Parliamentary Debates

(HANSARD)

FORTY-FIRST PARLIAMENT

FIRST SESSION

2022

LEGISLATIVE COUNCIL

Tuesday, 16 August 2022

Legislative Council

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

CANNABIS — LEGALISATION

Petition

HON WILSON TUCKER (Mining and Pastoral) [2.02 pm]: I present an e-petition containing 784 signatures, couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled. We the undersigned …
>
> believe that cannabis is used legally and illegally by approximately 60% of the population. There is a significant overlap between recreational and medicinal use.
>
> Legalisation would allow for a regulated market that increases safety to consumers, improves safeguarding of minors, reduces criminality, and can provide significant tax income to state and federal governments.
>
> Legalisation would allow for the development of a cannabis industry which can benefit our local economy as well as the export industry. Industries that would benefit include natural supplement companies, tourism, and the hospitality industry.
>
> Currently our indigenous population in particular are impacted by prohibition, with for example mothers being incarcerated due to not being able to pay fines. This further contributes to inter-generational trauma and perpetuates a cycle of disparity.
>
> Positive benefits for the state would include reduced costs related to policing, court costs, and incarceration costs.
>
> We therefore request that the Legislative Council recommend to the Government that it introduce legislation to allow for the development of a regulated cannabis industry.
>
> And your petitioners as in duty bound, will ever pray

[See paper 1490.]

CHILD DEVELOPMENT SERVICES — INQUIRY

Petition

HON DONNA FARAGHER (East Metropolitan) [2.03 pm]: I present an e-petition containing 3 750 signatures, couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled. We the undersigned …
>
> residents of Western Australia respectfully request the Legislative Council to support the establishment of a parliamentary committee into the adequacy of child development services and related programs delivered in Western Australia.
>
> Timely access to early learning programs and child development services are pivotal to a child's overall wellbeing and development. The wait lists to access paediatricians, clinical psychologists, allied health specialists and other therapeutic services in the public health system are, however, too long and are causing significant challenges for children and their families living in metropolitan, regional and remote locations.
>
> We believe an inquiry is necessary to examine these services and other early years initiatives provided to support children and their families, including identifying any opportunities for improved collaboration and integration of services in both the government and non-government sectors. This includes consideration of providing allied health services directly in to government schools.
>
> And your petitioners as in duty bound, will ever pray

[See paper 1488.]

MARTU RESIDENTIAL FACILITY — NEWMAN

Statement by Minister for Regional Development

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [2.05 pm]: On Friday, it was my great pleasure to open the new Martu residential facility in Newman, a facility that will support Martu students from remote Martu communities to access high school and vocational opportunities.

In 2013, the Martu leadership from the Western Desert identified that improving education would be their first development priority. They recognised that their people largely missed out on the jobs and business opportunities associated with the mining boom because of poor education. I was approached to help the Martu. In 2014, we established the Martu Schools Alliance and, over the past eight years, we have looked at identifying and finding solutions to improve education outcomes for their children, while keeping them connected to country and their families.

In 2020, the Western Desert Lands Aboriginal Corporation's feasibility study into a residential facility in Newman was completed, and its preferred recommendation was to refurbish three houses to become a Martu student hostel as a five-year pilot project. The project, which received $4 million in funding from the McGowan government, involved converting three houses to provide separate accommodation for male and female students, and common administration and meeting places. The houses were kindly given by BHP to the Jamukurnu-Yapalikurnu Aboriginal Corporation, which was previously known as the Western Desert Lands Aboriginal Corporation.

The Martu student residential facility is an investment in bringing opportunity to Martu children so they can walk and succeed in two worlds. It will enable Martu young people to engage meaningfully in the Pilbara economy while retaining a strong connection to culture and country. The facility will provide pastoral and educational support for students who are transitioning from remote schools to the larger school in Newman. We hope it will be a game changer for kids growing up in Martu communities and will allow them access to quality secondary education. Already, the first two students from Jigalong have taken up residence.

The project was developed by the Martu Schools Alliance, in conjunction with the Jamukurnu-Yapalikurnu Aboriginal Corporation and the Pilbara Development Commission, and with the support of BHP and the McGowan government. A big thanks goes to all involved in delivering this project. We hope it will help transform opportunities for Martu students.

LAW REFORM COMMISSION — EQUAL OPPORTUNITY ACT REVIEW

Statement by Parliamentary Secretary

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [2.07 pm]: I rise to table the Law Reform Commission of Western Australia's report *Review of the Equal Opportunity Act 1984 (WA): Project 111 final report*. The Equal Opportunity Act was one of the most significant social reforms in this state's history when it was introduced by the then Labor government 38 years ago. It put Western Australia at the forefront of anti-discrimination law in Australia. However, since that time, community expectations regarding discrimination have progressed, and Western Australia now lags behind most other jurisdictions.

In 2019, the Attorney General asked the Law Reform Commission to provide advice and recommendations to the government on possible amendments to enhance and update the act. There has been overwhelming public interest in this project and the extensive discussion paper that was published last year. In response, the Law Reform Commission received 995 written submissions, including from the education sector, and undertook seven online and in-person public consultation sessions.

The final report makes 163 recommendations. The McGowan government broadly accepts most of the recommendations and will now commence drafting a new Equal Opportunity Act for Western Australia. The new act will bring Western Australia into line with other jurisdictions and ensure that the state has modern, fair and effective anti-discrimination laws that will make it easier for people in the community, including individuals, employers and service providers, to read and to understand their rights and obligations.

Without pre-empting the final form of a new equal opportunity act, as it is still subject to drafting and further consideration, the Attorney General has broadly committed to several key reforms. That includes removing the outdated disadvantage test for sexual harassment complainants, in line with the Community Development and Justice Standing Committee's report *'Enough is enough': Sexual harassment against women in the FIFO mining industry*; strengthening equal opportunity protections for LGBTQIA+ staff and students in religious schools; providing anti-discrimination protections to those who are trans, gender diverse or non-binary without the need for recognition from the Gender Reassignment Board of Western Australia; extending the prohibition against sexual and racial harassment to members of Parliament and Parliament House staff, judicial officers and court staff, local government councillors and staff, and unpaid or volunteer workers; protecting family and domestic violence victims from discrimination; introducing anti-vilification laws; and strengthening victimisation provisions.

The new Equal Opportunity Act will achieve a balance between the rights and interests of a wide variety of Western Australians and aim to ensure that employers are not unnecessarily burdened with complex legislation. It will streamline the operation of the Equal Opportunity Commission, which will be given broader discretion to dismiss trivial or unworthy complaints and to focus on its roles of complaint resolution and community education.

On behalf of both the Attorney General and me, I extend our thanks to all the people who contributed to this report, in particular the commissioners, The Hon Lindy Jenkins, Dr Sarah Murray and Kirsten Chivers, PSM.

[See paper 1489.]

PAPERS TABLED

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

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Point of Order — Eighty-sixth Report — Consideration of the 2020–21 annual reports — Government Response — Tabling

Hon PETER COLLIER: With regard to the daily notice paper, I notice that the government response to the Standing Committee on Estimates and Financial Operations' eighty-sixth report, *Consideration of the 2020–21 annual reports*, was due on 14 August 2022. I was wondering when we will get that response.

The PRESIDENT: Leader of the House.

Hon SUE ELLERY: The member is quite correct; I was advised that I would be tabling that today. I will chase that up because it is ready to go.

PETER DOOLEY — TRIBUTE

Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [2.15 pm]: It is with great sadness that I advise the house of the death of Peter Dooley on 14 August. Pete began his role as a parliamentary education officer in April 2017, retiring in December 2021. Pete was a teacher, a passionate creative educator and a man who loved Parliament and believed in democracy. He was open to every opportunity to engage with the community, always welcoming of new ideas and happy to share his knowledge and offer encouragement. He was loved and respected by his team and the broader parliamentary community. Pete's creativity and his in-depth understanding of the school curriculum was integral to the development of the civics and citizenship program run by Parliament House.

Prior to commencing at Parliament House, Pete had a varied work life. He worked with the Aboriginal Legal Service and with TAFE. He was a musician, a poet and a comedian. Pete's life experience and his commitment to reconciliation brought a richness to his delivery of the education program at Parliament House.

Pete died at home with his family. Our condolences to his wife, Jodi, his two daughters, Sian and Alana, and his beloved grandson, Logan. Details of Peter's service will be advised in due course.

ESTIMATES OF REVENUE AND EXPENDITURE

Consideration of Tabled Papers

Resumed from 11 August on the following motion moved by Hon Stephen Dawson (Minister for Emergency Services) —

> That pursuant to standing order 69(1), the Legislative Council take note of tabled papers 1270A–D (2022–23 budget papers) laid upon the table of the house on Thursday, 12 May 2022.

HON WILSON TUCKER (Mining and Pastoral) [2.17 pm]: Before I begin my remarks, I would like to thank the Leader of the House for being accommodating. I was away last week, a little under the weather, so I thank her because I believe this is the last time for contributions to the budget debate. It seems we have saved the best for last!

A member interjected.

Hon WILSON TUCKER: I feel better; thank you.

Although my contribution is a while since the tabling of the budget, it has allowed time for the census data to arrive. I am not sure whether members have had a chance to look at the census data. We all know that the census is a nationwide statistical survey that happens every four years. It gives us a breakdown of the demographics of this country and provides a snapshot of who we are as Australians. It also tells us a story of where we are going. This census is particularly interesting because it tells the story of a generational shift. For the first time in a very long time we are seeing the decline of the baby boomer generation as the largest age group in this country and the rise of the millennials. The millennial generation now equals the boomers at 21.5 per cent of the population—and rising. That breaks down to about five million people apiece, which is a significant portion of the population of this country.

For the benefit of *Hansard*, there are a few different generations that have names associated with them. We have the traditionalists, the silent generation, which is people born from 1928 to 1946. We have the baby boomers, born from 1946 to 1964. We have generation X, born from 1965 to 1976; and generation Y, the millennials, born from 1977 to 1995. Then we have generation Z, the centennials, who I believe are also called the iPad generation, born from 1996 to 2010. Members are probably asking themselves: why is this important? This shift signals the end of the boomer generation as the largest group. The baby boomer generation was the focus of a lot of policy by subsequent governments over a very long period; Liberal and Labor governments are both guilty of this. The boomers cemented themselves as the wealthiest generation in the history of this country. It contributed to what is called the generational divide, putting the younger generation at a disadvantage to the others in Australia.

The boomers have had a fantastic run. For the past 40 years, we have seen policy after policy giving baby boomers favourable outcomes and really cementing their place as the wealthiest generation by a country mile. As a millennial, it is my duty to do what we do best and that is get on my soapbox, have a bit of a whinge and point the finger squarely at the boomer generation for a lot of the injustices that we have experienced. The disparity that the younger generation is experiencing right now, in this country and certainly in WA, is based on all this policy. I am sure that members are very well acquainted with some of these policy examples that I will read out, and I will go through a few now.

The first policy is negative gearing. Negative gearing works, in an investment sense, when the capital gain on a person's property is such that it will offset any losses experienced in servicing the loan. Negative gearing works best when property prices are increasing. The baby boomer generation loves negative gearing because since the 1950s, property prices have done nothing but go up. Meanwhile, home ownership in subsequent generations has been declining. There are studies that show that negative gearing favours the wealthy. As I have pointed out, the baby boomer generation is the wealthiest generation of them all. Recently, the University of South Australia published a report, and Dr Braam Lowies, the lead researcher, was quoted as saying —

> … Millennials are finding themselves locked-out of the market as the Silent Generation and Baby Boomers retain a significant portion of the housing stock, much of which has considerable value and development potential due to its lot size and location.

It continues —

> Over three census periods (2006, 2011 and 2016) researchers found that 80 per cent of older generations were long-standing homeowners compared to only about 50 percent of Millennials.

Again, this speaks to the disparity in policies such as negative gearing that help create disparity between generations. This disparity is well documented and well known, but governments are too afraid to touch it. We saw Bill Shorten famously try to take this issue to two different elections and be unsuccessful. I believe that federal Labor has backed down from the policy, so it is a bit of a hot potato and there are no plans to touch it. Meanwhile, younger generations are finding it harder to get into the property market while policies like negative gearing incentivise people who already have a house; basically, if people have the capital, they are going to invest in another property. The housing market is simply a case of supply and demand. When there is less supply, prices go up, which makes it harder for the younger generation and a lot of families who are trying to break into the property market to buy a primary residence. Despite this need, people in the older generation have had a really good run. They have multiple properties under their belt and are therefore taking properties out of the market and driving up house prices.

The second policy is free tertiary education. Tertiary education became free in Australia on 1 January 1974, and the timing is not a coincidence. This was just in time for the baby boomers to start university. University was completely free and by the time the baby boomers were ready to graduate in 1989, fees were reintroduced. At the same time, another policy came along called the higher education contribution scheme. HECS was a great way for the baby boomer generation to avoid paying for their children's education. The baby boomers got a free ride with free education; they made some children and then they did not have to pay for their children's education. Meanwhile, those kids, who were the younger generation in Australia, were being saddled with large amounts of debt. This issue contributes to the concept of intergenerational wealth disparity.

The third policy is affordable housing. We have all seen a lot of statistics and media articles flying around about the cost of housing going up, and it has gone up significantly since the 1950s. Thirty years ago the average house cost only a few times more than the standard income. Right now, the average house price is 8.5 times the average income, which is up from 6.8 times the average income over the past two years. If members were to plot this out, they would see an exponential curve happening whereby wages are not keeping up with housing prices, and they have not done so in decades.

As we are all aware, to avoid lenders mortgage insurance, the standard housing deposit is 20 per cent. At today's prices—this is at a national level—it would take someone, on an average income, 11.5 years to save a 20 per cent deposit. That is a very long time. In WA, we are a little bit better off than the standard. We have lower house prices than a lot of the other capital cities around Australia, and it would take a person on a standard income 8.5 years to save for that 20 per cent deposit, which is still a long time.

