentary secretary has indicated that it is not consistent with the existing law of Western Australia—that is, that there are no secrecy provisions—keeping in mind that we are talking about the disciplinary register. We have just had an extensive discussion around the existing disciplinary register. It is the intention for that to continue into the future under this uniform law. There are some encouraging signs that the disciplinary register might even be enhanced moving forward due to the work that will be undertaken with the regulations. But now at the eleventh hour we see this secrecy provision included at clause 224, which is not in place at the moment in Western Australia. It is not clear. It is certainly not part of the uniform law. We do not have any information at the table at the moment about whether it is part of the New South Wales or Victorian application laws, and there is an indication that maybe the government might not be able to help us understand what gave rise to this other than some general advocacy that was then considered by the Solicitor-General.

What are the circumstances that the government is intending to capture here? In what circumstances are we saying that it is important that these secrecy provisions be invoked? I see here that it appears that it will be subject to any order from the court or tribunal. I take the parliamentary secretary to clause 224(3), which states —

> A court or tribunal that makes an order or finding that constitutes, or results or may result in, disciplinary action against a person may make an order prohibiting the disciplinary action from being publicised.

I take it then, parliamentary secretary, that that will constrain this power. In other words, in the absence of a court or tribunal ordering that the information not be publicised, it will be on the register.

Hon MATTHEW SWINBOURN: The member is correct; it is the court or tribunal. Perhaps if I can just give the member some additional information about what circumstances we are contemplating that this might apply to. The clause was amended after it became apparent that a practitioner's name and the disciplinary action would need to be published in the register even if such publication posed a threat to the life and safety of the practitioner or practitioners associated with the practitioner, the subject of disciplinary action. It is anticipated that this power will be exercised rarely. Overwhelmingly, it is in the public interest for these matters to be published. We are not about protecting practitioners. The member has mentioned on a number of occasions the disciplinary action against the Attorney General in previous years. It is in the public interest that that information remains on the public record in those circumstances. However, there would be rare circumstances in which publishing the kind of information that is prescribed and statutorily required could place the life of the practitioner or their associates at risk, and we want to avoid those circumstances. So the balance tips in favour of secrecy, which, as I have said, should be a rare and exceptional circumstance.

Hon NICK GOIRAN: I agree with the parliamentary secretary that the circumstances in which clause 224 would be invoked should be rare and exceptional. I am intrigued by it, because the parliamentary secretary has indicated that there is no such provision in the existing law in Western Australia, and yet there has been some advocacy by some mysterious person to the government that this is an important provision to include. Even though there is no secrecy provision at the moment, somebody has said to the government that this really needs to be included, and the government has gone to the Solicitor-General, who has agreed that it is an important provision. Has a court or tribunal in Western Australia previously made an order prohibiting a disciplinary action being publicised?

Hon MATTHEW SWINBOURN: We are not aware of any such orders having been made. I refer the member to section 457 of the Legal Profession Act 2008, "Effect of secrecy provisions and non-disclosure orders". These are the same provisions as are set out in clauses 224(1) and (2), to some degree. Section 457(1) of the Legal Profession Act 2008 states —

> The provisions of this Division are subject to any order made by —
>
> (a) the State Administrative Tribunal in relation to disciplinary action taken under this Part; or
>
> (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this Part; or
>
> (c) a court or tribunal of this or another jurisdiction,
>
> so far as the order prohibits or restricts the disclosure of information.

I am not sure whether that made any sense, but it states that provisions of this division are subject to any order, and the division we are referring to is division 13 of the Legal Profession Act, which deals with the current register. A court or a tribunal could make an order that stopped the publishing of a disciplinary action in *The West Australian* or publication of that kind. Section 457(2) of the Legal Profession Act states —

> Despite subsection (1), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register …

Notwithstanding that a court or tribunal could have made an order that stopped the publication of the action, this does not stop the entry of the information into the register. Essentially, the mischief that this provision deals with are circumstances whereby the court or tribunal has exercised its discretion to prevent publication through a newspaper or any other means not being undermined by consequently having that information recorded on the disciplinary register itself, which is a public document, to which anyone would have access or reference.

Hon NICK GOIRAN: I appreciate that the parliamentary secretary and his advisers are not aware of any such order having been made under section 457 of the Legal Profession Act. However, at the moment in Western Australia, if an order has been made by a court or tribunal prohibiting publication of the disciplinary action, some general information about that matter is included in the register but not in the public register. In other words, it could be said that there are two registers: the complete register that is presumably held and maintained by the Legal Practice Board of Western Australia, and effectively a redacted form made available via the website.

I do not know whether the parliamentary secretary has information at his disposal on whether that is the case at the moment in Western Australia, but regardless of that, will clause 224 allow that to happen in the future; that is, might a practitioner's disciplinary actions not be able to be published because of an order of a court or a tribunal, but there will still be a record of it? I put it to the parliamentary secretary that even though, as he indicated, there might be a situation in which there are risks to the life of the practitioner or one of their associates, and so forth, and so it might not be appropriate for the information to be publicised—he said that provision would be rarely used—surely the disciplinary body or the regulator would still need to know that person X had committed offence Y and had been punished in accordance with Z, despite the fact that it had not been published to the public. The regulator certainly needs to know. Otherwise, a "rogue" legal practitioner could continue to go about their business under the protection of this non-publication order and not even the regulator—if you like, the governors of the whole scheme—would be aware of it. That would be a perverse outcome. I want to be satisfied at this point that if we pass clause 224, just because the public might not be aware of an exceptional circumstance, somebody responsible for regulation of the scheme will be aware of the outcome, particularly in view of the succession of people such as the chair of the Legal Practice Board or the complaints committee officer. These are positions that shift from time to time between different individuals.

Hon MATTHEW SWINBOURN: As far as we are aware, there is only one current register; there is no such redacted register. I take the member to clause 224(5), which states —

> If an order has been made under subsection (3) —
>
> (a) the name and other identifying particulars of the person against whom disciplinary action is taken, and the kind of disciplinary action taken, must be recorded in the register of disciplinary action in accordance with the requirements of this Division …

It must be recorded in the division. It then has the following qualification —

> (b) that information must not be —
>
> (i) made available for public inspection on the register or provided to members of the public under section 220; or
>
> (ii) otherwise publicised under this Division; or
>
> (iii) given to a corresponding authority unless the authority gives an undertaking to the Board that the information will remain confidential and will not be made available for public inspection or otherwise publicised.

The member has concerns about corporate knowledge and making sure that those who are responsible understand which legal practitioners have been subject to disciplinary action. It is relevant if a practitioner is subject to further disciplinary action in terms of any corresponding punishment that might be issued against them, in that the escalation of behaviours can be looked at. It is simply that it is not published in that way. If we provide that information to the other jurisdictions—New South Wales and Victoria—they will also be subject to those confidentiality requirements, but their internal bodies will be aware of the disciplinary actions and all those other material elements that must be recorded. I hope that addresses the member's concern. In effect, a redacted version of the register will be made publicly available. We have both been on committees when similar things have happened for very good reason. However, an actual register will contain all the information, including of those who are protected in only exceptional and, hopefully, rare circumstances.

Hon NICK GOIRAN: To conclude consideration of this point, the parliamentary secretary indicated that there was some advocacy to government. The government took that on board, having consulted with the Solicitor-General. Was the Legal Practice Board consulted on clause 224? If so, what was the nature of its feedback? If the parliamentary secretary is not in a position to indicate what its feedback was, is he at least able to indicate whether it raised any concerns about clause 224?

Hon MATTHEW SWINBOURN: I am advised that consultation did occur with the Legal Practice Board on clause 224 and the amendment that was passed in the other place, which is now reflected in the bill. I am told that no concerns were raised with the substance of what we are trying to achieve—the policy of it. Its concerns were only of a practical nature about how to have the two registers. That is a matter that the board will have to deal with ultimately because it will have to deal with all the practicalities of this bill, and we are confident it will have the capacity to deal with this. As I said, it supported the policy of what we are trying to achieve here.

Clause put and passed.

Clauses 225 and 226 put and passed.

Clause 227: Application for search warrants under Uniform Law s. 377 —

Hon NICK GOIRAN: To assist with the passage of the bill, I indicate that following this clause, my next clauses for consideration, subject to the views of any other members, are 238, 243 and 245.

Clause 227 comes under part 11, the enforcement provisions, which covers some 11 clauses. Will any provision in part 11 either enhance or dilute the existing enforcement powers held by the Legal Practice Board of Western Australia?

Hon MATTHEW SWINBOURN: The member's question was essentially about the enhancement and dilution of the Legal Practice Board's powers. I can confirm that we do not think there will be any dilution of its powers as such. We think there has been some clarification around its powers with the use of force. I have some information that I hope will cover any additional follow-up questions. The pertinent clause is clause 229, which states —

> An investigator executing a search warrant issued under the *Legal Profession Uniform Law (WA)* section 377 may, in addition to the powers that may be exercised under section 375 of the Law, use force under the *Criminal Investigation Act 2006* section 16 as if the powers exercised under section 375 of the Law were a power exercised under that Act.

Section 16(1) of the Criminal Investigation Act contemplates that when exercising a power under that act, a person may use any force against any person or thing that is reasonably necessary to use in the circumstances to exercise a power and overcome any resistance to exercising the power that is offered or that the person exercising the power reasonably suspects will be offered by any person. There is no equivalent provision in the current Legal Profession Act. This force is able to be used in the conduct of a search warrant, even if it will cause property damage. For example, force may be used to open locked cupboards or other storage areas to access documents the subject of the warrant. That is really just contemplating the most obvious circumstances in which we think that force would be necessary.

My advice is that it was unclear whether that was a power that somebody exercising a warrant had under the Legal Profession Act; it was not certain. We have tried to make clear that that is a power that somebody will have when exercising a search warrant. We are not talking about bikies here. We talking about lawyers, although some

of them are a bit dodgy, I suppose, at times. It is more likely to be about matters that are contained within a locked filing cabinet and a warrant is issued to open or jemmy open a filing cabinet by way of force. We want to make it clear that that is an appropriate use of that power.

Clause 230 provides that an investigator executing a search warrant issued under section 377 of the legal profession uniform law must endorse the warrant or a copy or form of the warrant referred to in the Criminal Investigation Act. We have been very specific about who will have those particular powers. Let me cover this fully so it does not get confused. Clause 230 provides —

> An investigator executing a search warrant issued under the *Legal Profession Uniform Law (WA)* section 377 must endorse the warrant, or a copy or form of the warrant referred to in the *Criminal Investigation Act 2006* section 13(8), with the time and day when the warrant was executed.

There was no equivalent provision in the current Legal Profession Act; that is the point I am getting at here. However, clause 230 is consistent with section 45(3) of the Criminal Investigation Act, which provides that, on completing execution of a search warrant, the officer in charge of executing it must record certain matters on it. It provides what those matters are, including the date and time when the warrant was executed.

Under clause 232, if the Legal Practice Board suspects, on reasonable grounds, that a person has —

> (a) committed an offence under this Act; or
>
> (b) committed an offence against the *Legal Profession Uniform Law (WA)* or contravened a civil penalty provision, other than an offence or civil penalty provision in Part 4.2 of the Law.
>
> (2) The Board may appoint a person to investigate the suspected commission of the offence or contravention of the penalty provision.

This is for the sake of clarity because there is no equivalent provision to this one in the current Legal Profession Act.

Clause 234 provides that a prosecution for an offence against section 10 or 11 of the legal profession uniform law may be commenced within 24 months after the day on which the alleged offence was committed or, in certain circumstances, within 24 months after the day on which the evidence first came to the attention of the board. I think there is a key distinction there between the time since the offence was committed—24 months—and when the board became aware of it, because obviously, the board will not be aware of offending behaviour for some time after the behaviour has occurred so it cannot reasonably be expected to have commenced proceedings. The limitation period for prosecuting offences under sections 10 and 11 of the uniform law, which relate to engaging in legal practice when not qualified or representing an entitlement to engage in legal practice when someone is not qualified, will be extended from one year to two years, or two years from the date on which evidence of the offence came to the attention of the Legal Practice Board. This clause has been inserted at the request of the board following a number of instances in which prosecutions for such offences under the Legal Profession Act 2008 have been time-barred by the time the board has been made aware of the alleged offence, or prior to the board being able to undertake a proper investigation.

Clause 236 references section 456 of the uniform law, which provides that if the designated tribunal orders a person to pay a pecuniary penalty, firstly, the penalty is to be paid to a fund specified in the legal profession uniform law act of that jurisdiction, or is to be dealt with in another manner so specified and, secondly, the order is enforceable as a judgement or order of the court. Clause 236 provides that for the purposes of section 456(a) of the legal profession uniform law, the Legal Practice Board may enforce an order to pay a pecuniary penalty made under the law. There is no equivalent provision in the current Legal Profession Act. With the member's indulgence, I shall continue.

Clause 237, which we are describing as an enhancement, is headed "Effect of notice under Uniform Law s. 371(1)(a) or (b)". It provides that an investigator may, by notice, require a lawyer or legal associate of a law practice to produce any specified documents or to provide written information. This clause provides that —

> (1) A notice served under the *Legal Profession Uniform Law (WA)* section 371(1)(a) or (b) has the same effect as a subpoena to produce documents or attend to give evidence, as the case may be, issued by the Supreme Court for the attendance of a witness for examination or production of documents in a civil action.
>
> (2) Obedience to, or non-observance of, a notice served under the *Legal Profession Uniform Law (WA)* section 371(1)(a) or (b) may be enforced and punished by a judge in chambers in the same manner as in the case of obedience to, or non-observance of, a subpoena issued by the Supreme Court.

However, a person cannot be punished by a judge in chambers and sentenced for an offence contrary to section 373 of the law. As I said, there is no equivalent provision in the Legal Profession Act and we are describing it as an enhancement.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Hon Nick Goiran.

Hon NICK GOIRAN: Thank you very much, Deputy Chair. Should I be wishing the Deputy Chair a happy birthday?

The DEPUTY CHAIR: You may.

Hon NICK GOIRAN: Happy birthday.

I thank the parliamentary secretary for that comprehensive explanation. On clause 229 and the use of force, although there is no dilution of the existing enforcement powers for the Legal Practice Board, I thank the parliamentary secretary in particular for setting out to what extent some provisions clarify those powers or, indeed, enhance them. With regard to the use of force provision in clause 229, what body will receive any complaints about excessive use of force by an investigator?

Hon MATTHEW SWINBOURN: Thank you, Deputy Chair, and happy birthday from me as well.

No specific use-of-force complaint process is identified under the application act. If a person who is unhappy about an excessive use of force, which went beyond the powers of the warrant, could make a complaint to the board itself if they are not prepared to complain to the court. A complaint could be made to the Corruption and Crime Commission if it were also a complaint about misconduct or corruption, and the complaint could also be made to the Ombudsman, otherwise known as the Parliamentary Commissioner for Administrative Investigations. Those actions would be available, but there is no specific provision within the bill that provides for a complaint process itself.

Clause put and passed.

Clauses 228 to 237 put and passed.

Clause 238: Terms used —

Hon NICK GOIRAN: We move to part 12 of the bill, "Law Society Public Purposes Trust". Is there any provision in part 12 of the bill—its five clauses—that will modify the law in our state regulating the Law Society public purposes trust?

Hon MATTHEW SWINBOURN: I am advised that the effect of these provisions is, in effect, to repeal the Law Society Public Purposes Trust Act 1985 and that those provisions have therefore been incorporated into the application bill itself. There are some changes. Section 4 of the Law Society Public Purposes Trust Act provides that if any of the trusts declared by the trust deed or declared by that deed as it may at any time is, in respect, revoked, added to or otherwise varied in accordance with the trust deed, the Law Society of Western Australia shall, within 14 days of the variation, submit a copy of the instrument to the Attorney General, who shall cause a copy of that instrument to be laid before each house of Parliament without delay. Pursuant to clause 242 of this bill, the Law Society of Western Australia will now publish any instrument varying the trust on its website and provide the Attorney General with a copy of the instrument. The Attorney General must then cause a copy to be tabled in each house of Parliament. It is not an earth-shattering change. It is probably more reflecting an update to current practice, which is the requirement to publish on the website. Obviously, the obligation will remain on the Attorney General to table it in both houses of Parliament.

Clause put and passed.

Clauses 239 to 242 put and passed.

Clause 243: Law library —

Hon NICK GOIRAN: Moving now to part 13 and the provision for the law library, to what extent will this part of the bill change the way in which our law library or law libraries will be governed in our state?

Hon MATTHEW SWINBOURN: I am advised that our much loved law libraries will not be significantly affected, so the status quo will be maintained. There are no particular changes to the law library. I will mention clause 245 because it contains a regulation-making power. I confirm to the member that it is our view that it is a simple regulation-making power and is not one of the Henry VIII clauses of the bill.

Clause put and passed.

Clauses 244 and 245 put and passed.

Clause 246: Information sharing —

Hon NICK GOIRAN: For the clarification of members, I had intended to ask questions on clause 245, but the hardworking parliamentary secretary was so comprehensive in his response to clause 243 that there was no longer a need for me to ask questions on clause 245.

Clause 246 now moves into "Part 14 — Miscellaneous". The first provision that I think is worth considering, parliamentary secretary, is the information-sharing provision. This attracted the attention of the Standing Committee on Uniform Legislation and Statutes Review in its 136th report. In particular, pages 19 and 20 of the report deal with clause 126(1)(b), "Local regulations in relation to government lawyers", and clause 246(c), "Information sharing". It is clause 246(c) that I would particularly like us to consider at this point. At page 19 of the 136th report, the committee sets out the position of the Attorney General.

For the benefit of Hansard, I refer to paragraph 5.77, which states —

> The Committee wrote to the Attorney General to ask questions about the wide regulation-making powers in clause 246(c). The Attorney General responded with the following information:
>
> > Clause 246(c) of the Bill is consistent with section 586(3) of the current *Legal Profession Act 2008* which provides:
> >
> > > The regulations may authorise a local regulatory authority to disclose information to a person or body prescribed, or of a class prescribed, by the regulations relating to or arising under this Act or a corresponding law, subject to any conditions specified in the regulations.
> >
> > There are currently no regulations in the *Legal Profession Regulations 2009* made pursuant to that section.
> >
> > It is anticipated that a number of persons including, but not limited to, the Law Society of Western Australia and the Western Australian Bar Association will be prescribed in the local regulations for the purposes of clause 246(c).
> >
> > It is possible that relevant stakeholders (including those in other jurisdictions) might for example change business names from time to time. This regulation-making power provides sufficient flexibility to prescribe relevant persons for the disclosure of information as and when required. Any regulations made pursuant to clause 246(c) will be subject to disallowance.

The Attorney General's response was from 2 September 2021 in a letter from him to the Standing Committee on Uniform Legislation and Statutes Review. The parliamentary secretary will note that the Attorney General identified a few things, including that there are no regulations made under the like provisions of the existing law, but, notwithstanding that, the government intends to make regulations under this provision moving forward. The Attorney General specifically identified the Law Society of Western Australia and the Western Australian Bar Association as the bodies that are anticipated to be prescribed in the local regulations. Is that now the government's fixed position on those two bodies? Further, has there been any more consideration since 2 September 2021 about other bodies that might be subject to these local regulations?

Hon MATTHEW SWINBOURN: In respect of the member's first point, about whether it is a fixed position, the regulations have not yet been finalised. It remains our intention to include the Law Society and the WA Bar Association. For the sake of the chamber, I can disclose that there have been additions to that list since that time. I said that Law Mutual WA is included; there is also the WA Bar Association, as I have already mentioned; the Legal Aid Commission; a judge, registrar or master of the Supreme Court, or a person appointed or employed, as referred to in section 155 or 155A of the Supreme Court Act 1935; a member of the State Administrative Tribunal or a member of staff, as defined in section 3(1) of the State Administrative Tribunal Act; and the Attorney General. That is the current list of people who will be prescribed in relation to that regulation. We do not have any others at this stage, but obviously, on the finalisation of the regulations, if any more are added, I could not really think of too many more people outside the profession who would be added to that list.

Clause put and passed.

Clauses 247 to 250 put and passed.

Clause 251: Local regulations —

Hon NICK GOIRAN: Clause 251 also attracted the attention of the Standing Committee on Uniform Legislation and Statutes Review in its 136th report, tabled in October last year. This is the local regulation provision, and the committee at page 21 of its report sets out, at paragraph 5.87, the Attorney General's position. It states —

> 5.87 The Committee asked the Attorney General a number of questions in relation to clauses 251(2)(d) and 251(3)(b) and (c) and the use of the regulation-making power.
>
> 5.88 The Attorney General responded:
>
> > This Bill, together with the Uniform Law, provides a substantial change to the regulatory framework governing the legal profession in Western Australia. Despite the careful consideration that has been given to this Bill and the Uniform Law, due to the Bill's complexity, there is the potential for inadvertent consequences to arise. Clause 251(2)(d) is a mechanism by which any unintended consequences or inadvertent hardships can be addressed.
> >
> > It is contemplated that a local regulation will be made enabling me, as Attorney General, to exempt persons, or classes of persons, in whole or in part from the provisions of the Act, in consultation with key stakeholders such as the Legal Practice Board and the Law Society, and that any exemption granted by me, as Attorney General may subject to such conditions as I, as Attorney General, think fit.

