Parliamentary Debates
(HANSARD)

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LEGISLATIVE COUNCIL

Tuesday, 25 October 2022

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

EMERGENCY MANAGEMENT AMENDMENT (TEMPORARY COVID-19 PROVISIONS) BILL 2022

Assent

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

BUY WEST EAT BEST

Statement by Minister for Agriculture and Food

HON ALANNAH MacTIERNAN (South West — Minister for Agriculture and Food) [2.03 pm]: This morning we joined Western Australian producers at our Meet the Buyer exhibition where more than 80 exhibitors and 500-plus brands were showcased by our Buy West Eat Best team. The event is the biggest showcase of our state's quality food and beverage products in one place, providing a face-to-face platform for producers to connect with a range of interstate and international buyers, including the big national retailers. When we came into government in 2017, we reinvigorated the Buy West Eat Best brand and, over the last few years, we have seen this program go from strength to strength. The program has grown from 38 founding members to around 240 members who come from a diverse range of businesses across the entire food and beverage supply chain. We import around $900 million worth of processed food into the state each year and about 80 per cent of the processed food we consume in Western Australia comes from interstate. This creates supply chain vulnerability and means lost opportunities for Western Australian producers. The McGowan government has focused on diversifying our economy and giving our producers more opportunities to value-add and process our beautiful local produce here in WA. We get that we need to back our own growers to prosper but, increasingly, we also understand the health and climate benefits of eating local, fresh food with low travel miles. From those who grow brilliant chickpeas in the Ord to whiskey in the Porongurups, everyone was upbeat today. Red Lime Jones tells us that it engaged four new retailers at last year's event and were super excited to have the chance to return. The Meet the Buyer expo is a fantastic opportunity for a number of Buy West Eat Best members to take the next step in their food journey by marketing their product to buyers from around the country and the world. It is true: if you want to eat best, buy west.

PAPERS TABLED

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

DUTIES AMENDMENT (FARM-IN AGREEMENTS) BILL 2022

Second Reading

Resumed from 21 September.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.08 pm]: Before there is a mass exit for the doors as we commence debate on the Duties Amendment (Farm-in Agreements) Bill, I am sure everybody will be riveted to have a discussion about dutiable amounts in the mining industry. I will start my contribution by saying that the opposition supports the bill; therefore, any need for members to fill the chamber should be done so only on the basis of an interest in the Duties Act 2008 and its application in the mining industry because we are not anticipating a great deal of dissent in the house today. I am pleased to see that nobody has exited! Everybody must be waiting with bated breath for a very in-depth debate on dutiable activities.

As I said, the opposition will support the bill. We can normally tell the complexity of legislation in that the minister's second reading speech was effectively two pages long and it oversighted the intent of the bill. The explanatory memorandum and the bill itself are far weightier, meatier documents, which goes to the complications that occur around duties, as they occur around taxation. What seems to be a simple process at the start of the day is usually a remarkably complex one by the time we wend our way through all the various parts of the legislation. It certainly is the case with this particular thing. That is, obviously, across the board. Those who have tried to deal with the federal tax act will know that it started as a fairly simple piece of legislation and now occupies the wall of a room. As every opportunity for somebody to get around the tax act presents itself, the tax act has to be amended to make allowances for those particular intents. The same is often the case for duties et cetera. It is not surprising that what seems like a fairly simple process ends up being far more complex by the time we get to its application. That is certainly the case today.

Before I start on the detail of the bill, I want to explain to the house and to members why it is so important that we get exploration, in particular, right in the state of Western Australia. I will refer to a few documents, and the minister will be pleased to know that I have a chart that I am happy to lend him. We can have a look in a couple of places

for the importance of exploration in Western Australia and how it relates to the entire country. One of the best references is the Australian Bureau of Statistics, which releases quarterly statistics. It releases a document called *Mineral and petroleum exploration, Australia: Quarterly statistics on mineral and petroleum exploration expenditure by private organisations in Australia*. It is quite a useful document because we get to pick up trends over time. I have the most recent version of that today, with the reference period to June 2022. That is the final quarter of the 2021–22 financial year, and the report was released on 29 August. Obviously, a new one is probably due in the not-too-distant future, but this was the most recent version that I could come up with.

It is pleasing to see that mineral exploration continues to rise significantly. The Australian Bureau of Statistics is saying that mineral exploration across the nation hit over $1 billion in the June 2022 quarter. I think that is the first time that the quarterly exploration of minerals and petroleum got over the $1 billion mark; it is certainly the first time I can remember this in the decade or so that I have been watching these reports. That is a pretty significant achievement. We will talk about this quite frequently.

Effectively, the two versions of exploration are brownfields investigations, in which companies investigate places where they know deposits already exist and they are going back to look at them, and greenfields investigations, in which the companies are out there looking for it and trying to find the next Lasseter's Reef. Probably some members in the chamber are too young to know what that is, but I am sure some will—before we get to the Scrooge McDuck argument again. In the most recent quarter, existing deposit exploration rose 24.5 per cent, and new deposit exploration rose 20.2 per cent. It is the case that it is often easier to find more resources close to or as a part of the resource that a company is already exploring.

Members are probably also interested to know the breakdown of what that exploration is going into. Gold still leads the pack, with a bit over $400 million of the somewhat over $1 billion of exploration that occurred in the last financial quarter. Hundreds of years later, we are still primarily chasing gold, despite the fact that many other minerals provide, overall, a greater injection into the economy. Base metals are at about $250 million. Iron ore is at about $200 million. Interestingly, coal is down, hitting the roughly $70 million mark. All others combined are at about $120 million to $130 million, out of the $1 billion in that quarter. Members will note that gold exploration is still very high, but bear in mind that that is an Australia-wide measure.

Another interesting measure is the metres drilled across the board for all minerals and petroleum. If we go back over recent years, we hit a peak not in the last quarter but at the end of 2021, when we hit 3.5 million metres drilled for exploration. We have actually declined a bit; we have probably declined about half a million metres. There has been some little drilling correction, but overall we would have to say that it remains quite promising despite a little reduction. When we see the breakdown, most of that reduction can probably be attributed to petroleum as opposed to other minerals.

The same Australian Bureau of Statistics report indicates that petroleum exploration investment has declined significantly. Eight years ago, when petroleum was really booming, investment in exploration hit as high as nearly $1.6 billion in one quarter. The current investment, seasonally adjusted, looks more like $225 million, so that has been a significant decline in oil and gas exploration. We even have a breakdown of that. We can break that down into onshore and offshore, but it does not matter how we break it down; both have significantly declined. Offshore exploration, in which expenditure has traditionally been higher, was at around $1.1 billion in June 2014 and has declined now to probably $125 million. Onshore exploration has not had quite the same level of decline, but it has still gone down from about $450 million to about $150 million. It has declined and is about a third of what it was. Whereas, offshore exploration is now one-tenth of what it was when it hit $1.1 billion; it has reduced by a factor of 10.

What does that mean in relevant terms? I think it reflects the great expansion of exploration when oil, in particular, and natural gas were expanding in those early years. Some pretty major oil and gas fields were discovered. We think of the ones that sit up north of Western Australia, such as Wheatstone and Gorgon. Those major finds were major investments in offshore exploration, and we have seen something of a decline in offshore exploration.

As a little aside to the argument, we should be concerned by the significant decline in gas exploration over the last decade or so. Admittedly, it is a tougher marketplace, and the financial situation has differed, but I remain convinced that as the world shifts from coal-fired generation—I will resist the urge to talk about Western Australian coal-fired generation because it does not relate to the bill today—gas will continue to play an important role. I repeat what I have said in the chamber before about the transition that Western Australia faces: access to a good source of natural gas for power generation will be critical. I think natural gas generation should be expanded to pick up baseload as we transition out of coal. As I have said before, I think I would be building 200 to 300 megawatts of gas-fired generation on the Dampier pipeline somewhere in the northern part of Perth, on the edge of the metropolitan region, just to manage the transition. Unfortunately, I think the government will struggle with this over the next seven to eight years as it tries to transition. That exploration remains important because the additional gas load is only delivered over time, particularly on the international market with additional exploration. Western Australia is lucky; in terms of its own generation, it has a domestic reservation policy: here is an admission for those members who were not around at the time, which is most members in the chamber. That reservation policy was introduced

by the Carpenter government—in fact, by Alan Carpenter himself. I remember the debate when I was down in the place that shall not be named—but below—and that debate was a really interesting one. Unfortunately for us, the then opposition, there was an opposition to that reservation policy. From our perspective, there was a lack of support.

Hon Sue Ellery: Wrong side of history again!

Hon Dr STEVE THOMAS: Well, on occasions, I would say, minister—on occasions. I am always happy to say that if we did not get it right on a particular occasion, I am usually pretty good at coming in and saying that perhaps we should have looked at that differently. That was one of those occasions for which I think wholesome support would have been a better solution.

Well done to Alan Carpenter on that particular policy. It might have been before he was Premier, when he was minister. I do not remember the exact time frame of that. He went from resources minister to Premier and would have been in that role around that time. I have not gone back to read through *Hansard* to work that out, but it was very much the case that that put Western Australia in a good position in terms of gas reservation. It gave an opportunity to those smaller companies that were not entirely focused on export to invest and look at the domestic consumption of gas. As I say, I would be building 200 to 300 megawatts of gas north of Perth, and my understanding is that in the current domestic reservation policy there is sufficient reserve in the Dampier to Bunbury gas pipeline to account for that. Members might have a different view of that, and one day that would be an interesting debate for the house. I think there is sufficient gas in that pipeline, but that will maintain only in the longer term.

Gas, as a baseload power, through the transition to renewables—I accept and agree with the government and the Minister for Energy that that will take place; we are arguing over time frame, not intent—will continue to play a baseload role for some decades to come. We are probably looking at 30 to 40 years of gas as a base as we transition out of coal in particular, and I do not think that we will transition out of coal at the rate the government has set. The Minister for Energy has said that we will not be building any more fossil fuel power stations, and I think that will cause a huge hiccup that will mean we will have no choice but to continue coal generation longer than the 2029–30 deadline that the government has set for itself. I think that because ultimately until storage is put in place, the government has no capacity to deliver the transition. We have to get storage right, but if the storage is not right, the government is betting on battery production and pumped hydro. Beyond that, the government is betting that the commercial marketplace and the private sector will come up with a solution for storage by 2029.

In fact, that is the government's wager on its transition. It is summed up in that particular wager; that is, the government is betting that someone will come up with the technology to manage storage by 2029 and that will allow the government that full transition into renewables. I personally would be hedging my bet on that because I think it is immensely optimistic. At one end we have a group of people saying that fourth-generation nuclear plants will be around and commercially viable in the same period. I have been hearing that argument for two decades as well. I am always open to science progressing, but I think it is reasonably unlikely that we will see that happen any faster than any of the others. Whilst we are out there dreaming, let us dream about nuclear fusion, and suddenly the world has energy forever! But that is a different argument. I think that the storage issue is going to cause Labor a great deal of grief in trying to get that right in the years 2027–29. If an additional baseload is not looked at in some way, shape or form, there is going to be an issue. However, that is my warning to the government. The government has six or so years before it becomes a crisis, so I suspect that we will be having these debates quite regularly.

I will bring us back to why exploration is important, more specifically, in Western Australia. I have a couple of good reference documents here. The most recent, obvious figures that I could find—some others might be able to get more recent figures—were the full financial 2020 year figures, and I will read in a couple of these. In 2020, the total mineral exploration expenditure for the calendar year was $2.7928 billion. Bear in mind that that was in 2020, and, as we said before, exploration in the June quarter of this year alone was $1 billion. So in 2020, it was roughly $2.8 billion—nearly $3 billion—on exploration, and $1 billion over this year. If we maintain that quarterly average, it will be even higher again. That is a significant amount of exploration. Anyone would think we were in a mining boom!

Hon Kyle McGinn: I have to ask —

Hon Dr STEVE THOMAS: Wait for it, Hon Kyle McGinn. We will get there.

Hon Kyle McGinn: I have to ask: do you know what a mining boom looked like in 2011?

Hon Dr STEVE THOMAS: Yes.

Hon Kyle McGinn: Did you know what that looked like? Because I think the squandering that was going on then was pretty remarkable.

Hon Dr STEVE THOMAS: I have already tabled graphs of the mining booms of 2003–08, 2008–14 and now 2019–22 and ongoing. So, yes, I was around for all that. I could table a chart again, if the member likes, in case he missed the last ones, but I might table a different one in a minute.

We were talking before about the brownfield and greenfield explorations. Of the $2.8 billion in 2020, $1.8 billion of it was brownfield exploration and $950 million of it was greenfield exploration. About one-third was new exploration in areas where we do not know what the resources are and two-thirds was looking around the resources

we currently have, including reprocessing some played-out areas as well. It has been a fact for some time that there is more exploration, and ultimately often more mining, around areas that we already know are productive and producing, rather than anything else. Of those, if we break down the exploration expenditure by commodity: gold was $1.3 billion, copper was $333 million, iron ore was $395 million and coal was $289 million. This document then breaks it down to the much smaller commodities after that. The exploration spend on the minor commodities—this is interesting—such as lithium, manganese, molybdenum, phosphate, tin, tungsten and vanadium, was $193.8 million. I suspect that spending $200 million on exploration 10 years ago for those minor and rare earth commodities would be almost non-existent. It would be a fraction of the cost. Therefore, obviously, we are seeing a shift in exploration as we deal with a shift in the economy and the marketplace in which rare earth has suddenly become a particular target.

Obviously, we still chase gold. There is something about human beings chasing gold that just seems to be immutable. When we look at everything else, the big producers of iron ore and coal are on the list, but I think we will see an increasing focus on those rare earth minerals over time. Lithium is probably the most desirable mineral out there; it is the sexy one right now. But, ultimately, I think we will see a shift away from that, too.

Western Australia is lucky in that it has some of the best lithium resources in the world. It certainly has, right now, the best lithium mine in the world, down in Greenbushes, in my patch. It is by far the best resource in terms of turning it over. But there are a number of other potential lithium sources around Western Australia and around the country. They will be important, I think, for the next couple of decades. Bear in mind that we talked before about storage being the major detriment to the government achieving its renewable energy agenda because storage is critical. There is an enormous demand for lithium. There is currently not enough lithium being mined to meet anywhere near the demand there will be as economies shift into renewables and major battery storage. Right now, it is still an immensely complex and expensive process. To give members an example, there is an issue around lithium-based batteries for electric cars. Firstly, their life span is limited; we are probably looking at 10 to 12 years on average. They are also very expensive. When people buy electric cars, they strike a couple of issues. The battery in that $90 000 car is probably worth $23 000 or $25 000, depending on who they buy it from. At the end of 10 years, as people go to resell their car, they will immediately have a $23 000 replacement cost if the cost of the battery does not come down. That will become an issue if we do not become more efficient with mining lithium, if we stay with lithium. The reason is that a lithium battery depletes over time—more so than a lot of other batteries. With the old rechargeable lead batteries, we used to be able to hold them between finger and thumb and a colour chart would tell us how much charge there was left in it. We would start at 100 per cent, but after a while that would decrease until we got to a point where they were no longer efficient. With lithium batteries, that looks like 10 years. I note that some early research shows that vanadium may not deplete. That would be an interesting concept—to have a non-depleting battery, so there is permanency, but of course there is a lot less vanadium being mined around the world than there is lithium, so there would be a significant lag time over that. That is a significant issue.

The same thing applies when we look at lithium energy storage in terms of the sort of transition that the government is talking about. The government is building a 500-megawatt-hour battery in Kwinana, and that is not the only place where that is happening; a similar thing is happening in South Australia. It sounds very impressive, but the problem with large-scale batteries is that we are talking about $1 million per megawatt hour to build them. Most of that is involved only in smoothing; it basically takes the peaks and troughs from renewable energy generation. When the wind blows, it is stored, and when the sun shines, it is stored. On a still night, obviously it is not being stored or generated, so energy has to be dragged out from some sort of source. Just to give that some sort of measurable number, if there is 12 hours of still night and the peak demand on the south west interconnected system is currently about 3 500 megawatts—that is generally late afternoon, when everyone switches their air-conditioning on—then in the middle of the night, it might get down to 1 000 megawatts. If the demand overnight is 1 000 megawatts for 12 hours, 12 000 megawatts will be needed. Bear in mind, a 500-megawatt battery demonstrates that we will be paying basically $1 million per megawatt, so a 12 000-megawatt battery for overnight coverage for the south west interconnected system will be $12 billion. To build the kind of battery capacity in Western Australia to allow this to work on its own will be a $12 billion exercise.

Again, vanadium may be better, and that is why a focus on exploration for vanadium is critical. But it is no easy task to come up with an alternative to $12 billion worth of batteries, bearing in mind that on a dark night on which the wind does not blow, we will probably want additional capacity. We would probably need $24 billion worth of batteries if we run our system entirely on renewables and lithium storage. We are probably looking at a $24 billion cost. That is why the government will have to look at outside sources and get the private sector far more heavily involved. That is going to be very difficult.

That is the breakdown for exploration by commodity. Members will be very pleased to know that in that same $2.8 billion year, $1.7 billion of that exploration occurred in Western Australia. At that point, Western Australia accounted for 62.4 per cent of Australia's exploration marketplace, followed by Queensland at $407 million; New South Wales at $288 million; Victoria at $152 million; the Northern Territory at $111 million; South Australia, going great guns at $80 million; and even Tasmania managing $10 million of exploration for minerals. I am not exactly sure what they were looking for in Tasmania, but I suspect rare earth. Western Australia is therefore

four times the next highest. Members should bear in mind that that was 2020; I suspect it might have hit 64 per cent by now. One could argue that two-thirds of exploration across the board is carried out in Western Australia, and that includes both minerals and petroleum. It is a massive industry in this state—a $1.8 billion industry. Obviously that pales in comparison with the hundreds of millions of dollars that are generated when mining hits production, but the exploration sector is not immaterial. That reinforces the need to take this legislation and the work we are about to do in this house very seriously.

I turn now to the Department of Mines, Industry Regulation and Safety and some reviews by the state government. For the first time in a decade, we have seen an increase in employees. There are more than 120 000 employees in the mineral and petroleum industries in the state of Western Australia, so they are significant employers. Of those, half are in the iron ore industry, one-quarter in gold, and roughly one-quarter in everything else. In terms of overall mining investment, Western Australia punches very much above its weight. On a percentage basis, Western Australia generally accounts for between 50 per cent and 65 per cent of mining investment. Mining investment, as opposed to exploration investment, has only just started to see a little tick-up. I will not seek to table the charts and graphs; they are all available, and I am sure that the minister reviews these things. In terms of actual mining investment, in one year we have gone from $95 billion across Australia down to $40 billion in 2021–22. I think that reflects the fact that although exploration remains reasonable, probably boosted by rare earth materials, actual mining activity has declined significantly. That is certainly not based on the development of the iron ore industry in Western Australia, which has not only remained immune to downturns but is actually doing very well. That will be a debate for later this week.

The Western Australian iron ore industry continues to put out massive levels of production—hundreds of millions of tonnes. The production level is high, and the price it is receiving is high, so in terms of productivity, Western Australia is certainly well above the rest, but actual mining investment as a whole across Australia is in decline and is charted in this report.

In agreement with both the Australian Bureau of Statistics and Geoscience Australia, mineral exploration across Australia in the last 10 years has increased. Again, Western Australia has done very well in that area. Its percentage of exploration sits even higher; it is generally in the 60 to 70 per cent bracket. Although mining activity has declined, particularly, I suspect, in the eastern states, not discounting coalmining production has probably declined in Collie this year, but it is at such a relatively low level that I do not think it is impacting on the national numbers, exploration continues to rise, and that is critically important.

Again, in agreeance with both the ABS and Geoscience Australia, Western Australia has seen a significant decline in oil and gas exploration over the last decade. During the peak year of 2012–13, we saw oil and gas exploration across Australia at the $4.7 billion mark. That has since declined to just over $1 billion. Again, that is a four-fold decline in that industry. In terms of Western Australia's proportion of it, it has held on better than the rest of the country but it has still declined from over $1 billion to in the order of half a billion dollars over the same period. Again, that reflects the fact that exploration in oil and gas is of significant concern. The bill before the house will not have an enormous impact on that but it will have an impact. That debate was designed to underpin the importance of the bill before the house. The bill is probably one of the government's two major incentives towards exploration, both of which are welcome. The first, which we will address soon, is having a nominal duty on exploration farm-in agreements. The second is the exploration incentive scheme, which in theory sounds like it might be more modest in its contribution, but we will be asking the minister about the financial impacts when we get to the committee stage of the bill. I say to the minister that I intend to consider the bill in Committee of the Whole. I only intend to talk about clauses 1, 8 and 14 because they are effectively the substance of the bill. I do not expect to spend a huge amount of time on them.

I turn to the export incentive scheme. According to the Minister for Mines and Petroleum, since 2017, the government has provided $80 million in funding. I would imagine that applying full duty on farm-in agreements would, in theory, provide significantly more money than that. During debate on clause 1, we will be asking what that level of impact might look like. What generosity has existed since 2008 in providing duty relief for farm-in agreements?

As I said earlier, the second reading speech is a fairly simple two-page document. It simply says that the government is trying to formalise and cement a duty concession that has effectively existed for a very long period. For over 25 years, the intent has been to allow a person who has exploration rights over a tenement to share the cost. That is effectively what we are talking about. It is absolutely the case that most of the large-scale major mineral explorers will manage those things in their own right. We are not talking about the BHPs and the Rio Tintos of the world, who do not need farm-in agreements and basically get some to assist with the exploration; they can do that themselves. We are talking about the second and third tier of exploration, where a group of people with an exploration tenement and limited resources engage in full-scale exploration—that is, to the point of using the newly available science and effectively converting that into drilling. Ultimately, they have to get to that drilling point.

There are some interesting new developments, particularly around geophysics. Using ultrasound and all those technologies, we certainly have the capacity to map where we have not mapped before and see what is there, but ultimately it is still very expensive to get into the drilling process. Significant drilling is a multimillion-dollar exercise.

It is not easy to do for someone who has taken up a mining tenement and wants to engage. The concession allows a person who has a mining tenement—the farmor—the capacity to give a right or an entitlement to a farmee, who will invest in exploration going forward. We should bear in mind that plenty of non-productive exploration occurs; that is, it does not prove up a resource—it can be mined. This legislation will give someone else the opportunity to come in and invest in the mining process.

It probably needs to be said from the outset that farmor–farmee agreements and contracts—that is, the farm-in agreements—are incredibly complex but often written down very simply. This issue relates to lots of other bills, some of which we will discuss in the not-too-distant future, where an agreement is effectively struck on the shake of a hand on an investment that might go in. In the old days, I am sure many of them were written on the back of bar coasters in places like Kalgoorlie. The issue is complex but the agreement as the farmor and the farmee often think it is quite simple. They will have an agreement that the farmee will provide X millions of dollars to exploration, which will give that person a certain level of right over the tenement or a certain level of income if mining occurs. There is no doubt that there are also certain implications for the federal tax act of what is a realisable investment and if it is an investment, that contract also impacts on the tax.

First and foremost, my message to the government is that I get that this is a simple process in theory, but the technicalities around contracting always leave me terrified. In fact, the worst issues that we generally face when trying to help people relate to contract law. I suspect that contract lawyers are the richest lawyers in the country. It is an immensely difficult process. We will spend some time on clause 1 of the bill trying to get a handle on what these contracts need to look like because they can become immensely complex.

This bill will update the Duties Act 2008. The Minister for Emergency Services states in his second reading speech that the farm-in concession has existed for 25 years, but advice from the State Solicitor's Office and RevenueWA has identified that the Duties Act 2008 is not sufficient to ensure that this concession will apply to the agreements and contracts to which it should apply and is excluded from those to which it should not apply.

One of the major issues that we intend to raise during Committee of the Whole is whether administrative costs are a reasonable component of a farm-in agreement. A farm-in agreement is supposed to be confined to exploration, so whether administrative costs will be applied is worthy of some debate. The minister explained it in his second reading speech in this way —

> The amendments clarify that the concession does not apply to farm-in agreements where the exploration amount involves expenditure in connection with mining operations or capital costs associated with the construction of mining infrastructure to allow mining operations to be carried out.

We agree with that. Obviously, the concession is not meant to apply to a mining asset; it is meant to apply to an exploration asset. Administrative cost is one thing that has not been explored. I am pleased that a level of administrative cost will be allowed so long as it is part of a farm-in agreement contract.

The Duties Act 2008 makes remarkably limited reference to farm-in agreements. It deals with farm-in agreements in only a few small sections. It is astounding that we are dealing with a 56-page bill that will effectively replace only a couple of very simple references in the Duties Act. Section 11(1), in chapter 2, part 3 of the Duties Act 2008, identifies that a farm-in agreement is a dutiable transaction. It states —

> (1) Subject to subsection (2), any of the following is a ***dutiable transaction*** —
>
> …
>
> (j) a farm-in agreement.

Subsection (2) lists the exclusions; that is, the transactions that are not dutiable transactions.

Another section of the Duties Act that is proposed to be replaced is section 13. That states —

> (1) A reference to a farm-in agreement is to an agreement between —
>
> (a) an owner of a mining tenement, or a person who holds a right to exploit a mining tenement; and
>
> (b) another person,
>
> to the effect that, after the other person expends the exploration amount specified in the agreement —
>
> (c) that other person will have —
>
> (i) a right to acquire an interest, or an entitlement to an interest, in the mining tenement that is specified in the agreement; or
>
> (ii) a right to acquire a right to exploit, or an entitlement to a right to exploit, the mining tenement that is specified in the agreement;
>
> and
>
> (d) the mining tenement, or the right to exploit the mining tenement, will be held with the person referred to in paragraph (a).

That is the owner —

> (2) A reference to an exploration amount in relation to a farm-in agreement means an amount to be expended, after the agreement is made, on exploration or development of the mining tenement carried out after the agreement is made.

Basically, agreement is reached that a certain amount will be spent on exploration. The development of the mine tenement must be a separate part of the contract. As I understand it, the relief provided is specific to the exploration component. That effectively means that it will be provided to the person who expends the exploration amount. When we get to clause 1 of the bill, we will ask some questions about what an exploration amount might look like. Could two people sign a contract on the back of a beer coaster to invest $100 in exploration and suddenly be granted a duty exemption—not that any duty would be payable on that? The question is: will limitations be placed upon when this would impact and a payment would be due.