According to the Property Council of Australia, the average house price in Perth is $527 000. If a person is saving for a 20 per cent deposit based on that amount, they will need $105 000, which will take someone, on average, 96.3 months, or eight years. However, as we have recently seen, housing prices have gone up. Therefore, if house prices were to rise by 10 per cent over the next 12 months and wages remain stagnant, which is what we are used to seeing in at least the last decade, it would take that same person 8.83 years to save. It just goes up and up. If we want to convert this idea into, let us call it, millennial speak, we have heard a lot of—how do I put this?—commentary from the media around the exorbitant lifestyles of millennials and our love for avocado toast. I personally love avocado toast, but I think it is a little bit ridiculous to think that if we just sacrifice our avocado toast, it will basically allow us to save for a deposit. I think the standard avocado toast costs about $20. It has probably gone up recently because the cost of living is going up.

Several members interjected.

Hon WILSON TUCKER: Is that cheap? It is probably more, but that is the number I am using.

Hon Peter Collier: No, you're getting ripped off, mate!

Hon WILSON TUCKER: Am I? Maybe that was in Sydney! It is around $20.

For that 20 per cent deposit, if a person wants to sacrifice their $20 avocado toast, it would mean skipping 5 250 meals of avocado toast. I have done a little bit of napkin math and, as morbid as it sounds, given my age, I probably have about 2 240 weeks left on this planet, or 15 680 days, which is a very sobering number. That would mean that I would have to give up, on average, 3.3 avocado toast meals a day for the rest of my life to save for a 20 per cent deposit.

Hon Kate Doust interjected.

Hon WILSON TUCKER: Potentially. This all sounds ridiculous—absolutely! But it just goes to highlight some of the ridiculous commentary we have heard about the lifestyle that millennials are leading and sacrificing the dream of home ownership in this country. I think there are a few other factors at play: family tax cuts, aged-care pensions and health care. The list really does go on.

The baby boomer generation and the older generation have contributed to climate change in a big way, without worrying about the ramifications of what they are doing to the planet. It has now fallen on the younger generations to pay back that capital.

I have had a bit of a whinge, as I rightly said I would. The good news is that the tide is turning. From a millennial perspective and a younger perspective, the tide is turning. The younger generation is now having its say in greater and greater numbers. We really saw this play out in the recent federal election. We now have a more progressive federal Parliament; the young vote has resonated in this country. A few different terms came out of the federal election. We heard the term "Greenslide", as I am sure the honourable member next to me is familiar with, but there was another term that was used by the media—that is, "youth slide". A stronger, younger voice has resulted in a more progressive Parliament. A lot of people are voting outside of the two-party system; I think around 33 per cent voted for minor parties and Independents. I believe that is the youngest movement away from the majors in the history of this country, which is quite astounding. Personally, I think that is a fantastic result for democracy; a healthy crossbench is good for the people. I certainly wish all the Independents well in their term.

We know that the younger generation typically votes for issues rather than policy and parties. The older generation is a bit more rusted on. It is willing to look past the fallacies of a government that has lost its way for a few terms, and it is more traditionalist, following the two-party lines—Liberal and Labor. They think that voting for an Independent or a minor party is a throwaway vote. That myth and fallacy was proven incorrect in the last federal election. This election has really put governments and the two-party system on notice: basically, ignore the people and, certainly, the younger generation at your peril.

I have waxed lyrically around federal policy and the results of the federal election, but what does all this mean for WA? According to the recent census, the median age in WA is actually 38, which is the millennial generation. Now, it is true that WA did buck the national trend a little bit in the federal election; Labor did quite well and people tended to vote for the more mainstream parties. I think a lot of that can be attributed to the shine, if you will, or the afterglow of our Premier post-pandemic and the popularity that he currently enjoys. We know that shine will not last forever and WA will likely fall in line with the national trend that people are willing to vote away from the major parties. We have really seen the centre of gravity shift in Australian politics. If young voters feel that they are not being represented on issues that they care about, they are willing to vote against traditional parties and candidates who are not representative of them.

What do younger voters and millennials care about? Federally, issues about integrity in government, women's rights and climate action played out, and the cost of living and housing affordability were certainly at the centre of the debate. I will look at some of these issues through the WA lens and what the WA government has been doing. Let us start with climate action. We saw a strong mandate for more action on climate change at the federal level. We have not seen much action on climate in Australia in the last decade. We were held ransom by a few marginal coal seats in Queensland for a very long time. Australia has really become a bit of a pariah on this issue and a bit of a laughing-stock on the world stage. WA's track record is not fantastic either. WA has actually increased its emissions; since 2005, emissions have actually gone up 20.8 per cent. To put this in context, WA was one of the worst-performing states and Australia was one of the worst-performing countries on a number of key metrics in the OECD. We are basically the laggard of the laggards and the worst of the worst when it comes to climate change.

For members who were not paying close attention, the state government recently announced a public emissions reduction policy to reduce emissions to 80 per cent below 2020 levels by 2030. Members could be forgiven for being mistaken that this is an all-of-state policy that encompasses the private sector, which is the main contributor to emissions in WA. Unfortunately, that is not the case. We have missed the deadline to reduce global warming temperatures by 1.5 degrees pre-industrial, as was called out in the latest Intergovernmental Panel on Climate Change report. Meanwhile, the McGowan government continues to green-light oil and gas projects around this state. I just want to say that I am not against industry; we are an exporting state in an exporting nation. We have a lot of resources that other countries need and want. Look at the gas industry: gas has been earmarked as a transitional fuel while we build up our renewable capability globally. Hydrogen is coming on board, but it is going to take some time

for industry to get behind it. Another big commodity that we export is iron ore. We are all familiar with it. I recently had the privilege of touring the Dampier port up in Karratha with Hon Dr Brian Walker. Industry is certainly moving in the right direction; the Rio Tinto rail network is moving to electric-powered vehicles, along with BHP. We know that Fortescue Metals Group is using hydrogen to kill off its diesel fleet. Industry is moving in the right direction, but it is taking a very long time. It is really balancing shareholder interests with the sentiment of the global community, and the government is certainly not in a hurry to push it along. Industry is currently getting a free ride from the government on this issue. The policy announcement was public; it was not private.

The state government has an aspirational 2050 target for net zero, but it does not have any teeth. It is purely aspirational; it exists on a piece of paper without a plan to actually get there. A lot of these resource companies have a golden handshake deal, if you will, on royalty agreements. They rely on finite resources but continue to make massive profits. I believe finite resources belong to the WA people. The industry can be pushed a lot harder by the government and become better corporate citizens. The McGowan government has an opportunity to respond. We have seen a really strong mandate by the people at the federal level. They are demanding more action on climate change and they want businesses to operate in a more socially responsible way. The people, the business community and the global community have spoken on this issue. The only one not listening is the WA government. All we are really getting now is window-dressing and words, and we are still waiting on the details.

I turn now to the cost of living and housing. I do not know about you, President, but when I picture the Australian dream, I picture a house with a patio, and because we live in WA, there is probably a four-wheel drive out the front, a couple of dogs running around the backyard, and maybe a Hills hoist and a barbecue. That Aussie dream is in serious jeopardy; it is really becoming unattainable for a lot of younger people, and that is really what we saw in a lot of the polling that was conducted in the lead-up to the federal election. There are a lot of young Australians who cannot picture a scenario in which they will be able to save up for a deposit and actually own a home. It will be incredibly sad if the younger generation cannot envisage a situation in which they can become home owners and they are stuck in a perpetual rent cycle.

We know that WA is at the epicentre of interest rate rises at the moment, but we are all susceptible to cost-of-living pressures around the country. When we look at housing affordability, we can see that there are a couple of vulnerable cohorts. There is a cohort of people who are close to being able to save up the 20 per cent deposit and service a mortgage, but then they are hit with interest rate rises and cost-of-living increases, and that has driven the bar higher and higher and has meant that those people will really now struggle to be able to put that 20 per cent deposit down on a house and stop renting. Meanwhile, interest rates have gone up and the banks have passed those rises on to renters through their landlords. Another cohort of people who are much more vulnerable is people who are currently renting around the lower end of the spectrum and are barely hanging on. The rents they pay are increasing and the cost of everyday goods and services is also going up. These people are at real risk of being pushed out the bottom end and falling into the social housing trap, which is obviously a terrible outcome for them, and puts pressure on the state government to continue providing social housing, and we currently have a very considerable social housing waitlist in this state.

We are at the epicentre of interest rate rises, and housing prices are skyrocketing as well. I refer to a University of South Australia report by Dr Braam Lowies. He has been quoted as saying —

> "In Australia, owning your own home has always been the great Aussie dream. But each year, this dream is becoming further out of reach for younger Australians," …

As I mentioned previously, the rate of home ownership in this country has been declining since the 1950s, for successive generations. Here in WA, we have had several building companies collapse. Their profit margins are wafer-thin and we have seen rising costs of materials and labour. Companies have fallen. We have outdated home indemnity insurance that does not realistically cover the cost of building a property, which is leaving WA families out of pocket. I have heard reports about some of the time lines for building a house having ballooned out to a year and a half; I am sure some members have probably heard even worse horror stories. Meanwhile, people building properties are susceptible to increases in the costs of labour and materials while they wait for their pad to go down. Things are even worse in the regions; we can probably times everything by two. The costs of materials and labour, and competition with resources companies, are really, really challenging. Interest rates are also typically higher for people looking to build a house or buy one in the regions.

This all paints a very bleak picture, but what can we do? We can look at resizing. This is about encouraging empty-nesters to downsize their properties. We have some of the largest houses by size in Australia—I think that is based on the fact that we have a lot of space in WA—but we also have an ageing population. There are people out there whose children have left home and who are sitting on very large properties—in some cases, five by threes, four by twos et cetera—and they no longer need all that space, and as they get older, it becomes harder and harder to maintain their properties. We should be incentivising them to downsize their properties by reducing interest rates for people who want to downsize. We have the unfortunate title of being the most sprawling city in the world, which is not something to be proud of, and we have seen ballooning costs and wait times for building greenfield properties. We can be more intelligent with our existing stock and encourage people to downsize to make way for younger families who are looking to use a larger house as their primary residence.

A couple of other suggestions that have been echoed by the Property Council of Australia in a recent pre-budget submission include the government reducing red tape for approvals and reducing costs for the development approval process. We know that the approval process makes up a significant portion of the cost of developing and building a property. Another suggestion is to increase density targets in appropriate locations. I know the state government hands down density targets to councils, which is a good thing, but there is certainly an opportunity here to be a lot more ambitious and aggressive. Really, the decisions that the government makes today will echo in the decades to come. This is a situation that has developed over many, many years, and it is going to take many, many years to reverse it, but we can certainly start today.

We recently had some commentary from the Premier on a thing called the Global Liveability Index, which looks at all the cities around the world and a number of different liveability factors and gives them all a rating. Perth usually does quite well; normally, we are in the top 10, but this year we actually dropped down to around thirtieth. We had perfect scores in a number of categories, including lifestyle and education, but the one on which we really dropped the ball was culture; I think we scored about three out of 10. Perth and Western Australia have not bounced back since the pandemic in that regard. The Perth CBD has not been a vibrant place for a number of years; it has been a bit of a ghost town for some time, but certainly became more of one after the pandemic. We need to encourage more vibrancy in the CBD and the suburbs, along with encouraging density targets. Rather than building out, we need to build up and try to break the 30-plus minute commute spiral that we find ourselves in in Perth.

I now want to touch upon political representation of the younger generation. The younger generation is typically under-represented politically; historically, the older generation has been better represented. It could be argued that with age comes wisdom, but I think it would be more accurate to say that wisdom occasionally comes with age! If we want to make decisions for the people we represent, we need people who are representative of the population, and that includes age. It is about having younger people who are going through the same life journey as the people making decisions, rather than the older generation talking down to the younger ones.

I did a bit of fact-finding and found some interesting statistics about the make-up of the chambers, here and in the other place. The Legislative Council is 19 per cent millennial, 31 per cent boomer and, surprisingly, 50 per cent gen X. Unfortunately, that is not representative of the population of Western Australia. Both chambers, in aggregate, are 15 per cent millennial, 34 per cent boomer and 51 per cent gen X, so we do have a way to go. One lesson that we should be learning from the federal election is that people want the political class to be representative of them and they are willing to vote against candidates and parties that are not. I think both major parties should be encouraging the younger generations to enter politics to have a voice and a say in representing the younger constituency that is emerging as a strong and leading voice in this country.

To summarise, the government has been handed a massive resource windfall—we all know about it—and there is scope to act on what the people are asking for and what the people want. We are a little bit parochial out here in the west, but that does not mean just making decisions that are in the interests of resource companies and the government's own party. The government needs to listen more closely to what the younger generation has to say, otherwise it will not be in government for much longer.

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.51 pm] — in reply: The minister representing the Treasurer, Hon Stephen Dawson, has asked me to acknowledge all the contributions made by honourable members during this debate. Those contributions have been noted, and I commend the motion to the house.

The PRESIDENT: The motion is —

> That pursuant to standing order 69(1), the Legislative Council take note of tabled papers 1270A–D (2022–23 budget papers) laid upon the table of the house on Thursday, 12 May 2022.

The question is that the motion be agreed.

Hon Dr STEVE THOMAS: Madam President, I am not going to give a long speech; I am just going to make sure that the appropriate member for the next business item —

The PRESIDENT: Order, member; I do not believe there is capacity for you to do that, but I will get advice.

The Leader of the House has closed the debate with her reply, so all that is left for me to do is to put the question, as I was about to do.

Question put and passed.

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Eighty-sixth Report — Consideration of the 2020–21 annual reports — Government Response — Tabling — Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [2.53 pm]: Members, before we move on to order of the day 5, I have a brief statement about the point of order raised by Hon Peter Collier earlier. The government's response to the eighty-sixth report of the Standing Committee on Estimates and Financial Operations, *Consideration of the 2020–21 annual reports*, of June 2022, was tabled today by the Minister for Emergency Services.

PARLIAMENTARY COMMISSIONER AMENDMENT (REPORTABLE CONDUCT) BILL 2021

Second Reading

Resumed from 11 August.

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.54 pm] — in reply: I thank Hon Nick Goiran for his indication that the opposition will be supporting the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021. I will seek to address the seven issues that the member raised in his second reading contribution.