That sounds very Henry VIII-ish I might add, just by way of interjection into the quote from the Attorney General. The report continues —

> Such regulations made pursuant to clause 251(2)(d) will be subject to disallowance.

My recollection is that in our consideration of clause 1, the parliamentary secretary addressed the recommendation of the committee, and specifically the fourth recommendation, which is for the parliamentary secretary to explain to the Legislative Council the persons or classes of person who may be exempt from part or all of the provisions of the legislation; the types of discretions that may be conferred on a person, and in what circumstances; and the types of conditions that may be imposed or authorised to be imposed, and the circumstances of those conditions. I think, at the very least, he provided a list of the persons or classes of person.

My question is in two parts. First of all: was that list of persons or classes of person subject to the consultation foreshadowed by the Attorney General in his letter of 2 September 2021, particularly with the Legal Practice Board and the Law Society, or any other key stakeholders included in that consultation process? I have a second question, but it is on a separate issue.

Hon MATTHEW SWINBOURN: Firstly, I confirm that we accept that this is a Henry VIII clause. It was not explicitly identified separate to the overall list of regulation powers that I gave, but we concede that this is, clearly, a Henry VIII clause. In relation to the member's discussion about the class of persons, there is currently no list of additional classes of persons, so there has not been any further consultation with stakeholders, including the Legal Practice Board or the Law Society, because no such classes of person have yet been come up with, for want of a better phrase. However, as I confirmed in consideration of clause 1, it is currently envisaged that if the power in clause 251(2)(d) is to be exercised, the Attorney General will first consult with key stakeholders such as the Legal Practice Board and the Law Society before including the exemption in the local regulations. I think that may have been a slight departure from what was put to the committee. In this instance, before any classes of people are identified, consultation will occur with key stakeholders, and then the regulation will be promulgated or drafted, rather than drafting the regulation and then going into consultation. I suppose that in this instance that would probably be a more qualitative approach, to make sure that things are dealt with before people get carried away with their drafting.

Hon NICK GOIRAN: That is good to hear. This is just one example of a local regulation that might be able to be made under the power conferred under clause 251. Is it the government's intention to make any other regulations at this time?

Hon MATTHEW SWINBOURN: No, member, we do not have any other plans, other than the ones I think were referred to in an earlier part of the debate, when we talked about the regulations being approximately 70 clauses, once they are properly proclaimed.

Hon NICK GOIRAN: I will conclude with a comment about clause 251 and in doing so, I hasten to add that the next clause I would like to consider is clause 255. I think it is reasonable to conclude that perhaps, in any other Parliament, a Henry VIII clause of this type would not be tolerated, but in this forty-first Parliament things are a little different and it appears that these types of provisions are considered to be acceptable. I draw members' attention to page 22 of the Standing Committee on Uniform Legislation and Statutes Review's 136th report. I note in passing that Hon Pierre Yang was the substitute for the parliamentary secretary on that committee, or maybe vice versa.

Hon Matthew Swinbourn interjected.

Hon NICK GOIRAN: It was because the parliamentary secretary had carriage of the bill. That is fair enough. During his period of substitution, the committee came to the conclusions that are found at page 22. There are four pertinent paragraphs starting at paragraph 589, for the benefit of *Hansard*. They state —

> The Committee considers that the wide regulation-making powers in clause 251(2)(d) and 251(3)(b) and (c) erode Parliament's sovereignty.
>
> In relation to clause 251(2)(d), the circumstances of any exemptions from the Act and the persons or classes of persons to be exempt should be set out in the Act. The Committee notes the Attorney General's position but considers that clause 251(2)(d) authorises Government to change the application of the Act through regulation. There is a lack of criteria or guidance within the Bill governing what sort of person is intended to be exempt from parts or all of the Act. Such exemptions should be contained in primary legislation and considered by Parliament.
>
> The Committee understands that regulations are scrutinised by the JSCDL and subject to possible disallowance by the Parliament. However, the JSCDL has limited power to recommend disallowance of a regulation if the governing Act authorises the regulation-making power. Clause 251(2)(d) does not place any limitations on the power to exclude persons from the Act and may have serious implications. The need for flexibility may not justify the use of such a wide regulation-making power.

> Clauses 251(3)(b) and (c) also contain wide regulation-making powers and the Attorney General has not provided adequate justification for those powers. The language used in clauses 251(3)(b) and (c) imposes a wide power for regulations to confer a discretion on a person and impose conditions or authorise or permit a person to impose conditions, in relation to a matter. There is no limitation or description of what a 'matter' is or the persons or classes of persons.

With those four paragraphs, the committee then made the seventh finding, which reads —

> The open-ended regulation-making powers in clauses 251(2)(d) and 251(3)(b) and (c) of the Legal Profession Uniform Law Application Bill 2021 erode the Western Australian Parliament's sovereignty and law-making powers.

I simply conclude by making this point: those members who have been here for longer than just the forty-first Parliament will know full well that this type of provision would not be accepted in any other Parliament.

Clause put and passed.

Clauses 252 to 254 put and passed.

Clause 255: Certain witnesses compellable despite Uniform Law s. 468 —

Hon NICK GOIRAN: As we move to clause 255 in part 14 of the bill, we are dealing with a provision about certain witnesses being compelled or, indeed, being exempt from that with regard to section 468 of the uniform law. Is it intended that the former staff of the Legal Practice Board will or will not be able to be compelled to give evidence or produce documents in light of clause 255 when read with section 468 of the uniform law?

Hon MATTHEW SWINBOURN: When the member asks whether it is our intention, it goes to a state of mind and, as the parliamentary secretary in a representative capacity, I find it difficult to go to the state of mind, as such. I think the better way for me to answer the member's question of whether former staff can be compelled to give evidence is just to say that yes, they can be compelled because they do not fall within the definition of "relevant person" under section 467(2), which provides that "relevant person" means the council or the commissioner; or a local regulatory authority; or a committee of the council. It goes on, but I do not think it refers to "retrospectively". If the member's question is whether a former staff member could be compelled, the answer would be yes.

Hon NICK GOIRAN: That makes sense, because in the Legal Services Council's consultation paper on proposed amendments to the Legal Profession Uniform Law published in January 2020, it made quite a number of recommendations, as the parliamentary secretary might recall. Its penultimate recommendation, which was recommendation 35, was that there should be an amendment to section 467 to provide former staff members with the benefit of non-compellability as witnesses. The parliamentary secretary has confirmed that at the moment they can be compelled, yet the Legal Services Council has recommended that they have the benefit of not being compelled. Here we are continuing with a course of action that would see them be compelled. Is that indicative that the government does not support recommendation 35?

Hon MATTHEW SWINBOURN: I think the short answer is no, and I do not know that I can take it a lot further. As we discussed at an earlier stage of debate, the recommendations of the Legal Services Council have gone to the standing committee, and the standing committee has made a decision based on those recommendations for the Victorian equivalent of parliamentary counsel to draft an amendment to the Legal Profession Uniform Law, but that process is currently in train and subject to Victorian cabinet-in-confidentiality. As I say, the initial answer to the member's first proposition is no.

Clause put and passed.

Clauses 256 to 260 put and passed.

Clause 261: Terms used —

Hon NICK GOIRAN: We have flown to the sixteenth part of the 17 parts of this bill, and passed over part 15 that was simply dealing with the repeal of some acts. Part 16 before us deals with the transitional provisions. During the reasonably long course of this bill, the Law Society made multiple representations. I note that in October of last year, the Law Society held a meeting. At that meeting it resolved to write to the Attorney General to request an urgent meeting to be arranged with the key stakeholders that were to include, at the very least, the Law Society, the Legal Practice Board, the Western Australian Bar Association and the Legal Contribution Trust. Specifically, the purpose behind that proposed meeting was to consider the then anticipated date for the commencement of this uniform law scheme that Western Australia was about to embrace, which, at the time, was going to be 1 January 2022.

The advocacy from the Law Society and others was that that date should be moved to 1 April. The reasons that they gave included the following. Firstly, the regulations and rules are yet to be finalised, and, to date, there has been no consultation on either. Secondly, from the date of proclamation, the stakeholders understood that there will be changes to the conduct rules and continuing professional development rules, how firms deal with cost agreements and cost disclosure, and broadly speaking, there had been limited communications and/or CPD provided to educate

the Western Australian legal profession on these changes in 2021. It was the view of the stakeholders, certainly as at October of last year, that the date of 1 April, rather than 1 January, would enable the implementation of professional education on the legal profession uniform law prior to the end of the CPD deadline of 31 March. It was also their view in October that it would be unfortunate if the legal profession were to be advised as late as December that a new bill would take effect from 1 January 2022, because their view was that that would be too short a time frame to introduce a new regulatory framework for the legal profession. They felt that that would be further compounded by the fact that there is an ordinary business shutdown during the December and January period. This takes me to the transitional provisions, because the final reason that they were calling on the Attorney General for this meeting in October of last year was that it was not clear how any of the transitional provisions would alleviate these concerns.

Did the Attorney General receive a request to hold such a meeting on or after October last year? Did the meeting take place? Have the stakeholders' concerns, with respects to whether the transitional pre-provisions will alleviate their concerns, been addressed?

Hon MATTHEW SWINBOURN: We are seeking some advice from people external to who are at the table. None of us were at any such meeting, so we do not know. Until I get that advice, I will have to sit tight.

We are still working on an answer. Before we are interrupted by question time, which is only a matter of minutes away, I am able to confirm for the member that one of the issues discussed early on in this debate was about the commencement date of this uniform scheme. I was very clear that the Attorney General's position is that it will not be before 1 July and I was also very clear that it will be in consultation with the relevant stakeholders, being the Law Society, the WA Bar Association and the like. The reason for that is because—and we had some debate about the commencement of this change—although it is not as earth-shattering as the 2008 reforms, it is a significant change for the profession. Obviously, it is important that we carry the profession with us for this change. Whilst the member has identified the Law Society and other stakeholders identified issues in October, they have at the same time been identifying to us their eagerness to get on and get this particular thing done.

Committee interrupted, pursuant to standing orders.

[Continued on page 1145.]

QUESTIONS WITHOUT NOTICE

TIER 3 RAIL LINES — BUSINESS CASES

194. Hon Dr STEVE THOMAS to the Leader of the House representing the Minister for Transport:

I refer to my questions without notice asked on 22 and 23 June 2021, 31 August 2021, 17 November 2021 and 17 February 2022 on the business cases being development by the government for three tier 3 rail lines, and to the nine months that have passed since that time of initial questioning.

(1) Are the business cases for each of the three proposed tier 3 lines—that is, Quairading–York, Kulin via Yilliminning to Narrogin, and Kondinin via Narembeen to West Merredin lines—finally completed for all or any of these three lines?

(2) If yes to (1), which of those lines have completed business cases?

(3) When will the business cases be made public?

(4) If yes to (1), which of the business cases have been submitted to Infrastructure Australia and when were they submitted?

Hon SUE ELLERY replied:

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

(1)–(4) The WA agricultural supply chain improvement stage 2 options assessment business case has been finalised and is soon to be submitted to Infrastructure Australia. In line with standard Infrastructure Australia processes, an evaluation summary of the business case will be made publicly available once the assessment is complete.

WATER CORPORATION — WASTEWATER CHARGES

195. Hon Dr STEVE THOMAS to the minister representing the Treasurer:

Interesting! I refer to the Economic Regulation Authority final report of 10 November 2017 titled *The efficient costs and tariffs of the Water Corporation Aqwest and Busselton Water*, which identified that Perth wastewater customers were being overcharged by $365.2 million, more than the Economic Regulation Authority's estimated efficient cost of supply.

(1) Has the McGowan government reduced the cost of Perth wastewater to reflect the estimated efficient cost of supply?

(2) Has the McGowan government reduced the cost of Perth wastewater at all since it came to power in 2017; and, if so, by how much?

(3) Has the McGowan government increased the cost of Perth wastewater at all since it came to power in 2017; and, if so, by how much?

(4) Does the Treasurer still hold the position that he put publicly as Premier on 19 February 2018 in *The West Australian* that Perth households are paying too much, but that this is vital for raising revenue?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question, and provide the following answer on behalf of the Minister for Emergency Services representing the Treasurer.

(1)–(4) The McGowan Labor government reduced water, wastewater and drainage charges by $23.52 in 2020–21 for the representative household. This is in comparison with the previous Liberal–National government, which increased water, sewerage and drainage prices by 66 per cent in its last term.

POLICE — OPERATION REGIONAL SHIELD

196. Hon COLIN de GRUSSA to the minister representing the Minister for Police:

I refer to Operation Regional Shield.

(1) How many children have been identified as at risk as a result of the operation?

(2) For (1), will the minister please provide a breakdown of the ages of the children —

(a) Zero to four years;

(b) Five to nine years; and

(c) 10 to 14 years?

(3) How many children have been referred to the Department of Communities since the start of the operation?

Hon Samantha Rowe: President, I think it is meant to be me, but the answer has not come in yet.

Hon Sue Ellery: Which number did you say?

Hon COLIN de GRUSSA: C253.

Hon Sue Ellery: I saw the answer, so if it comes in before the end of question time, we will make sure you get it.

G2G PASS — ACCESS — POLICE INVESTIGATIONS

197. Hon NICK GOIRAN to the minister representing the Minister for Police:

I refer to the Auditor General's report *Safe WA—Application audit* from 2 August 2021, which states —

> In the absence of any comprehensive privacy legislation in Western Australia, including oversight mechanisms, citizens have a right to expect that their personal information will only be used by governments in line with stated purposes.

(1) Has the Western Australia Police Force accessed or used G2G PASS data for criminal investigations?

(2) If yes to (1), on how many occasions and on what dates?

(3) Further to (2), what has been the range of seriousness of the crimes being investigated?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question. On behalf of the Minister for Emergency Services representing the Minister for Police, the following information has been provided by the Minister for Police.

(1) The Western Australia Police Force advise that, yes, when applying for a G2G PASS, as part of the terms and conditions, applicants consent to the collection and use of their information for a range of purposes. This includes allowing WA Police to use and disclose applicants' information for other policing purposes but only as required or authorised by law—for example, under formal legal processes for serious criminal investigations.

(2) On 22 occasions, G2G information has been accessed by way of a justice-approved order to produce notice for criminal investigations, other than Emergency Management Act 2005 matters. The dates were 18 December 2020, 7 January 2021, 8 January 2021, 12 January 2021, 13 January 2021, 17 January 2021, 23 January 2021, 25 January 2021, 3 March 2021, 4 March 2021, 5 March 2021, 11 March 2021, 14 April 2021, 10 May 2021, 19 May 2021, 21 May 2021, 4 June 2021, 24 August 2021, 23 September 2021, 30 October 2021, and 2 March 2022.

(3) Crimes investigated range from noncompliance to murder.

CLEAN ENERGY FUTURE FUND — GREENHOUSE GAS EMISSIONS

198. Hon Dr BRAD PETTITT to the minister representing the Minister for Environment:

Announced in April 2020, the McGowan government's $19 million clean energy future fund states it will support innovative clean energy projects in Western Australia, which will offer high public value through contributing to one or more of the following outcomes: significant, cost-effective reduction in greenhouse gas emissions below projected or baseline emissions as a direct result of the clean energy project; design, deployment, testing or demonstration of innovative clean energy projects likely to deliver community outcomes or lead to broad adoption and significant reductions in greenhouse gas emissions.

(1) In the almost two years since it was announced, how many tonnes of greenhouse gas emissions has the CEFF reduced?

(2) What is the projected lifetime greenhouse gas emission reductions of the two projects publicly funded by the CEFF?

(3) What is the cost per tonne or CO_2 equivalent of these emissions reductions from these two projects?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question and provide the following answer on behalf of the Minister for Emergency Services representing the Minister for Environment. I ask that the honourable member please place the question on notice.

GOVERNMENT REGIONAL OFFICERS' HOUSING — REGIONS

199. Hon WILSON TUCKER to the Leader of the House representing the Minister for Housing:

I thank the minister for his answer to my previous question without notice 182.

(1) When will the 20 properties approved for transfer to public housing be available to clients on the waitlist?

(2) What regions are these 20 properties located in?

(3) What regions are the 14 properties provided to non-government organisations and local governments located in?

(4) What regions are the 13 properties to be refurbished located in?

(5) Is the minister willing to table the Government Regional Officers' Housing asset matrix referred to in his previous answer?

Hon SUE ELLERY replied:

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

(1) GROH properties that are in the current tranche of transfers are required to go through refurbishment or undergo maintenance works to return them to clean, safe and working condition for public housing. To date, one property has been tenanted following this process and the remaining properties are at various stages of maintenance or refurbishment works.

(2)–(4) These properties are located within the Pilbara, Kimberley, midwest–Gascoyne, wheatbelt, goldfields and south west regions.

(5) The asset matrix is an operational internal decision-making tool used by the Department of Communities to inform asset decisions for GROH properties. The tool uses live data sets and formulas to complete a cost-benefit analysis. It is not designed for public release due to its complexity; however, the Minister for Housing is happy to provide a briefing to the member if required.

EMERGENCY SERVICES VOLUNTEER FUEL CARD

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

I refer to the Emergency Services Volunteer Fuel Card scheme funded by royalties for regions.

(1) Is the minister aware that in 2017 the McGowan Labor government halved the fuel card value from $2 000 to $1 000?

(2) Is the minister aware that one in three brigades, groups or units fully expend the value of the card?

(3) Is the minister aware that the value of the fuel card in 2016 could purchase around 1 700 litres of petrol compared with just 500 litres today?

(4) Considering rising fuel prices and cost-of-living pressures, will the minister immediately commit to reinstate the original $2 000 value of the card in recognition of the vitally important work of emergency service volunteers?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question. I provide the following answer on behalf of the Minister for Emergency Services.

(1) Yes.

(2)–(3) No.

(4) No. The McGowan government takes decision-making on public expenditure seriously, unlike the former Liberal–National government. It is not for an individual minister to make financial commitments outside of a budget process.

COMMUNITIES — POLICE RAID

201. Hon PETER COLLIER to the minister representing the Minister for Community Services:

I refer the minister to the raid by the Western Australia Police Force on the home of a female Aboriginal public officer employed at the Department of Communities and to the response to question without notice 184 asked on Thursday, 17 March 2022.

(1) Has this female Aboriginal public officer lodged a bullying complaint against the director general of the Department of Communities, Michael Rowe, to either the deputy director general or any other public officer employed within the Department of Communities since 1 January 2022?

(2) If yes, on what date was the complaint lodged?

Hon SUE ELLERY replied:

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

(1)–(2) The minister has been advised that the Public Sector Commission received a formal complaint of bullying involving the director general of the Department of Communities, Michael Rowe. It is not appropriate to identify the complainant.

NATIVE FOREST — LOGGING — TRANSITION PACKAGE — AUSTRALIAN WORKERS' UNION

202. Hon JAMES HAYWARD to the member representing the Minister for Forestry:

I refer to the minister's decision to transfer $200 000 of taxpayer funds to the Australian Workers' Union.

(1) Is there a requirement for the AWU to provide an acquittal report outlining exactly where and how the $200 000 of taxpayer money has been spent, including how many non-union members were supported?

(2) If no to (1), why not; if yes, will the minister table the report?

(3) Is the minister concerned there may be a perception that the AWU may be compromised in its ability to independently advocate for forestry workers in negotiations with the government, when the government has funded the AWU to do so?

(4) In the interests of assuring Western Australian taxpayers that the payment to the AWU was appropriate, will the minister table the contract and any other documents outlining the terms upon which the $200 000 was awarded to the AWU; and, if not, why not?

Hon ALANNAH MacTIERNAN replied:

The member and I expect similar questions about assistance given to various chambers of commerce from time to time. The following information has been provided by the Minister for Forestry.

The Department of Jobs, Tourism, Science and Innovation is unable to answer these questions within the time frame given. The Minister for Forestry will endeavour to answer by the next sitting week.

CORONAVIRUS — TEACHERS — K–3

203. Hon Dr BRIAN WALKER to the Minister for Education and Training:

I refer the minister to the ongoing spike in COVID-19 cases affecting local communities and its impact on our schools in particular.

(1) Am I correct in my understanding that, because kindergarten-aged students are, understandably, not required to wear masks, their teachers and teaching assistants are still being classed as close contacts when a child in their care tests positive?

(2) If yes to (1), has this led to a disproportionate number of staff members in the K–3 range being forced to absent themselves from schools in recent weeks?

(3) What additional resources and/or support is the department offering schools to help them swiftly and effectively source qualified relief staff during the COVID-19 pandemic, and are any of these resources specific to staff working in K–3 classrooms?

Hon SUE ELLERY replied:

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

(1) No. Staff in classes across kindergarten to year 2 are not automatically close contacts if a student in their class is a confirmed case. Although staff can remove their masks when necessary to teach, they are required to wear masks at all other times, which often negates them being deemed close contacts.

(2) Not applicable.