To finish the references in the Duties Act, section 135, "Farm-in agreements", identifies the nominal duty. It states —

> (1) Nominal duty is chargeable on a farm-in agreement if no consideration is paid, or agreed to be paid, for the agreement.

I understand that the nominal duty is $20 even if nothing is paid.

It continues —

> (2) The dutiable value for a dutiable transaction that is a farm-in agreement is the consideration for the transaction.

That effectively means the exploration amount that has been agreed. It continues —

> (3) In subsections (1) and (2) —
>
> ***consideration*** does not include the exploration amount.

The only other reference to farm-in agreements in the entire Duties Act is section 42, in chapter 2, part 4. It states in subsection 15 —

> Duty is not chargeable on a transfer of, or an agreement for the transfer of, an interest in a mining tenement under a farm-in agreement if —
>
> (a) the farm-in agreement is duty endorsed; and
>
> (b) the exploration amount under the agreement has been expended.

Those four references that I have quoted are the entire set of references in the Duties Act 2008 to farm-in agreements. The intent of the government is obviously to provide significantly more references to what farm-in agreements should look like and what duty will be payable. The intent of the government is to effectively maintain the normal duty components of the Duties Act. That is very welcome. The level of exploration activity is currently very high. It could potentially be argued that exploration does not need that level of encouragement. However, it always does. The reason I made the point to the chamber earlier about how mining has declined, particularly in oil and gas, was not just whimsy; it was designed to demonstrate that exploration, which precedes mining, is a critical component. Whether mining is going well or going backwards, we need to keep up our exploration activity. That is because Western Australia in particular, and Australia, is so reliant on the mining industry. I am not sure what time the federal budget will be handed down, but I suspect it will be in the not too distant future.

Hon Stephen Dawson: It will be at around four o'clock.

Hon Dr STEVE THOMAS: It is usually at around seven o'clock eastern states time, so it probably will be four o'clock. I have actually been to a couple of federal budget statements over the years and have sat there and watched.

Hon Stephen Dawson: I saw your former boss at Brunswick Junction on the weekend, actually.

Hon Dr STEVE THOMAS: They were all down at Brunswick Junction? I was in Augusta at the time. I have sat up in the gallery and listened to budget statements and budget replies. I note that the current budget will say that the situation has improved dramatically, thanks largely to the mining industry. I think that is absolutely the case. There will be millions of dollars of additional revenue thanks to the mining industry. I would like to see a bit more of that position or statement from the McGowan Labor government. I would like to see a bit of thanks for the mining industry's generosity, which delivers the Premier the capacity to behave very much like Scrooge McDuck and his money bin. The mining industry certainly underpins the Western Australian economy, even further than the Australian economy. It will be interesting to see the outcome of that in the not too distant future. Exploration remains a critical part.

I will outline my focus in the very limited time that I have left, because, unfortunately, I am going to run out of time. I think we will go through most of it at the committee stage. I am quite interested in the practicalities of how this applies. Bear in mind, the opposition obviously supports the government's intent. We support the mining industry;

governments of both sides have done that. Certainly, since 2008, it has been the intent of both sides of Parliament to assist the exploration industry. It is often the practicalities and how these contracts are written that I think will be critically important. I suspect that going forward, as we take those four very small references to farm-in agreements in the current duties act and we apply the 54, 55 or 56 pages once the act is amended, the technical detail will become very important.

I know this has been raised, but I have to say that the government's consultation on this process has been very good. I think this is the third version of the bill that has ultimately been worked on. I apologise if it is the fourth. It is at least the third version that has been examined. I think it has been a commitment since 2018; it has been a while coming. That has not impacted on people's capacity, because we are still simply working under the previous system, despite the fact that the advice is that the legislation is not up to scratch. It is not as though, by waiting from 2018 to 2022, there has been a significant impact. I will acknowledge that in this particular case, the government has consulted widely and frequently. I suspect there might be people who have contributed to all three versions of the bill as it currently goes forward. I think that if the government was trying to sneak anything through in an untoward manner, it would not go back three times to give everybody a good look at it. I think the consultation on this particular bill has been very good. The opposition appreciates that there has been an intent to try to get this very complicated process right.

I think we will spend a little bit of time, as we get into the committee stage of the bill, just looking at what those contracts might look like. I am a little concerned—I am trying to find the right words—that the, let us call it, "loosely determined" contracts and agreements seeking duty relief might have to be beefed up. We might have to set a stronger minimum standard of contract so we can better determine that the dutiable relief is going to the appropriate people. We will potentially need to look at how much that is. I understand that the government—we can confirm this when we get to the clause 1 debate itself—had some debate around whether standardised contracts would be required. This was to the point where perhaps there might even need to be a template contract for those people engaged in exploration who do not have the capacity to hire the legal team required for a more detailed contract. I suspect that when we make these changes, the contract on the back of the beer coaster will probably be gone. I think that that is a good thing and it probably should be. There will potentially be a few long-time traditionalists who might think that they still want operate that way.

There may be a template that we possibly need to look at in relation to what these contracts will be like. This is very much about the contract. It does not just make or break the deal, it makes or breaks the tax payable by various parties, and also, in my view, the duty concession that the government is putting in place to stimulate exploration. That contracting will be absolutely critical. We want to go into what needs to be written into the contract beyond simply the expenditure amount for example and other sorts of things, with a considerable amount of detail.

It is not my intention to make this last all day. I think a little bit of time spent working out those details will be very useful to identify some of the issues. I note that the explanatory memorandum, as it often does in very complex cases, provides lots of examples. I did not actually count the number, but there are certainly dozens of examples in my memory to demonstrate how this works. There we go—I have just flicked back to example 33. There are a huge number of examples in the explanatory memorandum trying to determine how this works. The minister's second reading speech is two pages, the outline of the explanatory memorandum is basically two and a third pages, and the entire document runs out to 84 pages, including pages of examples. I think this just demonstrates the complexity of the legislation. I will try to address most of the rest in my comments during the committee stage of the bill. It is an immensely complex piece of legislation trying to do a pretty simple thing.

I have enormous sympathy for the minister and government because those things are often an absolute pain. Like dealing with the tax act, dotting all the i's and crossing the t's in this is immensely complicated. Let us just see how we go through the committee stage of the bill. I am not expecting to spend a huge amount of time there. I think the vast majority of the entire house—well, I am not entirely certain; in the old days I might have had a fight with Hon Alison Xamon—are of one mind that this legislation needs to pass to encourage exploration in the state of Western Australia. We underpin the national economy with exploration, ultimately turning that into a mining sector be it minerals, oil and gas, onshore or offshore. We are of one mind. We think this is a good, if complex and difficult, piece of legislation. We will endeavour to do justice to it, while supporting the concept all the way through. I look forward to the committee stage to do some more of that.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [3.08 pm] — in reply: I was waiting for a second, just in case somebody else stood up. I can see that Hon Dr Steve Thomas is very passionate about this issue. I wondered if his passion was shared by anybody else in the house. It is certainly the case that he did make a very good contribution, so I understand why no one else in the opposition needed to stand to make a contribution.

I indicate from the outset my thanks for the member's support of the legislation. I will try to deal with some of the issues that he has raised in his second reading contribution. I note, of course, that we will get an opportunity to go into committee and he can tease those out further when we get there. He did point out that the explanatory memorandum and bill are weighty documents. The complexity of the amendments is largely due to the need to

accommodate, where possible, the different ways in which farm-in agreements may be structured. The diversity of these practices, together with the historically broad application of the concession, has resulted in more complex legislation and the current provisions. These provisions are no longer fit for purpose to cater to different farm-in arrangements. The new legislation will support RevenueWA's existing assessing practices as much as possible, which will minimise the impact on taxpayers. RevenueWA will publish guidance material to assist industry with interpreting the amendments.

In relation to the economic level of the mining industry, the bill under consideration today will ensure that the historical concession for farm-in agreements will continue to apply.

Hon Dr Steve Thomas spoke about the importance of exploration to the mining industry. The bill will support exploration in the mining industry by ensuring concessional treatment for farm-in agreements.

Hon Dr Steve Thomas asked about the budget impact of allowing the farm-in concession. No information is recorded on the duty that would be payable on farm-in agreements if there were no concession, so it is not possible to estimate the duty that would have been collected. The total amount collected since 2016 is $360 054.30, and a further $327 321.20 is likely to be collected on farm-in agreements that are currently waiting for assessment.

Hon Dr Steve Thomas: I accept that you cannot find a number. It would be interesting to know because, ultimately, that is the level of support that the government is giving.

Hon STEPHEN DAWSON: I have quizzed that, but it does not exist.

There was a question around whether the Duties Act has a minimum exploration commitment to qualify for the farm-in concession. The legislation does not impose a minimum exploration amount or commitment from the farmee for the concession to apply. This allows the concession to apply to farm-in agreements involving smaller greenfields exploration projects that do not require significant exploration expenditure from the farmee.

I think the member asked whether the industry will need to accept a stronger minimum standard of contract. The concession will still apply to more informal farm-in agreements as long as they meet the eligibility criteria, which are consistent with the concession under the current provisions and the commissioner's assessing practices. The new provisions are longer and more complex because they aim to accommodate the diverse practices in farm-in agreements that RevenueWA has come across over the years. The amendments largely aim to align the law with the historical administration of the concession as much as possible. This will minimise the impact on the mining industry, as it will be familiar with how farm-in agreements have been assessed. To assist junior miners and industry in understanding the new provisions, RevenueWA has drafted a fact sheet, revenue ruling and commissioner's practice to provide guidance on the new provisions. I am told that the draft publications have been sent to relevant industry bodies for comment, prior to being finalised and published once the bill is passed.

Hon Dr Steve Thomas: So they are not public yet?

Hon STEPHEN DAWSON: No, they are not public yet. We are in a consultation process. Stakeholders have them. I am not sure whether we have any drafts with us here.

Hon Dr Steve Thomas: I will ask you in committee and then you can take it away and ask the minister.

Hon STEPHEN DAWSON: I am happy to see whether that might be possible.

Technical presentations will be offered to industry bodies to assist their members with understanding the new legislation after the bill is passed. Template contracts are not proposed, as the legislation is designed to cater for the broad range of industry practices.

The honourable member made a comment about the amendments being complex. There is a school of thought about whether it will be difficult for taxpayers to comply with the legislation.

Hon Dr Steve Thomas: I made that positive by saying that I understand that they have to be.

Hon STEPHEN DAWSON: Yes. Certainly, the structure and content of the legislative amendments were determined by the Parliamentary Counsel's Office in consultation with RevenueWA. The complexity of the amendments is largely due to the need to accommodate, where possible, the different ways in which farm-in agreements may be structured. The diversity of these practices, together with the historically broad application of the concession, has resulted in more complex and prescriptive legislation than the current provisions, which are no longer fit for purpose to cater for the different farm-in arrangements. The new legislation will support RevenueWA's existing assessing practices as much as possible, which should minimise the impact on taxpayers. RevenueWA will publish guidance material to assist industry and advisers with interpreting the amendments. I will leave my commentary there. I do have a copy of the draft publication that has been circulated to stakeholders.

Hon Dr Steve Thomas: Sorry, which draft?

Hon STEPHEN DAWSON: The draft that I alluded to a second ago.

Hon Dr Steve Thomas: The fact sheet?

Hon STEPHEN DAWSON: Yes, the information sheet.

Hon Dr Steve Thomas: We will do it in committee; that is great.

Hon STEPHEN DAWSON: I just want to check, though. What has not been given to me is an indication of whether I can table it in this place. Once we get into committee, I will ask that question. I will get it to the honourable member somehow. With those comments, I will draw my remarks to a conclusion.

I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 1: Short title —

Hon Dr STEVE THOMAS: As I indicated in my contribution to the second reading debate, I will effectively deal with clauses 1, 8 and 14. That does not help much because they are the two big clauses, but I think we can get past the more functional components. I am interested in establishing a bit of background, particularly for the chamber, on what currently exists and what we are moving to. I always think that I will start with a simple question, but I do not think this is a simple question, unfortunately. This relates to why it is such a complex bill. I was going to ask whether the minister can give us an indication of what the current farm-in agreements look like. The problem is that there is a diverse range of them. Let us do the basics. In the earliest of phases, this potentially would have included verbal agreements as well as written agreements. What level of agreement is currently required to qualify as a farm-in agreement? Let us start with that.

Hon STEPHEN DAWSON: While I get an answer to that question —

Hon Dr Steve Thomas: Apologies; it is a complex question masquerading as a simple one.

Hon STEPHEN DAWSON: That is all right. We will see what we can get for the honourable member. In the meantime, I have sought advice from the advisers on the draft publications. One is a commissioner's practice on farm-in agreements, one is a revenue ruling on exploration for farm-in transactions, and the third is a fact sheet on farm-in agreements. I am happy to table those documents now. I note, of course, that they are draft documents, so they are out for stakeholder consultation at the moment. They could change, but as of today, they are current. I table those documents.

[See paper 1765.]

Hon STEPHEN DAWSON: I will answer the honourable member's question in this way, noting, of course, that he said it is a complex one.

Hon Dr Steve Thomas: I am sorry that it is tough.

Hon STEPHEN DAWSON: That is all right. Broadly, the eligibility requirements are that the farmee must spend the exploration amount on the mining tenement or derivative mining right after the agreement is entered into. The farmee has a right to acquire an interest in the mining tenement or derivative mining right only after they spend the exploration amount—that is, the farmor cannot acquire the interest in the tenement or right up-front and then spend the exploration amount. The mining tenement or derivative mining right must be held with the farmor after the completion of the transaction. This means that if the final stage of a farm-in agreement results in the farmee getting 100 per cent in the tenement, the final stage will not be eligible for the concession and the farmee cannot hold an interest in the mining tenement or derivative mining right when the farm-in agreement is made.

Hon Dr STEVE THOMAS: Some of that reflects what is in the Duties Act currently, which I read out a little bit earlier.

Hon Stephen Dawson: By way of interjection, I should point out that the broad eligibility requirements will be the same after the amendments are made.

Hon Dr STEVE THOMAS: Yes, and that is why there is some repetition of what is there currently, but it is obviously in a lot more detail than what it will look like when the bill passes, which is fine. I still want to chase this rabbit down the rabbit hole a little bit. For example, my wife and I have a property and we decide to get a mining tenement over it. The minister wants to take an interest in exploration so we strike a contract deal. At what point and how will the duty be assessed? At what point and how will the concession be decided? I presume these things are all registered in some way, shape or form. If the minister and I sign a contract and I put it in the back of the pantry and it never sees the light of day, there has to be a process that we work through for an action to have occurred and a duty to arise then that duty to be waived. What does that process look like in the operations of government?

Hon STEPHEN DAWSON: For the last couple of minutes, I have not been able to get out of my head that the honourable member talked about chasing a rabbit down the rabbit hole. I have in my head, "Run rabbit, run rabbit, run, run, run; don't let the farmor have all the fun"! I could have sung it for the member but I did not, so he should be grateful.

Under a farm-in arrangement, two separate transactions could give rise to a duty liability. The first dutiable transaction is the farm-in agreement itself. The second dutiable transaction is the transfer of the interest in the tenement or derivative mining right to the farmee after they have earned the interest by fulfilling of the exploration requirement. If the eligibility requirements are met and there is no consideration for the farm-in other than the exploration amount, a nominal duty of $20 will apply to the farm-in agreement. If consideration is provided for the farm-in agreement, duty will apply at the general rate. After the farmee has spent the exploration amount, the transfer of the interest in the tenement or right to the farmee under the farm-in agreement will be exempt from duty. If there is no concession, full duty will apply on the interest in the tenement or right acquired by the farmee. This is the duty treatment of eligible farm-in agreements under the current legislation and will continue to be the duty treatment after the amendments are made.

Hon Dr STEVE THOMAS: How would the Department of Finance become aware that this is occurring? What are the lodgement points that give rise to this occurring or is it entirely based on the fact that the legislation exists and the onus is on the signatories to the contract to notify when they arise? Let me confirm that first before I get to the spot-checking component.

Hon STEPHEN DAWSON: The Duties Act will require the farm-in agreement to be lodged.

Hon Dr STEVE THOMAS: That is what I am looking for. Each farm-in agreement will be lodged with whom?

Hon Stephen Dawson: It is RevenueWA.

Hon Dr STEVE THOMAS: It will be lodged with RevenueWA. Is that currently in a standardised form or is it simply whatever contract happens to be signed? Does the contract itself have to be lodged with RevenueWA?

Hon STEPHEN DAWSON: The contract has to be lodged, but not in a standard way because I mentioned earlier the historical differences in how this has been treated over time. An agreement must be lodged with RevenueWA within two months after the agreement is made. It will then be reviewed by RevenueWA to determine whether the concession applies. A transfer of a mining tenement under a farm-in agreement must be assessed before it can be registered with the Department of Mines, Industry Regulation and Safety.

Hon Dr STEVE THOMAS: Certainly, when there is a transfer of the title of a mining tenement, for example, if I go to that extreme, that will have its own level of paperwork and additional components. When the registration of a right is lodged, if the farmor maintains the majority share of the activity, even including the exploration, will there be no other notification apart from the need to lodge the contract in whatever form it exists? I presume it will be a copy and not necessarily the original documents in whatever form they come in. That demonstrates to the government there is at least an examination to be done of whether it is a dutiable transfer. Will a follow-up or spot-check occur? If contracts might be signed that provide the entitlement but are simply not lodged, is there another way that the government might see them and pick them up? It possibly would not be until the production stage, but is there anything in place that follows that route?

Hon STEPHEN DAWSON: The Department of Mines, Industry Regulation and Safety will not register the transfer unless it says "duty endorsed". The transfer of a mining tenement under a farm-in agreement must be assessed before it can be registered with DMIRS. There is no central register of rights or farm-in agreements. A copy of the document will suffice.

Hon Dr STEVE THOMAS: Thank you. I think that explores and explains that component. Perhaps, on occasions, things sneak through, but given we are probably not talking about large amounts of money, we do not want to make it overly difficult to get them.

One of the most critical considerations is the definitions of and distinctions between "exploration" and "mining activity" and the things that might be expended on for that purpose. I imagine there is some crossover, so if someone is exploring a tenement, for example, they may well find themselves being forced to clear areas of land for exploration or drilling. I do not imagine it will be huge amounts but could we explore the difference in those definitions? I imagine that will be firmed up under this legislation compared with the current legislation. Could we have a look at that?

Hon STEPHEN DAWSON: In the context of a mining tenement, exploration involves activities that have a purpose of discovering mineral bodies or, if a mineral body has been identified, scrutinising or examining the mineral body to better define the extent of the body and the degree of mineralisation or to determine other factors that are relevant to the feasibility of mining. Exploration will generally include development of the mining tenement until construction of a mine commences. This includes exploratory drilling, preparing and producing scoping studies, prefeasibility studies, feasibility studies, mineralisation reports, resource reports, environmental impact studies and mining proposals. A revenue ruling will be published to provide guidance on what is meant by "exploration", and, as I have previously indicated, industry bodies will be consulted on that ruling.

Hon Dr STEVE THOMAS: The feedback that I have received is that the fact that a revenue ruling is on its way is greatly appreciated across the board. That might take some of the question marks out of it. Is there an issue around what we call brownfields exploration—that is, where we are exploring around known resources? Is it envisaged that there will be a complication that will make existing operations difficult? Will the concession be available across the board on brownfield sites, or will there be a set of rules that will determine under what circumstances brownfields exploration is really an extension of an existing mining operation rather than looking at a genuinely new site or an extended exploration?

Hon STEPHEN DAWSON: I am advised that the Department of Mines, Industry Regulation and Safety will look at the substance of the activity on a case-by-case basis, honourable member.

Hon Dr STEVE THOMAS: I think that is going to be the problem in most of our discussions as we go forward: the activity will be looked at on a case-by-case basis. I think we will get stuck with that a few times as we explore the bill. That is basically one component of the definition of "exploration" versus "mining". I am happy to open the door here and maybe debate it more as we get further into the bill, but the intent of the bill is to allow administrative costs to be included, and that is a good thing. But how do we confirm that the administrative costs are specific to exploration versus other activities? Again, on a greenfield exploration site, it might be fairly simple; on a brownfield exploration site, it might be a little more complex. Therefore, how do we define the level of administration that is applicable to the concession?

Hon STEPHEN DAWSON: It is common for the exploration amount under a farm-in agreement to include some administrative or overhead expenses, such as head office costs and accounting and research costs. Agreements that include this expenditure do not qualify as an eligible farm-in agreement under the existing provision because it is not expenditure on exploration. This is inconsistent with the Commissioner of State Revenue's assessing practices. The amendment in the bill will give the commissioner discretion to treat small amounts of administration costs as exploration costs because they are accepted by the Department of Mines, Industry Regulation and Safety in determining whether the expenditure conditions of a mining tenement are met. Therefore, we will follow the same essential policy—a small amount would. DMIRS has already indicated what is an acceptable administrative cost. Again, there will be an element of looking at it on a case-by-case basis associated with this, honourable member.

Hon Dr STEVE THOMAS: Yes. I think we are going to find that for lots of our conversations, and I do not intend to drag it out.

Hon Stephen Dawson: Just by way of interjection, it should not be a surprise to those applying if they have done it before, and certainly if they have engaged with DMIRS, it would be similar practice.

Hon Dr STEVE THOMAS: Yes. I think that is right. Again, it is perhaps not as great a concern because most of those who are engaged in farm-in agreements, I suspect, are at the smaller end of the commercial scale versus the administration costs charged at a Rio Tinto level. That is likely to be significantly different from the level of administration that I think we are talking about under the circumstances that we are engaged in now. Therefore, I suspect that means it will probably be okay.

I want to raise a question about multiple farm-in agreements on the same tenement. How will the proposed legislation deal with multiple farm-in agreements on the same tenement? Will they be they registered separately? Will they all generally receive a concession? Will there be a limit on the concessions, or as long as they meet that test around the expenditure amount, which appears to be the pivotal component, will they all receive that concessional amount? Will there be a point at which it will get so complicated that that makes it difficult?

Hon STEPHEN DAWSON: I am told that multiple farm-in agreements will be fine on the same tenements. As long as each farm-in agreement meets the eligibility requirements, they will be able to access it.

Hon Dr STEVE THOMAS: Then, potentially, if there is no limit on the number of farm-in agreements one could put in place —

Hon Stephen Dawson: Correct.

Hon Dr STEVE THOMAS: Yes. Therefore, as long as, in each case, the expenditure amount is met in advance, that would give people the opportunity to build up. I am interested to know how often it happens that multiple farm-in agreements are trying to deliver bigger outcomes, bigger projects and higher levels of exploration. How often do we see multiple farm-in agreements versus what we assume is a one-on-one component?

Hon STEPHEN DAWSON: I do not have the data on me, honourable member, but I am told that it is generally quite common.

Hon Dr Steve Thomas: So it is common that multiple —

Hon STEPHEN DAWSON: Yes.

Hon Dr STEVE THOMAS: Okay. That is interesting. I would be interested to know a bit more about how big that is. Again, I am asking things that the minister does not necessarily have the answers to, but —

Hon Stephen Dawson: Just by way of interjection. Data doesn't get collected on this issue, but the advisers, who have got experience with it, tell me that it is quite common.

Hon Dr STEVE THOMAS: Okay. Just out of interest, then—I am getting a little sidetracked, but it will not be for long—I know there is everything from "not much" to "many", but in terms of the amount of money invested in a farm-in agreement and exploration, what would be the more common amounts seen by RevenueWA within those contracts as a fairly typical example of the level of agreed exploration revenue provided by the farmee to the farmor?

Hon STEPHEN DAWSON: I am told that the common range is between $10 000 and a couple of million dollars.

Hon Dr STEVE THOMAS: That is interesting as well. The minister is probably not in a position to answer this question, but at the lower end of that, would we tend to find agreements at the $10 000 to $30 000 level in multi-farm-in provision contracts? Is that an example in which the farmor tries to get a number of people to invest a smaller amount to get up to a larger amount? I cannot imagine that $10 000 would deliver much in the way of exploration, to be honest.

Hon STEPHEN DAWSON: I am told that $10 000 would usually just be a single stage of greenfields.

Hon Dr STEVE THOMAS: Would it be common for such agreements to be stage-by-stage or action-by-action? The farmor might decide, "I might need a component of exploration; I have a farm-in agreement on that." Is that a relatively common occurrence, in which it is stage-by-stage?

Hon STEPHEN DAWSON: I am told that it is usually up to the farmee to decide how much they want to keep spending, stage-by-stage.

Hon Dr STEVE THOMAS: Okay. This is a really interesting debate, actually. I appreciate all the effort the minister is going to. That lends itself to another question. Let us start with the simplest question first: can the contract for provision of expenditure for exploration include exploration-in-kind? Does it have to be a cash transfer? Could it be the case that a company or person that has the capacity to provide exploration skills or activity, provides that as part of the contract, rather than it being a cash transfer?

Hon STEPHEN DAWSON: Yes, it could be in-kind. The exploration amount in an agreement may require achieving an identified outcome or milestone rather than spending an amount of money. For example, the person may be required to drill to a certain depth, or to produce a bankable feasibility study. The current section 13 does not apply to this type of agreement, because it requires the farmee to spend the exploration amount specified in the agreement. This is inconsistent with the commissioner's assessing practice, which has been to allow the concession in these circumstances.

Hon Dr STEVE THOMAS: That is very interesting. Can I just confirm that under the existing legislation it was not able to be done in-kind, but under the new legislation it will be able to be delivered in that way?

Hon STEPHEN DAWSON: That is correct, although I will go further and say that it has been common practice to allow in-kind spending, even though it might have been outside the wording of the current legislation.