The first was the issue of resourcing. The commissioner—that is, the Ombudsman—has been resourced to undertake the reportable conduct scheme. Resourcing was appropriated in the 2021–22 budget, with $6 611 000 over three years, commencing in 2022–23. The resourcing provided was based on very careful consideration of the expected workload of the commissioner, following extensive consultation with stakeholders and the experience of other jurisdictions, particularly New South Wales and Victoria, that undertake a reportable conduct function.

For the first year, 2022–23, there will be nine FTEs, at a cost of $1.4 million. Notifications will commence for relevant state government and selected non-government institutions and training and capacity building for institutions, including institutions scheduled to commence in 2023–24. Examples of non-government institutions in phase 1 include non-government schools, out-of-home care services, childcare services and health service providers. In the second year, 2023–24, there will be 15 FTEs, at a cost of $2.4 million. Notifications will continue for institutions that commenced in 2022–23 and notifications will commence for the remaining institutions, with ongoing engagement, training and capacity building for all institutions. Examples of non-government organisations commencing in phase 2 include disability services, religious institutions, accommodation and respite services, and other non-government services for children not already commenced in phase 1. If there is any further need identified upon taking the jurisdiction, the commissioner will address the need at that stage.

The Ombudsman will be committing significant resourcing to working very closely with all sectors, including the not-for-profit sector, to ensure that the obligation to report will be supported fully and properly by the Ombudsman and communicated in a way that is least burdensome for entities and results in the least possible workload for them. Importantly, the Ombudsman's office has already consulted extensively with entities, including the not-for-profit sector, and will continue to do so, both in the implementation of the reportable conduct scheme and in an ongoing way. Everything that the Ombudsman does in relation to training and resourcing for entities, including the not-for-profit sector, will be done during implementation and into the future. In short, the Ombudsman's role in training and resourcing is a permanent role for the Ombudsman, and the Ombudsman will have a dedicated team with a dedicated permanent recurrent budget.

The second issue the honourable member raised was training for organisations. The commissioner will work closely and cooperatively with stakeholders in key sectors and individual organisations included in the scheme to provide education, advice and guidance to assist entities to build their capacity to meet their reporting obligations for the scheme. This will include developing tailored guidance and support materials and education programs for each sector in collaboration with peak bodies for the sector, with which the Ombudsman already has very well developed relationships, and providing advice and guidance to relevant entities to assist them in their handling of individual investigations.

The provision of education, advice and assistance is set out in the functions of the commissioner, and include educating and providing advice to relevant entities to assist them to identify and prevent reportable conduct; notifying and investigating reportable allegations and reportable convictions; and supporting relevant entities to make continuous improvement in the identification and prevention of reportable conduct and the reporting, notification and investigation of reportable allegations and convictions. Everything that the Ombudsman will do in relation to training and resourcing for entities, including the not-for-profit sector, will be done during implementation and in the future. The framework and time lines are that the first year will be phase 1, the second year will be phase 2, and then it will be ongoing for all institutions. Practically, this will include training, a help hotline, pro forma forms and information sheets, among other things. The Ombudsman has extensive experience in providing this sort of support to entities.

The third issue that was raised by the honourable member was the seven-day period for notification. Providing information within a seven-day working time frame will facilitate the protection of children. The notice that will be required to be provided to the Ombudsman within seven working days will include information that would be readily available to the head of the entity, such as whether the police have been contacted about the matter; details of the reportable allegation or the reportable conviction; and the risk assessment made and the risk management action taken, or proposed to be taken, by the relevant entity to protect the child or other children while the matter is investigated. At the time of notification, it will not be required that an investigation by the entity has been completed or even commenced. The outcome of the entity's investigation and the action taken by the entity following a finding of reportable conduct is a separate report that must be given to the commissioner, under proposed section 19Z, as soon as practicable after the end of an investigation. Accordingly, legal or industrial advice would not normally be required in order to notify the commissioner of a reportable allegation or reportable conviction. However, in the event that it was, an extension may be sought from the commissioner as set out in proposed section 19U(4)(a).

Based on extensive consultation with stakeholders by the Ombudsman's office, the time frame of seven working days was selected to strike a balance between the importance of responding expeditiously to serious matters while also allowing sufficient time for the relevant entity to identify that the allegation is a reportable allegation, take initial risk-management action and prepare the notice. The initial draft of the bill had a time frame of three working days for notification, similar to that in Victoria. Based on feedback during the initial consultation, this was changed to seven working days, similar to that in New South Wales. This feedback also supported including provisions that the head of the entity be required to provide only the information of which they are aware, and can seek an extension from the Ombudsman. These changes were included in the bill.

During consultation on the green bill, there were three submissions that raised the seven-day time frame; one suggested 14 days and two suggested that notification should be as soon as practicable. Meetings were held with all three of these stakeholders and the explanation for the seven-day time frame was provided, including the option of extension to further accommodate their concerns. The option of seeking an exemption from providing certain information was proposed. The stakeholders indicated that they were satisfied with the explanation. Provision for exemption has now been included in the bill. Based on this consultation, provisions have been included to enable the heads of relevant entities to meet this time frame and provide additional information later, if required. This includes providing for the relevant entity to only provide information of which it is aware in proposed section 19U(3); a request for extension for providing the notification in proposed section 19U(4)(a); and a request for an exemption from providing certain information in the notification in proposed section 19U(4)(b). The Ombudsman intends to establish systems to make it as simple and efficient as practicable for entities to make such requests. The Ombudsman will be working collaboratively with entities, including developing guidance material, so that the report requirements are understood. The approach in other Australian jurisdictions supports the government's approach. The requirement that the head of the entity provide a written notification or report of reportable allegations and reportable convictions of which they become aware to the oversight body is included in the legislation for all other jurisdictions with established reportable schemes. In New South Wales, the notification must be within seven business days and there is a penalty for not complying. In Victoria, notification must be within three business days after the head of the entity becomes aware of the reportable allegation, and more detailed information must be provided within 30 days. There is a penalty for not complying with this requirement. In the Australian Capital Territory, a report must be given within 30 days after the head of the entity becomes aware of the allegation or conviction, or another period allowed by the Ombudsman.

The fourth issue raised by the honourable member was around the definition of an investigator. The broad definition of "investigator" in the bill is consistent with the definition in New South Wales' Children's Guardian Act 2019, which defines an investigator as "a person conducting an investigation on behalf of the head of a relevant entity, including a delegate." The office of the Ombudsman has consulted those responsible for reportable conduct schemes in New South Wales and Victoria and I am informed that the expertise of investigators has not been an issue for their jurisdictions. To provide for this matter in the bill may have the unintended consequence of entities, including small entities, hiring external investigators at significant cost in situations in which it is not necessary, especially as they can and will get guidance from the commissioner. Nonetheless, the office of the Ombudsman will work closely and cooperatively with stakeholders in key sectors and individual organisations included in the reportable conduct scheme to provide education, advice and guidance to assist in building their capacity to meet and comply with this scheme. This will include developing tailored guidance, support materials and education programs for each sector in collaboration with peak bodies for the sector, and providing advice and guidance to organisations to assist them in their handling of individual investigations. The Ombudsman intends to include information on the qualities expected in an investigator in the guidance and support materials and education programs for entities. Further, the Ombudsman will be informed of the name and contact details of the investigator under proposed section 19W(1)(b) when the investigator is engaged by the head of the organisation, and will be able to assess whether investigators are suitably qualified as part of the Ombudsman's role to monitor investigations. It is noted that some of these allegations can be very complex and will require specialist skills to investigate. This is, however, currently the case. In modern, well-governed entities, heads of entities would already be undertaking an investigation if they received an allegation of child abuse by an employee, including engaging specialist support and advice if required.

The fifth issue raised by the honourable member went to whether the government should consider deleting proposed sections 19ZH(3)(b) and 19ZH(3)(c). Provisions for disclosing information about the progress and findings of the investigation and the action taken in response to the findings by the child who is the subject of the conduct being investigated and a person who has parental responsibility for that child are included in the legislation for all other jurisdictions with established reportable conduct schemes. In Victoria and the ACT, these provisions are permissive rather than mandatory; the information may be disclosed. In New South Wales, the information must be disclosed unless the person disclosing the information is satisfied that the disclosure is not in the public interest. The provisions in this bill are consistent with two out of three of the other jurisdictions—Victoria and the ACT—and, in New South Wales, although information must be disclosed, there is provision that it will not be disclosed if it is not in the public interest. The permissive provisions in the bill are based on the Victorian and ACT legislation. In addition to promoting a nationally consistent approach, disclosure has not been mandated in the bill as it may be inappropriate in some circumstances; for example, when the child does not have the capacity to understand the

disclosure, when the person with parental responsibility has been a perpetrator of abuse against the child who is the subject of the alleged abuse, or where there is a historical case when contacting the alleged victim or person with parental responsibility would not only require significant resources but also may re-traumatise them. During the consultation process it was recognised that, as a general principle, information would be disclosed unless there was a good reason not to, with key circumstances in which information should not be disclosed included the bill. Consistent with other states, this principle will be reflected in the Ombudsman's guidance material and will be subject to oversight by the Ombudsman's office. As part of its education and capacity building function, the Ombudsman's office will be supporting organisations to responsibly disclose investigation information. The child or their parents will also be able to make a complaint to the Ombudsman if they are not satisfied with the disclosure of information. In this context, proposed section 19ZH(3)(b) relating to disclosure of information to parents when the child has sufficient maturity and understanding to consent and does not consent, and proposed section 19ZH(3)(c) relating to circumstances prescribed by regulation, could be deleted leaving the decision about disclosure discretionary in these circumstances. Guidance about releasing information in these circumstances will be included in the Ombudsman's guidance and support materials and will be subject to monitoring by the Ombudsman's office. The decision will also be informed by the paramount principle, under proposed section 19K, that any person performing functions under the reportable conduct scheme must have the "best interests of children as the paramount consideration". The other circumstances in which information must not be disclosed will be retained. These are circumstances in which disclosure would put the wellbeing of the child or the safety of any other person at risk, or contravene the Children and Community Services Act 2004, section 124F, "Confidentiality of reporter's identity" or section 240, "Restrictions on disclosing notifier's identity", or compromise a police investigation or other certain investigations.

With respect to the sixth item raised by the honourable member about protection for a person who makes a report about the head of an entity, under the bill, a relevant employee of a relevant entity who becomes aware of a reportable allegation or reportable conviction that relates to the head of the entity must report the matter to the commissioner. Proposed section 19V(2) states —

> A person may disclose any information to the Commissioner that the person believes on reasonable grounds —
>
> (a) reveals reportable conduct involving the head of a relevant entity; or
>
> (b) is otherwise relevant to a reportable allegation involving the head of a relevant entity.

The bill provides protections for people making a report, including people making a report about the head of the entity to the commissioner. These protections expand existing protections under the Ombudsman's legislation to provide significant protections from liability under section 30AA and victimisation under section 30B for people undertaking their responsibilities under the scheme. This includes protection for people who make a report or notification of a reportable allegation or reportable conviction or act as a witness in an investigation. The bill provides for protection from liability for a person acting in good faith who gives a report, notification or information to the commissioner or the head of the relevant entity or who gives information for an investigation, does not incur civil or criminal liability or liability to be punished for a contempt of court, is not taken to have breached any duty of confidentiality or secrecy imposed by law, and is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct. These protections are similar to those in other WA child protection legislation, including the Children and Community Services Act 2004 and the Working with Children (Criminal Record Checking) Act 2004.

I turn to protection from victimisation. A person cannot do anything likely to be to the detriment of another person who may in the future make a complaint, provide information in the course of or for the purposes of any investigation under the act, make a report to the head of a relevant entity or the commissioner or give a notification to the commissioner of a reportable allegation or reportable conviction, provide information for an investigation of a reportable allegation or reportable conviction to the commissioner or the head of a relevant entity or exercise a power or perform a duty imposed by the act. The penalty is $8 000 or imprisonment for two years.

With regard to protection from publishing identifying information, a person must not publish identifying information for a child who is the subject of reportable conduct or a person making a reportable allegation or reportable conviction to the head of the relevant entity or the commissioner. The seriousness of publishing such information is reflected in the penalty of two years' imprisonment or $8 000. This is consistent with the existing penalty for victimisation.

The seventh issue that the honourable member raised with respect to the act is protection for the entity. Under the bill, if the head of a relevant entity becomes aware of a reportable allegation or reportable conviction involving a person who is an employee of the relevant entity, the head of the entity must notify the commissioner. Proposed section 19V(1) states —

> The head of a relevant entity may disclose any information to the Commissioner that the head of the relevant entity believes on reasonable grounds —
>
> (a) reveals reportable conduct involving an employee of the relevant entity; or
>
> (b) is otherwise relevant to a reportable allegation involving an employee of the relevant entity.

The entity will have the same protections it has now under industrial legislation and other legislation that requires it to report externally, including obligations to report to police and regulatory bodies, mandatory reporting, and for government organisations to the Corruption and Crime Commission. The bill also provides for specific protections for the head of a relevant entity who notifies the commissioner of reportable allegations or reportable convictions. These provisions expand existing protections under the Ombudsman's legislation to provide significant protections from liability under section 30AA and victimisation under section 30B for people undertaking their responsibilities under the scheme. This includes protection of people who make a report or notification of a reportable allegation or reportable conviction or act as a witness in an investigation. The bill provides for protection from liability for a person acting in good faith who gives a report, notification or information to the commissioner or the head of a relevant entity or gives information for an investigation, does not incur civil or criminal liability or liability to be punished for a contempt of court, is not taken to have breached any duty of confidentiality or secrecy imposed by law and is not taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct. These protections are similar to those provided in other WA child protection legislation that I have already referred to.

With regard to protection from victimisation, a person cannot do anything that is likely to be to the detriment of another person because they have made or may in the future make a complaint, provide information in the course of or for the purpose of any investigation under the act, make a report to the head of a relevant entity or the commissioner or give a notification to the commissioner of a reportable allegation or reportable conviction, provide information for an investigation of a reportable allegation or reportable conviction to the commissioner or head of a relevant entity or exercise a power or perform a duty imposed by the act. The penalty for that is $8 000 or imprisonment for two years. That deals in some detail with the seven issues the member raised about the bill.