(3) A central team assists schools in sourcing relief staff when the school is unable to source someone locally. This team can draw upon central staffing pools, teachers and support staff working centrally in the Department of Education and a flying squad of teachers for regional and remote schools, as well as providing support in the use of the casual staff seeker online tool to source relief. These initiatives support all school year levels.

CORONAVIRUS — STATE OF EMERGENCY

204. Hon TJORN SIBMA to the Leader of the House representing the Minister for Health:

I refer to part (4) of the minister's answer to my question without notice on 16 March concerning the public health state of emergency.

(1) Why are the Chief Health Officer's authorisations in relation to administering and supplying or prescribing poisons, and the operation of vaccine clinics, wholly dependent on extending the statewide declared public health state of emergency?

(2) Why is it possible to administer vaccinations for all other non–COVID-19 diseases in Western Australia without the need for a statewide declared public health state of emergency?

Hon SUE ELLERY replied:

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

(1) Registered health professionals working within the public health services, prison services or Aboriginal health services can administer COVID-19 vaccinations under structured administration and supply arrangements issued under regulation 33 of the Medicines and Poisons Regulations 2016. Pharmacists providing COVID-19 vaccine services for registered community pharmacies are covered by a separate structured administration and supply arrangement. These approvals are not dependent on the public health state of emergency.

The Chief Health Officer's authorisations issued under the Public Health Act enable an additional workforce to assist in critical delivery of COVID-19 vaccinations during the public health state of emergency, such as students in final years of training as health professionals, under the direction of registered health professionals. These authorisations also enable commonwealth-contracted organisations to administer COVID-19 vaccines in residential aged-care facilities and, if required, enable Defence Force health professionals to be involved in COVID-19 clinics.

(2) Structured administration and supply arrangements authorise health professionals to administer vaccines, including COVID-19 vaccines, and, therefore, are not dependent on the public health emergency.

PUBLIC SECTOR — STAFF — DISABILITY TARGETS

205. Hon NEIL THOMSON to the Leader of the House representing the Minister for Public Sector Management:

I refer to the minister's December 2019 media statement about people with a disability and setting a target of five per cent representation in the public sector by the end of 2025.

(1) What were the interim targets for representation set for each year to 2025?

(2) What was the actual representation of people with a disability in the Western Australian public sector, by number and per cent, at —

(a) December 2019;

(b) December 2020; and

(c) December 2021?

Hon SUE ELLERY replied:

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

(1) Interim targets were set as part of the initial release of the *People with disability: Action plan to improve WA public sector employment outcomes 2020–2025* in December 2019. This plan was later updated for consistency with the workforce diversification and inclusion strategy and five other action plans when they were released in August 2020. A decision was made not to establish interim targets as it was acknowledged that the aspirational targets set in the strategy were long term.

(2) Not all public sector employees have provided or disclosed their diversity information and, therefore, are not represented in the data. Diversity data is based on employees who have provided or disclosed their disability information as recorded in agency human resource systems —

(a) 1 686, 1.6 per cent;

(b) 1 685, 1.5 per cent; and

(c) 1 836, 1.5 per cent.

WATER CORPORATION — WASTEWATER CHARGES

206. Hon Dr STEVE THOMAS to the minister representing the Treasurer:

I refer to the Economic Regulation Authority's report *The efficient costs and tariffs of the Water Corporation, Aqwest and Busselton Water: Final report*, dated 10 November 2017, which identified that Perth wastewater customers were being overcharged by $365.2 million more than the ERA's estimated efficient cost of supply.

(1) What is the current estimated efficient cost of supply of wastewater in Perth, and how does this compare with current wastewater charges?

(2) What savings would be achieved by Perth customers per household if the government charged them the estimated efficient cost of supply?

(3) Did the Treasurer refuse to adjust Perth wastewater charges to the estimated efficient cost of supply because, as he was quoted as Premier in *The West Australian* on 19 February 2018, he thinks that, "You need to get that revenue from somewhere"?

(4) Given the $15 billion in expected surpluses over five years, can the Treasurer now identify alternative revenue sources that he can "get the revenue from somewhere" so that he can now provide some relief to families struggling with cost-of-living pressures?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question and provide the following answer on behalf of the Minister for Emergency Services representing the Treasurer.

(1)–(2) The Economic Regulation Authority has not reviewed wastewater charges since 2017 and therefore current estimates of the efficient cost of wastewater services are not available.

(3)–(4) The state government is acutely aware of cost-of-living pressures. Throughout the pandemic, the state government has spent $1.9 billion to keep household fees and charges low and provide relief to households. The state government has delivered measures to support Western Australian households, such as keeping household fees and charges below CPI, a $600 electricity credit to all households, and capping public transport fares—saving some commuters up to $3 000 a year. Most recently, the state government has provided all Western Australians with access to free rapid antigen tests—the only government in Australia to do so. The state government will not take advice from Liberal and National Party members who increased water, sewerage and drainage prices by 66 per cent and power prices by 90 per cent when they were last in government.

CORONAVIRUS — ESPERANCE

207. Hon COLIN de GRUSSA to the Leader of the House representing the Minister for Health:

I refer to the minister's response to question without notice 179, asked on 17 March 2022.

(1) In respect of contact tracing in Esperance, can the minister please define what is meant by "where appropriate"?

(2) Does the Department of Health currently publish all exposure sites for —

(a) metropolitan locations; and

(b) regional locations?

(3) If no to either (a) or (b), in what circumstances would they not be published?

(4) Is the minister aware that the Shire of Esperance was advised by the Department of Health on 8 March 2022 that due to the high COVID case load within the WA community, the department is unable to keep up with contact tracing and will not be releasing exposure sites?

Hon SUE ELLERY replied:

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

(1) In the very high case load environment, in many circumstances, WA Health requests—by call, SMS, email, or in person—that each of these cases undertakes their own contact tracing process and informs each of their close contacts. Resources are provided to enable the case to do so. For specific high-risk settings, WA Health maintains a greater role in contact tracing procedures—for example, in residential aged-care facilities.

(2) (a) No.

(b) No.

(3) In metropolitan Perth, exposure sites are not listed publicly if they are not considered high risk—that is, they are not sites of confirmed COVID-19 transmission. In regional areas, exposure sites will not be listed if the nature of duration of exposure within the venue would not result in any individuals being considered close contacts. Furthermore, sites will not be listed if all contacts are identifiable through other means, or if listing the site would breach confidential information, such as a private household address.

(4) The Minister for Health is aware that the department is taking a practical approach to contact tracing by requesting that individuals undertake their own contact tracing activities where practicable. For specific high-risk settings, WA Health maintains a greater role in contact tracing procedures—for example, in residential care facilities.

CHILDREN IN CARE — WHEREABOUTS UNKNOWN

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

I refer to the answer to my question without notice 3, asked on 15 February 2022, in which the house was informed that one child in the care of the CEO of the department had been reported to WA Police as missing.

(1) Has that child been found?

(2) For how many days has this child had their whereabouts recorded as "unknown"?

(3) How many children are in the care of the CEO whose whereabouts are currently recorded as "unknown"?

(4) Has the department formally reported any child in the care of the CEO to WA police as a missing person on more than one occasion?

Hon SUE ELLERY replied:

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

The term "whereabouts unknown" may lead to the assumption that every child with a placement type of "unknown" is a missing person, not in contact with caseworkers and unable to be supported by Communities.

(1) Yes.

(2) The child was recorded in a placement type of "unknown" for 19 days.

(3) As of 22 March 2022, five children are recorded in a placement type "unknown". Three of those children are in contact with the department and two have been reported to the Western Australia Police Force as missing.

(4) Yes.

BANKSIA HILL DETENTION CENTRE

209. Hon Dr BRAD PETTITT to the Leader of the House representing the Minister for Child Protection:

I refer to children under the Department of Communities' care at Banksia Hill Detention Centre.

(1) Since June 2019, how many children have remained at Banksia Hill Detention Centre despite being granted bail by magistrates because the Department of Communities' child protection and family services has failed to find them suitable accommodation?

(2) How long have these children in (1) remained at Banksia Hill Detention Centre, despite being granted bail, until suitable accommodation has been found?

(3) Are any children currently at Banksia Hill Detention Centre under the care of the Department of Communities and have been granted bail by a magistrate; and, if yes, how many and for how long have they been at Banskia Hill Detention Centre since bail was granted by a magistrate?

Hon SUE ELLERY replied:

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

(1)–(2) The Department of Communities works exhaustively to provide the right accommodation and care arrangements for all children and young people in care who have been granted bail by the courts. Coordinating a range of factors, including transport arrangements and care planning, is required before Communities can safely provide bail for children in care. When possible, Communities aims to maintain a young person's previous placement for the period they are incarcerated. However, there are occasions on which the level of support required may not be available at the point that bail is granted and, due to the nature of the offence and/or likelihood of reoffending, Communities cannot adequately ensure the safety of the young person or the community. In some instances, care arrangement recommendations are

made as part of bail being granted and it can take time for these arrangements to be made. In other instances, these young people remain on remand for other pending charges. Communities has a co-located senior child protection worker at Banksia Hill Detention Centre who coordinates support plans for children in care between Banksia Hill, the Department of Justice, Communities' regional offices and partner districts.

In relation to children who have remained at Banksia Hill Detention Centre despite bail being granted, since June 2019 this historical information is not collated centrally and would require manual review of individual files and reports, and significant resources and additional sharing and cross-referencing of information between agencies.

(3) The co-located senior child protection worker at Banksia Hill reported that, as at 21 March 2022, there were no children in care remaining at Banksia Hill Detention Centre who had been granted bail.

SMARTRIDER — REPLACEMENT

210. Hon WILSON TUCKER to the Leader of the House representing the Minister for Transport:

I refer to the 2021–22 state budget and the $57.8 million allocated to the SmartRider system asset replacement and technology update.

(1) When will the replacement and update be completed?

(2) When will a new ticketing system that makes use of contemporary contactless payment methods be rolled out?

Hon SUE ELLERY replied:

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

(1)–(2) The updated SmartRider readers and back-office systems will be progressively updated from later this year. The new contactless fare payment method is expected to begin after this update.

GERALDTON HEALTH CAMPUS — REDEVELOPMENT

211. Hon MARTIN ALDRIDGE to the minister representing the Minister for Finance:

I refer to question without notice 90 on the delayed and now uncertain Geraldton hospital redevelopment.

(1) How many tenders were received by the department for the main works contract?

(2) What were the lowest and highest bids received?

(3) Will the minister please table the tender evaluation report?

(4) Have the project time frames now been reconsidered; and, if so, what are they?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question and provide the following answer on behalf of the Minister for Finance.

(1) Three tenders were received.

(2) Global supply chain and skilled workforce issues have significantly impacted a range of projects, including the Geraldton hospital redevelopment. As a result, all bids received were significantly higher than the budget available for this project.

(3) The Department of Finance advises that the evaluation report contains a significant portion of commercial-in-confidence information. Accordingly, the minister requests the honourable member to clarify the areas of particular interest and he will endeavour to answer that question to the extent he can.

(4) The state government remains committed to the redevelopment of Geraldton regional hospital, and new time frames will be confirmed once a tender is awarded.

COMMUNITIES — POLICE RAID

212. Hon PETER COLLIER to the Leader of the House representing the Minister for Community Services:

I refer the minister to her response to question 165 on Wednesday, 16 March and question 193 on Thursday, 17 March.

(1) What is the current employment status of each of the 13 public officers who were identified as of potential interest in the internal investigation?

(2) What is the current employment status of each of the eight public officers, if different from those identified in (1), who were referred to the Corruption and Crime Commission?

(3) Were any of the public officers referred to in (1) and (2) being investigated for potentially leaking information?

(4) If yes to (3), how many?

Hon SUE ELLERY replied:

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

(1)–(2) All remain employed by the Department of Communities.

(3) Yes.

(4) Thirteen are being investigated.

METRONET — ARMADALE RAIL LINE — PERTH–BUNBURY FASTER RAIL BUSINESS CASE

213. Hon JAMES HAYWARD to the Leader of the House representing the Minister for Transport:

I refer to the answer provided by the minister to question without notice 101.

(1) Has the minister considered the possibility that the potential route for a fast-train service from Perth to Bunbury may utilise the Armadale line corridor?

(2) If yes, have engineering considerations for the fast train been made as part of the Armadale line works; and, if not, why not?

(3) Has the minister sought advice from Infrastructure WA in relation to the long-term planning considerations for the Armadale line?

(4) If yes to (3), will the minister table the advice; and, if not, why not?

Hon SUE ELLERY replied:

(1)–(4) As outlined in answer to the member's previous question without notice, dated 23 February 2022, the Perth–Bunbury faster rail business case is ongoing and will consider a range of options. Infrastructure WA is represented on the project steering committee.

POLICE — OPERATION TIDE

214. Hon TJORN SIBMA to the Leader of the House representing the Premier:

I am sorry; I am tangled up in my mask. Forgive me.

I refer to comments made by Commissioner of Police Chris Dawson on 6PR on 9 March when he admitted to halving the number of police officers assigned to the COVID-19 related Operation Tide, and doing so in the week preceding the interview.

(1) How is the commissioner's decision consistent with the inferred elevation of community risk presented by the Premier's decision to implement level 2 COVID restrictions on 28 February?

(2) When did the commissioner advise the Premier of his decision to reassign half of the Operation Tide force back to frontline policing duties?

Hon SUE ELLERY replied:

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

(1)–(2) Operation Tide was established by the WA Police Force in March 2020 to support Western Australia's response to COVID-19 and has performed an exceptional job to help keep the Western Australian community safe throughout the pandemic. Operation Tide has played a crucial role to ensure that the state of emergency measures, based on public health advice, have been implemented in a calm and considered manner. I note that the member does not support the public health advice and measures taken to keep the WA community safe.

Hon Tjorn Sibma interjected.

Hon SUE ELLERY: I don't know; masks, mate.

The deployment of resources is an operational matter that is the responsibility of the Commissioner of Police. The full border opening on 3 March resulted in fewer resources being required to manage the border. However, the work of Operation Tide continues.

DERBY — BRAWL

215. Hon NEIL THOMSON to the minister representing the Minister for Police:

I refer to the comments made by the Commissioner of Police on 6PR on 9 March regarding a brawl that recently occurred in Derby.

(1) Was drunkenness a major factor in the brawl?

(2) How many individuals involved in the brawl were —

(a) arrested; and

(b) cautioned?

(3) Of those in answer to (2), how many are —

(a) subject to a barring notice issued by the Commissioner of Police leading them to being placed on the banned drinkers' register; and

(b) subject to a prohibition order issued by the director of Liquor Licensing?

Hon SAMANTHA ROWE replied:

I thank the member for some notice of the question. I am answering on behalf of the minister representing the Minister for Police.

The following information has been provided to me by the Minister for Police.

Western Australia Police Force advise —

(1) Yes.

(2) (a) Investigation still in progress. No arrests to date; and

(b) investigation still in progress. No cautions to date.

(3) (a)–(b) Not applicable. Subject of ongoing investigation.

WA COUNTRY HEALTH SERVICE — CHILD DEVELOPMENT SERVICES — WAIT TIMES

Question on Notice 544 — Answer Advice

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.04 pm]: Pursuant to standing order 108(2), I wish to inform the house that answer to question on notice 544 asked by Hon Donna Faragher to me as Leader of the House representing the Minister for Health will be provided on 24 March 2022.

FORESTRY — TIMBER HARVEST

Questions on Notice 539 and 540 — Answer Advice

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [5.04 pm]: I inform the house that under standing order 108(2), the answers to questions on notice 539 and 540 asked by Hon Dr Steve Thomas on 17 February 2022 in my capacity representing the Minister for Forestry will be provided on 7 April 2022.

LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2021

Committee

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

Clause 261: Terms used —

Committee was interrupted after the clause had been partly considered.

Hon MATTHEW SWINBOURN: Prior to question time, Hon Nick Goiran inquired about some correspondence that he is obviously aware of between the Law Society of Western Australia and the Attorney General regarding a request for a meeting with the Attorney General and stakeholders, particularly with respect to the commencement of the uniform legal profession—sorry, the legal profession uniform law. I do not think I will ever get the order of those words correct, but I will continue to try. I can confirm that during the break I had an opportunity to confer directly with the Attorney General's staff and indicate that a meeting did not arise from that contact with the Law Society. However, there was correspondence between the Attorney General's office and the Law Society regarding the matters that were raised in the correspondence in particular and, more specifically, in relation to the commencement of the scheme. At the stage they were corresponding, I think the commencement date was 1 January; however, there was not enough time between October and January for that to occur. There was talk about the commencement date being 1 April. That was the discussion about the commencement. The position now, which is in concurrence with the Law Society, is that the bill will not commence before 1 July 2022, to address and to ensure that the matters raised by the Law Society and other stakeholders are adequately taken into consideration.

As I said, there was no meeting, but there was correspondence and there continues to be correspondence between the Attorney General's office and the Law Society on a range of different matters, including the Legal Profession Uniform Law Application Bill. The only other issue that was outstanding, as I recall, was the secrecy provisions. I indicated to the member that we were not sure at the table at the time whether or not such equivalent provisions were within the application acts of New South Wales and Victoria. I can confirm that there are no such provisions within those acts.

Hon NICK GOIRAN: Have any of the stakeholders raised concerns about the transitional provisions set out in part 16?

Hon MATTHEW SWINBOURN: I have been advised that some stakeholders raised concerns about transitional provisions at the consultation stage of the bill. In a general sense, those concerns were addressed through the

transitional provisions. I will give an example of such a concern. Clause 286 deals with persons approved as QA providers under the former Legal Profession Act. The original draft contained only subclauses (1) and (2) that allowed a QA accreditation to run indefinitely. A concern was raised about this by the Legal Practice Board, I presume. I am getting a nod from the table. That was an issue, because we did not wish the accreditation of QA providers to run in perpetuity, so subclause (3) was inserted. That is an example of issues raised being addressed. I could not comprehensively go through every matter raised. The transitional provisions are a key temporal issue, because we are going from a regime that has been in place since 2008 to a new regime—but over time the transitional provisions become less important. I might be able to give the member more examples if he wants.

Clause put and passed.

Clauses 262 to 287 put and passed.

Clause 288: Experience acquired before commencement day taken to be supervised legal practice under Uniform Law s. 49 —

Hon NICK GOIRAN: What has given rise to the insertion of clause 288(2)?

Hon MATTHEW SWINBOURN: I am advised that Parliamentary Counsel picked this up when reviewing the bill. Clause 288(2) seeks to ensure that, as of commencement day, all practitioners who have completed supervised legal practice or who are otherwise entitled to practise on their own account will be recognised as having completed a period of supervised legal practice under the Legal Profession Uniform Law. The concern was that, in the absence of this provision, people who have completed College of Law and practical legal training—I do not think anyone does articles any more—and are 18 months into their two years' supervised practice, all of this comes into place and all of a sudden no provision ensured that the period of supervised practice is preserved, and people would have to start that period of supervised practice all over again. I would dread to think that that would happen and people would knock on my door getting upset about it, because nobody enjoys supervision very much. Probably some people do, but I certainly do not.

Hon NICK GOIRAN: Was this picked up by Parliamentary Counsel or the College of Law?

Hon MATTHEW SWINBOURN: It was Parliamentary Counsel.

Clause put and passed.

Clauses 289 to 328 put and passed.

Clause 329: Transitional regulations —

Hon MATTHEW SWINBOURN: I move —

> Page 180, line 4 — To delete "of this" and insert —
>
> to this

As a quick explanation, this probably speaks for itself, but it was a drafting correction identified by the Parliamentary Counsel's Office and does not alter the substantive meaning of the provision.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 330: Act amended —

Hon NICK GOIRAN: We are on to the final part of this bill, albeit only at clause 330 of a 421-clause bill. That said, for the benefit of the parliamentary secretary and the deputy chair, my questions on part 17 of the bill are limited to division 1—and thereafter I have no further questions on part 17, although I know the parliamentary secretary has another amendment on the supplementary notice paper that we touched on briefly during consideration of clause 1, particularly the special commencement date set out in clause 2 for that provision. Division 1 of part 17 deals with consequential amendments to the Aboriginal Affairs Planning Authority Act 1972, so I will deal with the division, being clauses 330 and 331, in totality. What has given rise to the insertion of this exemption from the provisions of the Legal Profession Uniform Law?

Hon MATTHEW SWINBOURN: I am advised that the issue was raised in the last Parliament by the Greens (WA) during briefings undertaken on the 2020 bill. The insertion of part 17, division 1A—now part 17, division 1—in the 2020 bill is to expressly exempt persons authorised under section 48 of the Aboriginal Affairs Planning Authority Act 1972 from section 10 of the Legal Profession Uniform Law in the same way as applies to industrial agents, settlement agents or prosecutors under the bill. See items 12, 22 and 43 of clause 421 of the 2020 bill as a matter of reference.

Clause put and passed.

Clause 331 to 356 put and passed.

New Part 17 Division 8A —

Hon MATTHEW SWINBOURN: I move the amendment in my name on supplementary notice paper 31, issue 3 —

Page 187, after line 27 — To insert —

Division 8A — *Industrial Relations Act 1979* amended

356A. Act amended

This Division amends the *Industrial Relations Act 1979*.