Hon Dr STEVE THOMAS: I am not opposed to someone in those circumstances taking advantage of that. Even though it is not captured under the legislation as it currently exists, it has presumably been the reality in practice all the way back to 2008. I fully get that. I am sure it happens regularly that a drilling contractor with capacity might engage in investing in exploration on a tenement where the tenement owner does not have the capacity, but the explorer possibly does. It is a bit like building a spec house; they go out there, and if they have excess capacity in whatever form—I used drillers as an example, but it could be any one of the others—they can actually go out there and effectively come under a contract with a farmee, and they take the risk as part of their corporate venture. It is actually not a bad way to use capacity that might not otherwise be used. In terms of any untoward advantage being gained, it would be exactly the same if they were not providing that service directly. I actually think that is a good outcome—that they get to deliver capacity that they otherwise would not have had. I think formalising that in this legislation is a good thing. I do not imagine that there is any capacity to work out how often that happens, as an example?

Hon STEPHEN DAWSON: I am told that it is uncommon, but there is no reason why it could not happen.

Hon Dr STEVE THOMAS: That is good; I appreciate that. I am coming towards the end of my questions on clause 1, but I would be interested to explore the backdating of the legislation to 2008 and 2018. In effect, there are two different periods that are defined in the bill, as I recall. Is there a significant difference in the operations between 2008 and 2018, when the review was done? How was it applied from 2018 to 2022? In 2008, everyone agreed that this was the intent. Clause 14, which we will get to, makes reference to the first pre-amendment period and the second pre-amendment period, which sounds a bit like Jurassic and Triassic! Basically, in that period from July 2008 to 2018, was there a difference in the way the concession was applied once we hit 2018? Is that why, as we get further into the bill, we deal with the 2008 to 2018 section, and a separate 2018 to present-day section?

Hon STEPHEN DAWSON: The amendments that apply to farm-in agreements entered into since 1 July 2008—the date that the Duties Act 2008 commenced—are favourable to taxpayers. They provide legislative support

for concessions applied to farm-in agreements in accordance with the commissioner's practices. As such, these amendments will not result in any taxpayers receiving an unexpected bill. In relation to backdating of favourable amendments, it is common practice for amendments favourable to the taxpayer to operate retrospectively. This supports concessions or exemptions that have been applied under longstanding policy settings. If the amendments favourable to the taxpayer did not apply retrospectively, it would mean that concessions applied to farm-in agreements entered since 1 July 2008 are not valid, which could result in a tax liability for many transactions.

To safeguard the integrity of the state's revenue base, the state government announced on 28 November 2018 that amendments will be introduced to ensure that the concession does not apply to farm-in agreements involving only capital expenditure entered into from that date. Amendments were also announced to ensure that duty applies to all consideration provided for farm-in agreements, including consideration agreed to be paid after the agreement is entered into. The bill will give effect to the announced changes. The practice of announcing unfavourable amendments and having those amendments apply from the announcement date is common and ensures the integrity of taxes. Industry has been aware of these amendments since the 2018 announcement, and relevant industry groups were briefed about the proposed amendments before the announcement and consulted again during the drafting of the bill. A circular was also published after the announcement to provide further details about the proposed amendments to taxpayers in general, including changes that would be effective from 28 November 2018.

Hon Dr STEVE THOMAS: To finish clause 1 off, I want to address the complexity of the bill compared with the previous legislation. I am sure it has been put to the government, it has certainly been put to me, that the original bill was written with those few provisions. I found the line I referenced in my contribution to the second reading. It is in the minister's second reading speech about midway through, halfway down the bottom of the second page, and states —

> The detailed provisions in the bill replace one short provision in the Duties Act.

I think that is very true. Those are wise words. It is quite detailed legislation replacing a very simple thing. I think that simplicity was preferred and liked by the industry because it gave it a great degree of leeway and flexibility in how it managed this process.

I am happy to put on the record that I think the government's intent on this bill is good. I think we all support the process. I appreciate the minister tabling the documents earlier about how to get people across the technicalities and details of this and that ultimately, whether it is a simple or complex contract, I think I understood the minister in saying that the contracts do not need to be more complex than they were previously.

Hon Stephen Dawson: That is correct.

Hon Dr STEVE THOMAS: Thank you.

Those very simple contracts, obviously condensed, still apply. Apart from, I guess, going through the documents the minister tabled, is there intended to be some form of awareness campaign to try to reassure industry and the exploration industry, which I find is a reasonably disparate group, and to make sure that it understands that those processes look fairly similar, despite the fact that the legislation looks remarkably different and certainly appears more complex? There is a question mark around the fear that making it look more complex, even though in application it might not be, might be seen to be a hurdle to overcome. Is there intended to be an awareness campaign beyond simply those documents? I assume that negotiation would continue with all the people whom the government has negotiated with in good faith multiple times already to make sure that everybody is aware that the new rules can still be applied in a similar sort of manner. Perhaps the government might consider something of a before and after process: "Previously, you went through this set of steps; you, effectively, are going to go through the same set of steps, but be aware that these bits have changed." A very simple before and after component, a bit like a blue bill, might be really useful. I am looking for some reassurance that the government is fully intending to make sure that people find this new system as useable as possible, particularly considering I do not think the users' component of it appears to have changed significantly, despite the significant changes in the legislation.

Hon STEPHEN DAWSON: I want to go back to the member's earlier point when he pointed out the line in my second reading speech about the detailed provisions in the bill replacing one short provision in the Duties Act. It is complicated, as we said. The reality though is that because of the historically broad application of the section, that has resulted in more complex legislation than the current provisions. We are essentially retro fitting. The law says one thing, the policy has been something else and we are trying to retro fit to enable what has been common practice to be included in the bill before us. It adds to the complexity.

Regarding an awareness campaign, we are certainly in regular contact with industry groups through the state revenue liaison committee. Last week Revenue WA presented on the farm-in changes to the Association of Mining and Exploration Companies conference. The plan is to continue to engage with industry groups when possible. Other groups, like the Law Society of Western Australia, have consulted as part of the process. They may potentially provide assistance to some people who may not be members of AMEC, for example.

Hon Dr Steve Thomas: I would have thought AMEC would be your primary representative body, with perhaps a smidgeon of the CME in there as well.

Hon STEPHEN DAWSON: That is correct.

Hon Dr Steve Thomas: Outside of that, I think it is up to everybody else to demonstrate an interest.

Hon STEPHEN DAWSON: Updated information will be available on the wa.gov.au website, for example.

The other point is that we have certainly made undertakings to work with industry groups to assist their members to understand the legislation. That could include speaking at further conferences, information days, open days or whatever.

Hon Dr STEVE THOMAS: I return to administration costs. I understand that the current act refers to the concession being for administrative costs. A proposal was put to me—again, I think AMEC raised this with me; it probably raised it with the minister as well—that the concession will involve small amounts of non-exploration expenditure such as administration costs. Can the minister confirm that the concession will be specifically limited to administration costs? Has that been rectified in consultation with the particular group that the minister is aware of?

Hon STEPHEN DAWSON: I am told that we have addressed the concerns that were raised by AMEC, for example. The current provisions prevent the concession from applying to exploration amounts involving administrative costs. It is common for the exploration amount under a farm-in agreement to include some administrative or overhead expenses, such as head office, accounting, and research costs, as I said earlier. Agreements that include this expenditure do not qualify as eligible farm-in agreements under the existing provision because it is not expenditure on exploration. That is inconsistent with the commissioner's assessing practices. The amount in the bill gives the commissioner discretion to treat small amounts of administrative costs as exploration costs because, as I alluded to earlier, they are accepted by the Department of Mines, Industry Regulation and Safety in determining whether the expenditure conditions of a mining tenement are met.

Clause put and passed.

Clauses 2 to 7 put and passed.

Clause 8: Chapter 2 Part 5 Division 9 inserted —

Hon Dr STEVE THOMAS: This is obviously one of the two significant and substantive clauses in the bill. I take the minister to proposed section 91K, "Terms used". I thought it was interesting that there was a definition of "primary farmor", set out at the bottom of page 4, which states —

> (a) means a person who is the holder, or 1 of the 18 holders, of a mining tenement; and
>
> (b) includes a person … who is not the holder, or 1 of the holders, of a mining tenement in a case where —
>
> (i) there is a transfer of an interest in the mining tenement to the transferee in order to make the transferee the holder, or 1 of the holders, of the mining tenement; and
>
> (ii) the transfer is still to be registered under the *Mining Act 1978* …

I probably do not need to read the rest of it. Then it starts to get more complicated. It is obvious that in the same way that there can be more than one farmee because there can be multiple farm-in agreements, there can be more than one farmor—that is, more than one titleholder to the exploration tenement. Let us start with that. It suddenly seems like a complication that I am not sure was covered anywhere in the Duties Act. In a circumstance in which there might be multiple farmors and multiple farmees, will there be a limitation on the contracts that might exist? We would presume that if all the farmors own a share each, they would have to be a party to a contract to a farmee. Would there be cases in which that is not how it will work?

Hon STEPHEN DAWSON: The primary farmor holds the tenement. The farmor can also hold a derivative mining right. Yes, there absolutely can be multiple primary farmors.

Hon Dr STEVE THOMAS: I come back to that statement that we made earlier: there are probably as many different types of contract for this as there are days in the year.

Hon Stephen Dawson: I think that is what the bill before us is trying to capture.

Hon Dr STEVE THOMAS: I think that is absolutely right. It is trying to pick up all the variations that currently exist. We could have multiple farmors. Presumably, that is why the definition states "who is the holder, or 1 of the holders". Is there a circumstance in which there could be multiple unconnected holders of a tenement? Surely they would have to be a connected legal entity of some sort.

Hon Stephen Dawson: Yes, as in the latter part of your question.

Hon Dr STEVE THOMAS: Yes, they would have to be legally connected somehow.

Hon Stephen Dawson: They could be a joint venture, for example.

Hon Dr STEVE THOMAS: Or in some form of contract, which they will have set up. It continues to get more complicated.

In the first part of that definition, there could potentially be multiple farmors—multiple people who could potentially own the tenement. It could also include a person who is apparently designated as the transferee who is not the holder

or one of the holders but presumably has some form of registered interest in the tenement. I am interested to know what that circumstance looks like. How will somebody, under proposed subparagraph (i), transfer an interest if they are not recognised as another farmor and they have to be identified differently? Under what circumstances might somebody find themselves being captured as a transferee under proposed paragraph (b)(i)?

Hon STEPHEN DAWSON: This will apply when, one, they have a tenement but have not registered that interest with the Department of Mines, Industry Regulation and Safety; and, two, they have earned an interest under a previous farm-in agreement that is not registered.

Hon Dr STEVE THOMAS: Is there a time frame by which they will be expected to register their interest?

Hon Stephen Dawson: No, there is not.

Hon Dr STEVE THOMAS: Therefore, potentially the contract will be fairly open ended. Why would that be left open ended if effectively an interest exists but it remains unregistered? I am not sure why there would not be a time frame for that.

Hon Stephen Dawson: Are you asking why they have not registered their interest with DMIRS?

Hon Dr STEVE THOMAS: Yes. I apologise if that is not the area of expertise of the minister's advisers; I accept that. However, it would seem to be a simpler process if an interest was required to be registered earlier, or at least if a time frame was put on it, rather than simply allow a person to be called a transferee and to effectively have an interest and be another farmor, when in practice they miss out on that definition because they have not registered their interest.

Hon STEPHEN DAWSON: I am told that there is normally a natural incentive for people to register, because DMIRS will not deal with a person unless they are on the title.

Hon Dr STEVE THOMAS: I suspect that this is a just-in-case-clause, because if there is an incentive for a transferee to become one of the primary farmors, we would think that would happen regularly. I am not sure whether there might be a longer term benefit for some transferees to remain unregistered. I guess that might depend upon how many primary farmors are in the process. They might find it is easier not to engage in that process. I get that the minister does not have the capacity to explain this now, but it would be useful at some point, perhaps in a wider government discussion around DMIRS, to find out why a specific time line within which to register an interest has not been put in place. The interest would surely be contracted, so there would be a contract of interest, but, if it is not registered, that person is a transferee. I think that is what we are reading into this particular definition. If a person registers the contract, they are one of the primary farmors; if they do not, they are a transferee. Perhaps we could look at whether there might be some opportunity to put a time limit on the registration of those contracted rights. I am trying to work out whether I actually had a question in that. I will just put that out there, minister.

Hon STEPHEN DAWSON: I am told that this is about plugging a gap for an issue that might cause problems for taxpayers, or has caused problems for taxpayers in the past. I am further told that people register as soon as possible to protect their interest. It is similar to buying land. There is no time frame. That is obviously something in the Mining Act that would need to be changed.

Hon Dr STEVE THOMAS: I think that is right. I accept that this is a bit of a catch-all or just-in-case clause. I would be interested to know whether there are any particularly long-outstanding cases and whether there is a reason for that, but let us not get bogged down on that at the moment.

Hon Stephen Dawson: By way of interjection, I am told it came about because of a live case.

Hon Dr STEVE THOMAS: It is probably not appropriate to discuss that particular case here.

Hon Stephen Dawson: We would not be able to do that, no.

Hon Dr STEVE THOMAS: That would be interesting, though.

I take the minister to proposed section 91K(1) at page 5 of the bill —

> ***relevant derivative mining right***, in relation to a farm-in transaction, means a derivative mining right that is a relevant derivative mining right for the farm-in transaction under section 91M(1)(a)(ii), subject to subsection (3) of this section;

Can the minister give us the lay version of what a "relevant derivative mining right" might be and what it looks like?

Hon STEPHEN DAWSON: I am told that it is a way to link the mining right to the relevant tenement. It is a way of drafting. It is a Parliamentary Counsel's Office decision. It is essentially to link the mining right to the tenement.

Hon Dr STEVE THOMAS: This is a complicated piece of legislation! Okay. I will accept that. There is also a definition of "replacement derivative mining right". That links to proposed section 91K(4) on page 5, which states —

> In this Division, references to a mining tenement or derivative mining right being granted to replace another mining tenement or derivative mining right include cases where the mining tenement or derivative mining right is granted in substitution, conversion or renewal of the other mining tenement or derivative mining right.

This indicates that a farmee might swap either a tenement or a right to invest in exploration. We are dealing with a duty concession that will basically apply once the concession amount has been expended, although that will change under the legislation. Under what circumstances are we likely to get a swapping of either a tenement or a right to activity? Is that a common occurrence? What is occurring under those circumstances that this proposed section is seeking to pick up?

Hon STEPHEN DAWSON: This is another provision to plug a gap. It is not about a swap. Under the concession, the transfer of an interest to the farmee after the exploration amount has been spent is exempt from duty. However, issues with the current provisions mean that the transfer is not exempt if the mining tenement under the farm-in agreement is converted to another tenement type. This typically occurs when a farm-in transaction is made for an exploration licence. The farmor may apply to convert that exploration licence to a mining lease if there is no mineralisation on the tenement and they want to commence mining. If the conversion occurs before the tenement is transferred, the transfer to the farmee of the mining lease is not exempt from duty under the current provisions, and this produces an unfair outcome for the taxpayer.

Hon Dr STEVE THOMAS: It is hard to link the explanation the minister has given to the replacement. I fully understand that when one converts to a mining tenement or starts mining then suddenly all duty concessions are off the table and transfers at that point become dutiable instruments, and so they should be. I am not sure that that explanation gives an indication of the replacement of the mining tenement. Proposed section 91K(4) states —

> … references to a mining tenement or derivative mining right being granted to replace another mining tenement …

It sounds as though, effectively, one tenement will be replaced with another. Perhaps there is a more direct explanation that the minister might be able to come up with. Again, apologies, but it is very complex and technical area and bill.

Hon STEPHEN DAWSON: Technically it is not the same tenement once it has been converted. If it is a derivative mining right and the underlining tenement is converted, a new derivative mining right would need to be granted. The legislation refers to these as replacements. A replacement mining tenement is a conversion of an existing tenement. The most common example is a mining lease granted over part of the area of an exploration licence. If the farmee earns an interest in an exploration licence but it is converted to a mining lease before it is transferred, the exemption would not apply under current provisions.

Hon Dr STEVE THOMAS: I thank the minister for that; it makes it clear. Maybe it was just the way I heard it. Sometimes it is as much the way I hear something as the way the minister says it.

Hon Stephen Dawson interjected.

Hon Dr STEVE THOMAS: That is what my wife tells me frequently. I have taken that on board. That is good. I thank the minister for that clarification.

On page 7 we get to the meat, or substance, of the bill with proposed subdivision 2 "Explanation of farm-in agreements, farm-in transactions and related concepts". Proposed section 91L, "Farm-in agreements and concessional farm-in transactions, states —

> (1) A ***farm-in agreement*** is an agreement, whether conditional or not —

I am interested in the phrase "whether conditional or not". Is there an example of what sort of conditions might be applied under that provision? Given that in a minute we are going to start to talk about the conditions that will be required to meet the duty concession under proposed section 91N, "Exploration requirement and exploration amount", presumably "whether conditional or not" means that the farmor and farmee will sign a contract and that contract will be conditional on more things than simply what the new legislation will deal with in terms of exploration requirements? Currently it is just the amount, but presumably this provision will catch conditions that might be placed in the contract outside that. I presume that is what we are dealing with.

Hon STEPHEN DAWSON: A common example is a due diligence clause. It could also be conditional on finance. Those are two examples.

Hon Dr STEVE THOMAS: I think that is the simplest and most straightforward answer we have had today on a very complex piece of legislation.

Hon Stephen Dawson: You know I aim to please.

Hon Dr STEVE THOMAS: The minister is very good.

Several members interjected.

Hon Dr STEVE THOMAS: The minister had better watch out because others are going to press him, but he is fighting to hold his territory remarkably well. We will see what number he is on the ticket next time.

Several members interjected.

Hon Stephen Dawson: I won't be up very high if you guys keep going on.

Hon Dr STEVE THOMAS: Yes—well.

Let us jump to page 14 and proposed section 91N. This is where this bill shifts away from the current legislation with the definition of "exploration requirement" and "exploration amount". Proposed section 91N(1) reads —

> … an ***exploration requirement*** is a requirement to do either or both of the following after the farm-in transaction is made —
>
> (a) expend, on exploration carried out by the farmee after the farm-in transaction is made, an amount that is specified in, or determined in accordance with, the farm-in transaction;
>
> (b) carry out exploration as specified in, or determined in accordance with, the farm-in transaction.

Neither the word "or" nor "and" are used. Is it implicit that it is "and" between the paragraphs? I accept that the minister needs to do something. He can tell me when he needs me to sit down and be quiet.

I presume that "an exploration requirement" is, as we talked about before, shifting from the capacity for someone to provide a service rather than simply to provide an amount.

Hon STEPHEN DAWSON: I will have a good answer for the honourable member at a later stage. For now, I ask we report progress and seek to sit again.

Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson.

QUESTIONS WITHOUT NOTICE

ALBANY HEALTH CAMPUS — RADIATION ONCOLOGY SERVICE

1003. Hon Dr STEVE THOMAS to the Leader of the House representing Minister for Health:

I refer to my question on notice 2 860, answered on 13 May 2020, about the Albany radiation oncology unit stating that the unit would be completed by June 2022, and my question without notice number 475, answered on 19 May 2022, stating that the unit was scheduled for completion in the third quarter of 2022, and planned for operational use in the fourth quarter of 2022.

(1) What date is the radiation oncology unit due for completion?

(2) What date is the radiation oncology unit scheduled to commence operation?

(3) What clarity and certainty will the minister provide around these dates to cancer patients in the great southern who must travel four hours by road to either Bunbury or Perth for treatment?

(4) Will the minister apologise to the people of the great southern for the unacceptable delays in delivering this project; and, if not, why not?

Hon SUE ELLERY replied:

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

(1)–(4) The McGowan government is committed to delivering a high-quality facility that will allow radiation treatment for residents of the great southern for many years to come. The construction of the Albany radiation oncology unit is well advanced and expected to be completed early next year, with commissioning to follow. Construction delays are due to supply chain issues and labour shortages, which are out of the control of the health service. All parties are working constructively to minimise delays wherever possible.

WESTERN AUSTRALIAN LAND AUTHORITY — FINANCIAL REPORT

1004. Hon Dr STEVE THOMAS to the Leader of the House representing the Minister for Lands:

I refer to the annual report of DevelopmentWA, which includes the Western Australian Land Authority financial report.

(1) Can the minister provide an explanation for and a breakdown of the near tripling of WALA land sales revenue as evidenced on page 69 of the report?

(2) Can the minister provide an explanation for and a breakdown of the near tripling of WALA land sales expenses as evidenced on page 69 of the report?

(3) Why was the 2020–21 dividend from WALA to the state government increased from $8.4 million the year before to $169 million in 2020–21?

(4) Given that the WALA profit before income tax equivalents rose from $12.7 million in 2020–21 to $119.5 million in 2021–22, why did the dividends paid to the government drop from $169 million to $23.4 million at the same time?

The PRESIDENT: Before I give the call to the Leader of the House, I will point out that that question is both long and seeking a great deal of data. I will put it to the Leader of the House to see whether she is able to respond.

Hon SUE ELLERY replied:

I am always happy to assist, President, thank you. I thank the honourable member for some notice of the question.

(1)–(2) The significant increase to both land sales and land sale expenses in 2022 is driven by a number of factors including the second tranche of commercial assets transferred from the Housing Authority, increased residential lands sales due to high market activity and the high value sale of lot 4, Elizabeth Quay.

(3) This additional dividend relates to the regional land booster program.

(4) The 2020–21 dividend was retained and set aside for strategic infrastructure priorities over the forward estimates period. The special dividend paid of $23.4 million relates to reimbursement of funding as part of assets transferred from the Housing Authority in 2021.

SCHOOLS — CHILDREN WITH HARMFUL SEXUAL BEHAVIOURS

1005. Hon NICK GOIRAN to the Minister for Education and Training:

I refer to the minister's answer to my question without notice on 20 October 2022 in which she informed the house that none of the charges laid against the four alleged offenders who are currently at the same school as their victims have resulted in a conviction.

(1) Since the commencement of the protocol, has the Department of Education ever been informed that a charge laid against a student has resulted in a conviction?

(2) If yes, on how many occasions has this occurred?

Hon SUE ELLERY replied:

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

(1)–(2) To provide this information requires manual processing of individual student records, which cannot be completed in the time available. The member may wish to put this question on notice.

SCHOOLS — TEACHER FLYING SQUAD

1006. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to the Department of Education's teacher flying squad, which is utilised by government schools to fill urgent teaching vacancies until a suitable teacher is sourced. How many requests has the department received from schools seeking access to teaching services from the teacher flying squad in the 2022 school year, to date?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. Before I give the honourable member the number, I will make the point that 2022 has been the most difficult year for schools dealing with absent staff as they came down with COVID. I want to thank members of the teacher flying squad who made themselves available at short notice to assist those schools facing such difficulty, certainly in the first half of 2022.

In 2022 to date, the department has fulfilled 289 requests for teacher flying squad support.

COMMUNITIES — POLICE RAID

1007. Hon PETER COLLIER to the Leader of the House representing the Minister for Community Services:

I refer the minister to question without notice 165 asked on 16 March 2022.

(1) Are all 13 officers who are being investigated for allegedly leaking information still under internal investigation?

(2) If no, how many are still under investigation?

Hon SUE ELLERY replied:

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

It remains the case that the department will not disclose further information on any current departmental investigation.

YOUTH DETENTION — BANKSIA HILL DETENTION CENTRE AND CASUARINA PRISON

1008. Hon Dr BRAD PETTITT to the parliamentary secretary representing the Minister for Corrective Services:

(1) What was the average time out of cell—"unlock time"—for each young person who was held at unit 18 of Casuarina Prison in September 2022?

(2) What was the least amount of time per day that a young person in unit 18 spent out of cell in September 2022?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The Minister for Corrective Services advises that an answer to this question is unable to be prepared in the limited time available today. The minister will seek to provide an answer on 27 October 2022.

HOUSING — NATIONAL RENTAL AFFORDABILITY SCHEME

1009. Hon WILSON TUCKER to the Leader of the House representing the Minister for Housing:

I note the impending end of the national rental affordability scheme and the recent announcement by the federal housing minister that commonwealth rent assistance payments will not be increased to meet the soaring cost of rent. I further note the record low vacancy rate, with reports that Perth housing stock is at its lowest level in 12 years.

(1) Does the minister agree that Western Australia is facing a rental crisis?

(2) With a market tipped in favour of landlords, what assistance can the government offer to vulnerable renters?

The PRESIDENT: Before I give the call to the Leader of the House, I would like to point out that part (1) of that question seeks an opinion and therefore it contravenes the standing orders, but I will ask the Leader of the House whether she is able to respond.

Hon SUE ELLERY replied:

Thank you, President; indeed, I can. I thank the honourable member for some notice of the question.

(1)–(2) The McGowan government remains committed to increasing social housing supply and has invested a record $2.4 billion over four years to improve the quality and accessibility of social housing and homelessness services in Western Australia. This is on top of several other programs, including the housing diversity pipeline and targeted land releases to boost affordable housing supply. Since the start of the last financial year, 743 new homes have been delivered with over 900 homes under contract or construction. This continued investment will deliver 3 300 social homes and carry out refurbishment and maintenance work to many thousands more. The McGowan government continues to invest and provide affordable housing opportunities through a range of measures, including Keystart home loans, which are unique to Western Australia, and allowing low-income households to get into their own homes by providing a low barrier pathway to affordable home ownership. Bond assistance loans are available from the Department of Communities to overcome the up-front cost of renting in the private market. If individuals who are currently on the NRAS need assistance, the Department of Communities will assess their needs on a case-by-case basis and provide them with information on their housing options and the appropriate support services. This may be the provision of social housing, which is an affordable rental option for those on low incomes.

WASTE AVOIDANCE AND RESOURCE RECOVERY ACT — LEVY

1010. Hon SOPHIA MOERMOND to the minister representing the Minister for Environment:

I refer to the Waste Avoidance and Resource Recovery Act 2007.

(1) What was the forecast levy amount collected in the 2021–22 financial year?

(2) What percentage of the forecast levy was allocated to the waste avoidance and resource recovery account in the 2021–22 financial year?

Hon STEPHEN DAWSON replied:

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

(1) It was $83 million.

(2) It was 25 per cent.

HEALTH — E-CIGARETTES

1011. Hon Dr BRIAN WALKER to the Leader of the House representing the Minister for Health:

I refer the minister to the Department of Health's website and specifically to the page headed "Electronic cigarettes in Western Australia", which until recently contained a section entitled "E-Liquid/E-Juice/Vape Juice and nicotine".