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 Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: This is a 27-clause bill. At the outset, I thank the Leader of the House for the response on behalf of the government to the second reading debate. I make the observation that this is perhaps an example of when there is some benefit in having a short adjournment between the start of the second reading debate and the conclusion of it.

Hon Sue Ellery: I want to place on the record that I thought the response I was given by these officials was outstanding. I wish every agency would follow their lead.

Hon NICK GOIRAN: It is a good segue to what I was going to say. I am not sure whether in this instance the explanation is because of the short adjournment of a few days between the start of the second reading debate and the conclusion of it or because the Ombudsman's office has been intimately involved in the passage and preparation of this bill or, indeed, it could be a combination of the two. In any event, it is the case that the response that has been provided was most comprehensive and it is appreciated by the opposition.

At the outset, I might also note, through the chair to the Leader of the House, that the response sufficiently captures four of the seven issues. Three issues need some further interrogation. With respect to resourcing, training and the two elements on protections, the responses were most comprehensive and there is no real need to pursue those matters any further. By way of some interim notice, as we consider these 27 clauses, at some stage I would like to pursue the other three elements, dealing with, firstly, the seven working day time frame, secondly, the notion of the investigator, and, thirdly, restrictions on disclosure. Before we get to that, there is one final introductory remark from me before my first question. In terms of the 27 clauses, I might add that the opposition's primary questions, which will not come as any surprise, relate to clause 7. When we get to clause 7, they will be quite extensive; otherwise, most of the other clauses, from our perspective, can be passed without comment.

Beginning with clause 1, I note for the Leader of the House, who is in her representative capacity for the Minister for Child Protection, that the recommendation made in the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse from December 2017 was—I think both the Leader of the House and I made mention of this in our second reading contributions—that state and territory governments establish nationally consistent legislative schemes and reportable conduct schemes based on the approach adopted in New South Wales that obliges heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees. The Leader of the House made mention of the fact that the government has had regard to not only the New South Wales model, but also, from what I gather, the Victorian and the ACT models. Noting that the royal commission has asked for us all to work together to establish nationally consistent legislative schemes, how consistent is this scheme that is currently before us when compared to those in the other states and territories?

Hon SUE ELLERY: There are only three jurisdictions that have done it. The approach taken was to be as consistent as possible, but when there was a difference between those three, Western Australia chose the best for Western Australia. When it was necessary to consult, it went with the views of the Western Australian people who were consulted.

Hon NICK GOIRAN: The Leader of the House gave one example in her reply about the issue of the disclosure restrictions, as I have coined them. The approach that was taken by the government—we will look at this in more detail when we get to the relevant clause—was consistent with Victoria and the ACT, and differs from the New South Wales model. I think the Leader of the House said in her reply that the government chose to be consistent with two out of three of the models. Are there other examples in the 27 clauses where this occurs?

Hon SUE ELLERY: I also referred in my second reading reply to the time required—that is, the number of days within which the head of an entity must provide the initial report to the commissioner. In the Victorian model, it was three days; Western Australia chose seven days. There were variations within that as well. I will just check whether there was anything else.

I can advise that when I was talking before about the number of days within which after becoming aware of reportable conduct the head of the entity has to report to the commissioner, there was one jurisdiction—I think it is the ACT—that has 30 days. The royal commission took the view that that was actually too long and kind of erred against the principle of protecting the child in the first instance. I do not have a list, honourable member, but there are some other areas in other provisions set out in clause 7 where there is a difference between jurisdictions. As I described earlier, the same approach—the principle, if you like—was taken when there was a difference between jurisdictions in that we chose the best for Western Australia. I can bring these to the member's attention as we get to them, but I do not have a list of them.

Hon NICK GOIRAN: One of the areas in which there is this divergence is what I would regard as the reporting time frame. As the Leader of the House said, Victoria has three days, the ACT has 30 days and Western Australia is taking the approach of seven working days. The other is the disclosure restrictions. The Leader of the House does not have a list, at this stage at least, but is it fair to say that to the extent that there are inconsistencies in the national approach, they will be found in clause 7? We can unpack that further when we get to clause 7, which is where, as I have foreshadowed, the majority of the questions lie. Perhaps I will be guided by the Leader of the House about how she might want to tackle that when we get to clause 7. Clause 7 in itself runs from page 4 of the bill through to 40. I can indicate that I have questions on the vast majority of those individual proposed sections.

Hon SUE ELLERY: I am happy if the member wants to start by tackling themes, if you like, and where that might crossover between related clauses. We will see how we go.

Hon NICK GOIRAN: I think that is probably a good approach and I note that there are six subdivisions in that clause, so perhaps we might be able to tackle the questions by subdivision.

Does this bill capture instances when the reportable conduct might lead to the death of a child?

Hon SUE ELLERY: I am advised yes.

Hon NICK GOIRAN: Has there been specific consultation with the coroner in that respect?

Hon SUE ELLERY: I am advised that the member would be aware, given the Ombudsman's other role with respect to child death reviews, that the Ombudsman has an ongoing working relationship with the coroner. I am advised that there was not specific consultation on the provisions of this bill, but the Ombudsman would consult with the coroner if that was required and they do have a well-established working relationship.

Hon NICK GOIRAN: Therefore, if the death of a child arises because of reportable conduct, does it automatically then meet the test of being a child death that is subject to investigation by the Ombudsman?

Hon SUE ELLERY: No, not necessarily. If the honourable member casts his mind back to those provisions, that relates to children in the care of the state, so it would depend if that were the circumstance.

Hon NICK GOIRAN: We could consider in it two categories—that is, those deaths of children who were in care of the state and those that were not. With respect to the first category, if there is reportable conduct and it leads to the death of a child who is in the care of the state, by virtue of the existing provisions in the parliamentary commissioner's act and his existing roles and responsibilities, he would then take an inquiry into that death. If the child is not in the care of the state, who would then undertake an inquiry into the death?

Hon SUE ELLERY: Depending on the circumstances, we imagine in the first instance it would be the police and it may subsequently be the coroner as well.

Hon NICK GOIRAN: If we compare and contrast those two scenarios, in the first instance, there is no danger of there being any, if you like, duplication of effort because the Ombudsman is involved in both instances. However, in the second scenario, the Ombudsman has been notified of reportable conduct but, tragically, the conduct has led to the death of a child and that child's death is then being investigated by the police and/or the coroner, albeit the coroner would be waiting for a brief from the police in any event. How does the Ombudsman intend to deal with—I would not say conflict—that situation to minimise the prospect of duplicative investigations?

Hon SUE ELLERY: Otherwise they may run concurrently; is that what the member is talking about?

Hon Nick Goiran: That is right. That would be a possibility.

Hon SUE ELLERY: The short answer is that a police investigation takes precedence, and I am advised the provisions in the bill will provide for that to occur. I think for all practical purposes, there would be discussions between the Ombudsman and police, and that agreement would be reached on how to go forward, but the intention is not to impede the investigation by the police when they may well obviously be pursuing criminal proceedings.

Hon NICK GOIRAN: That is encouraging to hear, and it is consistent with what the opposition was told in the briefing by the Ombudsman. Which provision in the bill ensures that the police investigation will take precedence?

Hon SUE ELLERY: I am advised it is proposed section 19ZG.

Hon NICK GOIRAN: Proposed section 19ZG is found at page 35 of the bill and refers to the commissioner and also the Commissioner of Police—"commissioner" in this instance being the Ombudsman. Page 36 indicates the commissioner, being the Ombudsman —

> … or the head of the relevant entity may —
>
> (a) suspend the investigation or finding until otherwise advised; and
>
> (b) take steps to manage any risks while the investigation or finding is suspended.

Does that mean this notion of the police investigation taking precedence is ultimately discretionary on the part of the Ombudsman or the head of the relevant entity?

Hon SUE ELLERY: Yes. But, honourable member, we go further down that page and look at —

> (4) Before making a decision under subsection (2)(b) about the steps to be taken to manage risks, the Commissioner or the head of the relevant entity must consult with, as the case requires —
>
> (a) the Commissioner of Police or the officer in charge …

Et cetera.

Hon NICK GOIRAN: It might be a timely opportunity to get to the bottom of one of the issues that was raised in the second reading debate: the breadth of the investigator. One of the remarks that was made was that modern organisations would already be doing investigations anyway. Might it be the case that a modern organisation, as the minister described them, might presently, in the absence of the reportable conduct scheme, take the approach that it has received information and its protocol or procedure is to immediately report that matter to the police? The modern organisation will then not do any internal investigation and the like. It will just be satisfied that it has complied with its responsibilities by reporting the matter to the police. I imagine that that would be not uncommon for modern organisations. Will that approach still be available to an organisation or an entity notwithstanding the passage of this bill?

Hon SUE ELLERY: Yes. I am advised that under subsection (2)(b) of proposed section 19J, "Object and principles", on page 13, criminal conduct or suspected criminal conduct should be reported to the police.

Hon NICK GOIRAN: I agree that that is what the legislation says and that is an important object and the principle of the legislation, and that is that criminal conduct or suspected criminal conduct should be reported to the police. That is an important, at the very least, aspiration. However, the distinction is that we will be imposing as a matter of law this reportable conduct scheme. These modern organisations must comply with the provisions in the reportable conduct scheme. They do not currently need to do so. What I was saying earlier is that at the moment their practice might be to say, "I have had this information. I am very deeply concerned about it. I am now going to report the matter to the police and I will leave it with them", and they will be sufficiently satisfied they have done the best they can at that point in time. Although the objects and the principles will encourage them to continue to do that, my understanding is that, at present, it could be argued that that would be inadequate. They would not have fully complied with their obligations by doing so. My question is: if they did that and simply said, "Look, our practice always has been we just report this matter to the police; they are the best people to investigate this matter", and considering what the minister said earlier about police investigations taking precedence, will that be sufficient for an organisation to have complied or might this modern organisation still find itself needing to implement another element, whether that be reporting the matter to the Ombudsman as well as the police?

Hon SUE ELLERY: I think it will depend a little on the circumstances. Irrespective of whether they report to the police, they are going to be required under this legislation to provide that report within seven days of becoming aware of reportable conduct or an allegation thereof. I will get advice, but I imagine that the commissioner will have a look at what they have to provide, which is, basically, "Okay, what have you done so far?"; and, if they have not referred it to the police, I suspect the commissioner's office would do that.

Hon Nick Goiran: Different story, sure.

Hon SUE ELLERY: I am just going to get advice on the substance of the member's question. There are two elements, honourable member. In the first instance, when the entity provides that initial notification, they will be required to

identify whether they have referred it to police, and the Parliamentary Commissioner for Administrative Investigations' office will monitor that. The commissioner's office will then have two options. The office can say to the entity, "You should report that to the police", or of its own volition can report it to police. Then there is a third element at proposed section 19P(1), which states —

> The Commissioner may exempt the head of a relevant entity from commencing or continuing an investigation.

One of the reasons that exemption might be provided is that the matter is being dealt with by police.

Hon NICK GOIRAN: Thank you for that, minister. That is helpful, but I want to tackle the reverse of that situation. In the scenario that the minister helpfully set out, the entity goes to the Ombudsman and thereafter a course of action might take place. The Ombudsman might say to the entity, "You should report this matter to the police", or the Ombudsman might say that they will exempt the entity from doing an internal investigation and the like. I am particularly mindful of the reverse scenario in which the entity has gone directly to police first, rather than to the Ombudsman.

Hon Sue Ellery interjected.

Hon NICK GOIRAN: Understandably, from their perspective, they think they have gone to the highest investigative authority in Western Australia—the experts in the field of looking into child sexual abuse and the like. I suspect neither the government, nor the opposition, nor the Parliament want to trap people through procedures for no particular purpose. At the end of the day, if police have been informed and are actively investigating a matter of child sexual abuse, that is a good thing and it is consistent with the objects and the principles of the legislation. What I would not want to see is that we then say to the entity, "Look, we've caught you out. You have reported it to police but you have failed to report the matter to the Ombudsman, and now you will be chastised and a penalty will be applied against you." Has that come up in the consultation process? As part of that process, is there going to be some form of direct communication from the police to the Ombudsman? It is the reverse of what we were talking about earlier, whereby the police say that it is a matter under the reportable conduct scheme that the Ombudsman needs to know about and they will have a conduit, or a shared information technology system, that will deal with that.

Hon SUE ELLERY: I will get some advice in a minute. While I am getting that advice—I am sure the member picked this up in the briefings he received—my sense of this is that the approach to be taken by the commissioner will be very much an educative one. There will be education and training provided, but we are not going to capture everybody in that. We will not capture everybody who is already running a business or those people who set up a business maybe five months after that educative public discussion has occurred. My sense of it is that there will be a deliberate consideration by the commissioner's office that it is about assisting people, the entities, to meet their obligations rather than taking a blunt-instrument approach in the first instance. I will check whether there is anything further I can add to that.

There are two things. First, in the discussions with the other jurisdictions where this is already in place, the method, or approach, that I described with the commissioner taking an educative role rather than a blunt-instrument approach is what has happened in those jurisdictions as well, so there are no cases of somebody being used as the poster boy or girl for doing the wrong thing. Secondly, I am advised that there are provisions within the legislation that will require ongoing consultation between the commissioner and police. That is not a provision that will require or mandate the police to notify the commissioner, but in the course of having regularly scheduled formal consultation processes, it is anticipated that they will have agreements about when they should be notified, what it should look like and how it should be done. It will not be mandated but it is anticipated that there will be a close working relationship and mechanisms will be put in place so that both sides talk to each other when they need to.

Hon NICK GOIRAN: The bill applies to government as much as it does to the private sector. If there is a scenario in which the reportable conduct has occurred within the Western Australia Police Force itself, that would then trigger a need for police—presumably, the Commissioner of Police as the head of the entity—to report to the Ombudsman, and that seems appropriate. Perhaps we will not be able to tackle this issue completely when we consider this bill, but it might be worth the government noting it for the next iteration of the legislation. It seems to me there would be some benefit in, at the very least, considering an obligation on the part of police to notify the Ombudsman of all such instances. It would at least close the gap. I am heartened to hear that the intention of the government and the Ombudsman is to not take a heavy hand on the entities, particularly if they have already reported to police, but it seems there is an opportunity to close that information loop by simply having police understand, as a matter of practice—perhaps they will do this in any event—the need to provide the information directly to the Ombudsman so that there is no gap. I make that point as an observation. I very much doubt there will be sufficient time, let alone appetite, to look at amending the legislation to deal with that. I thank the minister for those heartening responses on the approach that will be taken by the Ombudsman, including comparing it with the experience in other jurisdictions.