356B. Section 112A amended

(1) In section 112A(3) delete "For the purposes of section 12 of the *Legal Profession Act 2008*" and insert:

Despite the *Legal Profession Uniform Law (WA)* section 10,

(2) Delete section 112A(3B) and insert:

(3B) In subsection (3A) —

disqualified person —

(a) means —

(i) a disqualified person as defined in the *Legal Profession Uniform Law (WA)* section 6(1); or

(ii) a person whose name has been removed from an official roll of lawyers (whether admitted, practising or otherwise) kept in a foreign country (a ***foreign roll***);

but

(b) does not include —

(i) a person whose name has, for reasons unconnected with disciplinary action, been removed from a foreign roll or a Supreme Court roll as defined in the *Legal Profession Uniform Law (WA)* section 6(1); or

(ii) a person whose Australian practising certificate (as defined in the *Legal Profession Uniform Law (WA)* section 6(1)) has, for reasons unconnected with disciplinary action, been suspended or cancelled.

Hon MATTHEW SWINBOURN: By way of brief explanation, this new part is consequential upon the amendment to the Industrial Relations Act 1979 contained in section 69 of the Industrial Relations Legislation Amendment Act 2021. It ensures that the term "disqualified person" as used in section 112A(3)(a) of the Industrial Relations Act 1979 is defined by reference to the Legal Profession Uniform Law (WA), not the Legal Profession Act 2008.

New part put and passed.

Clauses 357 to 420 put and passed.

Clause 421: Other Acts amended —

Hon MATTHEW SWINBOURN: I move —

Page 211, the Table item 17 the 2nd row — To delete the row and insert —

s. 5(1) def. of ***independent children's lawyer*** s. 11(3a) def. of ***legal experience*** par. (a) s. 219AK(2)(b)	an Australian legal practitioner	a legal practitioner

By way of explanation, I jump ahead to this amendment and the next two that are all consequential to the following acts introduced and passed since this bill was introduced last year—namely, the Family Court Amendment Act 2021, the Industrial Relations Legislation Amendment Act 2021, and the Veterinary Practice Act 2021. These amendments simply ensure that those new laws are properly dealt with by this new bill.

Amendment put and passed.

Hon MATTHEW SWINBOURN: I move —

Page 213, the Table item 22 — To delete "s. 112A(3)".

Amendment put and passed.

Hon MATTHEW SWINBOURN: You are doing a sterling job, deputy chair, if I do say so myself. I move —

Page 221, the table after item 50 — To insert —

50A. ***Veterinary Practice Act 2021***		
s. 3	def. of ***legal practitioner***	

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

LEGAL PROFESSION UNIFORM LAW APPLICATION (LEVY) BILL 2021

Committee

The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1 put and passed.

The DEPUTY CHAIR (Hon Peter Foster): Is there any interest in this bill?

Hon NICK GOIRAN: Deputy chair, yes, there is plenty of interest in this bill by the opposition, but the work of the parliamentary secretary on the package of bills has been outstanding and we have no further questions.

The DEPUTY CHAIR: Understood.

Clauses 2 to 4 put and passed.

Title put and passed.

LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2021
LEGAL PROFESSION UNIFORM LAW APPLICATION (LEVY) BILL 2021

Report

Bill (Legal Profession Uniform Law Application Bill 2021) reported, with amendments.

Bill (Legal Profession Uniform Law Application (Levy) Bill 2021) reported, without amendment.

By leave, reports of committees adopted.

ADMINISTRATION AMENDMENT BILL 2021

Second Reading

Resumed from 7 September 2021.

HON NICK GOIRAN (South Metropolitan) [5.34 pm]: I rise in my capacity as the shadow Attorney General as the lead speaker for the opposition as we consider the Administration Amendment Bill 2021. It has indeed been a long time coming to get to this particular bill, which is currently listed as order of the day 5. For the benefit of members, this bill seeks to amend the Administration Act 1903. The Administration Act deals with the estates of deceased persons and, in part, how they are to be handled by administrators.

I say that this matter has been a long time coming—I know that the parliamentary secretary will share my enthusiasm that we have finally reached this bill on the list of orders of the day—because the bill that is before us passed the other house on 3 September last year. The bill that was introduced and passed in the other place was in exactly the same format as the bill that was introduced in this house on 3 April 2019 but was never again debated. We are less than a fortnight short of the three-year anniversary of this bill being first introduced by the McGowan government in the Legislative Council. That was in the fortieth Parliament—nearly three years ago. In that three-year period, the bill has never surfaced.

This has caused incredible exasperation to stakeholders. As I have repeatedly told those stakeholders, they need to talk to the Leader of the House, Hon Sue Ellery, because over the last three years, she has been the person who has controlled the legislative agenda. She has been the person who has decided what orders of the day will be brought on. She has repeatedly decided over the last three years to bury this very important bill that will have a meaningful impact for those people who survive their loved ones and have to deal with inheritance matters.

It is a matter that has been brought up on multiple occasions by stakeholders, not the least of whom are some experts in the field. In that respect, I note that an excellent opinion piece was published on 21 September last year by the then president of the Law Society of Western Australia, Jocelyne Boujos. In part, the opinion piece had this to say, which might explain to members why these things are of importance —

> Many people shrug their shoulders and say: "So what? The house goes to my spouse, and I have nothing much else of value to leave." However, in an economic environment where a significant part of an individual's estate is often the insurance payout from compulsory superannuation, it is an immediate and significant problem. The Law Society has campaigned vigorously, advocating for many years, that the State government change the law, and was disappointed when the legislation lapsed at such a late stage last year.

As I said, those comments were made in September last year and so the reference to the lapsing of the bill is the lapsing of the bill that I was referring to earlier. We now almost mark the three-year anniversary of it being introduced into this place and, for reasons known only to the Leader of the House, buried for near on three years. This is not the only stakeholder who has expressed some form of exasperation in this area. There is also the group of practitioners, the Society of Trust and Estate Practitioners Western Australia, STEP, who pride themselves on advising families across the generations. STEP has also repeatedly advocated for not just the passage of this bill, but actually the prioritisation of the bill, which has consistently fallen on the deaf ears of the Leader of the House. On 9 April 2020, a letter was sent to the then Leader of the Opposition, Hon Peter Collier and the then shadow Attorney General, Hon Michael Mischin. This letter would be well-known to the Leader of the House, because it was also copied to the leader and to the then President of the Legislative Council, Hon Kate Doust. In this letter from STEP Western Australia and in terms of its exasperation regarding the passage of a couple of bills, not dealing merely with the Administration Amendment Bill, but also concern about the Legislation Bill 2018 and, of course, the predecessor to this bill before us, the Administration Amendment Bill 2018, it indicated that it had been communicating with the government about this matter. Then it said, in part, as follows —

> We received a positive reply on behalf of the Attorney General on 23 March 2020 …

Keep that date in mind, members and Acting President. Tomorrow will be the two-year anniversary since it received this positive reply on behalf of the Attorney General which stated —

> … that the two Bills:
>
> *"are among a number of other important Bills the McGowan Government is seeking to advance as soon as possible now that the VAD Bill has been dealt with. It is anticipated that these Bills will be progressed as soon as possible, subject to the Legislative Council's priorities".*

That was two years ago. Two years ago, these stakeholders, these experts in the field, were told by the government that this bill in particular will be progressed as soon as possible, subject to the Legislative Council's priorities. That sounds to me like code from the Attorney General to the experts to say, "Subject to whether Hon Sue Ellery decides to bring the bill on for discussion or not", because two years has passed. When has this bill been brought on? Not the 2018 bill, which has since lapsed, but the one before us now. Whatever members may think with regard to the lapsed bill, members of the forty-first Parliament know full well that with the passage of legislation in this forty-first Parliament, the government instead decided to prioritise legislation like the so-called electoral reform, which cannot possibly, even if one is a big supporter of it, have a material impact until the next election in three years' time. But that was given high priority and steamrolled through Parliament by the McGowan government while this particular bill, which experts in the field are saying will have a material impact on families in Western Australia, not only lapsed in the previous Parliament but also has not been given any priority in this Parliament. Then of course we had the other infamous bill dealing with the so-called protection of the Beeliar wetlands, which was a bill solely constructed to make it more difficult to build a road that this government has no intention of building anyway. Those are two examples of many that could be cited that the government decided to give upmost priority, and despite telling stakeholders that this bill would be progressed as soon as possible and that the government is keen to advance, the record in the forty-first Parliament would indicate otherwise.

Although the government has included proposed new section 14B in the bill before us, which requires the minister to review the relevant sums every two years, it is also important to note that the bill as a whole should be reviewed periodically to ensure that we can avoid the situation that we have experienced over the last few years—that is, a situation in which the relevant sums fall woefully short of what they should be and stakeholders are left reliant on the proactivity of the government of the day to ensure that the bill is kept up to date. Keep in mind, we are talking about a provision in the bill that says that the minister should consider something or review something every two years. Tomorrow will be two years since the government said that it was going to prioritise this bill. The original version of this bill was introduced in 2018. Here we are in 2022. As I indicated earlier, the predecessor of this bill was introduced into the Legislative Council on 3 April 2019. We are just short of three years since that has passed. If that is the level of proactivity taken by the McGowan government, what confidence can we have that this provision, which would see the minister review sums every two years, will actually be implemented? It seems to me that given its lack of proactivity par excellence, we should be including a more substantive review to the legislation to ensure that there are multiple mechanisms to hold the government to account.

With those introductory remarks having been made, members will need to turn their mind to what exactly is the problem with our current laws dealing with inheritance matters that the bill is trying to fix? It is the case that if a person dies without a will, their estate is to be distributed in accordance with sections 14 and 15 of the act. Interestingly, about 50 per cent of adult Australians die without a valid will. When they do that, that means that they are dying intestate. Section 14 contains statutory legacy amounts to be provided to surviving spouses in circumstances in which the deceased has not left any children. Indeed, it also provides a formula or a scenario whereby children are survivors of their parent. The legacy amounts are also provided to surviving parents in circumstances in which there is no surviving spouse or child of the deceased. The problem that this bill will fix is that the current statutory amounts are grossly inadequate, as members will see when we consider not only the provisions of the bill, but also some proposed amendments on the supplementary notice paper.

The acting president of the Law Society of Western Australia has had a longstanding interest in this matter. I commend to members' attention a briefing paper that the Law Society prepared, titled *Amending the Administration Act 1903 (WA) to increase the statutory legacy*. In that briefing paper, it says, in part —

> Historically, the statutory legacy was a means by which the spouse could acquire the matrimonial home.

It goes on to say —

> In 2019, 29 years later —

Of course, another three years has passed since the briefing paper was prepared —

> the statutory legacy remains the same.

Of course, in 2022, 32 years later, the statutory legacy remains the same.

It goes on to say —

> Nowadays, the amounts should be closer to $500,000 to meet the cost of even a modest house.

I would just ask members to remember that figure that the Law Society was advocating for three years ago. At the time when the Leader of the House was burying this bill, it was advocating for a figure closer to $500 000; let us consider that when we look at the figures that are in the bill and let us consider the amendment sitting on the supplementary notice paper to be proposed by the opposition.

The Law Society goes on to say —

> In no other State or Territory of Australia is the statutory legacy as low as it is in Western Australia. The current statutory legacy is simply insufficient where the surviving husband, wife or de facto partner does not have an interest in the residence. This means that the survivor is often put in the position of coming to an arrangement with his or her children and/or stepchildren, or in some cases bringing proceedings under the *Family Provision Act 1972*. If any of those children and/or stepchildren are minors this further complicates matters as the children cannot reach any agreement without the approval of the Supreme Court.

In terms of the figures themselves across the various jurisdictions—because the Law Society quite correctly identified some three years ago that no other state or territory of Australia has a statutory legacy as low as we do here—it will interest members to know that in Victoria the amount as of 1 July 2020 was $480 700. In New South Wales, the figure was $489 499. In Queensland, the figure was $150 000; that has not been amended since 1997—at least that was the case a year ago. In South Australia, the figure was $100 000, but subject to amendment by regulation, albeit not currently amended. In Tasmania, the figure was $434 995. In the Northern Territory, the figure was $350 000 with issue and $500 000 without issue, and in the ACT, the figure was $200 000. The lowest of those figures was $100 000, but members will see that particularly the larger states have higher figures—Victoria having $480 000 and New South Wales having $489 000.

Turning to the bill at the moment, if I draw members' attention to clause 4, they will see that the primary figure will be adjusted to $472 000, consistent with those other states. That of course is not the provision at the moment, which has been languishing for some 30 years. I want to take the opportunity to draw to members' attention one further example provided by the then president of the Law Society in that opinion piece to which I was referring to earlier in which a very practical example was given. The example reads as follows —

> … a wife of 17 years had to share the bulk of her husband's estate (consisting of his superannuation) with an estranged but independently wealthy stepchild while she did not receive sufficient to pay out the mortgage on the family home; a parent helpless when a child "frittered" the considerable sum received from their father's estate; a parent powerless as an ice-addicted stepchild received a payout of a quarter of a million dollars when her husband died.

These are the types of cases that have affected people in both a sad and indeed frustrating way. It is not uncommon for surviving spouses to be forced to dispose of the family home simply to comply with the existing provisions of section 14. Members can imagine the compounding of grief as a result of that. Therefore, it is an ironic outcome when we consider that the purpose of the statutory legacy amount was to provide a means by which the spouse

could acquire the matrimonial home—to then have a scenario in which, actually, the home has to be sold to comply with the law. Stakeholders have spoken out consistently over a long time on this. As I mentioned earlier, the Law Society of Western Australia has recommended the statutory legacy amount be closer to $500 000, which this bill does achieve, but for reasons that I will explain a little later, because the bill has been languishing for such a long period, the figure that is now being provided in the bill is, in itself, out of date.

This whole process of reform did not commence overnight; it goes as far back as 1990. Clearly, this reform is long overdue. Indeed, I note again that the Law Society has in an open letter to members of this forty-first Parliament, dated 1 December 2021, said that the number of individual members of our community who may be affected by the continued delay are around 20 persons a day. That is the estimate from the Law Society. While the Leader of the House allowed this particular bill to languish, year after year, 20 Western Australians a day were being impacted by that deliberate decision to bury this bill and instead to expedite and prioritise other bills, which might well receive the support of members and the government, as the record indicates that it did, but which cannot reasonably be said to be a higher priority than this bill that is currently before us.

There is ample community support for these reforms. It is interesting to note that these stakeholders have also indicated how this particular type of reform is necessary given the inequitability of the current law, especially for women. The immediate past president of the Law Society, who was at the time the president on 6 December 2021, in an article in *LawyersWeekly* titled "'No other state disadvantages its community to this extent'" is quoted as saying —

> "Because statistically women live longer than men, the current law severely disadvantages them. The Law Society has campaigned vigorously, advocating for many years, that the state government change the law, and was disappointed when the legislation lapsed at such a late stage last year. In no other state or territory of Australia is the statutory legacy as low as it is in WA …
>
> "The current statutory legacy is simply insufficient where the surviving partner is not on the certificate of title for the residential property. The little-known Administration Amendment Bill has had its third reading in Parliament but remains in the Legislative Council."

Clearly, that is a reference there to the third reading in the other place.

As I say, STEP Western Australia, that group of practitioners who pride themselves in advising families across generations, has specifically said that the legacies have completely failed to keep pace with the rising cost of living, which has caused much injustice to many, many in our community.

Before the bill passes, hopefully this evening, it is important to pause to consider the extent to which it is faithful to the original genesis of the reforms. Members may be aware that a working group was established in 2003 to examine our succession laws and that it published a report in 2007.

Sitting suspended from 6.00 to 7.00 pm

Hon NICK GOIRAN: Prior to the interruption for the dinner break, we were considering the Administration Amendment Bill 2021 and the exasperation of stakeholders over delays in the government bringing this bill before us for consideration. One of the experts in the field is a group called STEP Western Australia. Its members pride themselves on advising families across generations. They wrote to the Attorney General this month, on 4 March, specifically to advocate with respect to the legislative agenda. I thought it was interesting that they thought to include a sentence that reads —

> We are aware that the Bill has appeared in the Weekly Bulletins and Business Programs of the Council but has consistently been listed last in order of priority.

That demonstrates that the experts in the field are very familiar with how the legislative program works. We have a notice paper and, from that, some bills are selected by the government, prioritised and placed on a weekly bulletin; and, in addition to that, is the daily business program. These experts are familiar with all those parts of our procedure and have noted that this important piece of legislation has been consistently listed last in order of priority, hence their exasperation, multiple pieces of correspondence to the Attorney General and other people in government and why they are pleased that this evening we have the opportunity to debate this matter for the first time. It is certainly the opposition's view that it would like to pass this bill tonight.

Just prior to the interruption for dinner, we were also considering the genesis of the reforms, in particular the working group that had been established as far back as 2003 to examine our succession laws and the report it had published in 2007. That working group made a number of recommendations. This bill addresses one of those recommendations—an increase in the statutory legacy amount to be provided to spouses. I note that the working group also recommended that a surviving spouse should be entitled to the whole of the estate when there is no surviving issue. Currently, if the intestate has no issue but leaves a parent, brother, sister or child of a brother or sister, half of the remaining portion of the estate that exceeds the statutory legacy amount is to be distributed amongst those other family members. It appears that the working group thought it more appropriate that the spouse received the entirety of the estate. It is interesting to note that the government believes otherwise. Nevertheless, 15 years have passed since the working group's report was published. It will be interesting, and perhaps the parliamentary secretary will be able to inform

us in his response to this debate, whether the current working group has anything further to add or whether it would amend any of the recommendations made in 2007. I can perhaps telegraph to the parliamentary secretary that when we get to consideration of clause 1 in the Committee of the Whole I will ask to what extent the working group stills exists and whether it has been consulted; and, if the working group no longer exists, when was the most recent consultation with the last iteration of the working group. In any event, the original working group recommended that the statutory legacy for spouses be adjusted every two years and calculated on 75 per cent of the median house price. The government has chosen to calculate the legacy amounts based on the average weekly total earnings of full-time adult employees rather than the median house price or the consumer price index. It is important that the government explains its rationale for the deviation from the original recommendation representation, and perhaps the parliamentary secretary can do that during his reply to the second reading debate.

I will briefly touch on the opposition's amendments. It is indeed ironic that it is the government's delay in bringing this bill on for debate that now sees the amounts that are proposed in the bill are out of date. Consequently, the opposition has placed amendments on the notice paper that will ensure that the sums for the specified items are consistent with the government's own formula. I note that those amendments on the supplementary notice paper are supported by the expert stakeholders. In conclusion, I welcome the decision to bring this bill on for debate for the first time and indicate that the bill has the support of the opposition.

HON KATE DOUST (South Metropolitan) [7.07 pm]: I am pleased to comment on the Administration Amendment Bill 2021. I know the bill is narrow in scope and predominantly deals with changes to arrangements for payment to members of a family when a person dies intestate. I wanted to comment on this because I have had personal experience of dealing with the administrative management of an estate. Those members who have been here for a while will recall that in May 2016, we found my brother David dead. He literally came off his bike and dropped dead. Sadly, like a lot of people, as has already been alluded to, he had never contemplated his death and had not made a will. We did look for one, but there was no will. It has taken me five and a half years to try and resolve all of his affairs—even though he was a single man. It is only yesterday that I received, yet again, another cheque made out in his name—even after I told the issuer of the cheque that he was dead. The administration goes on.

I want to talk about the changes that have been made that recognise the need to increase the amounts not only for the spouse but also for the parents. I know from having looked at some of the reports and linking the Australian model of dealing with intestate arrangements with models in the United Kingdom that there has been a move away from providing resources to children and to shift the focus back to spouses.

I think increasing the amount is quite a significant change. I have spoken to a number of lawyers who work in this area. In particular, the lawyer who looked after some of my brother's things told me about some of the problems. Hon Nick Goiran referred to one situation, but death brings out the worst in people. Although a person might have had a great relationship with their family—be it their own blood family or an extended, blended family—when somebody dies, usually a parent, or sometimes a grandparent, people change. It does not matter how well people got along in the past, sadly, money changes everything. The lawyer talked to me about situations he has had to deal with. Even in a long-term arrangement, when the father of a family passed away without a will, the dynamic of the family changed. He told me about the enormous pressure that it put on the wife, the stepmother, if you like, who was basically pushed out of the home. She had to sell her home because the amount of money she received from his estate as it stood was very low and the remainder of the property had to be divided amongst the surviving children. There are probably a number of other examples, but when a person shifts from a comfortable lifestyle with a partner, with a lot of things to look forward to, and all of a sudden death occurs and their world changes dramatically, they should not have to worry about whether they will still have a roof over their head or how they will pay for their ongoing lifestyle. Increasing the amount from $50 000 to $472 000—I know Hon Nick Goiran has some amendments on the supplementary notice paper to increase that further—will make a substantial change to people impacted in that way.