(1) When was the information on e-liquids removed from the website?

(2) Who instigated that removal and was the minister or anyone in her office involved in the decision?

(3) Was any new legal advice received by the department or the minister prior to the removal that might have informed the decision?

(4) If no to (3), are the previous statements about e-liquids that did not contain nicotine being exempt from the 2016 Supreme Court ruling still valid; and, if they are, why does the department no longer offer public advice on that aspect of vaping?

The PRESIDENT: Before I give the call to the Leader of the House, I think the final part of that question seeks a legal opinion. Again, I refer the member to standing order 105, but I will give the call to the Leader of the House to attempt to answer the question.

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. To allow for a fulsome and accurate answer, I request the honourable member to please place the question on notice.

CORONAVIRUS — RAPID ANTIGEN TESTS

1012. Hon MARTIN ALDRIDGE to the Leader of the House representing the Minister for Health:

I refer to the 110.7 million rapid antigen tests—RATs—ordered by the state government at a cost of more than $570 million.

(1) How many RATs have been distributed from the state government's stockpile?

(2) How many RATs remain in the stockpile?

(3) What is the expiry date for these RATs?

(4) How will the government utilise these RATs before they expire?

Hon SUE ELLERY replied:

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

(1) There have been 64.7 million.

(2) There are 45.4 million.

(3) The use-by dates for the current stock of RATs range from December 2022 to December 2024.

(4) The government will continue to supply RATs to support hospital operations and to government agencies and the WA community.

PERTH CITY DEAL

1013. Hon NEIL THOMSON to the parliamentary secretary representing the Minister for Culture and the Arts:

I refer to question without notice 1002 asked on 20 October 2022 to the Leader of the House representing the Premier regarding the following completion dates for projects that are part of the Perth City Deal.

(1) Are the following estimated completion dates still anticipated for —

(a) the Perth Cultural Centre redevelopment—2022;

(b) the Perth Concert Hall redevelopment—2022; and

(c) the Perth Aboriginal cultural centre pre-feasibility study—2023?

(2) If no to any of (1)(a) to (c), what are the new anticipated completion dates?

Hon SAMANTHA ROWE replied:

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

(1) (a) No. The project scope has now expanded, with additional funds allocated to deliver a greater redevelopment of the precinct as per the Perth Cultural Centre master plan.

(b) No. Additional funding has now been secured.

(c) Yes.

(2) Given that additional funding has now been secured, completion dates will be announced once the scope of works for these projects are finalised.

RESIDENTIAL TENANCIES ACT — AMENDMENTS

1014. Hon STEVE MARTIN to the minister representing the Minister for Commerce:

I refer to uncertainty around proposed government changes to tenancy laws and the continuing very low rental vacancy rates in WA.

(1) Can the minister provide an update on the progress of the changes to the Residential Tenancies Act and provide a time line for when a draft bill will be introduced to Parliament?

(2) Can the minister confirm that the government is considering the removal of provisions that allow tenants to be evicted for no reason at all?

Hon ALANNAH MacTIERNAN replied:

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

(1)–(2) The state government is currently undertaking the most comprehensive review of Western Australia's residential tenancy laws in more than a decade. The review is occurring in two stages. The first stage of the review—the consultation regulatory impact statement—is complete. The second stage, which is the decision regulatory impact statement outlining proposed recommendations for reforms to the Residential Tenancies Act 1987, is well advanced and is being considered by government. The government's response to the review will be provided in due course.

WESTERN POWER — SUPPLY ALLOCATION

1015. Hon Dr STEVE THOMAS to the parliamentary secretary representing the Minister for Energy:

I refer to Western Power's wholly inadequate media release of 19 October 2022 announcing a trial to increase supply allocation in parts of the south west and wheatbelt regions between now and 31 March 2023, which states —

> Homes and businesses in the Shires of Boyup Brook, Bridgetown–Greenbushes, Collie, Donnybrook–Balingup, Nannup, West Arthur and Williams will be able to install a main switch circuit breaker of equal rating to those required in urban areas—63 Amp.

(1) Why have 90 per cent of regional shires been excluded from this trial, rendering them exposed to amperage reductions to 32 amps if they make any electrical changes or upgrades to their residences or businesses?

(2) How many homes and businesses in the trial area currently have main switch circuit breakers that restrict them to 32 amps?

(3) Given that nearly every residence and business currently has main switch circuit breakers well above 32 amps, despite the government's rules, which it started to enforce only in February 2022, can the minister confirm that his trial will in effect allow most of those home and business owners to simply keep their existing higher amperage main switch circuit breakers in place?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The following answer is based on information provided to me by the Minister for Energy.

(1) Western Power selected the trial area, covering approximately 13 800 homes and businesses, based on a number of technical factors. It is a representative sample of a diverse range of rural customers with different energy needs and includes equipment useful for pilot program purposes. A number of regional shires are considered large regional areas and already have a standard single-phase supply allocation of 63 amps.

(2) In the trial area, Western Power is aware of 45 sites that have installed 32-amp circuit breakers.

(3) The rural supply allocation of 32 amps has not changed. The only change is the August 2021 update of the *Western Australian service and installation requirements*. This states that any major alterations, including the addition of new circuits, require a main switch circuit breaker—a safety switch—set to the allocated supply of the site or any limiting components within the installation. This follows trends set by the Australian Industry Standards best practice.

PUBLIC TRUSTEE — FEES

1016. Hon NICK GOIRAN to the parliamentary secretary representing the Attorney General:

I refer to the performance audit undertaken by the Office of the Auditor General in the *Public Trustee's administration of trusts and deceased estates*.

(1) Given that the Auditor General found that "Trust fees did not always reflect actual work effort", what urgent steps have been taken to address this?

(2) Given the Public Trustee's underwhelming response—proposing a new brochure and more frequent financial statements—to the Auditor General's finding that "Trust clients are not provided with a clear and easy to understand explanation of the fees that are more likely to be charged to their account", what steps is the Attorney General taking to ensure that these concerns are properly addressed?

(3) Will the minister table the most recent briefing note or similar document he has received about these systemic concerns about the Public Trustee's administration of trusts and deceased estates?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question.

(1) The Department of Treasury immediately accepted the Auditor General's recommendation to review the appropriateness and transparency of the Public Trustee's fees and self-funding model. This review will aim to provide government with options to improve equity and value for money for the Public Trustee's clients, particularly given the vulnerable nature of its client base. The Attorney General fully supports this action.

(2) The Department of Treasury review will inform efforts to develop new simplified fee brochures, tailored to suit the different trust client types, which will be published on the Public Trustee's website.

(3) This part of the member's question is unable to be answered in the time provided and I ask him to place it on notice.

PRE-KINDY PROGRAM

1017. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to the response provided to question without notice 810 asked on 20 September 2022 regarding schools that have received ministerial approval to deliver a pre-kindy program.

(1) Have any schools sought the approval of the minister to deliver a pre-kindy program and not been approved?

(2) If yes, how many?

Hon SUE ELLERY replied:

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

(1) No.

(2) Not applicable.

CORRUPTION AND CRIME COMMISSION

1018. Hon PETER COLLIER to the parliamentary secretary representing the Attorney General:

I refer to question without notice 20 on director positions within the Corruption and Crime Commission, which was asked on Tuesday, 15 February 2022.

(1) Are all four director positions now being held in a permanent capacity?

(2) If no to (1), which of the four director positions are currently being held in an acting capacity?

(3) If no to (1), how long has each director position been held in an acting capacity?

Hon MATTHEW SWINBOURN replied:

Before I answer the question, I offer my deepest condolences to the family of the late Mr Ray Warnes, PSM, chief executive of the Corruption and Crime Commission, who recently passed away. I also acknowledge and recognise Mr Warnes' significant contribution to the community, with over 30 years of service as a senior public servant who specialised in justice administration.

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

(1) No.

(2) The positions of director of legal services and director of operations.

(3) For the position of director of legal services, from 9 May to 8 November 2022 and for the position of director of operations, from 22 January to 31 October 2022.

CLIMATE ACTION FUND

1019. Hon Dr BRAD PETTITT to the minister representing the Treasurer:

I refer to question without notice 921, and specifically the table provided of committed funding for the climate action fund broken down into projects.

For each project listed in the table, how much of the committed funding had been expended up to 30 June 2022?

The PRESIDENT: Before I give the call to the minister, that question seems to be seeking an awful lot of data, which would suggest that it is big question, but I will ask the minister to answer.

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer is provided on behalf of the Treasurer. As the Treasurer said in part (3) of question without notice 921, revised expenditure for the climate action fund will be published in the 2023–24 budget papers.

PRIVACY LEGISLATION

1020. Hon WILSON TUCKER to the parliamentary secretary representing the Attorney General:

I refer to my previous questions without notice 836, 874 and 910 seeking a time frame for long overdue privacy legislation. I note that my requests, and those of the media, have been met with claims of "cabinet-in-confidence". I congratulate the Attorney General for his commitment to privacy, even if it extends only to the progress of his own reform agenda. Will the Attorney General undertake to comply with section 82 of the Financial Management Act 2006 with regard to my previous questions on privacy legislation?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question—perhaps not the intemperate nature of it!

The McGowan government remains committed to introducing a comprehensive framework to protect personal privacy. As is the longstanding convention of successive governments, matters regarding legislative reform are decisions of cabinet and are cabinet-in-confidence. The Attorney General will provide the information as soon as he is able to, in accordance with the cabinet process.

SWAN RIVER CROSSINGS PROJECT

1021. Hon Dr BRIAN WALKER to the Leader of the House representing the Minister for Transport:

I refer the minister to the most recent Swan River Crossings project update, which states —

> Our design offers a unique opportunity to provide an extra 5,000 square metres of public open space.

(1) How much public open space is there currently, and how much will there be in the proposed concept design?

(2) How much green space is there currently, and how much will there be in the proposed concept design?

(3) How many large trees are included in the project area on the south side of the river now, and how many will need to be cut down to facilitate the proposed concept design?

Hon SUE ELLERY replied:

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

(1)–(3) The Swan River Crossings project envisions an increase in public open space from 23 700 square metres currently to 28 800 square metres. However, this will be finalised following detailed design. Approximately four large and 11 medium-sized trees are in the project area, with additional community and stakeholder consultation to inform this aspect of the design.

CYCLONE SEROJA — DISASTER RECOVERY FUNDING ARRANGEMENTS

1022. Hon MARTIN ALDRIDGE to the Minister for Emergency Services:

I refer to the $104.5 million disaster recovery package for communities impacted by cyclone Seroja.

(1) What is the total amount of the $104.5 million disaster recovery arrangements that has been spent to date?

(2) Will the minister please provide a breakdown of how this funding has been spent?

(3) What is the total amount that has been directly dispersed to families, businesses and communities from grant applications?

(4) Has the state government earned any interest from the $104.5 million; and, if so, to what value?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. Honourable member, I have seen the question come in this morning; I have not seen it come back this afternoon. Somebody will be watching and if it is there, I will provide an answer to the member at the end of questions.

SWAN RIVER CROSSINGS PROJECT

1023. Hon NEIL THOMSON to the Leader of the House representing the Minister for Transport:

I refer to the Swan River Crossings project.

(1) Will the rail line be closed at any stage of the project?

(2) If yes to (1), what duration will any closure likely apply?

(3) Has a construction management plan been prepared; and

  (a) if not, when will it be completed; and

  (b) will it be made publicly available?

(4) Has a traffic management plan been prepared; and

  (a) if not, when will it be completed; and

  (b) will it be made publicly available?

Hon SUE ELLERY replied:

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

(1)–(4) The timing and impacts of construction works will be finalised following detailed planning and communicated in due course.

FORESTRY — HARDWOOD — FURNITURE MANUFACTURING

1024. Hon STEVE MARTIN to the minister representing the Minister for Forestry:

I refer to the ABC online news article titled "End of WA's native timber logging final blow for jarrah and marri furniture maker" wherein the minister says that there will be timber available for high-end products.

(1) What amount of hardwood timber does the minister consider to be an adequate supply for furniture manufacturers in WA?

(2) Will the minister ensure that any commitment is reflected in the upcoming forest management plan?

Hon ALANNAH MacTIERNAN replied:

I thank the member for some notice of the question. The Minister for Forestry has provided the following information.

(1)–(2) Native timber sourced from ecological thinning and approved mine site clearing will continue to be available for products such as high-value furniture, joinery and artisanal products post-2023. The Forest Products Commission in consultation with the Forest Industries Federation of WA has recently carried out an expression of interest with industry, including high-value furniture makers, to determine the best use of the native hardwood products available post-2023. The feedback gathered as part of that process is currently being assessed and will guide the future sales process and the volumes allocated to this part of the industry once the *Forest management plan 2024–2033* is finalised. The process for the sale and purchase of these products will be released following the finalisation and publication of the next forest management plan.

WESTERN POWER — SUPPLY ALLOCATION

1025. Hon Dr STEVE THOMAS to the parliamentary secretary representing the Minister for Energy:

I refer to Western Power's wholly inadequate media release of 19 October 2022 announcing a trial to increase supply allocation in parts of the south west and wheatbelt regions between now and 31 March 2023.

(1) Will the government fund the cost for those power users who have already had their amperage downgraded in the trial areas to be upgraded to their previous levels?

(2) Is this new trial simply allowing energy users in the trial area to keep their current service levels if they alter their electrical circuits while all other regional consumers outside the trial area will have theirs downgraded?

(3) Will the minister end this costly, discriminatory farce by providing a real solution to regional power discrimination in households and businesses?

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

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. I provide the following answer based on information provided to me by the Minister for Energy.

(1) Western Power is developing a procedure to upgrade affected trial-area customers from a 32-amp circuit breaker at its cost.

(2) No. The trial is piloting an increase to supply allocations to ensure that service levels will not be negatively impacted when customers exceed the standard supply allocation without having applied for an upgrade. As the standard supply allocation has not been reviewed since the 1950s and 60s, it is imperative for the safety and security of the network that a thorough review is undertaken, including a trial period.

(3) The desktop review found that standardised network design and the deployment of new technology, such as advanced metering infrastructure, can provide an opportunity to further build on the McGowan government's commitment to provide reliable and affordable power to all Western Australians regardless of where they live. It is important that this finding is tested in practice to identify any areas where further network investment may be needed ensuring that changes are managed in a safe and reliable way. After the pilot is completed on 31 March 2023, the results will be reviewed and recommendations made with respect to increasing the standard supply allocation across the entire south west interconnected system.

(4) Not applicable.

LAW REFORMS — DERIVATIVE ACTION

1026. Hon NICK GOIRAN to the parliamentary secretary representing the Attorney General:

I refer to the Attorney General's answer to my question without notice 374 on 24 June 2021, which revealed that his office had asked the Department of Justice to provide advice on the matters raised in the Supreme Court decision in the Shephard case of 2019.

(1) Has that advice now been provided?

(2) If yes to (1), when was the advice provided?

(3) If no to (1), have any of the heads of jurisdiction been consulted as foreshadowed?

(4) Is there a date by which the Attorney General expects the advice to be provided?

(5) Will the Attorney General table the most recent briefing note or similar document he has received about this matter?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The following answer is based on information provided to me by the Attorney General.

(1)–(2) The Department of Justice is in the process of consulting with relevant stakeholders on this issue. It will provide the advice as soon as practicable and in accordance with the government's legislative priorities and reform agenda.

(3) The Department of Justice has written to the Chief Justice of Western Australia, Hon Peter Quinlan, regarding the matters raised in the Shephard case. The Supreme Court of Western Australia is the only relevant jurisdiction for matters of this type.

(4) I refer the member to the answer at (1)–(2).

(5) Not applicable.

SUPPORTING COMMUNITIES FORUM

1027. Hon DONNA FARAGHER to the Leader of the House representing the Premier:

I refer to the Supporting Communities Forum administered by the Department of the Premier and Cabinet.

(1) Have any formal reviews been undertaken to determine the Supporting Communities Forum's impact and effectiveness within the community services sector since it was established?

(2) If no to (1), can the Premier advise whether a review is intended to be undertaken; and, if so, when?

Hon SUE ELLERY replied:

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

The Supporting Communities Forum is a collaborative partnership between the community services sector and WA government agencies.

(1)–(2) No formal review is intended or planned at present.

ENERGY — BATTERY INSTALLATION

1028. Hon Dr BRAD PETTITT to the parliamentary secretary representing the Minister for Energy:

I refer to a media statement of Friday, 5 August 2022 titled, "Installation begins on WA's biggest battery", and the declaration, "The installation of more than 600 battery units will take approximately eight weeks."

(1) Eleven weeks on from this announcement, could the minister please provide an update on whether the installation is complete or when it is expected to be completed?

(2) On what date is the big battery expected to be operational, and is it still within the planned time frame of the end of 2022?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The following answer is based on information provided to me by the Minister for Energy.

(1) The installation is complete.

(2) The battery is expected to be connected to the network by the end of 2022. Testing will be completed prior to deployment for system security or market dispatch to the south west interconnected system.

BANNED DRINKERS REGISTER — LEONORA AND LAVERTON

1029. Hon NEIL THOMSON to the minister representing the Minister for Police:

(1) How many people in Leonora and Laverton have been placed on the banned drinkers register?

(2) Given the police commissioner's comments about the success of the cashless debit card in the ABC online article of 27 July 2022, "Labor's bill to end cashless debit card sparks mixed feelings, alcohol misuse fears in remote WA", what extra resources are being deployed to the communities where the card is about to be withdrawn? This question was asked on 19 September.

(3) Does the minister agree with the commissioner's comments regarding the cashless debit card; and, if not, why not?

The PRESIDENT: Before I give the call to the minister, the last part of that question seeks an opinion. I will give the call to the minister in an attempt to answer.

Hon STEPHEN DAWSON replied:

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

(1) The banned drinkers register falls within the responsibilities of the Department of Local Government, Sport and Cultural Industries. The question should therefore be referred to the Minister for Racing and Gaming.

(2) The Western Australia Police Force advises that there is no requirement for additional policing resources to be allocated to the communities referenced in the honourable member's question.

(3) Opinions cannot be asked for in questions.

HOME INDEMNITY INSURANCE SCHEME

1030. Hon Dr STEVE THOMAS to the minister representing the Minister for Commerce:

I refer to the minister's announcement of 19 October 2022 pertaining to the state government's home indemnity insurance scheme.

(1) How many indemnity insurance claims were made in the financial years 2020–21 and 2021–22?

(2) As the insurance scheme excludes apartments over three storeys, will the minister undertake to rectify and review the current framework, which is insufficient for protecting apartment owners and is essentially stifling purchaser investment in apartments?

(3) Given the McGowan government's infill target of 47 per cent in Western Australia, will the government commit to parity in providing access to home indemnity insurance for all apartment owners?

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

Hon ALANNAH MacTIERNAN replied:

(1)–(4) I thank the member for the question. The Minister for Commerce has advised that this information will be provided on 26 October 2022.

RECOGNISED BIOSECURITY GROUPS — DECLARED PESTS

1031. Hon MARTIN ALDRIDGE to the Minister for Agriculture and Food:

I ask this question on behalf of Hon Colin de Grussa, who is away from the chamber on urgent parliamentary business. I refer to the oversight of recognised biosecurity groups by the Department of Primary Industries and Regional Development and the setting of the declared pest rate.

(1) Which specific directorate or branch of DPIRD has direct responsibility for RBGs?

(2) On how many occasions has the minister intervened in the setting of the declared pest rate so as to limit the amount of funding available to the RBG; and can the minister list those occasions?

(3) In the event that the declared pest rate is effectively capped by the minister, what financial assistance is available to RBGs to make up any shortfall in funding caused by the cap?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1) The department's biosecurity directorate manages the compliance and governance arrangements of recognised biosecurity groups as well as the administration of the declared pest account.

(2)–(3) I do not accept the premise of the member's question. As the minister, I am responsible for the determination of the rate under section 130(1) of the Biosecurity and Agriculture Management Act 2007. Determination is informed by RBGs' proposed operational plans, advice from DPIRD and the outcomes of consultation.

Hon Martin Aldridge interjected.

Hon ALANNAH MacTIERNAN: I have been exercising my responsibility under section 130(1). The responsibility in the legislation is clearly the responsibility of the minister.

The PRESIDENT: Order!

Hon ALANNAH MacTIERNAN: I know the idea of a minister actually doing their job is pretty foreign to the people on the other side, but we actually take it seriously. We look at the desires of the RBGs. If it had ever been the plan that the RPGs just get whatever they want, it would have been written in the legislation like that. We have the RPGs, we have the advice from the department and then we have the result of the consultation, and the minister's job is then to make a determination, as set out in the legislation.

MINISTER FOR POLICE — REGISTER OF LOBBYISTS

Question on Notice 944 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [5.05 pm]: Pursuant to standing order 108(2), I wish to inform the house that the answer to question on notice 944, asked by Hon Wilson Tucker, MLC, to me, the Minister for Emergency Services representing the Minister for Police; Road Safety; Defence Industry; Veterans Issues, will be provided by 15 November 2022.

Also, I advise that I do not have an answer for Hon Martin Aldridge's question asked earlier today in question time, but I will track it down for tomorrow.

QUESTION ON NOTICE 903

Paper Tabled

A paper relating to an answer to question on notice 903 was tabled by **Hon Alannah MacTiernan (Minister for Regional Development)**.

SOUTH WEST INTERCONNECTED SYSTEM — GAS-FIRED POWER PLANTS

Question without Notice 1001 — Answer

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.06 pm]: I would like to provide an answer to Hon Dr Brad Pettitt's question without notice 1001, asked last week on 20 October, and I seek leave to have it incorporated into *Hansard*.

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

(1) No.

(2) No.

(3) Not applicable.

WESTERN POWER — REGIONAL CONSUMERS
ENERGY — ELECTRICITY CONSUMPTION

Questions on Notice 933 and 954 — Answer Advice

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.06 pm]: Pursuant to standing order 108(2), I wish to inform the house that the answers to questions on notice 933, asked by Hon Dr Steve Thomas, and 954, asked by Hon Dr Brad Pettitt, to me, the parliamentary secretary representing the Minister for Energy, will be provided by 15 November 2022.

OWNER-DRIVERS (CONTRACTS AND DISPUTES) AMENDMENT BILL 2022

Second Reading

Resumed from 30 August.

HON NEIL THOMSON (Mining and Pastoral) [5.07 pm]: I rise on behalf of the opposition as lead speaker on the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022. Before I begin my contribution to the second reading debate, I would like to say that the opposition will support this bill. In saying that, there will be some questions that will need some interrogation. I think it is incumbent upon us in opposition to make sure that those questions are asked and that a little detail be given. I would like more of a case to be outlined.

There has obviously been some evolution in the development of the Owner-Drivers (Contracts and Disputes) Act 2007. There has been fairly active management of that and I think it is timely to get an update on how effective it has been, noting that there are some amendments to that act that are now being considered. I think they are fairly minimal in terms of their impact. I do not think they are particularly onerous or will impact too much on the operation of the industry. Certainly, from my discussions with the Western Roads Federation and the consultation that has been undertaken with the Transport Workers' Union, there is an element of bipartisan support for the changes, and that is probably the main reason we do not feel we should be standing in the way of this reform. We are certainly not going to oppose it; we are here to support it. We hope that in the next hour or so we can get to a point of a bit more clarification around the impacts of some of these changes and the scope of the problems that we have.

In summary, the amendments, which have been outlined in the second reading speech, will include minimum notice periods for termination. For contracts of greater than three months, there will be a 90-day minimum termination notice period or payment in lieu of such notice. For contracts of less than three months, there will be a seven-day minimum termination notice period. There is a description of "unfair" and "unjust" contract divisions. During the Committee of the Whole House stage, which I put the parliamentary secretary on notice for, we will consider some of those "unfair" terms, how that will operate and how it will provide that such conduct could be a matter that the Road Freight Transport Industry Tribunal considers when making determinations on unconscionable conduct. I certainly would be interested in having some discussion around that during the Committee of the Whole stage. The second reading speech continues —

> Misleading and deceptive conduct: The notion of misleading and deceptive conduct is now well established … The act will now align with those areas, as such behaviour will be specifically prohibited.

There is probably a slightly more controversial issue, but I am assured by the body representing the hirers that it is not seen as a major issue. It is good to see the industry trying to collaborate on the matter of the right of entry into a workplace to investigate and obtain records if need be. There is already a code of conduct that outlines the records that need to be maintained. I am interested in cases that the tribunal might have considered, whether there have been any problems in obtaining information and whether that has been a very common occurrence. The extent to which this is a priority was at the heart of my thoughts and consideration when preparing for this debate. Whether it is is not passing any kind of judgement. If it is an issue, as I said, the opposition is supportive. We understand that this industry is very important and that also because of the structure of the industry, it needs a level of protection. There is a level of bipartisanship among hirers and subcontractors, or owner–drivers, in making sure the industry works well and there is a degree of satisfaction. Maybe the more cavalier practices that might have occurred in the past are not occurring because it is in everybody's interest to ensure that the owner–driver sector, and the transport sector

generally, particularly the haulage sector—we are talking about heavy vehicles over 4.5 tonnes—are operating in a way that is cohesive and fair. On that point, a comment was made in the second reading speech about an extension of the act in the future, flagging the idea that there potentially might be a reduction of that limit. I assume that is a reduction; it does not actually say that, but it states that the limitation of 4.5 tonnes may be examined in the future, but certainly for the heavy haulage and the subcontracting sector, it is important that it operates well.

The other aspect of course is discrimination, which will be identified as a form of unconscionable conduct under the act. There is some clarification that noncompliance with guidelines will be a relevant factor in the Road Freight Transport Industry Tribunal determining whether there have been unconscionable dealings. Even though I was assured in the briefing that this was already the practice of the tribunal, I guess the legislation is catching up to some extent with the practice and effectively making it so. There will be some administrative changes as well, and I understand the peak body that represents the hirers, which used to be referred to as the Transport Forum, is now operated by the Western Roads Federation. There is some catch-up in the legislation there as well.