I now look at the role of the Commissioner for Children and Young People. To what extent will this new role, new function, that the Ombudsman will be taking on intersect with that of the Commissioner for Children and Young People?

Hon SUE ELLERY: I am advised that the same consultative arrangements that apply between the commissioner's office and police for these provisions will apply between the commissioner's office and the Commissioner for Children and Young People's office, in that there will be regular consultation on matters of interest to both.

Hon NICK GOIRAN: The Commissioner of Police is expressly mentioned in the bill before us, and presumably was consulted about the bill.

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: Can the same be said for the Commissioner for Children and Young People?

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: To be clear: the Commissioner for Children and Young People was consulted about the bill but is not necessarily referenced in the bill.

Hon SUE ELLERY: On page 45, under clause 12, which will insert proposed section 22AA(4), it states that the commissioner may consult with any of the following: the Commissioner of Police, the Commissioner for Children and Young People and then there is a list.

Hon NICK GOIRAN: Minister, did either the Commissioner of Police and the Commissioner for Children and Young People raise any concerns about any of the provisions in the bill?

Hon SUE ELLERY: No. They did not raise any concerns that were not resolved through the consultations. If it is helpful to the honourable member—I think he raised this in his speech in the second reading debate—I have been advised that during the consultation process, which was fairly extensive, a number of themes were raised. One of them was the definition of "reportable conduct". Additional information was provided to stakeholders, and they were satisfied with that information. Regarding the interface with other regulatory systems, they commented on the interface between the proposed scheme and other regulatory systems, including the potential duplication of notification requirements and investigations, which goes to the member's point. The Ombudsman outlined the themes that I have described in answer to the member's questions, and stakeholders were satisfied with that information.

Hon NICK GOIRAN: Minister, I am looking at that provision on page 45 that allows for consultation or the sharing of information by the Ombudsman with four officers—albeit, as I understand, for the third and fourth officer, the same CEO is being referred to there. When we look at those—if we like—three individuals, we can easily identify, and already have in the earlier dialogue, the role of the Commissioner of Police. It is obvious when we are dealing with this matter why the Ombudsman might need to have a dialogue and consultation with the Commissioner of Police. It is also obvious why they might need to refer to the director general of the Department of Communities, because they may have information about a child who is at risk and who might need to be considered as a child who needs to be taken into care. But it is a little less obvious with respect to the Commissioner for Children and Young People. It goes to my earlier question about the intersection between this new role that the Ombudsman will take and the role of the Commissioner for Children and Young People.

Why was it decided that it would be important for the Ombudsman to have the power to share information with the Commissioner for Children and Young People, who, ordinarily, under her legislation, does not have a role in individual cases, but deals with matters at only a systemic level?

Hon SUE ELLERY: If I may, I will see whether the advisers think that I need to add anything to this.

The member is quite right. The Commissioner for Children and Young People's role is a kind of systemic policy advice role, if I can describe it in its broadest terms in that sense. Therefore, for those purposes, I would imagine there would be down the track—not at the beginning—issues that are brought to the attention of the Commissioner for Children and Young People about how this regime is rolled out that the Commissioner for Children and Young People might have a view that the policy may need to be tweaked to take account of the experience of children under the terms of the regime. That is not something that I think is going to happen immediately, but there may be other matters from time to time. Previous Commissioners for Children and Young People have done reports on all manner of things, including some that overlapped into matters affecting children in the care of the state. I am just going to check in case there is anything further that I need to add. There is nothing further to add to that.

Hon NICK GOIRAN: Is this sharing of information between the Ombudsman and the Commissioner for Children and Young People an approach that is consistently taken in the other jurisdictions?

Hon SUE ELLERY: I am advised that the other jurisdictions have this function sitting in the same area of government as the function for their equivalent Commissioner for Children and Young People, so that is the difference. This sits with our Ombudsman. I think that is probably a quirk of history because our Ombudsman has also taken on the child death review function and a range of other functions, so it makes sense to add this one.

Hon NICK GOIRAN: Is the minister indicating, then, that in the other jurisdictions—New South Wales, Victoria and the ACT—this role that we are about to give to the Ombudsman is undertaken by the Commissioner for Children and Young People in those other jurisdictions?

Hon SUE ELLERY: I will check. I do not know whether it is the person or whether it sits within that area of government. I am advised that it is the equivalent commissioners, but I am also advised that those commissioners, for example, also have responsibility for their equivalent working with children check, which is not the same here.

Hon NICK GOIRAN: Therefore, in New South Wales, is it the Commissioner for Children and Young People who will have this role with respect to the reportable conduct scheme—the same in Victoria and the same in the ACT?

Hon Sue Ellery: One of them is called the children's guardian, but —

Hon NICK GOIRAN: That is in Victoria, I think.

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: Yes. This then leads to the next question, minister. Why was the decision taken to give this role to the Ombudsman rather than to the Commissioner for Children and Young People? Was that something that was actively considered?

Hon SUE ELLERY: I think what I am being advised is that in those other jurisdictions, they are bigger—I am going to use the word "entity", but I do not mean entity in the sense of the bill. They are bigger entities and they have a combined function that is not just a policy advice role; they are also providers of various enforcement arrangements, whereas in Western Australia, those roles have been split. But as the Ombudsman's role already deals with matters related to, for example, child death review, it was deemed that it would be most appropriate and it would fit best with the Ombudsman's office.

Hon NICK GOIRAN: This will be a comment rather than a question, minister, on this point. It troubles me how much we seek to give to the Ombudsman in Western Australia. This is not a criticism directed at just this government because it is something I have observed over four terms of Parliament. It seems that governments of various persuasions almost reflexively, or instinctively, provide these new, expanded roles to the Ombudsman. It was mentioned in the reply to the second reading debate that in the first year, as I understand it, another nine full-time equivalent staff will be provided to the Ombudsman at a cost of $1.4 million, and in the second year it will be 15 full-time equivalents at $2.4 million. To the extent that I commend the government for looking at the resourcing issue and making sure that the Ombudsman will be adequately resourced to undertake this very significant role, one could argue that those 15 full-time equivalents at $2.4 million could just as easily have been provided to the Commissioner for Children and Young People, and that organisation could have undertaken this child-focused role. The Ombudsman has an enormous remit in Western Australia, not only with regard to children, but we also have a specialist organisation and, in fact, an officer of the Parliament—I understand the Commissioner for Children and Young People reports directly to the Parliament—who could, arguably, just as easily take on this role in their specialist capacity. I think it was the McGowan government, although it might even have been the Barnett government, or both, that gave the Ombudsman responsibility to oversee various administrative functions undertaken by police with regard to covert operations and the like. That is a quite distinct role for the Ombudsman and very different from what we are talking about here, which is understandably very child-focused. The point I am making now is not going to be addressed by this bill; it would require wholesale changes, and the opposition and I are not suggesting that that should be the case at this time. But for the benefit of the further consideration of government in this forty-first Parliament, I implore the government to not necessarily, from here on in, send every new function and role to the Ombudsman, who already has an enormous responsibility, but to give due consideration to specialists like the Commissioner for Children and Young People.

That takes me to my next question. Looking at the reportable conduct schemes in the other three jurisdictions that have moved in this area, being New South Wales, Victoria and the ACT, it appears that the government or perhaps the Ombudsman's office has undertaken some inquiries with those three other jurisdictions. What was the nature of those inquiries and can anything be provided to Parliament, either now or in the not-too-distant future, that summarises the interactions between the Western Australian Ombudsman and the reportable conduct scheme providers in the other jurisdictions?

Hon SUE ELLERY: I have not seen anything that can be tabled, but I will just check. I am advised that the Ombudsman's office visited each of the three jurisdictions very early on and has had subsequent telephone conversations about specific things, but that has not been pulled together in one list.

Hon NICK GOIRAN: The minister mentioned earlier that, as far as we know, there has not been an instance in one of the other jurisdictions in which someone might have been captured for failing to provide a report to the relevant entity—let us say the Commissioner for Children and Young People or the guardian in the relevant jurisdiction. There has not been, if you like, a conviction for that, in circumstances in which that particular entity or person has already reported the matter to the relevant local police force. That was encouraging to hear, and at the very least, it is instructive for the Ombudsman here to take the approach that has already been indicated. That said, are we aware of other convictions that have arisen as a result of the penalties that are in place in the other jurisdictions that we are looking to impose here?

Hon SUE ELLERY: We are not aware. If the member is interested, I could probably find out, but the advisers here are not aware of any. They would have to go and check.

Hon NICK GOIRAN: Is that "not aware" in the sense of "we don't know" rather than "to the best of our knowledge, there hasn't been any in the other jurisdictions"?

Hon SUE ELLERY: To the best of their knowledge, there has not been any.

Hon NICK GOIRAN: Sure, in which case, if it has been investigated at some level or inquired into at one level, there is no need to continue to pursue it, but it probably reinforces the point that the Ombudsman will take an educative approach rather than a heavy-handed approach, as appears to have been the case in the other jurisdictions.

Turning to a new theme, what responsibility will a head of an entity have if a third party hires out their premises? One can imagine that a local government authority would regularly hire its facilities out. What responsibility would a head of an entity have if a third party were to hire their premises and reportable conduct occurred?

Hon SUE ELLERY: It would be the responsibility of the entity that did the hiring of the venue, unless the local government contracted that third party to provide some service on behalf of the local government. But if it was someone holding a team-building exercise in a community hall, that would be a different relationship from the local government engaging someone to run after-hours school care or something.

Hon NICK GOIRAN: So the distinction will be: a pure and simple hire of a premises or facility will not, in itself, trigger the threshold of being considered an "employee" of the entity, as I think it is termed in the bill. We are here talking about an employee of the local government—that is the scenario we are using—and the term "employee", which we will look at more closely when we get to the relevant clause; it includes volunteers, contractors and so on, but the simple hiring out of a facility does not meet that threshold. It would be different if they were expressly contracting a particular service provider.

Hon Sue Ellery: Correct.

Hon NICK GOIRAN: On a different theme, will the reportable conduct findings that will be made as a result of this new scheme cause a reassessment of a person who has a working with children card check?

Hon SUE ELLERY: It is the intent of government to give effect to that. We will not see it in this bill, but it is the intent of government to give effect to that.

Hon NICK GOIRAN: That is encouraging to hear. What might be the mechanism through which this effect will be given? Will it be a situation in which, because some other reforms are intended, there will be changes to the Working with Children (Criminal Record Checking) Act 2004 or some policy or procedural manual—that type of thing?

Hon SUE ELLERY: The relevant minister has made clear that the working with children provisions were subject to review. As I understand it, this matter has been captured in that.

Hon NICK GOIRAN: One might hear that as an indication that, in due course, there could be some reforms to enshrine that expectation. In the interim, until such time as that happens, what confidence can we have that the reportable conduct scheme findings will make their way to the CEO as defined in the Working with Children (Criminal Record Checking) Act 2004? By virtue of that information being shared with that individual, triggering an assessment or reassessment, is there going to be a Premier's circular, minister's directive or something like that?

Hon SUE ELLERY: It will be somewhat limited. I understand what the member wants to know. There are provisions in here for consultation and discussion and working together with the relevant CEO. I think the member can assume that the matter will be dealt with in the not-too-distant future, but it will be under another piece of legislation.

Hon NICK GOIRAN: I will move on from here, but I think the indication the minister is giving to the chamber is that this is near top of mind for government at the moment.

Hon Sue Ellery: Very top of mind!

Hon NICK GOIRAN: I will move to the rollout of the scheme amongst entities. I appreciate that the minister touched on this to some degree in her reply. Is there a convenient time line that can be provided to the house as to which entities will be captured during which period of time moving forward?

Hon SUE ELLERY: The advisers are checking whether there is anything else that I need to add. In the first year, the financial year 2022–23, notifications will commence for relevant state government and selected non-government institutions and training and capacity building for institutions, including institutions scheduled to commence in 2023–24. Examples of non-government institutions in phase 1 include non-government schools, out-of-home care services, childcare services and health services. In the second year, 2023–24, notifications will continue for the institutions that I have already described and commence for the remaining institutions, with ongoing engagement, training and capacity building for all institutions. Examples of non-government organisations commencing in phase 2 include disability services, religious institutions, accommodation and respite services, and other non-government services for children that have not already been commenced in phase 1. I will check whether there is anything I need to add to that. That is all the information.

Hon NICK GOIRAN: Further to that, I turn to clause 25 of the bill, on page 56. It goes over two pages. The column 1 items are public bodies, providers of education services, providers of health services, providers of out-of-home care services, providers of childcare services and providers of youth justice services. Clause 27 of the bill, on pages 58 and 59, sets out three bodies: religious bodies, providers of disability services and providers of accommodation and respite services for children. Is it the intention that the first list, the ones in clause 25, are phase 1 and the ones in clause 27 are phase 2?

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: Let us assume that this bill passes the house unamended this week—we will get to the clause 2 debate momentarily. Is it the intention for what I am going to describe as "clause 25 entities" to be captured by the scheme in the current financial year and for the "clause 27 entities" to be dealt with next financial year?

Hon SUE ELLERY: It will depend a little bit on when it is actually implemented, but, yes, that is the general intention.

Hon NICK GOIRAN: I have three other themes to capture under clause 1. The first is on the penalties that are set out in the bill. How were the penalties in the bill determined? I imagine there will be some reference to other jurisdictions. Can the minister confirm whether that is the case and the extent to which there was a divergence of approach from the other jurisdictions, noting that the way in which some jurisdictions describe entities is different?

Hon SUE ELLERY: The officers did look at the other schemes, but they also looked at the provisions in the Children and Community Services Act in Western Australia and the penalties for offences of a similar nature relating to mandatory reporting—those concerning a written report being provided as soon as possible if an oral mandatory report is given, reporting to the CEO about a mandatory report, and the confidentiality of that report. The officers looked at the other jurisdictions and at those provisions.