I did not have to deal with a spouse because, sadly, my brother never had a partner. I have had to explain that a few times to people when I have been trying to sort out his business. What he did have were parents and siblings. I note, again, that the government is looking to increase the amount of money that will be paid to parents when an individual without a partner or children dies. The government is right; $6 000 really does not do a lot if a family has to manage funeral arrangements, pay rental debts or pay off bills. It goes very quickly on all those things for which they need to access cash. I must say that in my situation with my brother I engaged a lawyer—it was a very expensive process—and I am really glad that I did because, quite frankly, working through the process is very complicated. It is not straightforward and I had to do a lot of legwork myself, even though I had a lawyer. If a person cannot afford a lawyer, I cannot imagine how diabolical it would be managing grief and trying to work through this process. A big tip for people: write a will.

In terms of the family, I think parents need to be acknowledged. It is tough enough losing a child at any age—be they a teenager or, like my brother, 52 years old. Families have to come to terms with that. I am not saying that parents expect a windfall, but I think it is fair that if there is money to be allocated, they should be the first to be recognised for their contribution to and their relationship with their child, and if it assists them with clearing up other matters for that individual, so be it. The amount can be quite substantial. It will depend upon the value of

the estate, of course. If people have worked for a time and have superannuation, or they have a small property, or a large one, it can tote up to a surprising amount. Working through the division of an estate as the legislation currently stands is quite challenging. People have to deal with that $6 000 threshold. In my case, my parents had divorced, so I had to split it across two lots. Then the remainder had to be worked through and divided among siblings. This process does not resolve everything in one go and a person might be dividing an estate all the way through. They have to constantly go back to the formula to work out what the parents and the siblings get, and it can be quite complicated.

I note that Hon Nick Goiran talked extensively tonight about delays in dealing with this legislation. I know it has a long history. The original bill was framed in 1903. It was probably too early for Edith Cowan, but I imagine she would have had some say at the time about providing support to women dealing with estates. The legislation has had a long, long—I was thinking about using the word "pregnancy", but that is wrong. It has had a long ride to get here and there have been subtle changes around other issues to deal with administration, but I think this change will be well received. Hopefully, in due course, government will look at making it a little bit easier to work through the process. I know people have to be held accountable, justify everything and tick all the boxes, but there must be an easier way for them to work through the process.

Towards the end of bill there is reference to the review process that will be put in place as a result of an amendment in the other place, whereby the minister will have to review the legislation and the amounts, and provide a report. It is a shame our future Clerk, Mr Hastings, is not here because I know that he is keen on this. I was thinking about the idea of post-legislative scrutiny by this Parliament, dealing with those bills by referring the matter to our Standing Committee on Legislation to review and perhaps provide recommendations to the minister of the day. It might actually take some of the burden off that minister and give back to the Parliament the work it needs to do in closing the full cycle of commencing the legislation, working through the processes and completing the review as well. I put that suggestion on the table. I will probably raise this matter from time to time when we are dealing with legislation. Post-legislative scrutiny has been adopted throughout Europe, the United Kingdom and a range of Commonwealth countries in Asia. It is becoming a very important part of the legislative cycle, particularly for parliamentarians to work their way through the entire process. I offer that as a suggestion to provide assistance to the minister of the day.

As I said earlier, this bill is important. It follows that shift we have seen in the UK and other states whereby emphasis is placed on support for the spouse who is remaining. It addresses the issue of updating and increasing the amount. It is not necessarily a legitimate amount but it is capable of providing for that individual even if they still have to split up the remaining amount, and it is not as contentious or difficult as it is currently. Even though this has taken a while—I am sure Hon Nick Goiran will talk about this again and again—given that various governments have looked at this issue since 1982, when it was last substantially changed, I really do not think it is fair or appropriate to lob the blame onto just this government or take it to task for the delay. I might remind members that between 2008 and 2017 there was a Liberal government and it could have addressed this at any time during that period if it had thought it was important enough. Obviously, it did not. This government does, and, hopefully tonight, when these matters are resolved through Committee of the Whole House, these changes will be put in place and provide a much better benefit and outcome for those families impacted by the death of a loved family member and who have to deal with the fact that their family member did not contemplate their time in this place and write a will. The government has tried to address this situation. I look forward to seeing how it will be managed in the future. This issue will not go away until we start to promote the need for people to look after themselves and their families by drafting a will. Maybe there needs to be a better education program. I know that the Law Society of Western Australia runs a draft your own will session for a week once a year. Perhaps there needs to be more of that. If we can reduce the number of people who die without a will, that will be all the better for their families. I hope that perhaps there will be an ongoing discussion more broadly in the community about that.

I am really pleased to say a few words on this bill. I wanted to say these things based on my experience, which has been long and challenging. I must say working through money issues for a family member and managing the grief and expectations of family members can be quite challenging. Something that most people think will happen very quickly, sadly, when there is no will in place, can become very detailed and elongated. In due course I hope that further changes will be made to tidy up and make the process as smooth as possible for those people who are trying to work through it. I think that the changes the government is making are very positive. I know that they will be well received and I look forward to the passage of this bill.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.20 pm] — in reply: I thank Hon Nick Goiran and Hon Kate Doust for their contributions on the Administration Amendment Bill 2021. Both members recognised the fundamental importance of the changes being proposed in the bill, but I think it will be most advantageous to the people who will benefit from this bill if we focus on the advantages rather than on the history of how we got here. I will say this, however, and I think it backs up some of the points made by Hon Kate Doust: the legacy amounts that are being addressed in the bill are from 1982. They have not been changed since 1982. For 40 years, these amounts have remained the same. The original amount was put in the legislation during the O'Connor government in 1983 and since then we have had a Labor government, a Liberal–National government, a Labor government, a Liberal–National government, another Labor government, another Liberal–National government

and now another Labor government. Therefore, I think the best way of describing any failure to address this fundamental issue, while we focus on the last few years, is to recognise that there has been a collective failure by governments to address this issue by our political parties over time. As I said, for the purposes of the people who will benefit from this change, it is probably best that we focus on what the bill is seeking to achieve rather than its journey to get here. On that point, I do not propose to say much more about delays in getting here and things of that kind, because I just do not think it will advance what we are trying to achieve.

Hon Nick Goiran made some points about the bill and highlighted amendments that are in his name on the supplementary notice paper. It is fair to say that although there are a number of amendments, they principally relate to two issues—one is to update the figures that were provided in the 2021 bill based on the most recently published average weekly total earnings and the other is to insert a review clause. I will make it clear that the government does not support the honourable member's amendments at this stage. We will probably get into more detailed reasons during the Committee of the Whole, but the government does not support updating the figures in the bill because the figures in the 2021 bill, which was updated by the bill that lapsed in the last Parliament, would not have changed had we passed the bill at the earliest possible opportunity. Therefore, the amounts that are in the bill now are still the existing amounts had the bill been passed and proclaimed and, therefore, changed.

This is what we did do. During the briefing I was in with Hon Nick Goiran, he may recall that he made a point—it was last year so memories could be a little hazy—about regular reviews of the amount. He identified what I thought was a fair point—that is, we got into this situation of amounts not being moved for 40 years because nobody pushed through amendments to the bill, so there had been no change. The bill that was introduced into the Legislative Assembly did not provide for a regular review of the amounts. The member may recall that he asked us to consider that. An amendment was introduced in the other place—I give him credit for that—at his suggestion. He did not design the review clause, but it was certainly at his suggestion. Therefore, proposed new section 14B of the act states —

> **Minister must review sums for specified items**

That was introduced to ensure that the amounts will be reviewed regularly and that the amounts will remain relevant.

We come back to the member's proposed amendments on the supplementary notice paper regarding the amounts, because I understand he wishes to pursue them if it is the case that the review mechanism that we put in would take effect from only the date on which the bill is passed. But that will not be the case. Proposed clause 14B(2) states —

> The minister —

That is, the Attorney General —

> must review the relevant sums and decide whether or not it is appropriate to make an order under section 14A(2) —
>
> (a) on or before 30 June 2023;

That is just over 14 or 15 months away, if my maths serves me right. Those amounts will and must be reviewed on the passage of this bill by the minister on that date. If we had passed that date, or that day took effect only from the passage of the bill in terms of two years from now, which is what the requirement will be—that is, review every two years from that point forward—again, I could understand the changes to those amounts.

The other proposed amendments on the supplementary notice paper regarding the insertion of a statutory review clause into the Administration Act are not for this bill or exclusively for this bill. That provision is a review of the entire act, which would come into effect as soon as practicable after the fifth anniversary on the day on which the Administration Amendment Act 2021 comes into operation. That is a statutory review mechanism for the broader act—the 1904 act, I think it is—which, obviously, has some issues that people are constantly advocating for. Again, we do not support that because there have been processes over time in relation to the broader act. We can get into more detail on that when we get into committee. I am sure a question will be asked about that.

The honourable member also referred to the working group, which I confirm still exists. I think we can get into more detail about those sorts of things later.

The member also asked me to explain why it is based on average weekly total earnings rather than the consumer price index. I would rather address that matter in the committee than in the reply to the second reading. We must go into committee because the member has amendments on the notice paper, so if we deal with that issue whilst we are in committee, we will probably flesh out a more wholesome answer than in a second reading reply speech.

In summary, this is an important area of law reform. The bill is only five clauses long. It is deceptively simple. But as is often the case with what we do in here, a simple five-clause bill can be very significant. The circumstances that Hon Kate Doust outlined show that many people are affected by these legacy amounts. Too many people do not have wills that express their actual wishes for their estates upon their death. There is a significant number of people. There have been changes. When the bill was originally drafted back at the turn of the last century, people did not have many assets and were not worried about a will because when they died, they had simply their personal possessions and for many people that was all they had and they were not too worried about it. However, with the onset of superannuation and things of that kind, and also the provision of payments for superannuation-connected

insurances for total and permanent disability and death, people are often left with a not insignificant legacy upon their death, which can essentially go to a person or people that they would otherwise not have passed it on to if they had made a conscious decision to enter into a will.

As I say, it is obvious to me that the opposition alliance supports the bill and its intention, and we appreciate its expression of that support. Obviously, this side of the house supports the policy, but I think both sides of the house would absolutely support people expressing their wishes about how their estates should be disposed of by entering into a will. I think that is ultimately the solution to any issues that people might have with the amounts or anything of that kind. The government is only legislating this as the fallback position; people have it within their power to make a will and make their own allocations. I wish that would stop disputation between families; of course, it does not always, but it certainly makes it much clearer for the Supreme Court or other courts and tribunals to decide how things will be divided to give effect to people's wishes. With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon NICK GOIRAN: As foreshadowed in the second reading debate, the parliamentary secretary indicated in his reply that a working group is still in existence. One would imagine that the composition of the working group will have changed in the 15 years that have passed since the report that was the genesis of this bill was provided by the working group in 2007. Has the current working group been consulted on the bill that is before the house; and, if so, what was the nature of that consultation and were any concerns raised?

Hon MATTHEW SWINBOURN: Strictly speaking, the current working group was not consulted on the Administration Amendment Bill 2021, but it was consulted on the earlier 2018 bill. I make the following points. This bill is different from the bill that was introduced in 2018 only in the sense of the figures and the addition of the clause that arose from our briefing with the member. The original bill was the product of a recommendation of the working group, and, as I say, it was consulted. There has been only one change in membership between the 2018 version of the working group and the current 2020 version.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: No, not as far back as that, although I think people have been involved with it for as long as that. There has been only one change of personnel in that time frame. But I think it would be fair to say that the bill before the house is consistent with what the working group was trying to achieve, and we are comfortable with that.

Hon NICK GOIRAN: On the point about the bill being consistent with what the working group was trying to achieve, if we go back to the matter that arose during the second reading debate, the parliamentary secretary will recall that the recommendation in the report by the original working group in 2007 suggested that the statutory legacy for spouses be adjusted every two years. I will just stop there for a moment and indicate that, courtesy of the amendment moved in the other place, there is now going to be a forced consideration by government every two years. It will not necessarily mean that the amount will be adjusted; nevertheless, it will give partial effect to the first part of that recommendation. It then goes on to say that the adjustment should be calculated based on 75 per cent of the median house price. As the parliamentary secretary is aware, this bill does not use that as the basis for the calculation, but rather uses the average weekly total earnings for full-time adult employees. Can the parliamentary secretary give an indication of why the government has chosen to deviate from that recommendation, and whether, very specifically, that deviation has the support of the working group?

Hon MATTHEW SWINBOURN: I suppose there are many ways—this is a terrible saying—to skin a cat. Really, what we are trying to achieve is what we think is the most appropriate —

A member: It is not the animal welfare bill!

Hon MATTHEW SWINBOURN: No, but it is only a metaphor; it is not meant literally. My wife would kill me if she thought otherwise. Perhaps I should retire that saying! There is more than one way to get to that thing. The amount should be reflective, if we think about what we are trying to achieve with the legacy amount.

I return to the 2007 recommendation. We cannot really go into why we deviated from it because the Carpenter government was in power in 2007, we have had the Barnett government and now we have the McGowan government. The 2018 working group recommended the average weekly total earnings. That is what we based it on. Obviously, there were other ways we could do that. The working group recommended these figures after much deliberation. They were originally based on the median house price. That is what the original figure of $50 000 was based on. However, it is no longer just based on that; it is meant to reflect a figure that would see the surviving spouse partner looked after in

the case of intestacy while also striking a balance between the surviving partner and other people in the estate's family. Alternatively, we could have used the consumer price index but that was not considered to be appropriate because it may not accurately reflect changes in the housing market in WA as the calculation of the CPI includes a range of other factors. The average weekly total earnings is another cost-of-living index. It provides an objective snapshot indication of an individual's purchasing power and reliance on the AWTE and ensures ample protection for the amounts to reflect contemporary amounts. Reasonable people would take a view on what is the most appropriate. We have picked the average weekly total earnings because we think it is the most appropriate figure to achieve the reflective increases over time that will keep the amounts that are now set direct to the policies that we are trying to achieve with these amounts.

Hon NICK GOIRAN: Once this bill passes, the other jurisdictions will have finally caught up. The parliamentary secretary will recall that the Law Society of Western Australia, in particular, repeatedly made the point that Western Australia has fallen far behind the other jurisdictions with respect to the statutory legacy amount. I think the exact phrase that it used is that in no other state or territory of Australia is the statutory legacy as low as it is in Western Australia. That will no longer be the case once this bill passes. Indeed, we will be towards the higher end of the spectrum.

In terms of the calculation, and whether to use the median house price or the average weekly total earnings of a full-time adult employee, can the parliamentary secretary indicate what the other jurisdictions have decided to do in that respect?

Hon MATTHEW SWINBOURN: As is always the case, everybody does it a little differently across Australia. In New South Wales, there is an automatic update based on the CPI weighted average of eight capital cities. In Victoria, there is an automatic update based on the CPI for Melbourne, and the minister must publish that in its government gazette. In Queensland and the ACT, legislation is required to amend the amounts. In the Northern Territory, regulations need to be made to amend the amounts, although I do not know how that is determined. In South Australia, regulations need to be amended. In Tasmania, there is an automatic update based on the CPI weighted average of eight capital cities.

Hon NICK GOIRAN: That is interesting. We would not want to mirror Queensland, the ACT, the Northern Territory and South Australia because that is exactly the situation that we have been in for decades. We are moving away from that model. The only other model that exists is what I would describe as the CPI automatic update model, which is the model in New South Wales, Victoria and Tasmania. Now we are doing our own thing altogether. It does not really explain why we choose to use the average weekly earnings. The one explanation that has been provided is that it is consistent with a revised recommendation as a result of a consultation process that occurred with the working group in 2018. Is the parliamentary secretary in a position to give an indication to the house of the membership of the working group in 2018 and the membership of the working group in 2007 when the original recommendation was made?

Hon MATTHEW SWINBOURN: I cannot tell the member who the members were in 2007. We do not have that information available to us at the table. I am told that the working group includes representatives of the Supreme Court of Western Australia, the Public Trustee's office, the University of Western Australia's law school, the State Solicitor's Office and members of the legal profession and private industry. I suspect they are people who have specific skills on estates and administration.

Hon NICK GOIRAN: Why does the working group continue to exist? Is it because the government is working towards another suite of reforms? Hon Kate Doust made a very good second reading contribution, outlining some of her personal experience in this area. To the best of my recollection, the working group made other recommendations in its 2007 report on intestacy in the context of uniform succession law. Is that an active project underway at the moment, and hence the need for a working group?

Hon MATTHEW SWINBOURN: Yes, the group does exist in a form and, yes, the government is contemplating further changes to the act.

Hon NICK GOIRAN: I will not take that particular theme further, other than to again, I suppose, telegraph that that lends weight to the amendment on the supplementary notice paper, which is new clause 6, a review of the entire act. We can take that up when we get to that particular amendment.

Until such time that this bill passes, the legacy amounts are, certainly in recent times, completely inadequate and that is precisely why there has been all this advocacy and this need for reform. When we consider situations in which the deceased has a will and the will is challenged, there is no prospect whatsoever of the courts having any regard for the formula, the statutory legacy amounts, because it is completely inadequate. Now that the Parliament is enshrining into law what it is saying is a fair, reasonable and adequate distribution, to what extent, if any, will this new statutory legacy amount that is provided by the bill provide any guidance to the courts in circumstances in which wills are challenged?

Hon MATTHEW SWINBOURN: I think the member used the word "guidance", which is probably the highest one could elevate it to a court. It will not be binding on a court. A court might take it into consideration but there will be a range of other factors to determine what is an appropriate distribution in a particular circumstance. As I say, a court might take some guidance but it will not be binding on it in any way.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 14 amended —

Hon NICK GOIRAN: We now move to the part of the bill that deals with legacy amounts and, as we discussed earlier in clause 1, the original report from the 2007 working group supported the national committee's recommendation that the statutory legacy amounts be adjusted every two years by regulation based on 75 per cent of the median house price. We have identified that the government has taken a deviation with respect to the original recommendation to the extent that the formula that is being applied is based on the average weekly total earnings of full-time adult employees in Australia. The best justification that can be provided for that is the most recent consultation process involving the working group in 2018, which proposed that methodology. Further, useful information arose during our discussion on clause 1 that no other jurisdiction takes this approach—we are doing something somewhat novel—and that Queensland, the ACT, Northern Territory and South Australia are still stuck in the model of having to rely on either legislation or regulations to amend their amount. I might add in passing that the Northern Territory and South Australia are slightly ahead, given that theirs is a regulation-making amendment rather than one requiring adjustment to the primary legislation. New South Wales, Victoria and Tasmania have automatic updates based on the consumer price index and, again, that approach has not been adopted by the government. Instead, the formula is based on figures published by the Australian Statistician and, as I understand it, the figure proposed in this bill relies on a figure from November 2020. To what extent will the legacy amounts provided for in clauses 4 and 5—if it assists the parliamentary secretary in some way, I propose to ask my questions for clauses 4 and 5 together—be materially different if we were to use more recent figures rather than the November 2020 figures?

Hon MATTHEW SWINBOURN: The original figure in the 2020 bill for a surviving partner with issue was $472 000. If we adopt the current calculation, which is reflected in the supplementary notice paper in which Hon Nick Goiran has his amendment, it would be an increase of $11 500, although I might add that whilst $11 500 is not an insignificant amount of money in proportion to the overall amount that we are talking about, which is $472 000, it is less than, from my math, about two per cent—if that. For a surviving partner without issue, the bill provides for $705 000. Applying the average weekly total earnings from the most recent data from March this year, it would be $17 500. Again, it is a percentage of the overall figure. For a surviving parent with no surviving partner or issue, the amount was $56 500 in the 2020–21 bill and the proposed increase will take it to $58 000, making the net difference $1 500. What I am also told—I will work my way through this because I am not a mathematician but somebody at the table is much smarter at maths than I am—is that if we were to adopt changes in the denominator and increase the size of the denominator, the increase in the multiplier will be smaller. If we adopt the higher dominator amount that the member is proposing, over time we will have smaller increases in the lump sum amounts in the future. It will have a mathematical consequence if we were to do that in the bill as it is set here. Obviously, any increase in the denominator will happen in the two-yearly reviews if they are changed but, as I say, that is a potential consequence of adopting Hon Nick Goiran's amendments.

Hon NICK GOIRAN: When those amounts are then reviewed in accordance with proposed section 14B, is the minister constrained by the formula set out in proposed section 14A(3)?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: I turn to the amount for surviving spouses with issue. In other words, if the deceased had one or more children, there is a surviving spouse or partner, and the government's proposed bill passes, that surviving spouse will be entitled to a figure of $472 00, or, if the opposition's amendment is agreed to, it will then be $483 500. How will the remainder of the estate be distributed to the remaining individuals?

Hon MATTHEW SWINBOURN: It would obviously depend on the broader circumstances of the individual, but in this particular instance, or all instances, the rules of succession would come into effect. They are dealt with in sections 14 and 15 of the Administration Act 1903. Depending on the circumstances to apply, the remaining estate would be divided up according to those rules of succession. If they had issue—every time I say that word, I can only think of the former member for North Metropolitan Region Hon Michael Mischin, because he had a particular way of saying "issue", and now it is stuck in my head. It is of no relevance whatsoever to the passage of this bill.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: Yes, so the member is asking about a specific one.