Before I go on to more general discussion around the industry and some of the needs of the industry, I want to point out the situation on the ground now, which was probably not explained in any real detail. I would be happy for the government to elaborate on this, but I understand the extent to which the industry has been managed relatively well so far under the current act and with the disputes mechanism in place. Certainly, the Department of Transport has information on it and the *Western Australian owner-drivers: Information booklet* that outlines a number of factors that I will identify and discuss in a little more detail. Also, the transport.wa.gov.au website is fairly comprehensive for owner–drivers. It contains an overview of the act, whom it applies to et cetera and definitions of an owner–driver.

This act has been in place since 2007 and was part of a broader set of industry reforms that occurred in the 1990s when we were seeing some quite unsafe practices occurring across the industry. We saw some fairly high profile cases, particularly in the eastern states, with road crashes that involved drivers not managing fatigue appropriately and the pressure that owner–drivers felt because of the challenges they were facing regarding their viable businesses. This was a major issue. Those reforms were welcomed and we have seen an improvement. This is a difficult industry. Western Australia has something in the order of 7 000 registered heavy vehicles. I stand corrected on that number—it was a number advised to me. A lot of vehicles are not part of the owner–driver fleet, but we also know of complex arrangements that exist with the major trucking companies' vehicles.

We can sometimes get into situations in which several tiers of subcontracting occur because of particular needs, as is the case in Western Australia at the moment when there is pressure on labour and logistics. The industry is under pressure. Someone might be cashed up after working in a job, so they purchase a vehicle. They get into the industry and try to deliver goods, effectively working as a subcontractor, but they may need to go down the system one, two or three tiers before they get work. The margins in transport are fine. We know that that issue was a major contributor to some of the safety and maintenance challenges that we have seen in the industry, making sure that vehicles are properly maintained and people adhere to the standards relating to fatigue management and do the right thing in the industry. During the 2000s, there were concerns around the high-profile incidents involving vehicles and also a general desire to see a greater safety record and fairness in the industry. We saw the introduction of not only fatigue management requirements in the industry, but also safe sustainable rates for our vehicles. Those safe rates were useful for me during my past consultant work before I came into Parliament because they provided guidance on some of the costs and growth margins that operators normally operate within. There is this fairly broad understanding in the industry. It comes down to the question of adherence and the degree to which those rates and other conditions are properly managed in the contracts that people sign and operate within.

National standards have been applied across Australia. Western Australia still sits outside the Heavy Vehicle National Law. Western Australia has certain requirements that have been negotiated. I understand why that is the case, particularly given the huge distances we travel. Some of the fatigue management matters were tailored for the Western Australian system. I think it is right that we have not necessarily slavishly followed the national standards but have, in the main, followed the spirit of those standards. We operate in a way that has ensured our safety record remains reasonable, and no doubt it is improving as we see the industry operating and continuing to strive for better practice.

I suppose it comes back to the question of whether this bill actually changes anything. I have mulled over and considered that question during preparation for my second reading contribution to this debate. Sometimes we can make legislative changes that do not necessarily have a big impact. Black-letter laws do not necessarily change anything in the industry. The strongest changes occur when we see a bit of engagement with the department and the regulators, the Transport Workers' Union of Australia and the peak bodies for the hirers. That is an ongoing process. As I said, good information is available. I have familiarised myself with the information that is available on the Department of Transport's website. Earlier, I mentioned the *Western Australian owner-drivers information booklet*. If we look at that booklet without looking at the changes that will be made to the law, we would expect that the industry would operate reasonably well. It is incumbent on the government to explain what changes will be made and put on notice those changes for the parliamentary secretary. When we move to this new regime or when the law is promulgated, to what extent will we have to alter or amend the *Western Australian owner-drivers information booklet*? There are certainly a lot of similarities in this document and the legislation. There was certainly an intent

to provide a level of protection and a level of consistency. My point is that there appears to be an incremental change. I think a reasonable level of good practice is certainly outlined in the owner–drivers information booklet, including explanations of contracts and other agreements that cannot exclude, modify or restrict operation of the act or the code of conduct. It outlines the role of the Road Freight Transport Industry Tribunal and the importance of good faith negotiations, which I think is important. It would appear that that is already occurring.

I have been told that there is a lot of pressure in the industry, and some smaller operators might introduce contracts fairly quickly to try to get a result. I suppose the challenge going forward with some of the other provisions in the amended legislation is the extent to which we may over-solve the problem if those arrangements that are already in place, albeit under a level of commercial pressure, achieve a result that is fair and what degree of satisfaction there is in the industry. Given that we have this legislation before us today, we have to assume that there is some dissatisfaction in the industry. I would be interested to hear a little more about that, maybe during Committee of the Whole.

As I said, there are a considerable number of provisions in the booklet that align to the existing act. For example, in relation to records, there are requirements for a hirer to ensure that information is recorded in each owner–driver contract of which the hirer is a party. There is a very stepped-out process of what is required to be retained. Also in the booklet is the need for access to records. Another section outlines "unconscionable conduct" in detail when dealing with disputes, for example. In drawing people's attention to this booklet and the current practices underway, we already have an active process on foot. The question is to what extent and how well is that process operating. The other question is to what extent will this bill potentially raise any issues that might not be necessary.

I particularly raise the issue of access to premises. As I said earlier, there does not appear to be any pushback from the hirers. It may just be the case that hirers do not believe there will be much cause for an officer from the Transport Workers' Union, the representative body, to have to rock up to a premises and effectively demand records. I am not passing judgement in saying that. I am just asking whether this reasonably onerous provision would have been of help in the past, between 2007 and now. I know that there are some restrictions on the scope of those investigations. By the way, I was given some reassurance about that in the briefings that were provided by the Department of Transport. I put on the record that I appreciate that the Department of Transport, through the minister's office, provided a briefing to me and other opposition members. That was a question that we did ask. That question is only fair when we are creating a law that will effectively allow someone to enter another person's premises and force a search of records. That is quite an invasive power—that is not the right word, but members know what I am talking about. It is a heavy power. The question is to what extent has that ever been required. We have had the handbook since 2007. The tribunal has also been operating since 2007. Again, I am not an expert on how often the tribunal has to arbitrate on particular matters and whether it is a rare event, such as one in a hundred. That probably is the reason that we are supporting this bill. The industry seems to be comfortable with this bill. It does not seem to be particularly upset. The hirers are not providing information that they want to stand in the trenches on this bill. The overall objectives of fairness and safety are very important. The overall objective of transparency on these provisions is also very important. We are supporting the legislation.

I guess the other point that ties together hirers and owner–drivers is that they have a very close relationship. They are totally dependent on each other. Owner–drivers play a key role in our transport industry. They fill the gap when the large transport companies are not able to be as agile in fulfilling that logistics task, which is ever growing in Western Australia and expanding into a range of very important fields. We want the industry to operate safely. We also want it to operate around the chain of responsibility. One of the discussions during the genesis of this legislation was the importance of the chain of responsibility all the way along the transport sector. If something happens on the road that affects the health and safety of a subcontractor, it is not just the subcontractor that is responsible. It is important also for hirers that there is a level of consistency across the industry. I certainly understand that reputable companies do not want to see the undesirable practices that occurred previously. I have mentioned fatigue management. That is a vital part of managing this industry.

We understand the role of the Transport Workers' Union. From my understanding, at this stage that is the only registered body that will be involved on behalf of owner–drivers. We also recognise the Australian Road Transport Industry Organisation, which is effectively the union of employers. It also plays a role. That is facilitated through its peak body in each state. As I mentioned earlier, in this state that used to be called the transport forum and is now the Western Roads Federation. That collective of hirers plays an important role. The collective work of the Australian Road Transport Industry Organisation and the Transport Workers' Union led to the negotiation with government in 2007 and the development of the Owner-Drivers (Contracts and Disputes) Act that is now in operation.

I know that other members want to speak on this bill very shortly, so I will keep my points brief. In closing, the opposition acknowledges the need for intervention in what is a commercial activity between two business entities. That is deemed necessary now and was certainly deemed necessary in 2007 because of the tight margins and the compounding issues in this industry. There is also a desire to have a level playing field, a formal system of arbitration, and guidance, which is the key positive here, through good information. The role of the Department of Transport in providing that information is very much congratulated and supported. I trust that the Department of Transport will be properly resourced to continue to do that work, along with the tribunal as it does its job.

As I mentioned earlier, there are some questions about the need for these changes. The onus is on the government to outline that. I stress that from what I can tell, the industry is not unhappy and does not see this bill as overly onerous, despite the issue of being able to get records by entering premises, for example, which will now be formalised through this bill. I will not take my comments any further than that. I just wanted to outline those points. I have some questions to ask during Committee of the Whole. I will leave my speech at this point and commend the bill to the house.

HON DARREN WEST (Agricultural — Parliamentary Secretary) [5.40 pm]: I also wish to make a short contribution to the debate on the Owner-Drivers (Contracts and Disputes) Amendment Bill. I think it is great that opposition members have shown their support for it. Of course we should be making roads better and safer for everyone who uses them. It is often said that truckies carry the country and I think that is a very true statement. Every bit of paper before members, the phones in their hands and everything we eat has all been on a truck. Although trucks are very important for distribution and the movement of goods, not everyone is enthusiastic about trucks when they see them on the road. We often have a disparity between motorists' disapproval of trucks and the need for everything to be moved on roads. This is a good opportunity to acknowledge all the people in those trucks, whatever their circumstances may be—members of the mighty Transport Workers' Union of Australia, owner–drivers or people working for other companies. We all owe them a great deal. It has been a very difficult couple of years for a lot of sectors, no less the transport industry. The extra measures that were required, especially from interstate drivers during the last three years, to help keep Western Australia safe and our economy strong, have been noted and appreciated. To the best of my knowledge I have the distinction of being the only holder of a Western Australian road train licence in the Parliament. I spent many years driving trucks.

Hon Peter Foster: I have an HR licence.

Hon DARREN WEST: Heavy rigid is a very important category, member. I am going to give the member a call one day because HR drivers are very much in demand. In fact, the member could make almost as much money driving trucks with an HR licence as he does as a member of Parliament at the moment, such is the value placed on people who can distribute and deliver goods around the state and the country. I have experience of owning and driving trucks. We do not do any contract work. Our trucks do all the work on the farm, carting our own produce to market, but it is not always an easy job. A lot of very frustrated people on the road do not make it any easier to do that job. Big trucks are very heavy—over 60 tonnes in a B-double combination and a bit heavier than that for a pocket road train or a full road train. The triple road train drivers who head up north are in command of a machine that weighs up to 100 tonnes. It is not a job for the faint-hearted and it is not a job that is made easier by other road users. People sometimes expect a very small car and a truck to have the same stopping distances and they certainly do not. Someone behind the wheel of a truck needs to drive very differently and leave themselves a lot more room. It is frustrating when, from time to time, people do not give trucks that space and respect. I take this opportunity to encourage every Western Australian driver to show a bit more respect and courtesy to our truckies because they are doing a vital job every day.

Hon Lorna Harper: Hear, hear!

Hon DARREN WEST: Yes. It is important that, whatever someone's circumstances, they have the best working conditions, including that of other road users. As a state, we are investing heavily into the road network. No government before us has ever invested as much money into the road network and the idea is to make —

Hon Neil Thomson: Make sure the federal government has not pulled the money it allocated.

Hon DARREN WEST: Absolutely, member. I think it is incumbent on all of us, whichever our political persuasion, to encourage more investment in the road network in Western Australia. I think the member will get furious agreement on that. Obviously, the federal budget is facing some challenges and no doubt some good news is being delivered as we speak on how the next 12 months is going to look. We are very proud of our record of delivering road projects here in Western Australia to improve road safety and to decrease travel time. The NorthLink WA project has decreased the time it takes for all vehicles, including big trucks, which take longer to slow down and speed up, to get to where they are going safely and deliver important goods.

This bill will amend the 2007 act. Trucks have come a fair way since 2007. There is certainly a lot more product being moved around the state than in 2007, so it is time that we amend the act, especially when it comes to contracts and disputes. Owner–drivers are often at the end of the chain in disputes. When there is a dispute or a conflict, they find that, because they often have one truck or are a one-family operation without the bargaining power of major contractors and major transport providers, it can be a difficult road. Resolving disputes is not always good news for a small operation. I guess that is true across all industries, but it certainly is in the trucking industry where the stakes are pretty high.

It costs a lot of money to buy the machines these days. There are a lot of registration fees, insurance fees, accreditation fees, and costs for tyres and maintenance. It is quite an expensive hobby. Our truck needed a new engine for the last harvest. It was about $40 000 worth to rebuild the motor, which needs to be done probably every four to five years for operators who are on the road all the time. The cost of maintenance is high and the returns are relatively small.

If you are not paid, it can take you many years to catch up on the lost revenue. As a government, we appreciate that. We have made similar changes for other industries. Owner–drivers are especially vital to us. They are nimble, able to move quickly and carry out important roles, especially at the moment. We just cannot get enough trucks to move grain or general freight. It is becoming difficult. The freight task is set to increase by as much as 60 per cent over the next 20 years, so it is only going to become more and more in demand.

Our economic success as a state is remarkable. We have the best set of books in the country and are the only state reducing debt. Our economy is booming and strong on the back of strong resources and agricultural sectors. Those industries are the most dependent on logistics and transport. Our mines are remote and our agricultural farms are relatively remote. Everything needs to be moved and it needs to be moved in a timely manner. Over the last 12 months, since last harvest, we have been unable to get our grains to the ships that take them to markets around the world in time. We have missed out on some great marketing opportunities because we just could not get the product from up-country down to the loading facilities in the ports.

Hon Neil Thomson: Is that a logistics or a trucking issue?

Hon DARREN WEST: It is a logistics issue, but I think anyone who lives in the wheatbelt would have noticed there are a lot more trucks on the road. The reason there are a lot more trucks on the road, especially those pulling two grain trailers, is to move the massive harvest. It was a 24 million tonne harvest. We expect around 16 million tonnes every year. We have taken what we can produce off our agricultural land to a new paradigm over the last few years. We are now looking down the barrel of another 20-plus million tonne harvest. Some dreadful decisions were made by previous governments around rail and logistics. The Liberal Party will work out one day if rail is closed down, it will mean more transport on the road. That also means it is a more intensive job to move a large harvest. We acknowledge that. We knew it before and we know it now. We are making moves in that area. I am getting slightly off topic but I will wrap up with this point. We have situations in which it takes 11 hours to load a train. Our government is investing heavily in supply chains to reduce that time to three hours. Putting more grain on the rail network will free up more trucks to do other important jobs that rail cannot service. I know it is a very major point of difference between us, the Liberal Party and the National Party, but if we can use rail, it is much more environmentally friendly. It involves a lot fewer people and is much more efficient—and efficiency is king.

Although we are always going to need owner–drivers and truck drivers to do this work, we can relieve them of some of their burden by investing in other forms of logistics.

Being an owner–driver can be quite lonely. Truck drivers often spend a long time away from their families and homes, especially those drivers who head out on long hauls up north and across the paddock, as it is called, over to the eastern states. Even those drivers who do shorter distances often find themselves away from home every other night because the legs that they run dictate that. They cannot go home whenever they want because their movements are determined by fatigue management and other inhibitors such as the time it takes to load and unload. Owner–drivers often have quite lonely existences. That is a challenge for them. We acknowledge the great role they play and some of the difficult circumstances under which they conduct their business. Sometimes work can be in short supply. It has not been the case for the last 12 months or so, but at different times there is different demand. In some situations, owner–drivers may be working for very little or hardly any margin at all, just to get by, especially at quiet times of the year. Contractual disputes can leave those businesses very vulnerable. We are trying to protect the position of owner–drivers with this legislation. We are looking after the little guy—that is a great Labor philosophy—and looking after the people who look after us. I am pleased that the opposition is in general agreement with that. I think that it is a pretty commonsense piece of legislation. No-one would disagree that it is a good thing to give more financial certainty to the people who choose the business of owner–driving and the important role of moving freight. We are here on behalf of the people, and I think the people would generally agree with us.

Governments always like a good review. We have had a bit of a look at the past legislation to see how we can make this legislation better. There has been a lot of consultation with industry on how we can make things better. We have consulted with industry associations. I have worked closely with David Fyfe, who has become a good friend of mine. David is the president of the Livestock and Rural Transport Association of Western Australia. He and CEO Jan Cooper are great advocates for that industry. David also happens to have a son who does all right at footy. David Fyfe has himself built up a large trucking business. He started out shearing and went into the transport industry. He has his own distinctive colours on all his trucks. Members will see many Fyfe Transport trucks driving around. David has a great passion for the industry. He has been lobbying us recently on not only wash-down facilities and things that the industry wants, but also legislation like this to protect the industry. We are happy to deliver those wash-down facilities—I acknowledge that the Minister for Agriculture and Food made an announcement last week—but he also wants us to tighten up the laws to put his members and peers in a securer financial position. There is also the potential to introduce further amendments to the owner–driver laws to broaden the scope of this act. I think the industry will welcome that, as well.

I return to the review. I note that work started on this in 2014, so we have not done it in a rush or too quickly.

Hon Neil Thomson: Very bipartisan.

Hon DARREN WEST: It has been bipartisan; I make that point, member. Like a lot of things, I know it does not make for good theatre when we all agree, but it is in a good bipartisan spirit. I thank the member for making that point. We certainly have no problem with that. It is cross-government. I think it is in all our interests to ensure that this group is catered for.

We are looking at minimum notice periods for termination of contracts. There will be a 90-day minimum termination notice period for contracts of over three months. That is reasonable. I do not think that anyone who employs contractors would have a big problem with that. If that contract is terminated, the employer will need to pay the contractor regardless. There will be a seven-day termination period for shorter contracts. I guess that might lead to shorter contracts, but there is still a seven-day termination period for those contracts. The legislation clarifies relationships. It prescribes the matters that the Road Freight Transport Industry Tribunal will be able to consider when determining whether a term in a contract is unjust or unfair when making determinations of unconscionable conduct. There is a watchdog, and this legislation reflects the intent of what the industry thinks are fair and reasonable terms.

The legislation contains provisions that will prohibit misleading or deceptive conduct, which is a concept now well established under a number of other laws and in general. That is good. This act will now align with other laws, and misleading or deceptive conduct will be prohibited. There has been a certain element of relying on people to do the right thing, but this legislation now makes very clear what is and is not the right thing. I do not think that anyone will be able to rely on ignorance as a form of defence. There are provisions that cover off on misleading or deceptive conduct.

I refer to workplace right of entry. I think this is really important. The Industrial Relations Act 1979 contains workplace rights of entry so that authorised representatives of owner–drivers can go in and investigate suspected breaches of the act.

I refer to discrimination. Discrimination is outlawed in many areas of our life, and there are to be no exceptions to that under this legislation. Discrimination is a form of unconscionable conduct. It is in life and it will be under this legislation.

There are provisions that cover noncompliance with guideline rates. I mentioned earlier about work in times of uncertainty. At times when people are not sure whether there is going to be work, people will not be able to capitalise or take advantage of that. That is not going to happen when there is such a great demand for trucks and transport operators, but these things change. Economists around the world are telling us that the world is heading into a recession. If that is the case, that is when downward pressures will affect rates; in turn, as I have discussed earlier, that can affect businesses. Because these are often small family-run businesses, this can affect the whole family. Every family wants some security of income. Most truckies love the job they do; it is a life that they choose. They like their trucks. We all like to compare our trucks. Ours is the king of the road, we think, a big Kenworth T908, but other people have their own trucks. I do not think it is just a farmer thing; I think that anyone who drives a truck has that pride in their vehicle. We make our trucks look nice, service them, maintain them, make them safe and show some real pride in them, because, in many cases, they are our career.

This legislation will make changes to the Road Freight Transport Industry Tribunal's power and jurisdiction. Those changes are listed throughout the bill, and I am sure we will discuss them further as we go on. I think these are sensible changes to the tribunal's power and jurisdiction that reflect a modern workplace or business agreement.

This legislation has been through significant consultation with industry. The Road Freight Transport Industry Council has done a great job on this. The Transport Workers' Union of Australia is a very fine union. Western Roads Federation and industry representatives have also worked on the amendments over the period since 2014.

I think we all agree that owner–drivers deserve our respect and our protection. They deserve our respect on the road, in law, and here in this Parliament. I think there is a general agreement that they have our respect.

That is all I want to add to the debate on this bill. Again, I offer thanks to everyone who jumps up in a truck, everyone who has a bit of diesel in their veins! We do not always do it just because we love it; it is a very important role. Everything needs to be moved. I come back to my original point: the seats we are sitting on, the food that we eat tonight, the paper we are reading, the phone we are holding have all been on a truck at some point. We need to be a bit mindful of that and thank all our truckies. Whether they are driving smaller heavy rigid licences around Perth delivering goods to shops or sitting up in big road trains like me, they are all equally important and deserve the protection of this bill.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [5.58 pm]: We are about to break for a short time, so I simply put on the record that I have some significant concerns about the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022 that is before the house today. As someone who has driven trucks in two states, mostly driving cattle around, not on road trains but in body trucks—now we would call them heavy rigids, Hon Peter Foster—I have some experience in this area as well. I have some concerns about granting additional powers to any union, but particularly the Transport Workers' Union of Australia, in the general running of business in the state of Western Australia. I look forward to the opportunity after the break to put those concerns in a more fulsome and distinct manner.

Sitting suspended from 6.00 to 7.00 pm

Hon Dr STEVE THOMAS: I had barely started what will be a not-too-lengthy contribution to the Transport Workers' Union empowerment bill—sorry, the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022!

Hon Dan Caddy: Wow, didn't take long.

Hon Dr STEVE THOMAS: No, I had a minute before the dinner break, honourable member, so I waited a minute until I got into it. In the minute I had before the break, I indicated that I would raise some of my concerns about this bill. The bill is broken into a small number of sections. Some of it is quite reasonable, or at least appears reasonable, with proposed parts headed "Misleading and deceptive conduct" and "Discrimination". In effect, the largest part of the bill is division 3, "Authorised representative's right of entry to conduct investigation".

As I said before we broke for dinner, I have driven cattle trucks in two states and have some experience in the process of what is required to be a driver. I have also driven grain trucks and a few other bits and pieces over the many years I have been around. I have to say that the owner–driver industry has always been a very difficult and demanding one. It has always been the case that people have attempted to get into that industry. When I was growing up in central Queensland, the school was effectively divided into two groups—those who wanted to go on to further education and those who did not. Those who did not were effectively divided into abattoir workers and truck drivers, unless they were lucky enough to inherit their own farm, and that was a very small group. I had friends—one who was my age passed away of ill health this year, which was far too young—who were mad keen on trucks, whether Kenworths or any of the old trucks. I started in Bedfords. Those who have driven Bedfords would know they are an interesting experience in themselves. That is the old crash box for people who are not sure.

Hon Dan Caddy interjected.

Hon Dr STEVE THOMAS: Hon Dan Caddy has driven Bedfords as well. There we go. We double-declutched going down —

Hon Dan Caddy: It was old when I got to it.

Hon Dr STEVE THOMAS: So was mine; do not worry. Mine was older than I was. We double-declutched going down. It was not quite the 1950s type of configuration, but they were very difficult trucks to drive, especially with a moving load of cattle on the back. It was not the easiest thing in the world to do. It is a tough business to run in that oftentimes the margins are tight and drivers are providing services, particularly in regional areas, to people who are also struggling. Right now both cattle and sheep producers are doing pretty well, but I distinctly remember the times—there was more than one—when it was cheaper to shoot sheep than it was to try to send them to the marketplace. I remember cattle being valueless. I remember Friesian bobby calves being shot because that was cheaper than trying to get them to the marketplace. It is an incredibly tight marketplace and it means having to be remarkably flexible, generally speaking.

In that environment, I am not convinced that the Transport Workers' Union would be an owner–driver's greatest advocate. In fact, I would be very interested to know how many owner–drivers are members of the TWU, because I suspect, being small businesspeople generally, they would not necessarily be inclined to lean to union membership in particular. However, before the house is a bill, the greatest part of which is focused on investigations into contracts in which the aggrieved person will look for an advocate. I attended the briefing provided by the government to the opposition—I am very grateful for that—because I wanted to know a few things. I wanted to know in particular about the prescribed representative body. Under the bill, if a person wants to become an authorised representative, proposed section 34B(1) provides —

> The secretary of an organisation that is a transport association may apply to the Registrar for a person nominated in the application to be issued with an authority for the purposes of this Division.

Basically, an authorised representative will become so on the nomination of the secretary of an organisation that is a transport association. A transport association means —

> (a) a representative body prescribed by the regulations for the purpose of this definition; or
>
> (b) the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch;

It is interesting in the first instance that legislation would identify that a representative can be a representative group or, quite specifically named, a union—a union that I am not convinced, to be honest, represents the group of people involved here. But let us see what numbers the government can come up with for that. It is also interesting that when I asked in the briefing who is currently listed as a transport association, I was told that the transport association was singularly and entirely the Transport Workers' Union of Australia. That suggests that unless that changes, this will obviously be an empowerment bill for the Transport Workers' Union of Australia. That is very hard to argue with given that it is at this point the only body that is able to claim that it is a prescribed representative body.

I understand that there has been some discussion that other groups might be added to that list. I suspect that if they are, they might find that they are adding to that list of organisations that actually represent owner–drivers. But, again, let us see how we go. However, I am pretty certain that in the discussions there have been, there would have been some suggestion that the Road Freight Transport Industry Council—I think that is its name—might be added to that list. Let us wait and see, because at least it might be a representative body that represents owner–drivers.

I was very pleased to hear the Parliamentary Secretary to the Minister for Regional Development, Hon Darren West, talk about the Livestock and Rural Transport Association of Western Australia. He actually mentioned David Fyfe, its president, and the CEO, Jan Cooper. I do not know how much consultation there has been, but there is no suggestion that it, for example, might be listed or considered to be listed as a prescribed representative body. If I were still driving cattle trucks, as I was in my younger days, theoretically, that would be the organisation that would represent me, but there is no real focus on that particular group; we are focused on these two other groups. One is a body that obviously has some government investment—that is, the Road Freight Transport Industry Council. It was largely set up by government and, in my view, that needs to be looked at. The group is one of the unions that ostensibly controls the government. Those two groups are not necessarily representative of people who are owner–drivers and who are struggling to make a living.