Hon NICK GOIRAN: I appreciate that what I am about to say is going to take a subjective judgement on the part of the minister and her advisers, but were there instances of what I would describe as a manifest difference between the Western Australian act and the legislation of the other jurisdictions? I appreciate that there may be what could be described as small differences in approach. The minister will know if there were manifest differences, because they would have required active consideration rather than just mirroring the approach that has been taken in the other jurisdictions or under the Children and Community Services Act. Were there any manifest differences in the penalties applied; and, if so, what were they?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: The penultimate point to raise about clause 1, from my perspective, is on the oversight of investigations. It appears that the intention of the bill before us is for the Ombudsman in Western Australia to have an oversight role when entities undertake their own investigations on reportable matters. I understand that the bill will also allow, from time to time, at the discretion of the Ombudsman, for his office to undertake an investigation. Who will oversight those investigations?

Hon SUE ELLERY: They will be subject to review by the State Administrative Tribunal.

Hon NICK GOIRAN: Is the minister saying that if there is a complaint about the way in which the Ombudsman fulfils their role and functions under the new scheme, a person might be able to take that matter to the State Administrative Tribunal?

Hon SUE ELLERY: That is correct.

Hon NICK GOIRAN: That will be of some comfort, but it is not the same as the oversight that will be provided by the Ombudsman for internal investigations. An entity will undertake an investigation and, as I understand it, the Ombudsman is required to monitor that investigation, keep apprised of the outcome, assist, educate and facilitate an efficient and effective investigation. I would describe that as perhaps a proactive and very hands-on oversight role. SAT has a more reactive oversight role—more a role of review. Is there no intention by government for there to be any other type of oversight provided? I compare and contrast that with the Corruption and Crime Commission, for which a parliamentary inspector has oversight; indeed, a joint standing committee also has oversight of its role. Will there be any oversight other than the State Administrative Tribunal?

Hon SUE ELLERY: I thank the member. I could see where he was going part way through his question, so I asked the advisers. There is no intention to have the equivalent of a parliamentary inspector–type oversight or, indeed, a parliamentary committee.

Hon NICK GOIRAN: Before I move to the final theme here, I make this observation for the benefit of government advisers. I think this once again demonstrates why it would be worthwhile to consider, in this and future instances, giving the Commissioner for Children and Young People this role, because there is a parliamentary committee that provides express oversight of the Commissioner for Children and Young People, much like there is for the Corruption and Crime Commission. In situations whereby, in this instance, the Ombudsman is going to take more than just an oversight role and will have the power to undertake their own investigations, like the CCC does, somebody needs to oversee those investigations. Simply leaving it to the judiciary in the form of the State Administrative

Tribunal or the Supreme Court will not provide the same type of oversight. I think this is something that ought to be considered when this scheme comes up for review, particularly when we consider the approach taken by other jurisdictions, and also with any further matter that is going to be given to the Ombudsman, who continues to be taking on more and more roles. I note that another bill is on the weekly bulletin for this week, under which we will be looking to give the Ombudsman further responsibilities for inquiries into charitable trusts in Western Australia.

The final theme dealing with this matter is the situation of the drafting of the bill before us—that is, the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021. Who was responsible for briefing parliamentary counsel for the drafting of this bill?

Hon SUE ELLERY: It was the Ombudsman's office.

Hon NICK GOIRAN: In this place, the Leader of the House is representing the Minister for Child Protection and the Department of Communities. Was the department that the minister expressly oversees and is responsible for not involved in the briefing of parliamentary counsel on this matter?

Hon SUE ELLERY: That department did not do the briefing of parliamentary counsel. As I understand it, the minister has taken responsibility of the bill in the Parliament as a consequence of the fact that she is managing how we respond to a range of things that came out of the royal commission, so that responsibility fell to her.

Hon NICK GOIRAN: Is it a little unusual that executive government did not brief parliamentary counsel on the bill that is presently before us?

Hon SUE ELLERY: No, I am advised that this is not unusual. On the last occasion that there was a major amendment to the Parliamentary Commissioner Act to introduce a new function—namely, the child death review scheme—it was the office of the commissioner that instructed parliamentary counsel and an officer of the commissioner's office was the designated instructing officer.

Hon NICK GOIRAN: Herein lies the problem. In other words, there has been a precedent; this has happened before. The problem is that we have an organisation, albeit the hardworking Ombudsman and his office, that is briefing parliamentary counsel on the taking on of further roles and responsibilities for itself; in other words, it is responsible for feathering its own nest or building its own empire.

Hon Sue Ellery: That's harsh.

Hon NICK GOIRAN: I do not say that in a negative way towards the Ombudsman. With respect to the proper role of oversight and responsibility, and the intersection between executive government and Parliament, I think it is highly desirable that if executive government is asking Parliament to give an agency or an entity a new role or responsibility, that agency or entity does not itself brief parliamentary counsel and say, "This is how we would like it." We could end up with a scenario in which there is no complete oversight of the role of the Ombudsman. This goes to the earlier point that I made on investigations that are going to be undertaken by the Ombudsman. I have no doubt that, in good faith, the Ombudsman has briefed parliamentary counsel on this matter, and, of course, parliamentary counsel has fulfilled its task, but it seems to me that there is a gap here whereby there is no express body that will oversee the Ombudsman's own investigations. I doubt that would have happened if a different organisation had briefed parliamentary counsel, because it would have had to expressly give this some thought. I think it is a shame that, in this instance, parliamentary counsel has been briefed by the very organisation that is going to be taking on the functions and roles. I think that the Ombudsman should have been consulted by the department of child protection, or, in this instance, the Department of Communities, or possibly even the Department of Justice should have had responsibility for briefing parliamentary counsel. It does not change anything with respect to the bill that is currently before us, and the minister will be pleased to know that I have no further questions on clause 1.

Hon SUE ELLERY: I thank the member. I note that the bill obviously went through the cabinet process. That is twofold: approval to draft and approval to print. Both require consultation with relevant agencies, as well. I make that point and thank the member for completing clause 1.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: The minister will see at clause 2 that it is the intention of government that provisions will commence on different days. Putting to one side part 1, which will commence on the day after the bill receives royal assent, what is the intended time frame for part 2, division 2, which will then affect the rest of the legislation?

Hon SUE ELLERY: I am advised that the part 2, division 2 additional amendments will come into operation on the day after the period of 12 months beginning on the day on which section 7 comes into operation, and the rest of the amendment act will come into operation on a day to be fixed by proclamation, which includes section 7. That is to allow for some of that educative process to begin in advance of the provisions taking effect.

Committee interrupted, pursuant to standing orders.

[Continued on page 3544.]

QUESTIONS WITHOUT NOTICE

ALBANY HEALTH CAMPUS — BED CAPACITY

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

I refer to the incorporated answer provided in this house by the now Minister for Emergency Services on behalf of the Minister for Health on 15 June 2021 that stated —

> … Albany Health Campus is considered a high priority for WACHS as part of its strategic asset planning process. A site master planning development process has commenced, and this will inform any further developments for the facility.

It is over a year later.

(1) Has the site master plan for Albany Health Campus been completed?

(2) If yes to (1), when will the plan be made public?

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

(4) If no to (1), how does the WA Country Health Service still claim that the Albany Health Campus is a high priority for its strategic asset planning process?

(5) When will the Albany community be properly and fully informed of the government's plan for its health campus?

Hon SUE ELLERY replied:

I thank the member for some notice of the question.

I am advised that an answer will be provided on the next sitting day. The member may or may not have been told that in advance. I was sitting at the table during the Committee of the Whole, so I could not tell him.

Hon Dr Steve Thomas: That's fine. I thank the Leader of the House for that.

LAPORTE JETTY — AUSTRALIND

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

I refer to Minister Kelly's media release of 15 August 2022 detailing the awarding of the refurbishment contract of Laporte jetty in Australind to Ventia.

(1) How many potential contractors submitted tenders for the Laporte–Australind jetty refurbishment?

(2) How many tenders were compliant and how many were noncompliant?

(3) When is on-the-ground refurbishment work scheduled to commence on the jetty and what is the allocated time frame for completion?

(4) Is the government of Western Australia, its departments or agencies responsible for future costs, upgrades and maintenance of the Laporte jetty post-refurbishment?

(5) If no to (4), who is responsible?

Hon ALANNAH MacTIERNAN replied:

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

(1) Nil. The refurbishment works are being undertaken through the Department of Transport's asset management and maintenance agreement with Ventia.

(2) Not applicable.

(3) In October 2022, subject to the completion of addressing environmental and Aboriginal heritage requirements. It is anticipated that refurbishment works will be completed in 2023.

(4) Yes.

(5) Not applicable.

EXMOUTH DISTRICT HIGH SCHOOL

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

I refer to Exmouth District High School.

(1) How many high school students are projected to attend the high school in —

  (a) 2023;

  (b) 2024; and

  (c) 2025?

(2) Has the minister considered relocating Exmouth District High School?

(3) Does the department plan on investing in Exmouth District High School; and, if yes, what are the next stages of work anticipated?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. It is a brave person who would suggest relocating a school. That is my learnt experience, but good luck to the member!

(1) (a) It is 465.

(b) It is 466.

(c) It is 466.

(2) No.

(3) Since 2019–20, the McGowan government has allocated an investment of more than $1.45 million in infrastructure at Exmouth District High School for solar panels, playground equipment, maintenance and minor structural upgrades, as well as upgrades to the primary and secondary science laboratories and the IT laboratory to be delivered in 2023–24. The government will provide an additional $100 000 annually to Exmouth District High School from 1 January 2022 to strengthen the breadth of secondary provision. This is part of a targeted funding initiative for district high schools agreed in recent negotiations with the State School Teachers' Union of WA for the School Education Act Employees' (Teachers and Administrators) General Agreement 2021.

Honourable member, I am going to check that the 1 January 2022 date is correct. If it is not, I will stand at the end of question time and make a correction.

BUCCANEER ARCHIPELAGO MARINE PARKS

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

I refer to the sector support package that will be developed to assist commercial operators impacted by the creation of three new marine parks in the Buccaneer Archipelago.

(1) Have all the commercial, charter and recreational fishers impacted by the parks been identified?

(2) Please advise the number of these fishers by category?

Hon KYLE McGINN replied:

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

(1) Commercial and charter operators have been identified. It is not possible to identify individual recreational fishers.

(2) The impacts of the Buccaneer Archipelago marine parks need to be considered as part of the cumulative impacts of the greater Kimberley marine parks. Approximately 200 commercial fishing authorisations have been identified as being impacted to varying degrees across the Kimberley. There are 95 fishing tour operator licence holders that have access to the areas included in marine parks across the Kimberley. The extent of this activity varies considerably and will be the subject of further consultation with licence holders.

BAIL AMENDMENT BILL 2022

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

I refer to the Bail Amendment Bill 2022.

(1) Is the Attorney General aware that there is an active suppression order in place regarding the case that precipitated the development of this bill?

(2) If yes to (1), when did he first become aware of the order?

(3) Will the Attorney General provide a de-identified copy of the order?

(4) If no to (3), will the Attorney General undertake to provide a notice to the Auditor General and both houses in compliance with section 82 of the Financial Management Act 2006?

Hon MATTHEW SWINBOURN replied:

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

(1) Yes.

(2) On 14 June 2022.

(3) The Attorney General's office will take steps to request that the court provide a de-identified copy of any active suppression order for the purposes of tabling in Parliament. I will provide an update to the house by no later than the end of the sitting week.

(4) Not applicable.

WA COUNTRY HEALTH SERVICE — PAEDIATRICIANS

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

I refer to child development services delivered by the WA Country Health Service throughout regional Western Australia. How many children are currently on the waiting list to access a paediatrician via WACHS?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. This answer came in while I was at the table during Committee of the Whole, so I am sorry that I could not tell the member about it.

To allow for a fulsome and accurate answer, an answer to the member's question will be provided on 18 August 2022.

WESTERN POWER — SOLAR INSTALLATIONS — REGIONS

659. Hon JAMES HAYWARD to the parliamentary secretary representing the Minister for Energy:

I refer to the installation of solar systems at rural and remote residential properties.

(1) Can the minister confirm that changes to the Western Power's technical rules in February 2022 have resulted in some customers having to install current-limiting circuit-breakers resulting in a reduction in the amount of energy that they are able to draw from the grid at any single point in time?

(2) Is the minister confident that a 32-amp supply is sufficient for modern households?

(3) Are all households in Western Australia limited to a 32-amp supply?

(4) Will the minister table information such as a zonal map outlining what areas are limited to 32-amp circuit-breakers for new installations and which areas are permitted to have 63-amp circuit-breakers?

Hon MATTHEW SWINBOURN replied:

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

(1) Western Power's technical rules have not changed. However, in August 2021 the *Western Australian service and installation requirements* replaced the *Western Australian distribution connections manual*. This applies to both Western Power and Horizon Power networks. The supply capacity has not changed and electrical contractors have always had an obligation to consider the impact of any works on this capacity. However, mains switch circuit-breakers must be installed for new connections and major electrical works. This is in line with Australian standards.

(2) The 32-amp allocation is substantially more than the actual maximum demand used for most homes, particularly as appliances are used at different times. Consumers wanting to increase their load can apply to do so.

(3) No.

(4) I table the attached document.

[See paper 1491.]

SPARE PARTS PUPPET THEATRE — CLOSURE

660. Hon Dr BRAD PETTITT to the parliamentary secretary representing the Minister for Culture and the Arts:

I refer to recent media reports that Spare Parts Puppet Theatre has been forced to cancel the remainder of its 2022 season due to the sudden decision by the Western Australian government to condemn the theatre building. I also note that the exoskeleton was built in 2017, with an expected life span of five to 10 years.

(1) Was there a building and asset management plan for Spare Parts Puppet Theatre; and, if yes, will the minister please table the plan?

(2) Why was Spare Parts Puppet Theatre given no notice of the closure, and therefore no time to plan for this situation and look at alternative rehearsal and performance spaces?

(3) What was the department doing to monitor and manage the structural integrity of the theatre, and the risk to staff and members of the public, prior to condemning the theatre?

(4) Will Spare Parts Puppet Theatre receive financial support to ensure that it, along with contracted artists, is not out-of-pocket because of the sudden cancellation of performances?