Hon Nick Goiran: That is right. I refer to where the spouse is a surviving spouse and there is issue.

Hon MATTHEW SWINBOURN: I take the member to item 2(b) under section 14 of the Administration Act 1903. It states —

> where the net value of the intestate property (other than the household chattels) exceeds the sum of …

Because of the amendment bill, the amount will be $472 000. If there is a declared sum for item 2 applicable to the intestate, the surviving husband or wife shall, in addition to the household chattels, be entitled to the sum of $472 000, or if there is a declared sum for item 2 applicable to the estate, that sum, absolutely together with interest on that sum, in accordance with subsection (4), and of the residue, the surviving husband or wife shall be entitled to one-third and the issue shall be entitled in court with item 2(b) to the other two-thirds.

Hon NICK GOIRAN: In that scenario, when there are surviving children, the surviving spouse or partner will be entitled to $472 000 or $483 500 if the opposition's amendment is supported, plus one-third of the balance of the estate. How does that change when there are no surviving children?

Hon MATTHEW SWINBOURN: I am advised that item 2(a) is the applicable provision when the net value of the intestate property other than the household chattels does not exceed the sum of $472 000. I will not read the other part. The surviving husband or wife shall be entitled to the whole of the intestate property.

Hon NICK GOIRAN: I take the parliamentary secretary to clause 4 of the bill where we first see the figure $705 000. That seems to perhaps be best addressed at page 3, line 26, from what I can see. That deals with item 3, by which we will be deleting the amount of $75 000 and replacing it with $705 000. What scenario is contemplated in which the statutory legacy amount will be $705 000? Is that when there is a spouse who survives and there are no surviving children or is it some other scenario?

Hon MATTHEW SWINBOURN: I think we are all a bit at sea here, so we are asking for a bit more clarity. We will take the member back to the previous question, or proposition, that he put it so that we can be clear about it. I am not talking here about item 2(b), but where I gave the answer for item 2(a). We just want to be clear about that. The table sets out a number of scenarios at items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. We just want to make sure that we give the member the correct answer. I am not entirely sure that I gave him the correct answer before.

Hon NICK GOIRAN: I think the parliamentary secretary is onto something there. I was concerned about the answer and that is why I was just seeking clarification. Just to quickly recap, we have dealt with the first scenario, which is that there is a spouse who survives and children who survive, and as a result of that, under this new arrangement—I will not talk about the opposition's amendments; let us just work on the basis of the bill, from what I can gather, that will be the final outcome today—the surviving spouse in that scenario would get $472 000, plus one-third of the balance of the estate. I am just trying to compare and contrast that with how the scenario works when there are no surviving children—that is, there are spouses without issue. How does that differ from that item 2(b) scenario that the parliamentary secretary outlined earlier?

Hon MATTHEW SWINBOURN: We have two scenarios, which give us two answers. The first scenario arises in item 3 under the table in section 14 of the act, which describes the circumstance if the intestate dies leaving a husband or wife and one or more of, namely, a parent, a brother or a sister, or child of a brother or sister, but leaving no issue, then the circumstances described in (a) and (b) will apply. They are quite lengthy so I will not read them out. Essentially, paragraph (a) says that if the net value of the intestate property does not exceed the sum of $705 000, the surviving husband or wife shall be entitled to the whole of the intestate property. Paragraph (b) refers to the circumstance that the value of the estate property, other than household chattels, exceeds the sum of $705 000. The table contains some further qualifiers, but I do not think the member needs me to deal with those. Further, the surviving husband or wife shall, in addition to the household chattels, be entitled to the sum of $705 000 absolutely together with interest on that sum in accordance with proposed subsection (4) and, of the residue, the surviving husband or wife shall be entitled to one-half. It then gives examples of how the other half will be dealt with. The answer to the member's question is that the spouse will get $705 000 plus one-half of the remaining amount and the other half will be distributed according to whomever parent, brother, sister, or child of brother or sister remains. Item 4 contemplates the intestate dying, leaving a husband or wife but no issue, parent, brother, sister or child of a brother or sister, then the surviving husband or wife shall be entitled to the whole of the estate property. This has not been changed by anything that we are doing in this bill.

Hon NICK GOIRAN: That is exactly what we needed to know, parliamentary secretary. I will run through the last of the three scenarios that the bill is contemplating when there is no spouse or partner and no children, but there are surviving parents. What will the surviving parents be entitled to? Obviously, the statutory legacy amount set out in the bill is $56 500, but how will the residual of the estate be distributed?

Hon MATTHEW SWINBOURN: I am advised it is in either item 6 or 7. Item 6 provides that if the intestate dies leaving a parent or parents and one or more of the following, namely, a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue, the amendment states —

> (a) where the net value of the intestate property does not exceed the sum of $56 500 … the parent or parents shall be entitled (in equal shares where both survive the intestate) to whole of the intestate property;

That is less than $56 500. The amendment continues —

> (b) where the net value of the intestate property exceeds the sum of $56 500 —

There are some other qualifying points there, but I will gloss over those —

> … the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of $56 500 … absolutely, and of the residue, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half;

Hon NICK GOIRAN: To round that out, those sums are substantially different from the amounts that exist at the moment; for example, the statutory legacy amount for parents is $6 000. In that scenario, currently the surviving parent

would receive $6 000 plus half of the rest of the estate, whereas once the bill is passed it will be $56 500, plus half the estate. The opposition does not have the same concern about the scenario with the parents as it does about the surviving spouse. For the amount that will be adjusted—the $472 000 or $705 000—what is the figure at the moment?

Hon MATTHEW SWINBOURN: The current amount for the surviving partner with issue is $50 000, which will increase under this bill to $472 000; and for a surviving partner without issue the amount is $75 000, which will increase to $705 000, I think the member has already touched on this, but the amount for the parent when there is no surviving partner or issue will go from $6 000 to $56 500.

Hon NICK GOIRAN: Whether members are inclined to agree with what I will refer to as the government's outdated figures or the opposition's updated figures, either way the two figures are substantially similar. I hope members will appreciate how sizable the increase will be, particularly for surviving spouses. We are talking about a situation in which a person has died and there is a surviving spouse or partner. At the moment, they find themselves left with a statutory legacy amount of either $50 000 or, in certain circumstances, $75 000, and are entitled to either one-third or one-half of the balance of the estate. Of course, once the bill is passed, the figures will be far more adequate. That is the phrase we can rest on here. What we are doing is to provide an adequate amount of either $472 000 or $705 000. In addition, they will still be entitled to either one-third or one-half of the balance of the estate. That is how significant this amendment to the Administration Act is and why the policy of the bill has the opposition's support.

That takes me to my amendment on the supplementary notice paper. The parliamentary secretary has foreshadowed the government's position on this amendment. I assume the government agrees with me that if amendment 2/4 were to fail, there would be no purpose in moving the balance of the amendments, with the exception of a separate issue, which is new clause 6. I propose to test the will of the house on the first of my amendments, and that will determine the course of action thereafter. Without any further ado, I move —

> Page 3, line 15 — To delete "$472 000" and insert —
>
> $483 500

Just briefly, by way of explanation to support this amendment, as the parliamentary secretary has quite rightly identified, the change that will be effected here in some respects is a negligible $11 500. The purpose of the amendment is to ensure that it is consistent with the most recent published data from the Australian Bureau of Statistics—that is, the information made available in February 2022. This data is produced every six months, so the figures that have been relied upon by the government are two editions old. Notwithstanding that, I acknowledge the response provided by the parliamentary secretary on behalf of the government, in that the government, effectively, relies upon proposed section 14B being the biennial review of the sums, whereby every two years on or before 30 June, the minister must review the relevant sum.

The point that the parliamentary secretary made, which is not unreasonable, is that this is set to occur on or before 30 June 2023. In approximately a year's time there will be a review in any event. At which time the minister will at least be bound by the sum set out in proposed section 14A. Nevertheless, the opposition's position is that if we are going to pass legislation, it needs to be as up-to-date as possible, and that is what this amendment would do. We seek the support of not only the government but all members.

Hon MATTHEW SWINBOURN: As the member quite rightly pointed out, I did telegraph to the member that the government would not be supporting this amendment. I say this with caution. I do not think the member's proposition is unreasonable, but I do not think our opposition to it is unreasonable either. For the points that I made, the amounts were set. They were updated from the 2018 bill to the 2021 bill. The update was over three years and I think that was appropriate. The original bill introduced in the other place did not have proposed section 14B. Again, if I can be so bold, the member is a victim of his own success in some regards because he persuaded the government that it was appropriate to have such a mechanism in place, and we did adopt that. Again, I would be more sympathetic to the position the member is putting forward if that two-year review date only kicked in from the time the bill was passed, rather than this set date of 30 June 2023. I understand what the member is trying to achieve with this amendment.

Although I have been told not to give too many personal anecdotes, I did spend some time updating allowances in awards. Although many unions do that over time, a lot do not do it as diligently as they want. They are often effectively doing what the member has done here, which is to rely on the consumer price index if it is an expense-related allowance or on the state wage case percentage increases if it is related to a skills-based allowance. If that was not done for a couple of years, people missed out on the increase for that period. But when it was increased, they did not lose out on the total figure because it took into account the gradient increase over time and whatever the denominator was—or the multiplier. I cannot remember whether it is the denominator or the multiplier. In any event, as I say, I do not think the member's position is unreasonable, but I do not think our position is any less unreasonable; in fact, we prefer our position.

Hon NICK GOIRAN: Finally, in response, I will just make two points. First of all, I think what the parliamentary secretary said is fair, in that there is a reasonableness in the two positions that have been taken here. I continue to encourage the position that has been taken because I have consulted with the experts in the field, the Law Society of Western Australia and the Society of Trust and Estate Practitioners Western Australia, that have indicated support for the amendments, but also because I note that proposed section 14B is a good improvement to the bill

in contrast with how it was first introduced in the other place. I acknowledge the government's preparedness to listen and to adjust the legislation accordingly. Although there is a mandatory requirement for the minister to review the amount, there is not a mandatory requirement for him or her to adjust the amounts, because proposed section 14B(2) states —

> The Minister must review the relevant sums and decide whether or not it is appropriate to make an order under section 14A(2) —

The minister could choose on 30 June next year to simply make no allowance and we will be left with the figures that will be two years old, whereas the amendment would at least ameliorate that. Nevertheless, fair minds can differ on this. As I have indicated, Mr Deputy Chair, the opposition has moved the amendment.

Division

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

Ayes (8)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*

Noes (18)

Hon Klara Andric	Hon Peter Foster	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Darren West
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*
Hon Kate Doust	Hon Alannah MacTiernan	Hon Samantha Rowe	
Hon Sue Ellery	Hon Ayor Makur Chuot	Hon Matthew Swinbourn	

Pairs

Hon Steve Martin	Hon Stephen Pratt
Hon Donna Faragher	Hon Stephen Dawson
Hon Dr Steve Thomas	Hon Rosie Sahanna

Amendment thus negatived.

Clause put and passed.

Clause 5 put and passed.

New clause 6—

Hon NICK GOIRAN: I wish to move the new clause standing my name on the notice paper at 1/NC6. I move —

> Page 7, after line 29 — To insert —
>
> **6. Section 145 inserted**
>
> At the end of Part VI insert —
>
> **145. Review of Act**
>
> (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
>
> (a) as soon as practicable after the 5th anniversary of the day on which the *Administration Amendment Act 2021* section 6 comes into operation; and
>
> (b) after that, at intervals of not more than 5 years.
>
> (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.

By way of brief explanation for members, the amendment currently before them is one type of amendment that they will have seen on many occasions. It is what is commonly referred to as a statutory review clause, and this one is no different from what one would normally expect—that is to say that there will be a statutory review undertaken by the government of the day every five years and within 12 months of the government conducting the review, the government will have to table a report in the house. It is worth members noting that over the years these statutory review clauses have evolved somewhat. When I first arrived in the Legislative Council in 2009, I seem to recall that it was not as common in those days to require the government of the day to provide a report within 12 months. That is why we sometimes find that some statutory review reports are tabled years afterwards—it is quite extraordinary how long some of these things take. A perfect example is the statutory review that was tabled by the parliamentary secretary earlier today on what is commonly known as the double jeopardy amendments, which took, I seem to recall,

about three years. That will occur because whoever is in government seems not to give these things a particular priority. I do not say that that applies only to Labor governments by any stretch of the imagination, but because of that over the years these statutory review clauses have evolved to include what people see here in proposed section 145(2)—that is, the government will need to table a report within 12 months. This is now the common type of statutory review clause people will see.

Sometimes it will have a recurring review, as is proposed here; sometimes it will be a one-off. I recommend to members that we insert into this legislation a clause to provide for a standard five-year recurring review because of exactly the circumstances that brought this bill to the house in the first place—for decades this type of legislation was left to languish. It is on the record that I have been highly critical of this government both in the forty-first Parliament and the fortieth Parliament; and, of course, the government will respond by saying, "What happened in the previous Parliaments?" But the point is that all governments, whether Liberal or Labor or otherwise, have not given the Administration Act due attention. This amendment will ensure that no matter what colour of political party happens to be on the Treasury bench, someone will need to turn their mind to this every five years.

I note with interest that the parliamentary secretary indicated that there is currently a working group and conceded that the government is currently considering some kind of reform. My concern is that that type of consideration and possibility might continue for another few decades in which nothing much will emerge, and we will waste the good time of people on these working groups; whereas, this new clause will force someone to turn their mind to this matter at least every five years. The government, of course, will say that it already has a partial review in the legislation for the legacy sums—the two-year provisions—and that is true, but the Administration Act is far greater than just that. An excellent speech was given earlier this evening by Hon Kate Doust who indicated that some other issues and reforms are necessary.

For all those reasons, I encourage the government and members to support the amendment, albeit I acknowledge that the parliamentary secretary already indicated the government's view on this matter.

Hon MATTHEW SWINBOURN: I will be short. The government will not support this; again, I telegraphed that in my reply to the second reading. Some points Hon Nick Goiran made are reasonable and have validity, but this five-clause bill—if we adopted the amendment, six-clause bill—deals with a quite narrow but important issue. It is acknowledged that amendment bills that make substantive changes to acts often include clauses of this kind because they are a major rewrite of an entire act or are changing fundamental differences. This is about the long overdue updating of the legacy amounts and inserts a provision to ensure that those amounts do not suffer from the same failures of multiple governments, by providing a mechanism for them to be reviewed on 30 June 2023 and then two years every year after that. We have advised the chamber that the government is contemplating further changes to the Administration Act itself. I cannot go any further on what they will be. Some members will have no faith in that comment; other members will take us at our word. I suspect that will probably divide right down the middle of the house, but that is the position of the government. In this instance, out of no malice to the honourable member, we do not support his proposed amendment.

Division

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

Ayes (8)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*

Noes (18)

Hon Klara Andric	Hon Peter Foster	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Darren West
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*
Hon Kate Doust	Hon Alannah MacTiernan	Hon Samantha Rowe	
Hon Sue Ellery	Hon Ayor Makur Chuot	Hon Matthew Swinbourn	

Pairs

Hon Steve Martin	Hon Stephen Pratt
Hon Donna Faragher	Hon Stephen Dawson
Hon Dr Steve Thomas	Hon Rosie Sahanna

New clause thus negatived.

Title put and passed.

Third Reading

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

WITTENOOM CLOSURE BILL 2021

Second Reading

Resumed from 27 October 2021.

HON NEIL THOMSON (Mining and Pastoral) [8.42 pm]: I rise on behalf of the opposition to speak in the debate on the Wittenoom Closure Bill 2021. In making my comments, I say that the opposition will be supporting the bill. There will be some relatively short consideration at the committee stage.

The opposition supports this bill. It is long overdue. We know that a former iteration of this bill came before the other place in 2019. I am not sure whether it made it to this place, but certainly a form of this bill was considered and debated. The election got in the way, no doubt, and that meant that this legislation has sat in abeyance since then. My comments tonight will not be overly extensive, I hope, although there are some matters that I would like to raise about the bill for the record and maybe for consideration by the government. However, in a basic sense, we are fully supportive of resolving at least part of the problem at Wittenoom with its very long history of asbestos contamination and the challenges that successive governments and Ministers for Lands have had to deal with through the voluntary acquisition and the closure of Wittenoom, now coming to this final stage of compulsory acquisition of lots in the Wittenoom township. My understanding is that for all intents and purposes, there is very limited residency in that place these days. I hope that this legislation will bring a closure to any kind of permanent residency in that community, which has, as I said, a very long and interesting, if not sad, history.

The government has presented this bill for the purpose of allowing the acquisition of the last remaining privately held freehold properties within the former Wittenoom town site. The acquisition of the 14 remaining freehold properties will occur under the compulsory acquisition provisions of the Land Administration Act. I think that it is worth noting that this highlights a challenge we have within our land management system within the state. As someone who, in a former career, was involved in the public sector and the acquisition of land on behalf of the government, I must say just as a passing point that if the government is considering within its reform process making this process more streamlined and the outcomes more readily available to be enacted, I think that would be a good thing. I note the difference between the metropolitan area and crown land estate, having worked with the Western Australian Planning Commission, and the light-handed approach through the quiet voluntary acquisitions that have occurred over many years with the use of the metropolitan region improvement fund. I think that has been a very effective tool to deal with some of the challenges that we have had in the metropolitan area. But we see time and again the challenges whereby buybacks, for want of a better word, or acquisitions of land within the regional areas often require bespoke solutions, and we see that challenge happening right now in the town of Port Hedland, where, rather interestingly, bespoke solutions have been applied to the acquisition of land. I use the word "interesting"; I think that the bespoke provisions for the acquisition of land in that town are rather unfair, but I certainly would not say that about this case. I would say, however, that this has been a somewhat cumbersome process, notwithstanding being a compulsory acquisition, in order to deal with the challenges that we face of the 14 remaining freehold properties that—no doubt everyone in this room would agree—need to be acquired in order to remove people from harm's way.

As I said at the beginning of my comments, the previous version of the bill was introduced by Hon Ben Wyatt during the last Parliament. Although it was passed in the Legislative Assembly, it was unable to progress—there is the answer to the question that I raised—in the Council before it was dissolved ahead of the state election. That is outlined in the second reading speech.

As we also know, the bill is by no means an end to the contamination issue in the area but, as stated in the second reading speech —

> it is part of a larger body of work required to mitigate future public health risks and manage the contamination caused by the mining and use of asbestos in and around Wittenoom.

The claim is a significant step. I think it is probably reasonable to say that it is a significant step to finalise these acquisitions—the unfortunate legacy of one of Australia's worst industrial disasters that has led to thousands of deaths. Looking at the comments made in a publication by the Asbestos Diseases Society of Australia, over 2 000 deaths were claimed but I would suggest they were directly related to Wittenoom. There were thousands of deaths in the area. The area has the reputation of being the largest contaminated area in the southern hemisphere.

The bill is reasonably presented. The purpose of the bill is accurate. I note that there is still more consideration for that site and there are some outstanding issues—no doubt my colleague Hon Dr Brad Pettitt may touch on these tonight—of which I am sure the government is aware in relation to contamination and how we deal with that in the future. In saying that, we know that the ambient contamination of asbestos is varied across the north. As someone whose family has been involved in the drilling industry and also geology, the occurrence of asbestos—in particular, blue asbestos—throughout that region when working in the iron ore sector or others is common. In fact, if anyone who has spent time, as I have, in those gorges over the years, either on holiday or when I was working as a younger operator on machinery in the north, from time to time we came across various rock strata in the rock walls and we could see the asbestos very clearly. One might unwittingly touch that asbestos to see how quickly it dissolves into

the atmosphere. There are ambient risks throughout the world. It is a fact that asbestos exists in that part of the world. Whatever solutions are used for the long-term matter of contamination of that site, particularly in relation to the tailings, which still exist, and the road base in that town, they need to be thought through in a balanced but careful way so that we reduce the chances of people contracting mesothelioma in the future, which is clearly the issue that has led us to this point over many decades.

As I said, this bill has been around for a while. My predecessor asked questions about this issue in 2020. Vince Catania asked questions on this matter in 2019. This issue goes back much further. In fact, when I started working as the chief of staff for Hon John Day, I had the benefit of a tour in the north. I recall a presentation by Peter Kennedy, who worked for the ABC. People will know who Peter is. He gave a very interesting presentation on the history of Wittenoom. He talked about a tour undertaken by the then Premier. I am not sure which Premier that was but it was an interesting insight into the importance of asbestos back in the late 1940s and early 1950s. I believe that tour might have included dignitaries from the US—either the consul general or the ambassador. They drove all the way from Perth to that region to consider the prospectivity of iron ore. In those days, people drove for weeks. We would not see the Premier going off on a road tour now for weeks on end on dirt roads. A comment stuck in my mind about that tour. The matter was reinforced to me by a former boss, Hon Bill Marmion, whom I spoke to today. He said that a lot of people went to Wittenoom because it was such an important place. In fact, even school students visited in their hundreds on a regular basis over the years because it was so important. Back in the late 1940s and early 1950s, that delegation visited the area. The two major industries in the north—we have come a long way—were asbestos and whaling. I thought that comment was interesting.