My first concern, parliamentary secretary, is that this legislation, let us face it, will undoubtedly empower the Transport Workers' Union of Australia, giving it a stronger position than it had before. The question before the house is: is it just the TWU or will it empower other groups, including those that might, in my view, more accurately represent owner–drivers? I think that is a really worthy question for this house to investigate.

I have to say that although the Transport Workers' Union of Australia may tell people that the TWU equates to road safety, I do not necessarily believe that. I think the TWU is active in the road safety sphere but so are a lot of other groups. The TWU would have people believe that road safety is its only reason for existence, but I do not think that is the truth either. I think the TWU has been very good at selling this message that it is responsible for road safety when, in fact, the TWU is very good at looking after the membership of the TWU. I do not object to that. That is what it is there for. It is like saying the Australian Medical Association should not be looking after doctors. It is absolutely fair enough. The TWU is there to look after its union membership, and that is exactly fine. It is doing the job that it should be doing, and I do not have problem with that. I just do not think that the TWU should be empowered to be the police and investigator in contract disputes between owner–drivers. I think this legislation will empower the TWU to a point that is beyond its remit, so it is worth considering exactly what it will be able to do.

The other issue that I have, apart from my concern that only one union, that we know of, will be empowered by this legislation, with potentially some other groups, is that I am not sure how practical the legislation will be for many of the contracts in regional Western Australia. If we are dealing with long-term transport logistics contracts, those components of the bill for unconscionable conduct et cetera seem to be reasonable. If we are dealing with a long-term contract, if an owner–driver has a yearlong contract to provide a particular service and they are geared up for that, having bought a $350 000 truck to deliver that service, it is absolutely the case that if that contract is cut off with no warning, they will have an issue. Those circumstances will probably be picked up under the legislation.

The problem I think the government has with this—maybe it is not a problem for the government but a problem for owner–drivers—is that those groups of longer term contracts tend to be with much bigger businesses and they are much more stable. Often, they tend to be contracts taken with larger logistics companies. Even in Western Australia, there are significantly sized trucking companies that provide many of those services and they are not, for the most part, owner–drivers that would be caught under this legislation. Who will be caught under this legislation? It is the young couple who have gone out and bought a truck. They are often people in the short-term contract market trying to make a profit.

For those who are not aware, let us talk about how animal transport generally works. The purchaser of an animal or a group of animals would generally be the contractor who initiates the contract. In some circumstances, they know that 50 steers will be going to a marketplace on a particular day, so it is a fairly set contract. The price in the contract is generally set at a kilometre per head, depending on the purchase price and what is offered on the day. The animals arrive at the marketplace and contracts are put in place on a nod and a handshake at a set of saleyards but is that a contract under the legislation before us tonight? At what point does a contract become a contract? Now that I know Hon Dan Caddy can drive a Bedford, if I go to a saleyard and see him there with his old Bedford truck, which can carry a dozen steers, I could say, "I have bought a dozen steers. Can you take them back to my place and put them in the paddock?" At what point does that become a contract? We may change our minds; in the livestock system, flexibility is an issue.

The current bill says that if we have a contract and want to make a significant change to it, we have a seven-day period in which to do that. It is not practical for that to apply to all the services that are agreed to but are not necessarily delivered in a contract system. That would not apply to an agreement for Hon Dan Caddy to pick up my 12 steers; it will only apply to contracts that go for six or 12 months—long-term regular weekly contracts. Those short-term contracts change all the time. Ultimately, it can look like a regular contract, particularly if livestock are moved, and it can change dramatically. Suddenly, if what someone intended to do is not what they are able to do, we often cannot give seven days' notice to the owner–driver. At what point does a contract become a contract for the purposes of the bill? How do we build in the flexibility to say that my cattle pick-up truck, which I originally agreed to, even if it was a trip a week for three weeks, cannot do the middle week as the stock cannot be mustered? I cannot give seven days' notice because they have to be mustered the day before. If I cannot get them in the day before for some reason, how will that work? Those matters are worth considering.

There are practicalities involving rural truck services, particularly for owner–drivers. I might give my contract to one person. If they are not in a position to do the work, they may subcontract. In that circumstance, despite the fact that I am purchasing the service from owner–operator A and they are subcontracting to owner–operator B, are there two contracts involved? Who is responsible for the contract at that point? The next day, the situation might be reversed and suddenly owner–operator A has a shortfall and owner–operator B asks them to fill in. The ultimate question here is: who is responsible for those contracts? I think it is a remarkably confusing exercise. I will be interested to see how this piece of legislation takes into account the variations that may occur.

The other thing that concerns me about this bill is very much around the powers that an authorised representative will be given, which starts at clause 16 of the bill. They all have right of entry. Right of entry is not unusual. I know that unions have right of entry in most workplaces now. The question mark will be the identification of an owner–driver and the identification of their authorised representative. Admittedly, the Transport Workers' Union of Australia will have to show some sort of written authority to do that but it will then have access, effectively, to any record, including documents, photographs, film or audio, video or other recordings of any work materials, machinery or appliances that are relevant to the suspected breach. How will the government demonstrate that this power that it will have will be restricted to an argument over a contract? I would have thought that if this were an argument about whether the rate of pay for a contract was legitimate, that would be relatively simple, but it will have access to any document that it effectively deems relevant to its investigation. I do not think that the Transport Workers' Union should investigate whether there has been a breach of contract. I know, ultimately, it will have to take it to the Industrial Relations Commission because it acts as a tribunal, but we actually have a union now that is the police officer, and I am not convinced that that is the best outcome.

I am sure someone will stand up and talk about how unions have the right to access workplaces and receive documents about complaints for their union members. Do not worry, there are plenty of days when I have concerns about that. There is some precedent for that and, therefore, there is some opportunity for a genuine representative to seek information, but I remain concerned that the Transport Workers' Union of Australia is not the genuine representative of the owner–drivers. The parliamentary secretary may have evidence to say that X percentage of owner–drivers are members of the Transport Workers' Union of Australia but it will be interesting to see. It has not been my experience; I think it very much represents drivers. I get that, but we will see whether they represent owner–drivers and owners, and people who are trying to get ahead by running their own businesses effectively and contracting out.

I suspect that there is some opportunism here. There will always be owner–drivers who contract out, particularly to the major corporations. There is absolutely some history that major corporations have pushed owner–drivers, particularly in the old days—less so now but I am sure it still exists—to practices that would be considered unsafe: very long hauls, not taking sufficient breaks, and narrow time frames between departure and destination. In the old days, that was a common practice; hopefully, it is less so now. We were always of the view that the people who do those long haul trips, who are subject to those pressures, are generally doing so for large corporations, so, in my view, disputes with smaller groups and with smaller businesses are less common. That being the case, I think there remain concerns that this bill genuinely looks to protect owner–drivers versus empowering the TWU.

I would like to see some commitments out of this. First off, at the very least, the government should commit to adding representative bodies apart from the TWU to the position of a recognised transport association. I am still concerned that the Transport Workers' Union is the only authorised representative that is listed and that it will automatically get a tick before anybody else is even considered. I am also concerned that the authorised representative's right of entry appears to be relatively unrestricted. I am sure that is the government's intent. I am just not convinced that is necessarily a good idea.

I hope that we will be able to get some reassurance that this bill is genuinely aimed at conflict resolution. That level of reassurance would be represented by the government demonstrating an understanding of how owner–drivers operate, particularly in regional areas. Set aside the focus on national and multinational companies shipping stuff from east to west. In my view, I want to see that the government understands that small transport companies around the regions require something different. They are not representative. They are not the classic union group. They are trying to get ahead, but they need flexibility in the system. I am not convinced that the bill before the house today will provide that flexibility. It seems to me that it will apply additional inflexibility to the system. That will have negative impacts, particularly if it is not remarkably well managed. I am afraid that I do not have confidence that the government is focused on those outcomes versus its more ideological ones. I remain to be convinced that this bill is the best iteration of what might be presented for owner–drivers legislation.

Hon Samantha Rowe: Are you supporting the bill?

Hon Dr STEVE THOMAS: Yes, the opposition is supporting the bill.

HON MARTIN PRITCHARD (North Metropolitan) [7.27 pm]: I want to make a couple of comments on the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022. I was not going to speak, but the previous speaker raised a couple of issues. Before I came into this place, I was a union official for 27 years.

Hon Dr Steve Thomas: For the TWU?

Hon MARTIN PRITCHARD: No, the SDA. During that time, I often came up against this issue from people who have conservative views in this area. With regard to entering a premises and getting documentation, Hon Dr Steve Thomas mentioned that it looks as though the TWU will be acting like the police. The Leader of the Opposition might consider the TWU in that way. However, the TWU will not be the judge and jury. If the TWA applies to get documentation, the tribunal will determine whether it has the right to do that. It will not be an unfettered right. Is this legislation needed? Yes, it is needed. There are definitely inequalities in this industry, particularly with regard to owner–drivers.

During my time as a union official, I looked after many of the larger food warehouses. During that time, they moved from direct employment to contract drivers. It was not my membership, so I did not get involved, but the issues caused by the unequal bargaining powers that I saw as a bystander made for some very unsafe practices. Therefore, something needs to be done. I commend the McGowan government for doing something about that and trying to introduce some safety into this area. I understand the Leader of the Opposition's reluctance. The power will not be unfettered; there will be some restrictions. The TWU is an excellent organisation. It will do a marvellous job in this area and provide a much safer industry.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.28 pm]: I endorse the comments of Hon Martin Pritchard. I am glad he took the opportunity to refute the slurs made by Hon Dr Steve Thomas against the TWU. I think they are completely unjustified.

Hon Dr Steve Thomas interjected.

Hon MATTHEW SWINBOURN: I have a lot of regard for Hon Dr Steve Thomas, but when he falls into that old habit of conservatives of trying to delegitimise organisations that represent working people, it does him no service. The Transport Workers' Union is a proud, hardworking union that seeks to represent the interests of the working driving people of this state. I do not think there is any issue with the TWU being represented in this bill as it is. It is a legitimate representative of drivers.

Hon Dr Steve Thomas: Owner–drivers?

Hon MATTHEW SWINBOURN: And owner–drivers. If the honourable member looked at the union's rules, he would see that they permit the union to recruit owner–drivers as members, which is quite unusual for union rules. Those rules have been endorsed by the Western Australian Industrial Relations Commission. I am not sure what component of its membership is constituted by owner–drivers, but what I do know is that the union—the organisation—seeks to represent their interests as best it can. I know Tim Dawson, the secretary of the union, quite well. He is a passionate advocate for all drivers. He is a passionate advocate for safety. If the member wants to talk about safety, of all the industries that are the most unsafe, transport is at the top. It is transport and agriculture at the top—the two industries that the member just talked about. One reason for that is that there are a lot of sharp practices in those industries, which means that people take risks to try to make money. If this bill does anything to ameliorate those risks, it will make things better for society.

The member spoke a lot about his experiences with the transport of livestock. The trucking industry is huge; it is one of the biggest industries in this state. It does not just extend to agricultural or regional areas. Even within the metropolitan area, on any given day people will interact with trucks of all shapes and sizes. I want to be assured that the drivers of those trucks, whether they are owner–drivers or employees, are not pushing the limits to try to make ends meet because somebody put them on a contract that makes it very hard for them to make money. There is significant evidence that that kind of practice happens and that we need regulation in this space because the market has failed these groups of people for many years. I am absolutely supportive of what this bill is trying to do. As I said, the TWU is a strong union with very strong membership. I think it has unashamedly pushed forward with these reforms, and it should be commended for that.

Let us put the union to one side and think about the owner–drivers that the bill is trying to deal with. These people have sunk costs in very expensive equipment, which makes them very vulnerable. If someone wants to buy a truck of any decent size, they will look at paying hundreds of thousands of dollars. Then there is the cost of diesel—these trucks are almost exclusively diesel. The last time I checked the price of diesel, it was about $2.30 or $2.40 a litre. It is massively expensive. They also have to pay insurance and registration fees. All these things stack up for them. Then they have to make a margin to make it worthwhile. How do they make a margin? There can be a power imbalance in the contracts. Owner–drivers sink all those costs and have all those overheads, yet powerful companies can dictate the terms of the contract, particularly when they capture drivers through long-term contracts and then, all of a sudden, look at how to change them.

I have not mentioned this in the house before, but I used to drive a truck as well; it seems to have been a relatively common activity for members of Parliament around here! I spent six years driving milk trucks. I had an old B class licence, which is now a heavy rigid licence. I still have the HR licence. I just checked and I can drive a non-articulated vehicle up to nine tonnes, or whatever it is.

I worked for milk vendors who had contracts with one dairy. We worked out of O'Connor; there was a depot down there. Most of the drivers would have been classed as owner–drivers. They were very vulnerable to the vagaries

of their contracts with the dairy that they worked with. In my case, it was Masters Dairy, or National Foods, back then. I think Bega owns it now. These drivers were very vulnerable. As somebody who worked for one of them, I was in a very tenuous position. I can tell you what, they were squeezed by the company, and guess who they squeezed? They squeezed me. I was earning $13.50 an hour driving a truck, packing milk and doing that sort of stuff.

Hon Dr Steve Thomas: How long ago was that?

Hon MATTHEW SWINBOURN: I finished that in 2001. It was from 1995 to 2001. It was not great money back then, I can tell the member, for the amount of effort that I had to put in. I used to move about eight tonnes of milk a day by hand. It was not a great fun job. In any event, that demonstrates the vulnerability of someone who relies entirely on one hirer for their income and survivability. Those drivers would enter into contracts with National Foods, and, of course, those contracts would not come near their ends. There was always pressure because of the margins that they were looking to make. It was at the time of the deregulation of the dairy industry as well, which increased the powers of the dairies vis-à-vis the farmers. Farm gate prices started to drop around that time because the milk board had disappeared; I do not think it was called the milk board but I cannot remember what it was called. The supermarkets were the main clients and put pressure on the dairies. The dairies put pressure on the drivers who were delivering the milk, the farmers, so on and so forth. It is a tale as old as time itself. It comes back to the power imbalance. When the market fails, what do we do? We need to intervene. That is what happens in these situations, and to deny otherwise would be to put blinkers on or cover your eyes and not to see.

They were always price takers and never price makers. Whenever someone is in that position, they are always vulnerable. I think it is quite appropriate for the state to step in in those circumstances and regulate the space. I am really pleased that the opposition is supporting this legislation. Perhaps some members of the opposition are supporting it more wholeheartedly than other members. It is worthwhile that they are supporting it and I think it is appropriate that they ask the questions that they are going to ask. I will keep coming back to this. I will always stand with my friends at the Transport Workers' Union. It is not a union that I have ever worked for. I worked for the Construction, Forestry, Mining and Energy Union, amongst other unions. The TWU does a fantastic job, and works very hard for its members in an industry that is very difficult. I was not going to have many comments to make. I endorse the comments of Hon Martin Pritchard. Union bashing is a hobby of some. In my case, I am going to talk them up and encourage them to be as good as they are. I am happy to stand in this Parliament and say that. I commend the bill to the house.

HON SAMANTHA ROWE (East Metropolitan — Parliamentary Secretary) [7.37 pm] — in reply: I start by thanking all the members who have stood and made a contribution tonight to the bill. I really appreciate everyone's support, in particular, the lead speaker from the opposition, Hon Neil Thomson. I thank him for his support of this bill and for the comments that he made. I might address some of his comments first, then work my way to Hon Dr Steve Thomas.

First of all, in reply to Hon Neil Thomson, again, I thank him for his second reading debate contribution and acknowledgement of the importance of this legislation in supporting the safety of the road transport industry and all road users. I am really pleased that the member has indicated the opposition's support for this bill. Some of the issues that he raised during his second reading contribution were around the benefits of the bill. The key benefits that will result from the amendments proposed by the bill include increased industry compliance, clarification of the scope of the mandatory provisions of the act, enhanced road safety for all road users and improved administration of the act. Some of the other issues that he raised in his contribution were about right of entry. The amended right of entry provisions proposed in clauses 13 to 18 of the bill provide for a holistic right of entry scheme that is consistent with the equivalent right of entry provisions prescribed under the WA Industrial Relations Act 1979.

The proposed provisions set out defined processes with supporting protections for authorising, suspending and revoking the right of entry authority and will facilitate the procurement of evidence to inform the tribunal's dispute resolution processes as needed when information is not otherwise made available. Right of entry powers are to be exercised only to assist with the investigation of suspected breaches of the act, code of conduct or individual owner–driver contracts. Eligibility to hold a right of entry authority is limited to a current holder of a valid authority issued under either the Industrial Relations Act 1979 or the Fair Work Act 2009. These provisions were developed in consultation with the Road Freight Industry Council, the tribunal and the Small Business Development Corporation. The provisions aim to establish a regime equivalent to the right of entry powers under the WA Industrial Relations Act and afford owner–drivers the same protections as other workers in Western Australia.

My colleague Hon Darren West also rose tonight to support the bill. I would like to thank him for recognising that our truck drivers and the trucking industry do a lot for our community and the important role that they play. I would also like to thank Hon Martin Pritchard and Hon Matthew Swinbourn for their contributions tonight. I think it is really important to put the other side of the important work that our unions play and show that they are not the bad guys in this scenario.

Again, I thank Hon Dr Steve Thomas for his contribution. I know he has some concerns around the bill. No doubt we can go into them in further detail when we go into Committee of the Whole. Some of his concerns were around right of entry provisions and whether the Transport Workers' Union of Australia is the best advocate for owner–drivers,

amongst other things. Note that the act does not prevent other unions from using the right of entry provisions. The TWU is the only union that is registered and eligible at this time. Other unions and registered organisations could have the same rights —

Hon Dr Steve Thomas: You may not have meant other unions there, but other organisations?

Hon SAMANTHA ROWE: It is other unions and other registered organisations.

Hon Dr Steve Thomas: Okay. It suggested it was only unions, but I do not think that was what the member was suggesting.

Hon SAMANTHA ROWE: No. Other unions or other registered organisations can have the same rights with respect to breaches of code of conduct, contract terms or unconscionable conduct. The changes that we are making and bringing into the act are going to be in line with the WA industrial relations system. Of course, one of the big things is that owner–drivers currently have less bargaining power because of the nature of the market and industry. This is really important legislation to make sure that these workers are protected, just like other workers in other industries. I thank members of the opposition and members on our side for their contributions and their support of the bill. 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 Samantha Rowe (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon NEIL THOMSON: I thank the parliamentary secretary for her response to some of the issues that were raised in the second reading debate. In the clause 1 debate, I would like to get a bit of a feel for the scope and scale of some of the dispute processes in the current environment. My understanding is that probably anywhere between 10 per cent and 30 per cent of owner–drivers are members of the union, depending on the industrial relations situation on the ground. It was good that the parliamentary secretary clarified the issue in the legislation that other registered organisations can become representatives. I assume that process is organised through the Road Freight Transport Industry Tribunal and that the owner–drivers would have to apply. I will get to that in a minute.

I will start with the current situation. Approximately how many disputes are there—the parliamentary secretary does not have to give me an exact number—every year? To get an understanding of how these additional provisions might impact on the process, how many of those disputes would have any issues about the quality of information provided?

Hon Samantha Rowe: Could you repeat that last part?

Hon NEIL THOMSON: The first question is: how many disputes does the tribunal consider? If the parliamentary secretary can answer this question, I would also like to know how many disputes that are currently before the tribunal are likely to be problematic because of the provision of adequate information for consideration by the tribunal?

Hon SAMANTHA ROWE: I thank the honourable member for the question. I can give him the figures for the number of referrals to the tribunal each year from 2008, if he wishes. There were five in 2008; 28 in 2009, 39 in 2010; 28 in 2011; 14 in 2012; 13 in 2013; 35 in 2014; nine in 2015; 24 in 2016; six in 2017; two in 2018; four in 2019; 21 in 2020; 31 in 2021; and zero for this year. In answer to the second part of the member's question, we do not have information on how problematic each of those are.

Hon NEIL THOMSON: That is interesting and fascinating, to some extent, in terms of the relationship between the number of disputes and the state of the economy. I certainly will look at that out of interest because this is primarily an economic issue. We know that it is a sellers' market in the sense that a truck owner who is an owner–driver would probably get quite good contracts at the moment because of the challenges of supply chains and logistics. I suggest that might be one reason for the low number of disputes at the moment. That is a hypothesis that I am putting in the lead-up to my next question. Without necessarily going through the whole list of numbers that the parliamentary secretary provided, roughly what percentage of those disputes would result in an adverse finding on a hirer? I assume most of those are resolved in the tribunal in a more conciliatory way and that there is some sort of resolution. I would be interested to know about the adverse findings that might come out.

Hon SAMANTHA ROWE: I am advised that in the first instance, there is a conciliation process. If things cannot be resolved during the conciliation process, the matter is referred to the tribunal for a hearing. I think the member asked whether we had any percentages of disputes that would result in an adverse finding for the hirer. I am sorry but we do not have that data here.

Hon NEIL THOMSON: We are probably surmising a little, then, going forward. Would it be fair to say that most of those complaints or matters raised are resolved through conciliation?

Hon SAMANTHA ROWE: I am advised that the majority are resolved through that conciliation process.

Hon NEIL THOMSON: I think that maybe goes to the heart of some of the concerns that were raised by my honourable colleague Hon Dr Steve Thomas, notwithstanding some of the reasonable limitations and requirements for persons to actually enter premises. As I think I said in my second reading contribution, it is a fairly evasive provision, notwithstanding the parliamentary secretary's explanation that those right-of-entry provisions are consistent with equivalent provisions in the Industrial Relations Act and other industrial law. It seems to me that it would be quite rare that there would be any likelihood of a person turning up to a premises and having some sort of authority to enter and effectively seize documents. Would that be true?

Hon SAMANTHA ROWE: I think the honourable member asked how frequently some of these powers would be used. Obviously, they currently do not have these powers as yet. But, as I might have mentioned in my second reading reply, these right-of-entry powers will be exercised only to assist the investigation of a suspected breach of the act or the code of conduct or individual owner–driver contracts when and where information is not willingly provided.

Hon NEIL THOMSON: I appreciate that. My understanding from what the parliamentary secretary is saying is that it would be a relatively rare situation, and it would be in line with what Hon Dr Steve Thomas has said. If it became an aggressively policed situation, there will be provisions that will enable some sort of complaint. We will get to the tribunal in the more detailed provisions of the bill. I imagine that there would be something to examine at that point because I think the industry has benefited from a relatively high level of cooperation since the act was put in place.

I will move on to an aspect that was raised by my colleague about contracts and that I think is worth raising in the clause 1 debate. I note in the owner–driver booklet that a contract could be a verbal contract. That seems to be an allowable form of contract. If it is a verbal contract, will that continue into the future given that we will have these potential situations in relation to records? Would a verbal contract preclude the requirement for the keeping of certain records by the hirer to outline what the verbal contract actually outlined? This does pose some issues, and I thought I would raise this in the clause 1 discussion because it would seem that it is an unusual allowance that a contract could be a verbal contract.

Hon SAMANTHA ROWE: I am advised that verbal contracts are already in the legislation, and that will not be changing. Section 5(1) states —

> For the purposes of this Act, an ***owner-driver contract*** is a contract (whether written or oral or partly written and partly oral) entered into in the course of business by an owner-driver with another person for the transport of goods in a heavy vehicle by the owner-driver.

Hon NEIL THOMSON: Thank you. The second part of my question is: notwithstanding that a verbal contract is a contract, is it still an obligation, as is outlined quite clearly in the owner–driver booklet, that records must be kept? Therefore, if a verbal contract is struck, would it then be the prerogative of the hirer to keep the information as outlined in the written form? Is that correct?

Hon SAMANTHA ROWE: Yes, member. That is correct.

Hon NEIL THOMSON: Thank you. I have another general matter, which could be in the detail of the bill, but I thought that for safety I would raise it in the clause 1 debate. Regarding the issue around the other representatives, does that not preclude non-union representative organisations? Is it correct to say that any representative organisation that could be established or that might already exist seek application with the tribunal to become an authorised representative?

Hon Samantha Rowe: Yes, that is correct.

Hon NEIL THOMSON: There is a generally low rate of union participation; indeed, one estimate I have heard is that only 10 per cent of owner–drivers are members of the union. Apparently this varies a bit depending on the state of play. Obviously, during a dispute, people might seek recourse through the union, which might swell the ranks of the Transport Workers' Union of Australia. As a public servant, I worked with the TWU, indirectly at least, on issues in the taxi industry. I found the TWU to be reasonable. I do not know whether that is still the case, but it certainly acted in good faith in those activities. What constitutes a representative organisation? Would it have to be an incorporated entity of some sort? How would it prove its representative status?

Hon SAMANTHA ROWE: I am advised that the bill states —

> ***prescribed representative body*** means a body that —
>
> (a) represents the interests of owner-drivers or hirers; and
>
> (b) is prescribed by the regulations for the purposes of this definition;

For example, the Western Roads Federation will be prescribed in regulations.

Hon NEIL THOMSON: Who will be responsible for prescribing that body?

Hon SAMANTHA ROWE: I am advised that it will be the Governor on recommendation of the Executive Council.

Hon NEIL THOMSON: The Executive Council. Effectively, that means that a minister will present a proposal. I am trying to work out the process.

Hon Samantha Rowe: The Minister for Transport would be the one.

Hon NEIL THOMSON: Okay. I was going to share my trucking story. I cannot claim to be a driver of cattle trucks or road trains like Hon Darren West and others. I will take credit for driving one of the oldest trucks when I was shepherding sheep in New Zealand. I drove an ex-World War II GMC 2.5 tonne tip truck to build farm tracks. I put that on the table as there has been a bit of bragging about trucking credentials tonight. As I said, with a bit of levity, I thought it would be helpful given the conversations we have had.

If, in another life, Neil Thomson and a few mates were driving trucks and wanted to create a representative body, we would have to write to the minister and say, "We've got this body. We are fairly well represented. Obviously more than one person is involved in the industry. We are representing ourselves." Would that be considered by the minister and would it be up to the minister's discretion, effectively, to put something through to the Exco?

Hon SAMANTHA ROWE: I am advised that yes, if they wanted to approach the minister they could do that, but the regulations would be amended to prescribe the organisation for the purpose of the definition of transport association.