(5) Is the department working on a temporary solution and performance space, and is there a plan to rebuild, redevelop or repair the condemned theatre and adjoining building for Spare Parts Puppet Theatre?

Hon KYLE McGINN replied:

I thank the member for some notice of the question. The following answer has been provided to me by the parliamentary secretary representing the Minister for Culture and the Arts, on behalf of the Minister for Culture and the Arts.

(1)–(5) On 15 July 2022, the Department of Local Government, Sport and Cultural Industries met with Spare Parts Puppet Theatre to discuss the future of the Short Street theatre that houses Spare Parts Puppet Theatre. At that meeting, Spare Parts was advised that safety of staff, performers and audiences is the primary concern and that urgent works were required to the building. Spare Parts was advised that it could not be guaranteed that these works would not disrupt its operations. DLGSC is committed to working with Spare Parts to provide opportunities to minimise impacts on its operations.

On 2 August 2022, the consultant team engaged to document the proposed works advised DLGSC that the works would not address the underlying structural integrity issues caused by the height of the watertable. Further, the consultant advised that the works could not be undertaken safely. Based on the expert's advice, DLGSC determined that the safety risk required that the auditorium be closed immediately. Spare Parts was advised of the decision on 3 August 2022. Structural integrity and compliance reports were prepared in 2015, 2017 and 2021. In addition, routine and preventive maintenance has been undertaken. These reports and inspections, and the additional structural support—the exoskeleton—installed in 2017, provided a level of assurance that the building was safe at that time. The urgent works that DLGSC had proposed to undertake were identified as being required in the 2021 structural integrity report.

Spare Parts Puppet Theatre remains a valued part of the Western Australian arts ecology. The minister recently met with the board and staff of Spare Parts to assure them that every effort would be made to assist them during this time. He has directed DLGSC to work with Spare Parts Puppet Theatre to minimise operational disruption and costs and to develop short and long-term solutions.

GENDER PAY GAP

661. Hon WILSON TUCKER to the Leader of the House representing the Minister for Women's Interests:

I refer to the WA government's *2022 Women's report card*, which found that women in Western Australia earn 21.2 per cent less than their male counterparts.

(1) To what does the minister attribute this disparity?

(2) What policies will the government enact to reduce the gender pay gap?

Hon SUE ELLERY replied:

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

(1) The gender pay gap is influenced by a number of factors, including gender-segregated industries; the dominance of the mining and resources sector; female-dominated industries attracting lower wages; a workplace and social culture in which there is a gender bias in recruitment and career progression; women still undertaking the majority of unpaid domestic and family care; lack of flexible work arrangements, which impacts more on women than men; and high rates of part-time work for women.

(2) The McGowan government released *Stronger together: WA's plan for gender equality* in 2020, as a framework for coordinated action by government, business, community and individuals. The second action plan under *Stronger together* includes more than 50 actions and initiatives by government agencies to contribute to increasing women's workforce participation, progression to leadership levels in organisations, and safety in workplaces and in the home.

PREMIER — MINISTERIAL PORTFOLIOS

662. Hon SOPHIA MOERMOND to the Leader of the House representing the Premier:

Given yesterday's revelations that former Prime Minister Scott Morrison secretly held several portfolios, including health, finance and resources—they are the ones we know about—without disclosing this to not only the Australian public, but also his own cabinet, I ask the following in the interests of transparency.

(1) Does the Premer hold any portfolios that we are unaware of?

(2) Have all ministerial and parliamentary secretary positions —

Several members interjected.

The PRESIDENT: Order!

Hon SOPHIA MOERMOND: — in the Western Australian government been disclosed to the Parliament and the public?

(3) Has the government sought legal advice on what, if any, legal questions may arise as a result of any state–federal arrangements made in the portfolios that the former Prime Minister secretly held during the period he held them; and, if not, will it?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. It is indeed incredibly interesting what has happened in the last 24 hours. The answer is clearly as follows.

(1) No.

(2) Yes.

(3) The Prime Minister has indicated that he is seeking advice on the revelations that have come to light in recent days. The state government will respond if necessary.

NEW INDUSTRIES FUND

663. Hon Dr BRIAN WALKER to the Minister for Innovation and ICT:

I congratulate the minister on the recent award of more than $19 000 from the new industries fund to Hemp Squared, a Bridgetown company looking to have hemp blocks certified for use in social housing.

(1) How much of the $16.7 million committed to the new industries fund over 2021–25 has been awarded to date?

(2) Have any other applications been made on behalf of hemp-based industries; and, if so, how many, and with what level of success?

(3) How is the government advertising the fund to potential applicants, and how might members of Parliament assist in promoting it in their own electorates?

Hon STEPHEN DAWSON replied:

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

(1) As at July 2022, $4.1 million funding has been awarded.

(2) I table for the honourable member a list of all awarded applications since 2017, including for two hemp products in 2022. This information has also been publicly listed on the new industries fund website.

[See paper 1492.]

(3) The NIF is advertised on the Western Australian government website www.wa.gov.au/nif, as well as through e-newsletters, social media and events. The Department of Jobs, Tourism, Science and Innovation can prepare a fact sheet for the next round in 2023 to be supplied to members of Parliament to provide to their constituents.

SOCIAL HOUSING — CARNARVON

664. Hon MARTIN ALDRIDGE to the Leader of the House representing the Minister for Housing:

I refer to social housing properties in the Shire of Carnarvon.

(1) What is the total number of social houses in the Shire of Carnarvon?

(2) Of those in (1), how many are vacant or undergoing repair or refurbishment?

Hon SUE ELLERY replied:

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

(1) As at 31 July 2022, there were 308 social housing properties in the Shire of Carnarvon.

(2) Vacancy numbers are always a single-point-in-time number that fluctuates for a range of reasons. Properties may be awaiting acceptance of offers from applicants, undergoing minor maintenance repairs or refurbishment prior to new occupants moving in, or undergoing major refurbishment as part of a redevelopment. As at 31 July 2022, 43 social housing properties in the Shire of Carnarvon were vacant while undergoing, or scheduled for, maintenance repairs or refurbishments, or awaiting acceptance of offers from applicants, and will be returned to social housing stock once complete. Two further properties are not returning to stock as they are identified for demolition or redevelopment.

ABORIGINAL CULTURAL CENTRE — SITE

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

I refer to the recent announcement to build an Aboriginal Cultural Centre in front of the Perth Concert Hall.

(1) Noting the challenges around activation of the CBD's north–south axis along William Street, did the minister consider a site nearer Elizabeth Quay or at the Perth Cultural Centre?

(2) Has there been a comprehensive urban planning assessment of visitation, activation and foot traffic for the current site?

(3) If yes to (2), would the minister please table that?

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

Hon SUE ELLERY replied:

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

(1)–(4) This question should be referred to the Minister for Culture and the Arts.

FOREST PRODUCTS COMMISSION — FIREWOOD SUPPLY

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

I refer to the answer provided to me on 9 August 2022 to question without notice 594.

(1) Could the minister confirm the types and amounts, in cubic metres, of firewood supplied by the Forest Products Commission to contractors for the following years as at 30 June —

(a) 2016–2017;

(b) 2017–2018;

(c) 2018–2019;

(d) 2019–2020;

(e) 2020–2021; and

(f) 2021–2022?

(2) Could the minister provide the total quantities of each of the product types that the Forest Products Commission is committed to sell under contract in the 2022–23 financial year, and how much the Commission expects to be able to deliver?

Hon ALANNAH MacTIERNAN replied:

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

(1) (a)–(f) I have a document in tabular form and I seek leave to have that incorporated into *Hansard*.

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

(1) (a)–(f) Please note that firewood is delivered in tonnes by the Forest Products Commission.

Jarrah FIREWOOD	FY14/15	FY15/16	FY16/17	FY17/18	FY18/19	FY19/20	FY20/21	FY21/22
GREEN FIREWOOD	50,393	48,441	67,274	55,705	61,363	70,351	79,621	60,205
DEAD FIREWOOD	13,428	15,760	18,846	12,408	12,781	11,966	15,840	9,773
Grand Total	63,821	64,201	86,120	68,113	74,144	82,317	95,461	69,978

(2) The Forest Products Commission contracts for firewood are in calendar years not financial years.

TIER 3 RAIL LINES — BUSINESS CASES

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

I refer to my questions without notice 194 of 22 March and 241 of 23 March 2022.

(1) Has the business case for the Quairading–York proposed tier 3 line been completed; and, if so, when was it completed?

(2) Has the business case for the Kulin–Yilliminning–Narrogin proposed tier 3 line been completed; and, if so, when was it completed?

(3) Has the business case for the Kondinin via Narembeen to West Merredin proposed tier 3 line been completed; and, if so, when was it completed?

Hon SUE ELLERY replied:

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

(1)–(3) On 3 May 2022, the Minister for Transport announced $72 million of joint state–commonwealth funding from the stage 1 $200 million agricultural supply chain improvements program for the southern wheatbelt region towards the progressive recommissioning of the Narrogin–Kulin rail line. This project will provide for rail services for grain growers and other export freight producers in the Narrogin–Wickepin area.

CORONAVIRUS — HEALTH MODELLING

668. Hon COLIN de GRUSSA to the Leader of the House representing the Premier:

I refer to the article "COVID in WA: Mark McGowan open to deviating from Andy Robertson's health advice for first time" first published 13 July 2022 in *The West Australian*.

(1) Please table the COVID-19 modelling referenced in the article.

(2) Will the Premier commit to ensuring that any new modelling for COVID-19 is publicly available during the ongoing public health state of emergency and state of emergency; and, if not, why not?

Hon SUE ELLERY replied:

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

(1)–(2) The Premier and the Minister for Health meet with the Chief Health Officer regularly, who also meets with his national counterparts on the Australian Health Protection Principal Committee. A range of research, analysis and forecasting is conducted on a national level. There is no WA-commissioned modelling to table.

STATE INFRASTRUCTURE STRATEGY

669. Hon TJORN SIBMA to the Leader of the House representing the Minister for Transport:

This is a question from last Tuesday, 9 August, numbered 666—the question of the beast!

I refer to the recently released state infrastructure strategy that recommends further investigating the merit and staging of investments in the rail growth plan.

(1) What elements of the rail growth plan are currently unfunded?

(2) Will the minister table the rail growth plan?

Hon SUE ELLERY replied:

It does not appear to be in my file. If it comes in before the end of question time, I will provide it to the honourable member.

[See page 3544.]

CORONERS ACT — STATUTORY REVIEW REPORT

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

I refer to the findings of the *Statutory review of the Coroners Act 1996 (WA): Final report* tabled in July 2021.

(1) Has the next recurrent review of the act commenced?

(2) When is the next review of the act expected to be completed?

(3) Are post-mortem examination reports routinely being provided to hospitals?

(4) If no to (3), when did this cease and when was the Attorney General first made aware of this decision?

(5) Further to (4), why did this cease and which stakeholders were consulted in relation to this decision?

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 Attorney General.

(1) No.

(2) As soon as practicable, taking into account various factors, including, but not limited to, government priorities and resources, consideration and possible implementation of any prior review recommendations, and the time period that has elapsed since the last review was completed.

(3) Not at present.

(4) The practice ceased in December 2020 after an instruction issued by the State Coroner. The Attorney General is unaware of the precise date, but he was aware by May 2021. He supports legislative change to the Coroners Act 1996 in order for post-mortem reports to be provided to hospitals or medical services, without the informed consent of the senior next of kin, to enable clinicians to better understand the circumstances leading to their patient's death. The Attorney General intends to bring the legislative provisions addressing this issue to Parliament.

(5) The reasons for the decision and any consultation are a matter for the State Coroner. However, the Attorney General is advised that the State Coroner issued the instruction after obtaining legal advice.

EMPOWERING COMMUNITIES PROGRAM

671. Hon DONNA FARAGHER to the Leader of the House representing the Minister for Community Services:

I refer to the Empowering Communities program delivered through the Department of Communities and the remaining 12 centres that were previously unsuccessful in the tender process and that were working with the department to transition into the program, which was anticipated to have been completed by 30 June 2022.

(1) Can the minister confirm whether all 12 of the remaining centres have now been successfully transitioned into the Empowering Communities program?

(2) If yes, what is the total amount of funding that has been allocated to each centre in the 2022–23 financial year?

Hon SUE ELLERY replied:

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

(1) Yes.

(2) The information is provided in tabular form. I seek leave to have the response incorporated into *Hansard*.

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

Organisation	Funding ($) (Ex GST) 2022–23
Eaton Family Centre	80,842.97
Lockridge Community Centre (Bluesky)	172,449.37
Woodlupine Family Centre Inc.	80,668.72
Kulungah-Myah Family Centre Inc	80,668.72
Forest Lakes/Thornlie Family Centre Inc	80,668.72
Meeralinga Children and Family Centre – Ballajura, Beechboro, Kingsley and Woodvale	322,674.95
Warnbro Community and Family Centre	80,668.72
Whitford Family Centre Inc	80,668.72
Victoria Park Community Centre Inc	80,668.72
Sandalwood Family Centre Inc (Kalgoorlie)	103,301.93
Karratha Family Centre Inc	92,259.00
Collie Family Centre Incorporated	113,938.00
Total	**1,369,478.54**

HOSPITAL CAMPUS — VASSE

672. Hon JAMES HAYWARD to the Leader of the House representing the Minister for Health:

I refer to the answer provided to question without notice 601 regarding plans by St John of God Health Care to build a new day hospital in Vasse.

(1) Can the department confirm that it had no contact at all with St John of God Health Care in relation to where it planned to locate this hospital?

(2) Is the Department of Health required to provide any approvals for new hospitals proposed by private healthcare providers?

(3) Is there capacity for a private healthcare provider to be co-located on the site of the existing Busselton Health Campus?

(4) Can the minister advise the benefits for patients and medical staff in the co-location of public and private hospitals on one site, such as the Bunbury Health Campus?

Hon SUE ELLERY replied:

(1) The Department of Health confirms that it had no contact at all with St John of God Health Care in relation to where it planned to locate this hospital.

(2) Yes. The Department of Health is required to provide approvals for new hospitals proposed by private healthcare providers under the Private Hospitals and Health Services Act 1927.