I want to acknowledge and comment on a former member of this place, Hon Robin Chapple, who is from my part of the world. He gave me a lot of history, which I will not go into in full detail. It was quite fascinating to read. He spent a lot of time examining this whole story and looking at all the elements of the issue. The synopsis of that is that in the 1930s, Lang Hancock was involved in the early development of asbestos at that site. The mining operations began around the war years and then proceeded with a somewhat chequered history until 1947 when the town of Wittenoom was built at the entrance of the Wittenoom Gorge. It was named the town of Wittenoom in 1948. It proceeded over time with various iterations. Lang Hancock got out of those operations and, of course, he went on to be involved in the iron ore industry in a very big way. A level of interest continued at various times, including ownership of various tailings leases that were taken out over the Wittenoom mine and the eastern gorge tailings dump in 1960 and jointly owned by Hancock and Wright. Those interests lapsed at various times. We know that other transfers occurred on that site. CSR was involved. Concerns about the effect of dust started to arise in the 1960s but did not come to the fore in a very dramatic way until much later when the dust started to impact on the health of those people who either lived in that town or who were involved in the mining operations. I will not go into great detail, but I must say that after reading through the rather detailed summary of the sequence of events, I learnt about the rather intriguing and detailed involvement of our mining sector and some of our mining pioneers during the early days of asbestos and the ongoing transition to iron ore in that region, which is now a major generator of significant wealth for our state and employment opportunities for those people who live in the Shire of Ashburton or the town of Tom Price, which is not too far from Wittenoom. We know that it continues to play a significant part in our ongoing economy.

The important part is that there is unfinished work and business to be done on the issue of contamination. I will not try to pretend that I know what those actions should be and what they should look like, but I would welcome the government bringing forward some sort of recommendations on that in the future. Given the significant wealth that is generated from mining in that region and the significant wealth that certain individuals have been able to derive from mining in that part of the world, notwithstanding some of the economic challenges that have beset the asbestos operations over time, it would be good to see the mining sector play some sort of role. I am not sure how that would occur—I am not suggesting any specific way—but I certainly think that people would feel happy about the mining industry addressing some of the impacts that might occur in the future if matters are not dealt with. I make that point because that history plays a part today as we move forward.

I want to make a comment about the second reading speech and touch on some of the effects that the asbestos disaster, for want of a better term, has brought upon different groups or categories of people within our community. I note that the second reading speech acknowledges the Banjima people, the traditional owners of the land on which the former town of Wittenoom is situated, and states that they continue to be heavily impacted by exposure to asbestos. I will go into more detail on that in the coming minutes, but it is also important, without diminishing the impact on the Banjima people, to add with the greatest sincerity that we need to also acknowledge the terrible impact that the slow process of asbestos has had on generations of people and continues to have. It sits like a silent Damocles, one might say, on people who may not even know that those fibres are doing their slow and dangerous work in their lungs. We know that there are likely to be future cases related to this place and it is worth acknowledging that impact in a very serious and deep way.

I also acknowledge the Shire of Ashburton. Local governments are often the forgotten element in this process. The Shire of Ashburton has played a major role in the story of that part of the world and it continues to do so. The issue of ongoing liability is of grave concern to the Shire of Ashburton. I met with the council some months back and we

had a discussion in anticipation of this bill. We discussed the shire's concerns about the impact that asbestos has on it and its community, particularly with some of the challenges it may face with future liability claims by persons who might be affected by asbestos. That is worth noting as part of the process of additional work that might occur in the future. On principle, it is unfair that a local authority should wear the potential future liabilities of those who might claim that somehow the shire has been negligent in the management of the risk. We know that people can move into these areas. It is not as though it is easy to prevent people from moving into this area even after the properties are purchased and the remaining structures demolished. It will be very difficult to prevent people from entering a region where there is a high risk of asbestos dust and fibres in the atmosphere, and that is something that we face in the litigious society in which we live. Indeed, the comment was made that whenever there is a case of asbestoses, often the lawyers, and fairly so, ask whether those concerned ever spent time in Wittenoom or thereabouts. Of course, that might be directly related from a health point of view, but, at the end of the day, people might seek redress, which, again, is fair enough and quite understandable, given the terrible impact that such dust and fibres have on their health, and seek some form of financial compensation for their situation. We might find that the shire is the easy target in taking legal action. I was told that due to an insurance or other legal claim, the shire was exposed to a liability amount—it was a generalisation—in the order of $6 million. It is not so much the figure that has an impact on the shire, but future liability claims. It is worth acknowledging the local authority as we go forward.

The huge amount of wealth that has been generated by the mining sector in general—notwithstanding that although we are mining iron ore, we are talking about mining in that region—and some of those early pioneers, who went on to make their fortunes in iron ore, mean their capacity to provide some sort of redress is significantly higher when compared with that of a local authority. I say with some reservation, but with respect to the state also being the recipient of significant royalties, that going forward there is scope for the state to provide overarching protection and ensure that the local authority is not exposed in any way. In this regard I refer to not only the local authority, but also the traditional owners of the land, the Banjima people. The government could ensure that they are not exposed in any way. The capacity to protect and to take on that future liability should sit squarely within the ambit of the state going forward. That is, I suppose, some commentary that I wanted to make on that matter.

I acknowledge very strongly the sad and tragic cases of those who have paid the ultimate price of asbestos on their lives. This issue has been subject to significant court action, litigation and judgement over the years. We know that the early diagnosis of the impact of asbestos started in the early 1960s. That is a history, and it is a sad and difficult history, but in acknowledging it, we say that we really need to look forward. I commend to the government the idea that I hope is occurring, that there is some serious science underway regarding that site and how that might be resolved going forward, to ensure that the risks of asbestos dust are minimised.

I want to touch on the impact on the Banjima people, because that has been the subject of a fair bit of discussion of late. I quote a 2021 SBS News article that touches on that. Many people were interviewed. It is titled, "Banjima take Wittenoom clean-up fight to WA Parliament". There is a story about the Banjima people, who are seeking a clean-up and have brought a petition that has been tabled. I am sure the government is fully aware of that. The article quotes them saying —

> "We want our Country cleaned up and made safe for all people, for now and for future generations," said Mr Parker, the chair of the Banjima Native Title Aboriginal Corporation … in a statement.

It is that difficult legacy that we know needs to be resolved. There is a specific letter from 27 May 2021, which I found rather curious, from the Department of Water and Environmental Regulation to the Banjima Native Title Aboriginal Corporation. When I read this, it struck me as a typical case of bureaucracy, whereby we are in the system and we send out a letter, sometimes without consideration of how the recipient is likely to digest it. It is worthy of presenting this letter because of how it highlights the risk of passing the buck of responsibility to someone other than the state government. I think we should be careful with this particular case, remembering that this is the largest contaminated site. In saying that, I again commend the government for bringing this bill forward, going through the process of acquisition of the land, moving people from those sites and dealing with those structures. We should be very careful not to say that that is the end of the story, and leave the responsibility and pass the buck to someone else.

As I said, there was a letter dated 27 May 2021 written by the Department of Water and Environmental Regulation to the Banjima Native Title Aboriginal Corporation. It reads —

> This letter is the formal notice of classification of a known or suspected contaminated site in which you have an interest.

What is that interest? We will come back to that. The next part of the paragraph states —

> This constitutes the notice the Department of Water and Environmental Regulation … is legally obliged to give under the *Contaminated Sites Act 2003* … which came into effect on 1 December 2006.

The department was going through a legal process. The letter went on in more detail about the notice of a classification of a known —

Hon Sue Ellery: Member, can you please table that letter?

Hon NEIL THOMSON: I will, once I have read it out if that is okay. I want to quote from the letter. I am happy to table it.

Hon Sue Ellery: Can you also say who sent it?

Hon NEIL THOMSON: The letter was sent by—does the Leader of the House want the name of the manager?

Hon Sue Ellery: All of it.

Hon NEIL THOMSON: Okay. It was written by Michelle Brierley, acting manager and contaminated sites regulation delegated officer under section 91 of the Contaminated Sites Act 2003, on 27 May 2021. There were some attachments. I do not have all the attachments, but some were listed. I will table this letter as soon as I have read out the elements that I want to read out. The letter gives notice of classification of a known or suspected contaminated site given under section 15 of the Contaminated Sites Act. It goes through various parcels, including an approximate spatial representation of the rail maintenance track, and refers to the deposited plan on the certificate of title. It gives the specific sites on which the Banjima people have an interest. I followed this up with Banjima just to get a better understanding of their reaction and what this is about, but I think it is also a salutary message to government, I suppose, about how it communicates on these matters. We are talking about an interest. I assume it is to do with native title. Without having the time to do deep research into the exact interests, I assume it is native title. If it is, I raise the question of whether that is technically a registrable interest within the context of our Land Administration Act.

The ACTING PRESIDENT (Hon Jackie Jarvis): Member, for the benefit of other members who may be speaking, did you want to seek leave to table that document?

Hon NEIL THOMSON: Am I able to keep going?

The ACTING PRESIDENT: Yes; I thought you had finished with it.

Hon NEIL THOMSON: I will hold on to it until I finish. I will then seek leave, thank you, Acting President.

My understanding is that the technical idea of a registrable interest does not exist with respect to native title. There is a very good reason for that, and it is not to diminish native title at all—certainly not. It is a very good reason because of the liability issues that native title holders might face going forward when they accept native title over their lands. From my experience of dealing with native title holders over the years, this is certainly something that exercises the minds of native title lawyers as much as it might exercise the minds of the public servants involved in the process of management of land, because significant liability issues can exist going forward. That is a grave concern. Just like the Shire of Ashburton might have concerns about future liabilities on its land or with its managed reserves, whether distinct from or overlapping native title concerns, native title holders would have concerns about potential liability going forward and the implication with respect to what insurance they might have to hold. I am happy to table that letter.

[Leave granted. See paper 1158.]

Hon NEIL THOMSON: Following the receipt of this letter, which came out of the blue, the comment of Banjima's CEO, Johanna Ramsay, who was in communication with my office, was that the corporation was concerned about its native title interest. It was concerned that, as the site was contaminated, the corporation would potentially be obligated to undertake a management plan and it was seeking further advice on this. They did not understand the jargon used in this letter or what it was expected to do, and the comment was that no-one seemed to know. The counsel I could give the government is that it would be useful, in relation to future activities and the consideration of that site, if it looked at this interaction and its implications. If there is an expectation on native title holders to do something under the Contaminated Sites Act, that expectation should also rest with the state government. In fact, I hope that that expectation and consideration would remain with the state government, because it would be problematic if somehow the idea existed that it was no longer a problem. Banjima also commented that, despite its requests, it had not received a clear answer about its ongoing obligations as the native title holder for Wittenoom. It was unsure about what it had to comply with. Again, Banjima has concerns about this lack of clarity. The understanding I got from Banjima, which I thought was rather generous, was that it would be happy to comply if it was given some plain language and understood what it was it had to comply with. I thought Banjima was being rather generous. I am paraphrasing the interaction as reported to me. I stress that the government needs to be clear about what it requires of others. By being clear about what it requires of others, it will become clear what is required of the state. Given the comments I made earlier about the wealth that has been generated from this region, all future liability and responsibility for the management of the site should rest with the state. I hope we will have some clarity on that for the future.

Banjima pointed out that it had not received any undertaking to stabilise or clean up the contaminated areas. I am not an expert on the issue of dust management. In my conversations with former member Hon Robin Chapple, I heard his ideas about creating a slurry-type arrangement in which the tailings would be potentially mixed with water and somehow reinjected into the mine. That might be a way, but I also understand that it might not have the full effect that was sought, given the issues around the ambient dust. I also spoke to former member Hon Bill Marmion

who grew up there and has probably waxed lyrical in previous times on this issue because he had some interesting experiences there as a child. He says the impact of the dust is pretty much right across the site and that it is going to be extremely difficult to decontaminate Wittenoom.

I think a risk management approach needs to be taken. There needs to be some sort of assessment, if it is not already occurring, and the state needs to take responsibility about the future of the site. In the letter, Banjima Native Title Aboriginal Corporation made a comment about proponents and it was worried about what that actually meant. It had asked for full details of any remediation works or action items that the department expects Banjima to carry out and again had no response. It had asked whether it was required to carry out any community consultation and what funding and support was available. As yet, there has been no response. This one letter, which was probably written in good faith—I am not picking on the officer involved because they had a legal obligation to do that—and would have been an automated process, creates a lot of questions that need to be addressed. I think it would be quite instructive for the government to think about the next stage, if it has not already thought about it, and how we could go about dealing with this site.

I am not going to take much longer; I am getting close to the time limit anyhow. I think it is important to reiterate that we have a plan to protect, to the greatest extent possible, not just the owners of those 14 sites who will no longer be able to reside there—that is a great step—but also the Shire of Ashburton, the interests of the Banjima people and those tourists who continue to move in and around that area. It is a beautiful part of the world. It was the part of the world where I had my first experience in Australia when I came here in November 1985. I moved for my first job, as I said in my inaugural speech, which was working as a machine operator on the Newman–Port Hedland road, just south of Munjina Gorge. In fact, it was on the new turn-off to the national park, which enabled people to avoid Wittenoom. On those weekends when I was able to get a little bit of time off, I was able to explore a little. It is a beautiful part of the world. I know people who come from that part of the world can concur that it is certainly one of the most iconic places in Western Australia. It is somewhere we want to encourage people to continue to visit, but not in and around those tailing sites. It is quite hard to stop people from taking the tracks. There are questions about how the roads will all be ripped up. How will it be dealt with going forward? What measures will be put in place to divert four-wheel drive traffic, for example, away from the most dangerous areas but ensure that people can still enjoy the landscape? We know that we cannot remove all risk. We can never get rid of every single risk in the community, as I said, because of the nature of ambient dust in the north west and the presence of areas where the undisturbed natural asbestos remains and could be disturbed by interaction with the landscape. We need to do a risk assessment and make sure that there is a clear plan for keeping people away from the areas of highest risk and for how that will be managed. It is very hard to extensively fence such a broad area. We also do not want to exclude people from seeing beautiful parts of the world. Finding the right balance is vital. We need to have a plan into the future for tourists who sadly could contract mesothelioma or an asbestos-related disease from Wittenoom or maybe from other asbestos contamination in Australia, because we know it also exists in building materials. There are a range of other potential sources of contamination throughout our state and across the country. That needs to occur as well.

I reiterate that we have the opportunity to have the mining sector involved. I have spoken to former colleagues in the public sector who have now retired. They have said to me that it was always their thinking as public servants—I will not name names for their privacy—that with all that machinery in place and wealth, surely there is a way to integrate a solution to deal with this site so that it is made safe into the future.

Hon Kate Doust: There is, member. We are dealing with it. And the longer you take, the longer it's going to take to put the solution in place.

Hon NEIL THOMSON: We look forward to the minister's response. I can only go by what is presented to me in the bill. The bill is very simple. It is for the acquisition of sites, but that is only a small part of the process going forward, and that is my point.

As has been said, we support the bill. On that point, noting the interjection, I commend the bill to the house. The questions I have respectfully raised are based on my assessment of the bill. I ask that we might hear a bit more from the government and its plans going forward. Thank you.

HON KATE DOUST (South Metropolitan) [9.33 pm]: I will probably take only the 10 minutes because, unfortunately, I will not be able to participate in this debate tomorrow. The Wittenoom Closure Bill 2021 is extremely important and it has been a long time coming. I absolutely congratulate the Labor government on delivering this outcome. I listened to Hon Neil Thomson. Conservative governments have had eons to deliver on this commitment. Since 1994, there have been two significant parliamentary inquiries. One was led by Hon Mark Neville and one was led by Hon Larry Graham. Larry Graham's inquiry in 1994 led to a series of 34 recommendations to the government of the day, one of which was not taken up. Hendy Cowan made a great announcement in 1994 about shutting down Wittenoom and purchasing all the properties and businesses.

Sadly, it has taken all this time to get to the point at which there are only one or two properties left, but this government has been pretty consistent in its efforts to try to find the mechanisms to do that. When we think about the tragedy, the industrial debacle and the catastrophe that we are now left with as a result of the work done in Wittenoom, we know that no amount of money will ever compensate the people and their families who lived and worked there.

I find it interesting that the member talked about how this is the government's responsibility. I have always taken the view that for the people who worked there, it was their employers' responsibility to look after them in the first place and prevent access to that very destructive blue chrysotile asbestos rather than turning a blind eye. Think about the millions and millions of dollars of profit reaped by those companies during that time and about the suffering of those people right through to this generation. In fact, we lost one of our very loved members of this chamber a few years ago, Hon Bobby Thomas, not because he worked there—he developed mesothelioma in his early 50s—but because he played there as a child. We are now seeing the second and third wave of people from that area who have suffered as a result of the very bad decisions of the profit-driven corporates that engaged there and of the government of the day that supported them doing so.

This government is now delivering on its commitment to shut down Wittenoom. In 1994, I was working there as a trade union official. Under Graham Kierath, whom I must say I am not a fan of, the Liberal government of the day brought in some quite draconian health and safety legislation. The only decent thing he did in that round of legislation was to introduce a prohibition that was effectively a prohibition on Wittenoom. I cannot tell members the exact clause of the legislation—I would have been able to do that 10 years ago—but that was the only thing of value he did in that entire redraft of legislation. I was excited at the time. I thought it was great that the government was going to take action, shut it down, prevent access to the place and provide a safe and secure environment.

I must say that I am really pleased the member talked about the local Indigenous people, because all throughout those early debates, I do not think they were referenced at all; it was centred entirely around the miners and, later on, their families. It is really good that they and their outcomes are starting to be considered. I am pretty damn sure that the fatalities associated with asbestos exposure in the Indigenous community is exceedingly high, and they have not been dealt with appropriately. I hope that will be resolved and I am sure that other members will talk about that at length.

When we think about the issue at Wittenoom, two songs come to mind: *Blue Sky Mine* by Midnight Oil and *Industrial Disease* by Dire Straits. Members can hear the beat reverberating through their head. The changes the government will make to shut down that place might lock it down for Western Australia and draw a line in the sand, so to speak, but we still have these issues happening in other places of the world. There is a town in Canada called Asbestos. Guess what it does? Asbestos is still being mined in China and Russia and exported for building products, which, sadly, we still receive because our customs people do not know how to manage it properly. We still have thousands of people dying as a result and we still do not have decent compensation in place. We have had years and years of conservative governments and their acolytes opposing support for these peoples and opposing compensation.

Based upon the long history and the many attempts to shut down Wittenoom, I think that this is the most significant legislation. I know that when we ultimately get to the third reading of this bill, there will be joy among those people who have been working in this space. I want to acknowledge the long, hard work of the Asbestos Diseases Society. The Vojakovic family—Robert and Rose Marie—have committed their whole lives to supporting the people who lived and worked in that area. I know they will be absolutely jubilant when this legislation goes through. It will not help the people they work for, but it will provide some comfort that it will never happen again. The member referenced tourism. It is not my hot spot of a place to go. I understand that it is a beautiful visual environment, but we must take into account the potential risk of going to that place.

The Labor government has certainly made a very significant decision—a decision that has been a long time coming. It may be a difficult decision for the very few people who are left in Wittenoom—I appreciate that they probably love their environment—but for the sake of the whole state, sometimes we have to make decisions like this to close down a noxious and toxic environment that has left a disastrous legacy for our state. I do not have very much time left. This legislation is quite detailed. It sets out the process and structure that will enable the government to take appropriate action and has processes that will finally seal up that town for good.

I pick up on what the member said about how we will manage these things in the future. There are concerns about how we manage iron ore and asbestos content in current processes. Mining companies need to work on that and put in place appropriate measures to protect workers in current environments. There are things that we still need to do, and I know, based on the Governor's speech last year, that the Labor government is still committed to addressing the issue of appropriate compensation for asbestos disease sufferers. I was really pleased to hear that ongoing commitment. I know it is a really complicated process and it has been very drawn out. I introduced a private member's bill in 2013 to address issues around the Sullivan v Gordon damages and ongoing payments to enable an asbestos disease sufferer to have a second go at compensation if they developed further health problems. Although our side of politics and the crossbench supported that change going through, it was opposed at every possible stage by conservative members in this chamber, which was an absolute travesty. I look forward to, hopefully, another outcome that will provide comfort to those people who are going through the throes of dealing with asbestos disease, mesothelioma or other health problems, or those people who have lost family members. Sadly, those numbers are growing. Ultimately, the Labor government will provide that additional comfort with appropriate legislation. However, as I said earlier, I do not think it is entirely on the government. I think focus needs to be put back on the originators of the problem. They should be paying for the damage that they did to people in Western Australia.

HON DR BRAD PETTITT (South Metropolitan) [9.42 pm]: Thank you, Acting President.

Debate adjourned, pursuant to standing orders.