Hon NEIL THOMSON: This is maybe a rhetorical question. Does that mean a lawyer working on behalf of some sort of class action or group of owner–drivers could not effectively be prescribed? Would that be correct?

Hon SAMANTHA ROWE: It has to be a body, not an individual.

Hon NEIL THOMSON: Thank you. I appreciate that and I will not labour that issue anymore. That might go to some of the concerns by my honourable colleague Hon Dr Steve Thomas. It is probably limited in the sense that there is some cooperation and also desire in the industry for both the hiring side and the drivers' side to ensure there is collaboration when small businesses have to effectively operate within a monopoly of sorts through the union. The parliamentary secretary probably clarified that if there was some satisfaction with the union representation, a group of transport providers, or owners–drivers, could potentially get together, organise themselves and seek application. That probably seems reasonable. Although we are supporting the bill, maybe there could have been some gratuitous advice from me and scope for, for example, legal representatives with equally esteemed qualifications who might be involved in the supporting of conflicts around, for example, these contracts, yet, they would not be able to access those documents. Maybe they would have other ways to subpoena information—I do not know. Maybe they could do that through some civil means. I would assume that in that scenario, whereby a person was represented by someone other than a union, they would still have access to the tribunal. Is that correct?

Hon SAMANTHA ROWE: Yes, that is correct.

Hon NEIL THOMSON: I appreciate that. To again highlight the concerns of my colleague, to have a monopoly might seem unfair to some, but in saying that, we could counsel any persons out there who might not be keen to be members of the union—for whatever reason they choose not to be—to set up and apply to become a representative body. It seems an unnecessary restriction on members of the legal fraternity, perhaps, who might have very good reason and, I assume, quite often represent owner–drivers in a tribunal. I am happy to move on from clause 1.

The DEPUTY CHAIR: I assume, member, you are not asking a question at this point.

Hon NEIL THOMSON: No.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 3 amended —

Hon NEIL THOMSON: Clause 4 relates to "minimum notice period". I refer to the matter of shorter contracts. We heard a representative on the government benches concede that this proposed provision could result in some shorter contracts being prepared. That piqued my interest a little. In his second reading debate contribution, Hon Darren West raised the issue about potentially shorter contracts. The parliamentary secretary might have missed that but I was all ears when I heard that because I had contemplated that issue. Obviously, members have heard me mention unintended consequences many times in this place. Sometimes protections can sort of lead to distortions if people feel that the restrictions might restrict them in ways. I have a question around the potential for distortion. Why was a 90-day minimum notice period for termination put in place?

Hon SAMANTHA ROWE: I am advised that the 90 days is currently included in the model contract, which is on the Department of Transport's website. Industry consultation also supported a 90-day minimum.

Hon NEIL THOMSON: That was my understanding, too, so that is good. As I said in my contribution to the second reading debate, a lot of what is in the bill effectively seems to be making black-letter law out of what is already in the model contracts and the handbook, which outlines at least some of the high levels of it. Would it be fair to say that this is effectively already the industry practice?

Hon SAMANTHA ROWE: Yes, that is correct.

Hon NEIL THOMSON: That may mitigate the comment by Hon Darren West, because it is obviously a concern. We will be worried about the contracts shorter than 90 days—we have the seven-day contracts—if everyone suddenly gets on these short rollover contracts because people think that they will somehow be able to avoid the longer period. Does the parliamentary secretary think there is any scope for there to be a shift in the length of contracts as a result of this provision being put in place?

Hon Samantha Rowe: Shortening of the 90 days?

Hon NEIL THOMSON: Yes, under the provisions that will come into effect, if the term is less than 90 days. paragraph (b) of the definition of minimum notice period in clause 4 states —

> if the aggregate term of the original contract and any consecutive series of successive contracts between the same parties that contain substantially similar terms and conditions is less than 90 days — 7 days;

Seven days is the termination period. It is a bit of a drop. It does not scale back; it just goes straight back to seven days. I think that is what Hon Darren West was getting at. If people want to avoid the 90-day termination time frame, they will just, effectively, have people on rolling contracts of 89 days. Will that be possible?

Hon SAMANTHA ROWE: I am advised that the 90 days will apply for rolling contracts.

Hon NEIL THOMSON: I am satisfied with the parliamentary secretary's response there. Thank you for that. I just have one last question on clause 4. For the sake of the deputy chair, clause 10 will be my next clause, if that is of any assistance.

We have this definition of "prescribed representative body", which we discussed in the clause 1 debate, but we also have a definition of "transport association", which means —

> a representative body prescribed by the regulations …

They look identical—lines 8 and 13 in clause 4 on page 3. Is there any difference between a transport association and a prescribed representative body?

Hon SAMANTHA ROWE: I am advised that a prescribed representative body is a body that represents the interests of owner–drivers or hirers that is prescribed by the regulations for the purposes of this definition. Section 18 of the Owner-Drivers (Contracts and Disputes) Act 2007 will provide that the minister shall seek nominations for appointments to the Road Freight Transport Industry Council from prescribed representative bodies, as well as other persons or bodies prescribed in section 18(3). Following passage of the bill, it is intended that the Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010 will be amended to prescribe the Western Roads Federation as a representative body.

In relation to transport associations, the representative body prescribed by the regulations for the purpose of this definition is the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

Proposed section 34B relates to who can apply to be an authorised representative for the purposes of right of entry to conduct and investigate a suspected breach of the act.

Hon NEIL THOMSON: "Transport association" is described as —

> a representative body prescribed by the regulations for the purpose of this definition;

Is that open ended or will that just be the Western Roads Federation? Does it encompass other bodies?

Hon SAMANTHA ROWE: I am advised that yes, it can encompass other bodies.

Clause put and passed.

Clauses 5 to 9 put and passed.

Clause 10: Section 31A inserted —

Hon NEIL THOMSON: This clause sets out the definition of "unfair terms". They are quite prescriptive but they are also quite subjective. That is a reasonable way of describing them. For example, proposed section 31A(1)(a) states —

> whether the term causes a significant imbalance in the parties' rights and obligations arising under the contract;

That is a pretty subjective assessment. I refer to the model contracts, which is the proper way of describing them. My feeling is that the model contracts are the way to go. Basically, people want guidance and the more models we have, the more education we have and the more protection we have. How will that be assessed? Will these contracts ultimately be assessed by the tribunal?

Hon SAMANTHA ROWE: I am advised that they will be assessed by the tribunal.

Hon NEIL THOMSON: I refer to the model contracts and the educative process for hirers and owner–drivers. What elaboration are we likely to see when we change to other documents? For example, I found the *Western Australian owner-drivers information booklet*. Obviously, it refers to the model contract. There is a link to the model contract. Are there likely to be any changes to other supporting documentation going forward to assist the industry to not fall foul of the legislation?

Hon SAMANTHA ROWE: I am advised that the supporting documents, as the member referred to them, will be updated. That includes, for example, the model contract, the code of conduct and the information booklet, which are all on the website. The website also has an interactive tool—a cost calculator that people can use—and that will also be updated.

Hon NEIL THOMSON: Maybe the minister could indulge me a bit and we could defer this discussion to when we deal with the transitional provisions, or, for the sake of practicality, we could have this discussion now if that is okay. I understand that upon the enactment of this bill, it will come into effect straightaway. The question is the timing of the supporting documentation to make sure that we are fully prepared, given that we will have in black-letter law proposed section 31A, "Unfair terms", which refers to a bunch of specific things such as significant detriment, and payment guideline rates. I assume those guideline rates are already in place and will not require change. I would have thought that a lot of that might have been resolved through the provision of better information by the Department of Transport, and better education. It might be a question of who should take the onus of providing that information. If everyone understands what is fair and reasonable, we should not need to require the hirer, who is probably also a very busy person in the industry, to explain to a new entrant what is required. However, we can imagine that if a person has bought a truck and has just come into the industry, the hirer might have an obligation to be reasonable and provide, as stated in new section 31A(1)(f) —

> the extent to which the term, and its legal and practical effect, was accurately explained to a party;

There might be a requirement in that case.

The first question is: as we transition to the new regime, will the supporting documentation be ready for when this becomes law?

Hon SAMANTHA ROWE: I am advised that there will be a period of time between when the legislation is passed and when it will commence, but then everything will be updated, including the regulations.

Hon NEIL THOMSON: Is that period understood or defined? Does the parliamentary secretary know how long it will take?

Hon SAMANTHA ROWE: We believe that it will be during the first half of next year.

Hon NEIL THOMSON: Proposed section 31A(1)(h), under clause 10, is about one of the unfair terms. It states —

> whether or not it was reasonably practicable for a party to reject, or negotiate for a change to, the term before it was agreed to;

Is that something that is currently considered by the tribunal?

Hon SAMANTHA ROWE: I am advised that it could be considered, but it is not specified in the legislation.

Hon NEIL THOMSON: Under what circumstances is that likely to occur? Normally, if someone was in a negotiation, they could quite happily reject it and go on and work for another company.

Hon SAMANTHA ROWE: I am advised that it will primarily deal with the power imbalance. For example, a hirer might rush an owner–driver to sign up immediately, and the alternative might be that they do not get engaged at all.

Hon NEIL THOMSON: I am trying to help the parliamentary secretary here. Will this apply to the renegotiation of an existing contract or will it apply to new contracts as well?

Hon SAMANTHA ROWE: I am advised that it could be either.

Hon NEIL THOMSON: I am a layperson; I am not a member of the tribunal. It just seems a bit unreasonable. If the tribunal uses this test, I hope it will be done with a reasonable level of consideration in terms of it being reasonably practical for the party to reject it. I would have thought that in most cases, particularly with a new contract, it would be enormously practical for a party to reject a contract insofar as they might choose not to work with that company. Anyhow, I raise that point. The other one I would like to point out is proposed paragraph (k), which states —

> whether, at the time the term was agreed, a party knew, or could have found out by asking, that the term would cause the other party hardship;

I had to read it twice because it is a little hard to understand. I am trying to work out whether this is a negative or a positive, if the parliamentary secretary understands what I mean. This is an unfair term. My first question is: is it only to do with the term?

Hon SAMANTHA ROWE: I am advised that it is in relation to the past, so it is about when the contract was originally agreed to.

Hon NEIL THOMSON: Fair enough. Of course, any dispute would be in the past. The bill states —

> …a party knew, or could have found out by asking …

Am I correct in assuming that means that the onus would be on the party to ask?

Hon SAMANTHA ROWE: I am advised that the party could be either the hirer or the owner–driver. The duty will be on both parties.

Hon NEIL THOMSON: The parliamentary secretary sort of read my mind. That is a question I was going to ask: which party is which? The question I have is whether the onus will be on either party, the hirer or the owner–driver, to ask. I might be confusing the parliamentary secretary here. I am trying my best. I do not quite understand how this works myself. If I am confusing the parliamentary secretary, it is because I am confused by proposed paragraph (k), under which it seems an unfair term could be —

> whether, at the time the term was agreed, a party knew, or could have found out by asking, that the term would cause the other party hardship;

It seems to me that because it could be either party, the hirer or the owner–driver, both will have to make sure they ask the other whether there is going to be hardship. Is that correct?

Hon SAMANTHA ROWE: I am advised that it could be either party. It will really depend on what is in the contract. If the dispute has gone to the tribunal, it will look at the contract to see where the hardship is. It could be either the hirer or the owner–driver, depending on what that hardship is.

Hon NEIL THOMSON: To be fair, I will draw the parliamentary secretary back to proposed section 31A. I appreciate the good faith with which she is trying to answer the questions. Proposed section 31A(1) is really using an unfair term that the tribunal "may" have regard to a determination. It obviously will ultimately come down to a deliberation of the tribunal. Maybe we are trying to be a bit too prescriptive, but I did not draft it and members opposite are in the government. The government has done the drafting and is giving guidance to the tribunal on this. My question is about subjectivity and whether putting this into the act will in any way alter the behaviour of the tribunal. That is a question I have about all these provisions. Is it likely that there will be any change to the behaviour of the tribunal or its consideration of these matters given the subjectivity of these provisions? I trust the tribunal to make a value judgement about what is fair, but we know that hardship can be caused by a whole range of reasons, including those that are no fault of the hirer. It might be the fault of the owner–driver because they may not be very organised with their financial management, for example, in a particular situation. That is no judgement on owner–drivers, by the way. I am happy to move on from these provisions once the parliamentary secretary has answered this question: to what extent does the parliamentary secretary think that by being specific in proposed section 31A(1)(a) to (o), including terms like "harsh" and "oppressive" that have value judgements, the tribunal's behaviour is likely to change?

Hon SAMANTHA ROWE: I am advised that the commissioners at the Western Australian Industrial Relations Commission sit as the tribunal, so it is not just one individual. These provisions make it clear that these matters can be considered by the tribunal. By being explicit, it means there will be some consistency for the tribunal.

Clause put and passed.

Clause 11: Parts 6A and 6B inserted —

Hon NEIL THOMSON: Proposed section 31B is titled "Misleading or deceptive conduct by hirer". Could the parliamentary secretary provide some examples of what that might be? It does not have to be all encompassing, but I would be interested to know the sorts of examples that might be considered misleading or deceptive conduct by an owner–driver in the acquisition or possible acquisition by the hirer of services from the owner–driver under an owner–driver contract.

Hon SAMANTHA ROWE: I am advised that some examples could be hiding or not providing information at all, or lying.

Hon NEIL THOMSON: Would the two examples the parliamentary secretary gave apply to proposed section 31C, "Misleading or deceptive conduct by owner–driver"?

Hon SAMANTHA ROWE: Yes, that is correct, honourable member.

Hon NEIL THOMSON: I assume that both those examples could be applied to the ability of an owner–driver to deliver within the terms of a contract when the owner–driver might know that they are not able to deliver the outcome outlined in the contract.

Hon SAMANTHA ROWE: I am advised that yes, that could be an example.

Hon NEIL THOMSON: Discrimination comes under clause 11. I am checking on my list. One provision on page 10 has piqued my interest. I refer to proposed section 31D under "Part 6B — Discrimination". Proposed section 31D(3)(d) involves refusing to engage a person as an owner–driver. Read in isolation, that does not seem to me to be discrimination. It seems that someone is refusing to engage a person. There could be myriad reasons why someone might not be engaged as an owner–driver. Proposed section 31D(3) states —

> For the purposes of this section, subjecting an owner-driver to detriment includes doing one or more of the following —
>
> …
>
> (d) refusing to engage a person as an owner-driver;

Under what circumstances might that be considered discrimination? Could a hirer refuse to engage an owner–driver for a range of legitimate reasons?

Hon SAMANTHA ROWE: I am advised that the provisions in proposed section 31D(3) go to what is meant by "causing a detriment" and are to be read in conjunction with proposed subsections (1) and (2). We are looking at proposed section 31D. Proposed section 31D(3) has to be read in conjunction with proposed sections 31D(1)(a), (b), (c) and (d) and 31D(2)(a) and (b)(i) and (ii), in which the term "detriment" is given effect.

Hon NEIL THOMSON: I thank the parliamentary secretary; that was my understanding as I was going back over proposed section 31D(1) and (2), and trying to read and understand them. I am still concerned; I suppose this one does bother me a bit. To put it in layman's terms, there is some detriment associated with refusal. I would have thought that, by its very nature, refusing a contract would create a detriment. There would not be many cases in which it would not. I would have thought there would be plenty of legitimate reasons why there might be refusal. Maybe I should turn it the other way: in what situation might a refusal of a contract not be considered a detriment? It may be better to give us a bit of a list of situations in which a hirer might refuse a contract. Given that they might have been in negotiations with an owner–driver for several days on quite a big contract, and then, because of the argy-bargy in the negotiations, there is a refusal, it might not be discrimination because it is a marketplace. Can the parliamentary secretary tell me a situation in which that would not be a detriment and therefore would not be discrimination?

Hon SAMANTHA ROWE: I am advised that it would be deemed discrimination if an owner–driver has, firstly, claimed, or proposes to claim, a benefit, or has exercised, or proposes to exercise, a power or right that the owner–driver or their associate is entitled to claim or exercise under this act or the code of conduct; or, secondly, has brought, or proposes to bring, or has otherwise participated in a proceeding under this act; or, thirdly, has informed, or proposes to inform, any person of an alleged contravention of this act, the code of conduct or an order of the Road Freight Transport Industry Tribunal under this act; or, fourthly, has participated, or proposes to participate, in joint negotiations relating to owner–driver contracts or the engagement of an owner–driver; or, fifthly, under proposed section 31D(2) —

> (a) has raised, or proposes to raise, issues of health and safety in relation to the performance of services under an owner-driver contract; or
>
> (b) has sought, or proposes to seek, to —
>
> … negotiate a proposed owner-driver contract; or
>
> … renegotiate an existing owner-driver contract.

Hon NEIL THOMSON: I can intuitively support many of those things. Proposed section 31D(3) refers to the owner–driver's detriment and the issue of health and safety et cetera. I must be missing something here because I find this a bit worrying. A new contract would start a negotiation. Proposed section 31D (3) states —

> For the purposes of this section, subjecting an owner-driver to detriment includes doing one or more of the following —
>
> (a) terminating the owner-driver's owner-driver contract;

There is a provision in the bill that outlines giving notice of termination, which seems to be a bit at odds with what the bill is saying if there is detriment in the termination. I would have thought that detriment would not occur if notice was given in accordance with that provision. Therefore, would terminating the owner–driver's owner–driver contract under proposed section 31D(3)(a) be considered a detriment and therefore be discrimination, if the termination was done in accordance with the provision of giving notice of the termination?

Hon SAMANTHA ROWE: No. That does not apply to this.

Hon NEIL THOMSON: There seems to be some tautology going on here. We are kind of overdoing it in this legislation because we already have a rule about the detriment provisions, but this provision reads in a very open-ended way because it would not be detrimental if an owner–driver was given notice in accordance with the provisions as outlined. I am still concerned about the refusal to engage a person as an owner–driver. That seems to be an incredibly challenging issue. The opposition has been talking about suggesting an amendment, which I might have a look at. Without prejudice, I will say that I will make a suggestion that the refusal to engage a person as an owner–driver seems very ambiguous. If someone refuses to engage somebody, will that be a breach, per se, of this discrimination provision?

Hon SAMANTHA ROWE: I am advised that it means nothing unless it fits into either proposed section 31D(1)(a), (b), (c) and (d), or proposed section 31D(2)(a), (b)(i) and (ii).

Hon NEIL THOMSON: I will take the parliamentary secretary at her word. One of the challenges we face in the short time we have to highlight these issues is in getting our heads around them.

Hon Kyle McGinn: She's not going to lie!

Hon NEIL THOMSON: The honourable member can sit there and make comments. I have a job to do in relation to this.

Hon Kyle McGinn interjected.

The DEPUTY CHAIR (Hon Peter Foster): Order! I give the call to Hon Neil Thomson.

Hon NEIL THOMSON: I am trying my best here.

In relation to proposed section 31D(1)(a), (b), (c) and (d), we can take the approach of trust, and hope that we are all good here, but obviously we do not want unfair discrimination. Creating the concept of discrimination is something that we all want to avoid. I am trying to ascertain, based on proposed section 31D(1) and (2), how that might practically apply. The parliamentary secretary might be able to assist me here. Given that there are some limitations with regard to proposed section 31D(3)—limited by the need to refer to (1) and (2)—under what circumstances in which a hirer refuses a contract would that hirer not be discriminating against that person? I seek some practical examples to assist me here.

Hon SAMANTHA ROWE: I am advised that a practical example could be of a hirer who refuses to engage an owner–driver because, under a previous owner–driver contract, that owner–driver had taken a matter to the tribunal to dispute that contract with that same hirer, so that hirer refuses to engage them in a new contract.

Hon Dr STEVE THOMAS: I might be able to cut through a little. I understand that we are dealing with proposed section 31D(1). It really goes back, as the parliamentary secretary said, to "must not subject or threaten to subject" in circumstances in which they effectively use the act, which is reasonable, and under proposed section 31D(2), if they raise an issue about safety and the right to negotiate. That is not the complicated bit. Jumping to proposed subsection (3) and what is a detriment, it might help if the parliamentary secretary can describe the circumstances in which the link is made between proposed subsection (3) and proposed subsections (1) and (2); that is, how will it be demonstrated, for example, that an action under proposed subsection (3) is the result of the things occurring in proposed subsections (1) and (2)? How does the fact that the person is not engaged as an owner–driver relate to those first things? It is that connection that we are missing as part of the debate.

Hon SAMANTHA ROWE: I am advised that it will be at the discretion of the tribunal. It will need to consider the evidence put before it about discrimination, specifically if an owner–driver was not engaged—that is proposed section 31D(3)(d). The tribunal will have to be satisfied that the reason that the owner–driver was not engaged relates to the provisions that are highlighted in proposed subsections (1) and (2).

Hon NEIL THOMSON: In the discussion, we have been able to look at each of these within the context of that provision. Some of them are quite evident when one reads through them, but it has been worthy of clarification. It has been difficult because we have to go back and look at each provision. In summary, effectively, the discrimination is that anyone who is involved in a disputation or any allegation in relation to breaches of the code of conduct or the act cannot be refused a contract on that basis. That is probably the easiest way to explain it. In saying that, I am trying to get my head around what each of these provisions mean, because it is a little complicated. Proposed section 31D(1)(b) states —

> has brought, or proposes to bring, or has otherwise participated in, a proceeding under this Act; or

I think that is quite reasonable and fair, but one scenario might give me some concern. Hypothetically, is it possible that an owner–driver might be in a situation in which they are in the process of signing a contract and say that they will propose to bring some sort of action in proceedings under this act in relation to that contract? I would have thought that that is not a very discriminatory situation. I would have thought that is more like a threat from the owner–driver. My concern is that under this provision of discrimination—I am hoping this would never happen, of course—it might be possible in a negotiation for a person to say, "You know what? I'll bring proceedings under this act and if you refuse me, I've got you for discrimination". Is that a gotcha moment, or is that not possible?

Hon SAMANTHA ROWE: I am advised that that would not be possible, because there would not be a contract.

Clause put and passed.

Clauses 12 to 15 put and passed.

Clause 16: Part 8 Division 3 inserted —

Hon NEIL THOMSON: Acting President, I might offer to skip clause 16 because it has been covered in detail under clause 1, in relation to registered organisations. I have to go through my notes again to make sure. Before we move on I have one question about proposed section 34C(1), which states —

> An authorised representative must, within 28 days after ceasing to hold an authority or permit referred to in section 34B(3)(b), inform the Registrar that they no longer hold the authority or permit.

I have a question on this clause. Under clause 1 we covered off quite a lot of detail and I thank the parliamentary secretary for providing me the very detailed answers about authorised representatives. We had discussions about associations as well. This proposed section is to do with 28 days after seeking authority. Who is responsible for the permit? If that authorisation is not removed when it should be, what sanction is there? Subsection (2) states —

> A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act …

What is the sanction if that is not managed in accordance with that provision?

Hon SAMANTHA ROWE: I am advised that the registrar is the responsible person.

Hon NEIL THOMSON: I refer to "contravention" in proposed section 34C(2). Does that mean the registrar would be the one subject to that provision?

Hon SAMANTHA ROWE: No, I am advised that it would be the authorised representative in proposed section 34C(2).

Hon NEIL THOMSON: I refer to proposed section 34D, "Revocation or suspension of authority". Proposed section 34D(3) might provide Hon Dr Steve Thomas a bit of comfort in terms of the balance of power. We had a discussion in the second reading debate about the toing and froing and the good faith or otherwise of union representatives. I think this provision will provide a level of comfort insofar as proposed section 34D(3)(a) states, in part —

> has acted in a proper manner in the exercise of any power …

This will effectively apply to a situation in which the representative has acted improperly and maybe not in accordance with the full arch of provisions. It is effectively some sort of sanction on the representative not acting properly in their duties in relation to records et cetera? Yes?

Hon SAMANTHA ROWE: I am advised that yes, that is correct.

Hon NEIL THOMSON: In that situation, would it be the normal practice for the hirer to lodge a complaint with the tribunal?

Hon SAMANTHA ROWE: I am advised that it could be anybody.

Hon NEIL THOMSON: Would the authorised representative be an individual or an organisation?

Hon SAMANTHA ROWE: It would be an individual.

Hon NEIL THOMSON: I take it here that the behaviour of a representative, an individual, is then subject to a complaint by anybody, and then the tribunal would revoke that authorisation. By what means would that authorisation be revoked?

Hon SAMANTHA ROWE: I am advised that the tribunal would make an order to have the authority revoked.

Hon NEIL THOMSON: Would the organisation of which the authorised representative was a member—namely, in this case, the Transport Workers' Union of Australia—be notified? I imagine the normal process would be that the tribunal would write to the TWU to say, "Person X has behaved in a certain manner, which is in breach, and, therefore, they are no longer able to operate as an authorised representative." Would that be the process?

Hon SAMANTHA ROWE: I am advised that the registrar would be empowered to contact the secretary of the registered organisation in writing.

Clause put and passed.

Clause 17: Section 35 replaced —

Hon NEIL THOMSON: This clause inserts proposed section 35, "Authorised representative's right of entry", which states —

> An authorised representative may enter any workplace where an owner-driver works, during working hours at the workplace, for the purpose of investigating any suspected breach …

The limitations include the act, the code of conduct or an owner–driver contract. At the heart of this is the extent of this power, and whether it is proportionate. On face value, it would seem to be proportionate, in the sense that it has to apply to the act. I guess the interpretation of that, in terms of its extent and practicality, is the circumstance in which a representative might go to a workplace and say that they have information relating to matters that are outlined in the Western Australian owner–driver's handbook, and the records that are to be kept by hirers are very explicit. I assume this handbook will be updated to meet the requirements of this bill. Will it just be a case of seeking records or will there be something else in the investigations that might be undertaken by the authorised representative? Will it be an open-ended investigation or will it be narrowed down to an officer just wanting the records, someone not giving up the records and the fact that they must satisfy the list of records in an updated handbook, which will refer to the new act? Will it be easy enough to determine?