MENTAL HEALTH — TEACHERS

Statement

HON DR BRIAN WALKER (East Metropolitan) [9.43 pm]: I apologise for giving a member's statement this late in the evening. Members know that in recent days I have spoken about the mental health of doctors, and I wanted to extend that and speak about the mental health of other frontline workers, in this case teachers and those running our schools. I asked a question earlier today specifically aimed at the kindergarten to year 3 cohort. I am grateful to the Minister for Education and Training for her response. I found it most fulsome, but I have to tell her that I do not think we are doing enough to support our school staff through this pandemic.

In my clinic, I often have to listen to tales of woe from teachers in schools who are actually crying out for help. I was approached by a school principal a few days ago, and this will have to remain anecdotal because telling tales out of school is not really approved. I have no doubt that other members in this chamber have similar stories. This particular principal had a number of teachers off work as close contacts, which they had picked up in their classrooms. It is all well and good for the government to say that there is a bank of 5 000 casual relief staff—and that is true—but in the case of this particular school, it put in more than 280 requests in the space of 24 hours. That was from the department's casual pool and a third-party relief system, and they got not one single response. Imagine the stress of the headmaster and headmistress in this situation. No-one can take over the classes. What do they do? The children are going to pile up and they have nothing to fill the day with.

I have no personal experience, but I am reliably informed by people who have been working in this situation that schools are booking out relief teachers weeks in advance so that they can have them on call should they need them. I have no personal evidence, but I am told this. It must cost a lot of money. If that is the case, how many of our schools can afford to spend from their budget just to book their relief teachers in case they run into need? A friend of mine is a relief teacher and is working very, very hard, but is also one of many who is finding the job precarious. If they are being booked out but are sitting, twiddling their thumbs, waiting for something to happen, it is not the best use of their time, either. What I have heard from this friend is that this situation is worse than it was in 2020. That is in the metropolitan area. Having worked in the country, I cannot imagine what it is like there now. Well, I can, actually, and it would not be very nice.

The advice was to contact the department directly. That is all very well and good Monday to Friday, but Saturday and Sunday would be a bit difficult, I believe. I had the same experience with medical advice, in that lots of advice was given, but come the weekend, you could not get anyone there. Even now in my clinic, we are taking advice given by the department and sitting down and saying, "Right, what do these people actually mean? How do we make this happen?" I am sure that also applies to teachers.

We cannot play the critical worker card all the time, can we? That is the last resort. It may be a solution, but in the schools I have spoken to it seems to be a non-existent solution. It is possible that we will be putting teachers' and students' health at risk in the coming weeks because we have forced schools to merge classes or hire non-existent or overbooked relief teachers. Again, with bureaucratic health responses to the response I am anticipating from the Department of Education that we will see teachers and principals burning out with the stress of managing the wellbeing of their students and finding a balance between the needs of the community and the needs of the school.

To say that it is an exercise in sweeping things under the carpet might be a bit stern, but we have the vision of the duck gliding quite nicely on the surface, but with its feet rapidly paddling under the water. I get the impression that that is what is happening here. What is also happening is that the mental health of school staff and leaders on the ground is suffering. It is important that we bear this in mind. What is it going to look like to get schools functioning normally in this pandemic? We need to acknowledge student welfare as well.

In my personal experience of the schools my boys go to, there is an excellent system there of online teaching that could be implemented, but that is not always the case in schools across the country. I am sure I am not the only one in this chamber who has issues with this. I am sure we are all concerned and want to help, but I think we ought to make a noise here about this being a developing problem. I urge the government and the minister to look again at the provision of relief staff for our schools and to assess the triggers for selective classroom closures, if these are perhaps more palatable.

We have excellent, wonderful teachers. They are prepared and capable and they are providing wonderful online teaching options. We should not allow that to be interfered with to the detriment of the health of those we rely on to care for our children and, indeed, their colleagues. I hope we acknowledge this and look at the health and wellbeing of our teachers. It matters to us because our children are the future and we need to care for them. The reports I am getting is that anxiety and stress amongst students is actually increasing. I anticipate we will have problems to deal with in the coming years. We can do better, members. We are doing our best, but we can do better, and I encourage all members to work towards this aim of relieving the stresses on those on whom we depend for the teaching of our students.

Statement

HON SUE ELLERY (South Metropolitan — Minister for Education and Training) [9.49 pm]: I need to make some comments in response to the contribution made by the honourable member. Member statements exist for members to make a statement about anything they need to canvass; I do not take anything away from that. But if the member wants to understand the facts, I can offer him a briefing. He can talk to me behind the chair. He can take note of the things that I have said publicly, which include that I understand the pressures that are on not just teachers, but all our staff in schools right now. With the greatest of respect to the member, I think I understand it a bit better than he does. I speak with stakeholder groups regularly, I meet with all of them once a term, and when I need to meet with them more often, which I have been since term 1 started this year, that is what I do. I do not want to diminish or belittle in any way the pressure that schools are under—they are under enormous pressure—but if the member says that it was even worse in 2020, which I think is the point the member was trying to make, I say that it was nothing like it is now. It was nothing like this in 2020. I think we had a period of about three days at the end of term 1 in which we encouraged parents to keep their kids at home if they could, but they did not have to. We did not have COVID cases in schools. Just on the basic facts, it is fundamentally, vastly different today than it was back in 2020.

Equally, every day in the Department of Education the COVID-19 response team takes calls and emails directly from people in schools to help them manage all manner of issues. Every day, the Department of Education is replacing staff, sending staff out of the flying squad and the various pools that it has to assist those schools that need it. As I said, I do not want to diminish at all the impact and pressure that schools are feeling, but, honestly, if the honourable member wants to talk with some meaning about the facts, he just needs to ask me. I will provide him with a briefing note or a briefing from the department face-to-face. But there is a whole pile of things in what the member just said that are factually incorrect.

TREASURER'S ADVANCE AUTHORISATION BILL 2022

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)** on behalf of the Minister for Emergency Services, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.52 pm]: I move —

That the bill be now read a second time.

The bill seeks to increase the Treasurer's advance limit for 2021–22 to $2.32 billion, an increase of $1.5 billion on the currently approved limit of $820.5 million. The Treasurer's advance allows for supplementary funding of annual appropriations for unforeseen and extraordinary events during the financial year, as well as short-term repayable advances to agencies for working capital purposes. The annual Treasurer's advance limit is set automatically by section 29(1) of the Financial Management Act 2006—the FMA—and is calculated as three per cent of the amount appropriated in the previous financial year. For 2021–22, this equates to a Treasurer's advance limit of $820.5 million. Under section 29(3) of the FMA, if this automatic limit proves insufficient, parliamentary approval for an increased limit must be sought by way of a Treasurer's advance authorisation bill.

The 2021–22 *Government mid-year financial projections statement* or midyear review showed that the total amount to be drawn against recoverable advances, excesses and new items in 2021–22 was forecast to be $723 million. This leaves only $97 million available for the remainder of this financial year. As has been shown to be the case throughout the pandemic, WA Health expenditure was the largest component of the $723 million forecast to be drawn against the Treasurer's advance. This includes additional expenditure to increase WA Health's hospital bed capacity under the safe transition plan and to accommodate extra COVID-19-related health spending and general hospital services. The midyear review projection for the Treasurer's advance also included funding for the government's Reconnect WA package, construction of common-user infrastructure on the Burrup Peninsula, the COVID-19 test isolation payment, the severe tropical cyclone Seroja disaster recovery package for temporary workers' accommodation, and enhanced COVID-19 cleaning in schools. Additional spending has emerged since the midyear review was released. This includes the cost of purchasing COVID-19 rapid antigen tests and other COVID-19-related costs for WA Health, the Western Australia Police Force and schools. Further spending pressures are likely to emerge, given the uncertainties of the COVID-19 pandemic.

Members will be aware that although the 2021–22 budget included an $800 million general spending provision to offset the financial impact of any unforeseen agency costs that emerge during 2021–22, that provision does not act as an offset to the Treasurer's advance. The provision simply ensured that the operating balance and net debt forecast reflected the high likelihood of spending increases in 2021–22. Parliamentary approval of an appropriation for such a general provision cannot be made in the budget due to the uncertainties of the size and purpose of payments to be made from the provision. Although the budget anticipated that a large yet-to-be-identified spending increase was likely this year, its impact on the Treasurer's advance could not be prevented, hence the need for this bill now arises.

The bill seeks to increase the Treasurer's advance limit by $1.5 billion to $2.32 billion. It is anticipated that this increase to the Treasurer's advance will provide sufficient capacity for the government to respond to emerging issues for the remainder of 2021–22, including further potential initiatives that may be required in response to the COVID-19 pandemic. As has been highlighted during the debate on other recent Treasurer's Advance Authorisation Bills during the pandemic, the increase in the Treasurer's advance provides the authority to meet higher funding requirements. It does not commit the state to any other additional spending. Any unspent capacity on the Treasurer's advance will lapse at 30 June 2022. Actual expenditure will be reported in the 2021–22 *Annual report on state finances*, which will be released in late September 2022.

The urgent nature of this bill reflects the need for the authority for release of excess funding to be in place before any such funds can be drawn during the remainder of the 2021–22 financial year.

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

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

[See paper 1159.]

Debate adjourned, pursuant to standing orders.

House adjourned at 9.58 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

SERVICEWA APP — USERS

545. Hon Wilson Tucker to the Leader of the House representing the Premier:

Please provide general information about the uptake of the ServiceWA app, including:

(a) the number of registered users;

(b) the number of daily active users;

(c) the average time between a user downloading the app, and successfully registering an account;

(d) the number of users who have accessed their COVID-19 vaccination certificate;

(e) the average time between a user registering an account, and successfully accessing their COVID-19 vaccination certificate;

(f) the number of users who have used the 'check-in' feature; and

(g) the number of users who have used the G2G feature?

Hon Sue Ellery replied:

As at 8:30am on 15 March 2022:

(a) 877,061

(b) 332,930

(c) This data is not captured.

(d) 774,036

(e) This data is not captured.

(f) 874,045

(g) 154,858

SERVICEWA APP — COMPLAINTS

546. Hon Wilson Tucker to the Leader of the House representing the Premier:

Please provide general information about ServiceWA app support, including:

(a) the total number of reported incidents/complaints;

(b) the total number of troubleshooting cases; and

(c) the total number of support tickets, including:

  (i) the number of resolved tickets; and

  (ii) the number of unresolved/ongoing tickets?

Hon Sue Ellery replied:

The current ServiceWA support model has three providers. Technical support is delivered by Genvis Pty Ltd. Phone support is delivered via 13 33 WA, which is operated by the Department of Transport. Email support is provided by the Department of the Premier and Cabinet.

The following response is a combination of technical and email support. These numbers include both ServiceWA app support and myGovID first level triage support. Questions regarding phone support should be referred to the Minister for Transport.

As at 28 February 2022:

(a) There has been one technical incident which occurred on the day the ServiceWA app was launched. This resulted in users registering for ServiceWA being queued for approximately 20 minutes. There has been 48 emails relating to complaints.

(b) There has been 1,510 troubleshooting cases.

(c) There has been a total of 7,348 support tickets.

  (i) 6,940

  (ii) 408

SERVICEWA APP — DEVELOPMENT AND SUPPORT

547. Hon Wilson Tucker to the Leader of the House representing the Premier:

(1) Who developed the ServiceWA app?

(2) What agencies are responsible for the ServiceWA app?

(3) What is the estimated cost of developing the ServiceWA app?

(4) What service providers provide ongoing support for the ServiceWA app?

(5) What is the estimated cost of ongoing support for the ServiceWA app?

Hon Sue Ellery replied:

(1) Genvis Pty Ltd.

(2) There are multiple agencies with responsibility for certain elements of the application. The Department of the Premier and Cabinet is responsible for technology, the Department of Health is responsible for SafeWA and the WA Police Force is responsible for G2G.

(3) The cost of developing the application was $570,000.

(4) The current support model has three providers. Technical support is delivered by Genvis Pty Ltd. Phone support is delivered via 13 33 WA, which is operated by the Department of Transport. Email support is provided by the Department of the Premier and Cabinet.

(5) The estimated cost of ongoing support is approximately $1 million per annum.

SANDALWOOD — BIODIVERSITY MANAGEMENT PROGRAM

549. Hon Dr Brad Pettitt to the minister representing the Minister for Environment:

I refer to the Department of Biodiversity, Conservation and Attractions' (DBCA) commitment in 2016 to produce a biodiversity management program (BMP) for *Santalum spicatum* (native sandalwood), as provided for under the *Biodiversity Conservation Act 2016* and recommended by the Environmental Protection Authority, which at that time the DBCA stated would take 'six to 12 months'. I additionally refer to question without notice No. 1151 asked of the then Minister for Environment in relation to the development of that program, and I ask:

(a) has DBCA completed the sandalwood biodiversity management program;

(b) if no to (a), when will it be completed;

(c) why has it taken DBCA over five years to produce the sandalwood biodiversity management program that it stated in 2016 would take 'six to 12 months' to develop;

(d) given the recent listing of native sandalwood as a 'vulnerable' threatened species on the International Union for the Conservation of Nature's (IUCN) Red List, following reviews by two former senior DBCA scientists, will native sandalwood be listed as a threatened species under the *Biodiversity Conservation Act 2016*;

(e) if no (d), why not;

(f) given native sandalwood has now been listed as a 'vulnerable' threatened species on the IUCN Red List, will the Minister immediately suspend the Forest Products Commission's (FPC) annual sandalwood licence and work with the Minister for Forestry and key industry stakeholders to reform the industry so it complies with all requirements in relation to trading in a globally-listed threatened species;

(g) if no to (f), why not;

(h) based on DBCA sandalwood licensing and production data, how many tonnes of sandalwood has the native sandalwood plantation sector in the Wheatbelt produced over each of the past five years from both FPC and private plantations;

(i) given the EPA stated in 2016 that it supports the development of the 'Transition to Plantations' sandalwood strategy by FPC and that it should undergo stakeholder consultation prior to being published, has the 'Transition to Plantations' sandalwood strategy been completed; and

(j) if no to (i):

  (i) why not; and

  (ii) when will it be completed?

Hon Stephen Dawson replied:

(a) No.

(b) The Department of Biodiversity, Conservation and Attractions (DBCA) expects to undertake consultation on the *Santalum spicatum* (Sandalwood) Biodiversity Management Program (BMP) in mid-2022.

(c) Sandalwood management can be complex, with many factors to consider. It was also considered important to allow the WA Taskforce on *Advancement of Aboriginal Economic Development Using Wild Harvested Sandalwood* to complete its deliberations and report to Government. DBCA is preparing the BMP, consistent with the requirements of the *Biodiversity Conservation Act 2016* (BC Act), so that it will deliver a framework for the conservation, protection and management of the species while providing for ecologically sustainable use.

(d) No.

(e) A nomination for the listing of sandalwood has been submitted to DBCA. As the species occurs in Western Australia and South Australia, the assessment of a nomination must follow the requirements for cross-jurisdictional assessments under the Intergovernmental Memorandum of Understanding Agreement on a common assessment method for listing of threatened species and threatened ecological communities. The nomination has been provided to the Commonwealth to facilitate cross-jurisdictional assessment. A listing under the BC Act will be considered once the Commonwealth process is complete.

(f) No.

(g) In Western Australia, the International Union for the Conservation of Nature (IUCN) Red List criteria have been adopted as providing best practice for assigning the conservation status of species. The IUCN Red List itself, however, is not automatically adopted. The Commonwealth and Western Australian Governments apply statutory and rigorous processes, with specified data standards, for listing species as threatened. A species is not considered threatened in Western Australia without such an assessment process being completed and it being formally listed.

(h) DBCA does not hold plantation sandalwood production data.

(i)–(j) This question should be referred to the Minister for Forestry.

CORONAVIRUS — VACCINATION STRATEGIC COORDINATION GROUP

550. Hon Martin Aldridge to the Leader of the House representing the Premier:

(1) I refer to question on notice 465 answered on 16 February 2022, regarding the Vaccination Strategic Coordination Group (VSCG), and I ask again:

(a) on what dates has the VSCG met since 15 December 2021; and

(b) please table any agendas, minutes, reports, or findings of the VSCG to date?

(2) In reference to Tabled Paper 1063 in response to Question on Notice 465(d), please advise why only the agenda's of the VSCG were tabled, omitting the minutes, reports, and/or findings that were requested?

Hon Sue Ellery replied:

(1) (a) Since 15 December 2021, the VSCG has met once on 10 February 2022. The VSCG has since ceased, in recognition that the initial objectives of the State's vaccination program, which the VSCG was established to oversee, have been met. This includes the 90 per cent double dose vaccination rate for Western Australians aged 12 and above.

(b) All in-scope documents were provided in Tabled Paper 1063.

(2) All in-scope documents were provided in Tabled Paper 1063.

VOLUNTARY ASSISTED DYING

551. Hon Martin Aldridge to the Leader of the House representing the Minister for Health:

I refer to voluntary assisted dying (VAD) in Western Australia, and I ask:

(a) by region, how many medical practitioners and nurse practitioners are currently registered and trained to act as coordinating or consulting practitioners;

(b) how many submission's of relevant forms to the VAD Board have been made that relate to the:

(i) first request;

(ii) first assessment;

(iii) consulting assessment;

(iv) final request; and

(v) prescription of substance and administration decision;

(c) has the VAD Board provided any information to the Minister under section 118(b) of the Act and, if yes, will the Minister please provide details:

(i) I refer to Question on Notice 464 asked on 15 December 2021, confirming that the VAD Board has provided information to the Minister under section 118(b) of the Act and ask why the Minister did not table that information as requested; and

(d) has the VAD Board made any referral under section 118 of the Act and, if yes, will the Minister please provide details?

Hon Sue Ellery replied:

(a) Please refer to the answer provided to Question on Notice 464, section (a). As at 18 February 2022, there are an additional 2 registered and trained medical practitioners in Western Australia.

(b) As at 1330hrs on 23/02/2022, the Voluntary Assisted Dying Board has received the following submissions of relevant forms:

	Form	**Number of submissions**
(i)	First Request	514
(ii)	First Assessment	256
(iii)	Consulting Assessment	219
(iv)	Final Request	189
(v)	Administration Decision and Prescription	187

(c) The Voluntary Assisted Dying Board has provided information to the Minister under section 118(b) of the Act.

(d) The Voluntary Assisted Dying Board has not made any referral under section 118(c) of the Act.

Summary of information provided to the Minister under section 118(b)

Regular responses to the following questions:

(1) How many Western Australians have registered their interest in accessing VAD?

(2) When is the first person likely to use it?

Responses provided:

08/07/2021

(1) 16

(2) At this stage it is not possible to predict when the first person is likely to actually access VAD.

20/07/2021

(1) 32

(2) At this stage it is not possible to predict when the first person is likely to actually access VAD.

27/07/2021

(1) 47

(2) The Board advises that voluntary assisted dying has been accessed.

03/08/2021

(1) 53

(2) The Board advises that voluntary assisted dying has been accessed.

10/08/2021

(1) 66

(2) The Board advises that voluntary assisted dying has been accessed.

17/08/2021

(1) 79

(2) The Board advises that voluntary assisted dying has been accessed.

07/09/2021

(1) 116

(2) The Board advises that voluntary assisted dying has been accessed.

05/10/2021

(1) 158

(2) The Board advises that voluntary assisted dying has been accessed.

02/11/2021

(1) 211

(2) The Board advises that voluntary assisted dying has been accessed.

06/12/2021

(1) 262

(2) The Board advises that voluntary assisted dying has been accessed.

04/01/2022

(1) 297

(2) The Board advises that voluntary assisted dying has been accessed.

01/02/2022

(1) 336

(2) The Board advises that voluntary assisted dying has been accessed.

01/10/2021

Letter from the Board Chair to the Minister providing VAD activity data prior to attendance at the Voluntary Assisted Dying Board meeting (held on 08/10/2021)

12/11/2021

Letter from the Board Chair to the Minister providing an update on the first four months of operation of the *Voluntary Assisted Dying Act 2019*.

06/01/2022

Letter from the Board Chair to the Minister providing an update on the first six months of operation of the *Voluntary Assisted Dying Act 2019*.

WA COUNTRY HEALTH SERVICE — HOSPITALS — STAFF

554. Hon Martin Aldridge to the Leader of the House representing the Minister for Health:

For each regional hospital operated by WA Country Health Service please provide the following for the months of November, December and January:

(a) for each month, what was the total number of overtime hours worked by nursing staff;

(b) for each month, what was the total number of agency nursing hours undertaken;

(c) for each hospital, please identify the longest continuous shift undertaken between 1 November 2021 – 31 January 2022;

(d) what is the approved FTE staffing level for nursing staff at each hospital;

(e) what is the current FTE staffing level for nursing staff at each hospital;

(f) what is the approved FTE staffing level for doctors at each hospital;

(g) what is the current permanent FTE staffing level for doctors at each hospital; and

(h) for each hospital, please provide a breakdown of the total number of resignations, by job title, each month?

Hon Sue Ellery replied:

The WA Country Health Service operates 6 large regional health campuses, 15 district health campuses and 46 small hospitals, as well as supporting a further 43 health centres and nursing posts, employs over 11,000 staff. An answer to the question as stated cannot be provided because substantial resources would be diverted from delivering core business of the Agency.

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