We are trying to avoid going through this process. People will know that the weight of the law might apply. Hirers might have an incentive to provide that information, because no hirer will want an authorised representative searching through files randomly seeking information. How long is a piece of string when a search is undertaken? Will it just be to do with records? How long is a piece of string? Are we going to see offices overturned because the investigation will be open-ended?

Hon SAMANTHA ROWE: I am advised that it is probably a good idea to remember that this is not a search power. It is a right of entry to inspect records that are required to be held by the hirer. The Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010 state in schedule 1, division 7, item 12, that the hirer must record and keep for at least six years the following information for each owner–driver contract to which the hirer is a party: the name of the owner–driver; a description of the services provided under the contract; the name of the person who

operated the vehicle with which the services were provided; the date or dates on which the services were provided; the amount of the payment due for the services and how the amount was calculated; and an explanation of any deductions that were made from the amount due.

Hon NEIL THOMSON: That probably provides some reassurance for the discussion that we had earlier about the right of entry provisions. That could be complied with quite easily by a person who is abiding by the code of conduct, because that is what the code of conduct requires. That is important. There is nothing else to clarify on this matter. That completes my comments on the bill.

Clause put and passed.

Clauses 18 to 32 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON SAMANTHA ROWE (East Metropolitan — Parliamentary Secretary) [9.30 pm]: I move —

That the bill be now read a third time.

The ACTING PRESIDENT (Hon Jackie Jarvis): Members, I have received from the Deputy Chair of Committees a certificate in writing that this is a true copy of the bill as agreed to in the Committee of the Whole House and reported. The question is that the bill be now read a third time. All those of that opinion say aye.

Members: Aye.

The ACTING PRESIDENT: To the contrary, no.

Hon Neil Thomson: Acting Speaker.

The ACTING PRESIDENT: I think the ayes have it. Apologies, member; I was quite quick in rushing that through.

Hon Neil Thomson: I was going to make a contribution.

Hon Sue Ellery: Do you want to make a contribution? You can seek leave.

HON NEIL THOMSON (Mining and Pastoral) [9.30 pm] — by leave: I think it is worth me making a brief contribution to the third reading debate on the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022. I thank the parliamentary secretary for her cooperation and collaboration on this bill. As I said at the beginning of this process, the opposition supports the bill, and I absolutely make clear that we think this is a good measure. It was certainly interesting to hear during the second reading debate about all the wannabe truck drivers that we have in the house.

Hon Matthew Swinbourn: And actual truck drivers.

Hon NEIL THOMSON: And a few actual truck drivers. That is excellent.

For the record, I want to commend the industry. I think the industry does a tremendous job under very difficult circumstances. The owner–driver sector is very important because it fills a very big gap in the industry by providing flexibility for the logistics network; it fills the gaps that large companies might not otherwise fill.

An important part of my contribution to the third reading debate is that I will outline what was clarified in the discussion; I reiterate my thanks to the parliamentary secretary for persevering through some of the questions. The right of entry is very limited. We had a discussion about the number of matters that are taken to the tribunal. That varies a lot from year and year, as was reported in the Committee of the Whole. We saw that there is quite big variability, and I suggest that that might be affected by some of the economic circumstances that might exist. We are probably in good times at the moment for the industry. I know that there are some huge challenges with the availability of labour and having staff to drive those trucks. The owner–driver sector usually involves only one truck, but owner–drivers can sometimes have two or more vehicles in their fleet. As discussed earlier, a range of organisations provide services within the owner–driver sector. The right of entry is very limited and hopefully will not be required. By providing more explicit requirements in relation to records and the fact that entry will be allowed will mean that there will be further incentives for owners to provide those records. My understanding, from the debate in Committee of the Whole, is that once those records are provided, there will be no scope for a right of entry. Hopefully, that is how the system will work. I think it is important that there is collaboration between industry and that is certainly from a reflection of the discussions I have had with industry and a representative body for the hirers. In that respect, the opposition clarifies it support. There are a number of other provisions. There was a fair bit of discussion around what represents unfair terms. Again I thank the parliamentary secretary for clarifying that it is simply to provide more clarity and consistency for the tribunal in what matters it may have regard to, notwithstanding the subjectivity of those terms. We trust the tribunal. As the parliamentary secretary rightly pointed out, the Industrial Relations Commission is more than a person. Others are involved. I would not expect that much would change in its practice other than providing greater clarity going forward. That should not in any way unfairly weigh the scales of justice, so

to speak, in this quasi-judicial body in relation to the balance between drivers and hirers. I want the record to say that we support those clarifications. I think they are important and I trust that going forward we will see clarification on the updating of the supporting documentation. That documentation will be done quickly and we will be able to see these new provisions finalised in a relatively short time, from recollection sometime in the middle of next year when this new legislation will come into full effect. I thank the parliamentary secretary for her support in this process.

Question put and passed.

Bill read a third time and passed.

TRANS-TASMAN MUTUAL RECOGNITION (WESTERN AUSTRALIA) AMENDMENT BILL 2022

Receipt and First Reading

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

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.38 pm]: I move —

That the bill be now read a second time.

The purpose of this bill is to continue Western Australia's participation in the Trans-Tasman Mutual Recognition Arrangement by re-adopting the commonwealth Trans-Tasman Mutual Recognition Act 1997 under section 51(xxxvii) of the Australian Constitution. The current adoption act, the Trans-Tasman Mutual Recognition (Western Australia) Act 2007, terminates on 31 January 2023. Western Australia has been party to the intergovernmental agreement on the Trans-Tasman Mutual Recognition Arrangement since 1996. Western Australia commenced participation in the arrangement when the act commenced on 1 February 2008 for an initial period of five years. In 2012, the Western Australian Parliament agreed to extend the act for a further 10 years until 31 January 2023. The Trans-Tasman Mutual Recognition Arrangement seeks to facilitate trade between Australia and New Zealand by removing regulatory barriers to the movement of goods and the mobility of persons in registered occupations. These arrangements are based on two principles. Firstly, in respect of goods, the general principle is that goods that are produced in or imported into New Zealand and that can be legally sold in New Zealand may also be legally sold in an Australian jurisdiction without meeting further regulatory requirements and vice versa. Secondly, in respect of occupations, a person who is registered in New Zealand for an occupation is entitled to carry the equivalent occupation in an Australian jurisdiction once they have notified the local registration authority. This also applies vice versa; however, conditions may be imposed on registrations to achieve equivalence between occupations in different participating jurisdictions. A broad range of occupations are in scope including nurses, midwives, builders, plumbers, electricians and teachers. There are safeguards embedded into the arrangements, including the ability for states and territories to exclude certain goods such as firearms, hazardous substances and dangerous goods.

In 2015, the Productivity Commission conducted a review of the Trans-Tasman Mutual Recognition Arrangement and concluded that the arrangement is generally working well. The proposed amendments contained in the bill include: removing the timed termination of 31 January 2023, noting that Western Australia has now been participating for nearly 15 years; amending the existing termination by proclamation method to align with the Mutual Recognition (Western Australia) Act 2020 and trans-Tasman mutual recognition legislation in other states and territories; and requiring the minister to table the review of trans-Tasman mutual recognition arrangements in both houses of Parliament like the Mutual Recognition (Western Australia) Act 2020.

If the act is not amended prior to 31 January 2023, Western Australia would exit trans-Tasman mutual recognition arrangements, which may have consequences for the free movement of goods and services between Western Australia and New Zealand. Western Australia benefits from being part of trans-Tasman mutual recognition arrangements and should continue its participation.

Pursuant to Legislative Council standing order 126(1), I advise the bill is a uniform legislation bill. The bill will give effect to an intergovernmental agreement to which the government of the state is a party, and will introduce a uniform scheme for the automatic mutual recognition of occupational licences and registrations.

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

[See paper 1767.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.

HEALTH AND DISABILITY SERVICES (COMPLAINTS) AMENDMENT BILL 2021

Assembly's Message

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

House adjourned at 9.42 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

INVESTMENT AND TRADE OFFICES — STAFF AND RESIDENCES

903. Hon Martin Aldridge to the minister representing the Minister for State Development, Jobs and Trade:

(1) I refer to Western Australia's eight trade and investment offices and I ask, for each office please identify for each of the following years 2020–21, 2021–22 and 2022–23:

(a) the number of staff employed or engaged;

(b) the total cost of staff employed or engaged;

(c) the salary of the relevant Agent-General or Trade and Investment Commissioner;

(d) any additional allowances, payments or support provided to each identified in ;

(e) the cost to lease or own commercial premises; and

(f) the total cost of each office per annum?

(2) In relation to the residence of the United Kingdom Agent-General please provide:

(a) the location (including address) of the primary and any secondary residence of the Agent-General;

(b) are each of the residences identified in (a) leased or owned;

(c) on what date and for what term was each lease entered into; and

(d) please table the lease agreement executed?

(3) How is the salary and allowances for each Agent-General and Trade and Investment Commissioner determined and what explanation can be given for such significant disparity between them?

Hon Alannah MacTiernan replied:

The Department of Jobs, Tourism, Science and Innovation advises:

(1) (a)–(f) [See tabled paper no 1766.]

(2) (a) The Agent General's primary and only residence in the United Kingdom / Europe is in postcode WC2 London. For privacy and security, it is not appropriate to provide the Agent General's address.

(b) Leased.

(c) The lease was executed on 24 November 2021 for 36 months.

(d) See (2)(a).

(3) The Agent General is appointed by the Governor of Western Australia in accordance with the *Agent General Act 1895* (WA).

While the Agent General works to attract investment and grow trade opportunities for Western Australian businesses in the United Kingdom/Europe region, the position also performs an important state representational role in the United Kingdom. Mr John Langoulant AO has decades of experience across the public, private and not-for-profit sectors, extensive knowledge of the Western Australian economy and industries, and considerable experience undertaking reviews to support government reform agendas.

The State's four Investment and Trade Commissioners (for ASEAN, China, India-Gulf and North East Asia) are classified in accordance with the *Public Sector Management Act 1994* and relevant Commissioner's Instructions. The Public Sector Commissioner endorsed classification at Level 9 and as part of Other Management Executive. The Investment and Trade Commissioners were appointed following merit-based recruitment processes which were open to existing Western Australian public servants.

The Agent General and the Investment and Trade Commissioners receive various allowances or supports to help offset the disruption and higher costs of living associated with the posting and vary depending on location and the number of dependants accompanying them. The use of third party global mobility provider data is included in the evaluation of allowances or supports.

POLICE — REGIONS

925. Hon Martin Aldridge to the minister representing the Minister for Police:

I refer to regional Western Australia police resourcing and I ask, for each regional police district please detail the:

(a) authorised strength (by FTE);

(b) current police strength (by FTE); and

(c) number of vacancies (by FTE)?

Hon Stephen Dawson replied:

I thank the Honourable Member for the Question.

The McGowan Government is delivering 950 extra police officers over four years, the single largest increase in police officer numbers. There are 481 more police since the election of the McGowan Government. It is expected that over 400 new officers will graduate this year. FTE are deployed by the Commissioner of Police to address areas of greatest operational need.

The Western Australian Police Force advise:

(a) Authorised Strength (by FTE)

Data as at 30 September 2022: Goldfields–Esperance District – 239; Great Southern District – 195; Kimberley District – 242; Mid-West Gascoyne District – 274; Pilbara District – 249; South West District – 296; Wheatbelt District – 171.

(b) Actual Strength (by FTE)

Data as at 30 June 2017: Goldfields–Esperance District – 207.44; Great Southern District – 182.38; Kimberley District – 196.03; Mid-West Gascoyne District – 228.43; Pilbara District – 208.30; South West District – 240.68; Wheatbelt District – 149.56.

Data as at 30 September 2022: Goldfields–Esperance District – 218.3; Great Southern District – 188.8; Kimberley District – 224.0; Mid-West Gascoyne District – 259.7; Pilbara District – 238.0; South West District – 281.0; Wheatbelt District – 158.1.

(c) Number of vacancies (by FTE)

Data identifying officer numbers can vary daily due to a number of factors, including; natural attrition, leave without pay, and transfers between districts, and officers being attached to specific operations. The data includes all positions which are not substantively filled (i.e. internal vacancy) and which are still subject to advertisement/selection process. The Police Officer Deployment Unit issue transfer notices to successful applicants, following which an officer's physical arrival in a new position can take up to six weeks in Regional Western Australia. The data does not reflect officer numbers undertaking operations, or for those providing support functions, nor targeted deployments, which regularly boost local capacity. Data as at 30 September 2022: Goldfields–Esperance District – 16; Great Southern District – 7; Kimberley District – 19.5; Mid-West Gascoyne District – 14; Pilbara District – 8; South West District – 1; Wheatbelt District – 9.

KIMBERLEY PORTS AUTHORITY — SUPPLY BASE

928. Hon Dr Brad Pettitt to the Leader of the House representing the Minister for Ports:

I refer to the media statement '$1.3 billion to diversify WA and set up our State for the long-term' published on 12 May 2022, and specifically the $52 million Kimberley Ports Authority budget allocation announced "...for the construction of a supply base to support oil and gas operations in the Browse Basin, and for base infrastructure for an associated chemical storage facility in Broome", I ask:

(a) which Department proposed the allocation to the Expenditure Review Committee;

(b) has a business case been developed for the proposal and, if so, will the Premier table it:

(i) if no to (b), why not;

(c) has any independent cost-benefit and social/environmental risk analysis of the project been undertaken:

(i) if yes to (c), will the Premier table it; and

(ii) if no to (c), why not;

(d) which company or companies has the Government been in discussion with in relation to this project;

(e) where exactly is the proposed location of this supply base;

(f) will the Premier provide a map of the proposed location;

(g) how many hectares is the area proposed as a supply base;

(h) where can the public access and view the detailed breakdown of expenditure for this project;

(i) have any detailed plans been developed for the proposed site and where can they be viewed by the public;

(j) what is the proposed time frame for any site work commencing;

(k) has the government been in discussion with Woodside over this proposal and, if so, what has been the outcome to date of those discussions;

(l) what chemicals would be processed and stored at the proposed site and how much volume of each would be produced and stored; and

(m) according to the *2022–23 State Budget Paper No. 3* on page 202, "The expenditure is contingent on a contractual commitment by a third party to move a supply base to Broome, with the third party to repay the $52 million investment over a 20 year period". Where would a supply base be moved from and which third party would be involved?

Hon Sue Ellery replied:

(a) Kimberley Ports Authority.

(b)–(d) and (m) Kimberley Ports Authority is currently seeking advice on the legality, probity and confidentiality issues around the release of this information.

(e)–(g) Four hectares of Kimberley Ports Authority land on Port Drive has been identified for the Supply Base.

(h) Should the project proceed, cost analysis information will become available through the tender process.

(i) Such plans are in draft and will conclude as part of the tender process.

(j) If the project proceeds, it is proposed works would commence in approximately mid-2023.

(k) No.

(l) This will be finalised following the tender process.

ATTORNEY GENERAL — STATE LEGAL CASES — COST

929. Hon Nick Goiran to the parliamentary secretary representing the Attorney General:

I refer to your answer on 31 August 2022 to my question without notice 634 asked on 11 August 2022 in which you advised that the external legal costs and disbursements to the State in the two related Supreme Court actions involving the President of the Legislative Council were $23,146.10, and I ask:

(a) who were the external legal costs paid to;

(b) what were the disbursements;

(c) how many hours were recorded by the State Solicitor's Office in representing the Attorney General in both matters;

(d) how many hours were recorded by the Solicitor-General in representing the Attorney General in both matters; and

(e) what were the costs incurred by the Corruption and Crime Commission on each matter?

Hon Matthew Swinbourn replied:

(a) No external legal costs were incurred on behalf of the Attorney General, who was represented by the State Solicitor's Office and the Solicitor-General. External legal costs were incurred on behalf of Darren Foster, who was represented by McNally and Co;

(b) The disbursements incurred on behalf of the Attorney General consist of court fees and the cost of joint private facilitated settlement conferences;

(c) The total number of hours recorded in the State Solicitor's Office Time and Matter Costings system for representing the Attorney General in both matters is 1,244 hours; and

(d) The total number of hours recorded by the Solicitor-General in representing the Attorney General in both matters is 170.5 hours.

(e) The Commission incurred $241,548.59 (excluding GST) in legal fees defending *CIV 2717 of 2019 – President of the Legislative Council v Corruption and Crime Commission & Ors*.

The Commission did not incur any legal fees in *CIV 2716 of 2019 – Attorney General v President of the Legislative Council & Anor*.

MINISTER FOR TRANSPORT — PORTFOLIOS — STAFF

931. Hon Tjorn Sibma to the Leader of the House representing the Minister for Transport:

Regarding the workforce profile of the Minister's transport agencies, I ask:

(a) what is the total number of FTE staff employed in various media, publicity, promotion and communications roles at the Department of Transport, Main Roads WA, and the Public Transport Authority; and

(b) what is the annual salary cost for the employment of these officers?

Hon Sue Ellery replied:

(a)–(b) Each year, the Public Sector Commission publishes the 'State of the WA Government Sector Workforce Statistical Bulletin'.

The bulletin provides a detailed breakdown of the government sector workforce, including occupational profiles by Australian and New Zealand Standard Classification of Occupations (ANZSCO) groups and occupational groups by entity.

The bulletin for the 2021–22 financial year is expected to be published in November 2022.

PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT — STOCK ALERTS

932. Hon Colin de Grussa to the Minister for Agriculture and Food:

I refer to stock alerts reported to the Department of Primary Industries and Regional Development (DPIRD) by WA Police, and I ask:

(a) since 1 January 2022, how many stock alerts have been reported to DPIRD; and

(b) please identify the number of stock alerts received from:

(i) WAPOL Rural Crime Squad;

(ii) WAPOL Goldfields–Esperance District;

(iii) WAPOL Great Southern District;

(iv) WAPOL Kimberley District;

(v) WAPOL Mid West–Gascoyne District;

(vi) WAPOL Pilbara District;

(vii) WAPOL South West District; and

(viii) WAPOL Wheatbelt District?

Hon Alannah MacTiernan:

(a) 12.

(b) (i) 5.

(ii) 1.

(iii) 1.

(iv) Nil.

(v) Nil.

(vi) Nil.

(vii) 1.

(viii) 4.

POLICE — RURAL CRIME SQUAD

934. Hon Colin de Grussa to the minister representing the Minister for Police:

I refer to the Western Australia Police Rural Crime Squad and I ask:

(a) when did Western Australia Police form the Rural Crime Squad;

(b) what is the authorised strength by FTE of the Rural Crime Squad;

(c) what is the current strength by FTE of the Rural Crime Squad;

(d) how many members of the Rural Crime Squad have a background in agriculture;

(e) what training does each member of the Rural Crime Squad receive; and

(f) since 1 January 2022, how many Western Australia Police members have left the Rural Crime Squad?

Hon Stephen Dawson replied:

I thank the honourable Member for the Questions: The Western Australia Police Force advise:

(a) The Rural Crime Team was formed in August 2020.

(b) Five.

(c) Five.

(d) One.

(e) All members of the Rural Crime Team have completed the Western Australia Police Force general investigator course (two weeks), Detective Training School (six weeks) and a supervised two-year probationary detective development period and a further two-week Detective Training School (Investigative Level 5). Formal training is currently being developed for members of the Rural Crime Team in relation to handling of cattle and large animals and in November 2022 officers will travel to New South Wales to participate in a nationally accredited rural crime investigation training course hosted by the New South Wales Police Force.

(f) Three officers have transferred from the Rural Crime Team during 2022 with the subsequent vacant positions being filled through expression of interest and selection files.

TREASURER — REGISTER OF LOBBYISTS — CONTACT

935. Hon Wilson Tucker to the minister representing the Treasurer:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Stephen Dawson replied:

(a)–(g) Refer to Legislative Council Question on Notice 938.

DEPUTY PREMIER — REGISTER OF LOBBYISTS — CONTACT

936. Hon Wilson Tucker to the minister representing the Minister for Deputy Premier:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Stephen Dawson replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR EDUCATION AND TRAINING — REGISTER OF LOBBYISTS — CONTACT

937. Hon Wilson Tucker to the Minister for Education and Training:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Sue Ellery replied:

Please refer to Legislative Council Question on Notice 938.

PREMIER — REGISTER OF LOBBYISTS — CONTACT

938. Hon Wilson Tucker to the Leader of the House representing the Premier; Minister for Public Sector Management; Federal–State Relations:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Sue Ellery replied:

(a)–(g) On 30 June 2022, there were 256 lobbyists and 105 lobbying companies on the Western Australian Register of Lobbyist.

Lobbyists engage with Government from time to time. The nature of contact from lobbyists is broad and may range from an unprompted phone call or email or an in-person meeting.

Given the broad nature of the Member's question, which has been asked to all Ministers and their staff, the resources required to collate this information would be substantial. If the Member has a more specific question regarding a particular lobbyist or company, I will endeavour to provide a response.

MINISTER FOR STATE DEVELOPMENT, JOBS AND TRADE — REGISTER OF LOBBYISTS — CONTACT

939. Hon Wilson Tucker to the minister representing the Minister for State Development, Jobs and Trade; Tourism; Commerce; Science:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Alannah MacTiernan replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR EMERGENCY SERVICES — REGISTER OF LOBBYISTS — CONTACT

940. Hon Wilson Tucker to the Minister for Emergency Services; Innovation and ICT; Medical Research; Volunteering:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Stephen Dawson replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR REGIONAL DEVELOPMENT — REGISTER OF LOBBYISTS — CONTACT

941. Hon Wilson Tucker to the Minister for Regional Development; Agriculture and Food; Hydrogen Industry:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Alannah MacTiernan replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR CULTURE AND THE ARTS — REGISTER OF LOBBYISTS — CONTACT

942. Hon Wilson Tucker to the parliamentary secretary representing the Minister for Culture and the Arts; Sport and Recreation; International Education; Heritage:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Samantha Rowe replied:

(a)–(g) Please refer to Legislative Council question on notice 938

ATTORNEY GENERAL — REGISTER OF LOBBYISTS — CONTACT

943. Hon Wilson Tucker to the parliamentary secretary representing the Attorney General; Minister for Electoral Affairs:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Matthew Swinbourn replied:

(a)–(g) Please refer to Legislative Council Question on Notice 938.

MINISTER FOR MINES AND PETROLEUM — REGISTER OF LOBBYISTS — CONTACT

945. Hon Wilson Tucker to the parliamentary secretary representing the Minister for Mines and Petroleum; Energy; Corrective Services; Industrial Relations:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Matthew Swinbourn replied:

Please refer to LC QON 938

MINISTER FOR TRANSPORT — REGISTER OF LOBBYISTS — CONTACT

946. Hon Wilson Tucker to the Leader of the House representing the Minister for Transport; Planning; Ports:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Sue Ellery replied:

(a)–(g) Please refer to Legislative Council Question on Notice 938.

MINISTER FOR FINANCE — REGISTER OF LOBBYISTS — CONTACT

947. Hon Wilson Tucker to the minister representing the Minister for Finance; Aboriginal Affairs; Racing and Gaming; Citizenship and Multicultural Interests:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Stephen Dawson replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR CHILD PROTECTION — REGISTER OF LOBBYISTS — CONTACT

948. Hon Wilson Tucker to the Leader of the House representing the Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Sue Ellery replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR WATER — REGISTER OF LOBBYISTS — CONTACT

949. Hon Wilson Tucker to the minister representing the Minister for Water; Forestry; Youth:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Alannah MacTiernan replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR HEALTH — REGISTER OF LOBBYISTS — CONTACT

950. Hon Wilson Tucker to the Leader of the House representing the Minister for Health; Mental Health:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Sue Ellery replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR HOUSING — REGISTER OF LOBBYISTS — CONTACT

951. Hon Wilson Tucker to the Leader of the House representing the Minister for Housing; Lands; Homelessness; Local Government:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Sue Ellery replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR DISABILITY SERVICES — REGISTER OF LOBBYISTS — CONTACT

952. Hon Wilson Tucker to the parliamentary secretary representing the Minister for Disability Services; Small Business; Fisheries; Seniors and Ageing:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Kyle McGinn replied:

Please refer to Legislative Council Question on Notice 938.

MINISTER FOR ENVIRONMENT — REGISTER OF LOBBYISTS — CONTACT

953. Hon Wilson Tucker to the minister representing the Minister for Environment; Climate Action:

Has the Minister or their ministerial staff had any contact with any individual or company on the Register of Lobbyists during the 2022 calendar year and, if so:

(a) what are the dates for each meeting or contact;

(b) who was the lobbyist;

(c) what was the nature of the contact;

(d) where was each meeting held;

(e) who was present at each meeting;

(f) what was discussed at each meeting; and

(g) what company or individual was being represented by the lobbyist?

Hon Stephen Dawson replied:

Please refer to Legislative Council Question on Notice 938

NATURAL GAS CONSUMPTION — METROPOLITAN

955. Hon Dr Brad Pettitt to the parliamentary secretary representing the Minister for Energy:

Can the Minister please advise of the Perth metropolitan area's annual natural gas consumption for each of the past three financial years, broken down by:

(a) suburb or postcode; and

(b) local government area?

Hon Matthew Swinbourn replied:

The State's major gas distributor, ATCO Gas, operates the gas distribution network that supplies homes and businesses in Perth, Geraldton, Kalgoorlie and the south-west of Western Australia.

ATCO is a privately-owned company and does not publish suburb, postcode or local government area information regarding gas consumption within its supply areas.

LEGAL AFFAIRS — CHILDREN'S COURT AMENDMENT REGULATIONS 2022

959. Hon Nick Goiran to the parliamentary secretary representing the Attorney General:

I refer to the Children's Court Amendment Regulations 2022 , and I ask:

(a) what was the catalyst for bringing about these amendments to the regulations;

(b) who was consulted prior to these amendment regulations being finalised;

(c) did any person consulted raise any concerns;

(d) if yes to (c), what were these concerns;

(e) have the finalised amendment regulations addressed these concerns; and

(f) if no to (e), why not?

Hon Matthew Swinbourn replied:

(a) The 'Multi-Agency Protocol for Education Options for Young People Charged with Harmful Sexual Behaviours' has evolved over time and this step was considered an improvement.

(b) The President of the Children's Court and the Department of Education were consulted prior to, and during drafting, and were supportive of the amendments.

(c) No.

(d)–(f) Not applicable.