(3) To determine whether there is capacity for a private healthcare provider to be co-located on the existing Busselton Health Campus site, a detailed master planning exercise would need to be undertaken. That would require analysis of the size and scope of the project, as well as local factors such as available space and ecological conservation requirements or constraints.

(4) Potential benefits from a co-location of public and private hospitals would be determined through the master planning exercise, which would identify the types of services that could or would be provided.

HOMELESSNESS — LOCAL GOVERNMENT PARTNERSHIP FUND

673. Hon Dr BRAD PETTITT to the Leader of the House representing the Minister for Homelessness:

I refer to the local government partnership fund for homelessness and the 11 local governments and partner organisations that applied, totalling $1.3 million in applications. In a public announcement on 24 June 2022, only two local governments were successful, receiving a total of $280 000 in funding. In the publicly available information session on 7 September 2021, it stated to allow up to 12 weeks from the closing date to assess and award grants to successful applicants.

(1) How long did it take to assess the applications, given I was told in Parliament on 24 February 2022 that the assessment process was complete?

(2) Why did it take eight and a half months from the close of applications to notify 11 applicants of the outcome and publicly announce the two successful applications?

(3) When will the department's review of the local government partnership fund for homelessness occur and will the outcome be made publicly available?

(4) Will the unspent $1.22 million from the first grant round still be utilised, along with the remaining $4.5 million for future rounds, to support local governments and their role in addressing homelessness?

Hon SUE ELLERY replied:

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

(1)–(4) The assessment of applications to the local government partnership fund required careful review and deliberation due to the majority of applications not meeting the fund's intent. Evaluation of the unsuccessful applications found that they did not align with the government's objectives, including displaying value for money. In addition to this, the assessment process of applications was impacted by absences and illness due to COVID-19. The future of the fund is currently being reviewed and application of the remaining funds will be considered in the near future.

PUBLIC SECTOR COMMISSION — INTEGRITY REVIEW

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

I refer the Premier to the *Notification of minor misconduct by public authorities: An integrity thematic review* issued by the Public Sector Commission in December 2021. I am in fulsome agreement with the opening statement of that report, which states —

> The highest levels of integrity are required across the government sector so Western Australians are assured that public authorities always act in the interests of the communities they serve.

(1) How regularly has the Premier met with the Public Sector Commissioner in the last 12 months?

(2) What level of input does his office have into the priorities of the commission, given the obvious desirability of a whole-of-government approach to integrity and transparency?

Hon SUE ELLERY replied:

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

(1) The Premier and his staff meet with the Public Sector Commissioner frequently.

(2) The Public Sector Commissioner acts independently in fulfilling her functions, other than in a few circumstances—undertaking reviews, inquiries and machinery-of-government changes—where she may be directed by the Premier. The Premier supports the commissioner to implement her functions as outlined by the Public Sector Management Act 1994.

HEALTH — STAFF — RECRUITMENT

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

I refer to question on notice 409 asked on 16 December 2021, relating to the Belong recruitment campaign, to which the minister stated —

> An evaluation of the WA Health Belong recruitment campaign is planned for the first half of 2022.

(1) Has a review of the Belong recruitment campaign been completed?

(2) If yes to (1), can the minister please table the review?

(3) If no to (1), what is the expected completion date for this review?

(4) Can the minister please provide a breakdown of funding for the Belong campaign and how it has been disbursed, including to which jurisdictions and/or markets?

Hon SUE ELLERY replied:

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

(1) Yes. A mid-campaign evaluation report has been completed for the first stage of the Belong campaign covering October 2021 to June 2022.

(2) I table the mid-campaign report.

[See paper 1493.]

(3) Not applicable.

(4) Provision of additional budget information sought by the member would divert WA Health staff away from their normal duties and is not possible at this time. However, a budget breakdown by media placement, creative production and post-campaign research is provided below. That information is in tabular form so I seek leave to have the response incorporated into *Hansard*.

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

	Total campaign budget allocation	Actual spend to date 2021–22
Media placement	$1,500,000	$781,095
Creative production	$300,000	$347,736
Research	$50,000	$0
Totals	$1,850,000	$1,128,831

SOIL REPLENISHMENT PROGRAM — CARNARVON

676. Hon NEIL THOMSON to the Minister for Regional Development:

I refer to the soil replenishment program conducted in Carnarvon.

(1) Is the minister aware that many growers consider they have received only a small allocation of the soil required despite the stated 12 338 cubic metres delivered being approximately 21 per cent more than was estimated to have been required?

(2) How was the amount of soil delivered recorded and accounted for?

(3) Given these mounting concerns, will the minister order a survey of the pit the soil was taken from?

(4) Was a competitive tender process used to procure the cartage of the soil?

(5) If yes to (4), was the lowest cost applicant awarded the contract?

Hon ALANNAH MacTIERNAN replied:

I do hope the member is not suggesting that one of the earthmovers in Carnarvon is dodgy. I really hope that is not what he is suggesting. I hope, in particular, that the member is not aligning himself with one of the earthmovers against another earthmover.

That having been said, the answer to the question is —

Several members interjected.

The PRESIDENT: Order! The minister is trying to provide the answer.

Hon ALANNAH MacTIERNAN: I was just giving a bit of advice in advance of that.

(1)–(2) The soil volume was confirmed by the Loadrite receipt provided by the contractor from the delivery tipper truck and certificate of bulk density of the area being evacuated by a separate materials engineering laboratory. Topsoil was not provided for roads or in areas not suitable for farming, such as within close proximity to floodways or spillways.

(3) No. The pit area was remediated as per a rehabilitation plan, which involved a redistribution of topsoil from across the site to minimise depth of the disturbed area and maintain a natural seed base on the site so that vegetation can be established to protect the area from erosion.

(4) A competitive procurement process involving requests for quote from four local contractors was undertaken with only two quotes received. The procurement process was approved by the Department of Finance.

(5) Yes.

STATE INFRASTRUCTURE STRATEGY

Question without Notice 669 — Answer

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.04 pm]: I have an answer to the question asked earlier by Hon Tjorn Sibma. The answer is as follows.

(1)–(2) The state government is currently considering and developing its response to the state infrastructure strategy, which is due within six months of its tabling in Parliament.

CYCLONE SEROJA — RECOVERY GRANTS

Question without Notice 640 — Answer

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [5.04 pm]: I would like to provide an answer to Hon Martin Aldridge's question without notice 640 asked on the last sitting day, which I seek leave to have incorporated into *Hansard*.

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

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(1)–(4) DFES and our recovery partners have done an outstanding job in supporting the recovery from Tropical Cyclone Seroja. With over $23 million dispersed to date, staff are still on the ground and remain committed to these communities as they face their long-term recovery journey. DFES has coordinated clean up and removal of hazardous materials, debris and green waste with support of local Shire resources, the Australian Defence Force, Department Water Environment and Regulation and other recovery partners.

The insurance sector supported clean-up for insured residents, in the initial recovery phase and the Resilience and Recovery grant was designed to assist those who are underinsured, to reimburse out of pocket expenses. Total application confirmed as eligible is 194, with 410 total applications received for this grant. The remaining applications are currently in process, awaiting submission of evidence in line with the set criteria.

This program remains open and has a nominal upper limit of $45 million.

Dedicated Community Recovery Officers are available to support residents through any process and applications required, using their expertise of the local context and recovery needs of the communities. These efforts have helped to support 22 applications for Clean-up Assistance for Uninsured Residents, with 14 approved eligible with $55,200 approved for contractor payments for works complete. This stream also remains open to those impacted. In the month of July alone, DFES Community Recovery Officers engaged with the community 429 times in support of their recovery, and it's been my observation that the efforts have been deeply appreciated by those impacted.

It is important that the Disaster Recovery Funding Arrangements (DRFA) is designed to be a safety net for Local and State Governments. Recovery is a shared responsibility for individuals, households, businesses and communities, as well as for Local, State and Federal Governments where access to capital or appropriate strategies of natural disaster mitigation are considered. DFRA provides funds to be available for individuals once works have been completed. The State has written to the Commonwealth seeking an extension for the DRFA funding arrangements as the current closing date is 31 March 2023.

PARLIAMENTARY COMMISSIONER AMENDMENT (REPORTABLE CONDUCT) BILL 2021

Committee

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

Clause 2: Commencement —

Committee was interrupted after the clause had been partly considered.

Hon NICK GOIRAN: When we were considering the bill prior to the interruption for the taking of questions without notice, the Leader of the House kindly indicated that part of the bill—that being the portion that can be described as part 2, division 2—will come into effect precisely 12 months after what is described as the rest of the act. The trigger point is clause 7 of the bill. When is it intended that clause 7 of the bill will come into operation?

Hon SUE ELLERY: On the date to be proclaimed.

Hon NICK GOIRAN: When does the government intend to proclaim clause 7?

Hon SUE ELLERY: I cannot give the honourable member a precise date. The best advice I am given is that some work needs to be done around the educative materials and the like that are to be provided, but I am not able to give the member anything more specific than that.

Hon NICK GOIRAN: The educative materials will be prepared by the Ombudsman's office. It is an important piece of work to be done because once the primary provisions are proclaimed, people will have an obligation under law to report, and it would be good for them to understand precisely what the thresholds are and the circumstances under which it might be appropriate for them to seek an exemption. We will get to the exemptions a little later. Is that piece of work that can be described as the preliminary educative work in an advanced stage?

Hon SUE ELLERY: I am not sure how advanced I would describe it, but it is certainly advanced. They have checked the relevant copies of the material that has been used in the other jurisdictions and undertaken broad consultation, but they also intend to consult, if you like, industry group by industry group to make sure that the material makes sense to those in different areas of the economy.

Hon NICK GOIRAN: That piece of work, minister, has been undertaken by the Ombudsman's office. The minister indicated in her second reading reply that at a cost of $1.4 million, there are nine full-time equivalents. Are they already with the Ombudsman's office undertaking this work or is that pending the bill passing?

Hon SUE ELLERY: That is pending the bill passing.

Hon NICK GOIRAN: The work that is being done—it is not yet at an advanced stage but it has advanced because some work has been done—is being done with the existing resources of the Ombudsman's office, and I commend the Ombudsman and his office for doing so. That said, one would think that the Ombudsman must have some idea about how long he is prepared to allow this preliminary work to go on before he is ready to say to government, "Please proclaim this bill." Has there been an indication from the Ombudsman about that?

Hon SUE ELLERY: No; that is what I tried to tease out in answer to the member's question earlier. I am sorry; I do not have that information here.

Hon NICK GOIRAN: Given that we will need to spend some time considering clause 7 in particular at length—I think it is highly ambitious that that will happen in the next 47 minutes—I wonder whether the minister or those assisting her could specifically ask about this. Ordinarily, when governments choose to leave the commencement of bills for proclamation, it is typically because they need to wait for regulations to be drafted and those things are left with the Parliamentary Counsel's Office. We are often given an indication from government that it expects that to take three months, six months or some period of time. It is somewhat unusual that there has been no indication, but I suspect that if asked, the Ombudsman might be able to provide an indication. I wonder whether the minister can do that.

Hon SUE ELLERY: I am happy to take the question and see whether we can get an answer, but I am not going to hold up the committee's consideration of clause 2 or any other provisions of the bill waiting for it. I am happy to see whether we can get something during the dinner break, but I want to proceed.

Hon NICK GOIRAN: I agree, minister; there is no need to postpone debate on clause 2 and wait for that information. But if it can be sourced, it would be of assistance.

Clause 26 is one of the provisions that is being left to the later period. Whenever section 7 of this soon-to-be act comes into operation, some 12 months later, all of division 2 of part 2 will come into operation. Part of that second division is clause 26 of the bill. Why has that been pushed out to the secondary phase?

Hon SUE ELLERY: Those in the first phase, if you like, are those entities that already operate under complex and extensive regulatory regimes and are used to doing so. The ones that are being pushed out are those that are not used to operating in that kind of environment. The judgement is that they will need a longer time to understand what they will need to do to meet the requirements.

Hon NICK GOIRAN: That would be an excellent explanation if my question pertained to clause 27 but it relates to clause 26. Clause 27 lists all those organisations that will be addressed in the second phase. Clause 26 deals with a different issue.

Hon SUE ELLERY: I am sorry that I gave the member a fantastic answer to the wrong question. The first tranche, if you like, of conduct that will be reportable will go to sexual conduct and the like. The two that are referred to in clause 26 will perhaps be harder and less obvious for organisations to understand exactly what kind of behaviour or conduct they will need to report. The view is that more time is needed to make sure that is done properly.

Hon NICK GOIRAN: I agree with that. The curious element, though, is that the bill—we are still on clause 2—states that this provision, clause 26, will automatically come into effect 12 months after the first phase comes into effect. I understand the 12-month delay for clause 27, which comprises those organisations that, as the minister said, might not routinely be used to operating under this type of reportable conduct scheme and the like, unlike the organisations and entities set out in clause 25. For the purpose of giving an extra 12 months for the Ombudsman to consult with and educate those organisations, the Parliament is saying, "Let's give them an extra 12 months." But clause 26 is a particularly complex component because it will include behaviour that is described as "significant neglect of a child"—the use of the word "significant" is significant—and that will require clarity from the Ombudsman's office and the Western Australia Police Force and for all that to be communicated to both sets of entities; that is, the clause 25 entities and the clause 27 entities. In addition to that, it will capture conduct that is described as "any behaviour that causes significant emotional or psychological harm to a child". That notion will also not be without its complexities and difficulties. It seems perhaps ambitious on the part of government to say that rain, hail or shine, 12 months after clause 7 comes into effect, all these entities will have to report under these two new categories. Was any consideration given to leaving clause 26 to be proclaimed on a different date?

Hon SUE ELLERY: I am advised no. I think the honourable member has to read two things together. There is a 12-month period within which the work will be done to make sure that material and guidance is provided on what those things mean. But the second bit that he needs to take into account is what we discussed before—that is, the approach that the commissioner will take, which will not be with a sledgehammer: "You did not do this. Out you go—jail or an $8 000 fine." He has made it clear that his intention is to take an educative approach rather than a sledgehammer-type approach.

Hon NICK GOIRAN: I acknowledge that, minister. Nevertheless, I express my concern. The situation at the moment, on 16 August 2022, is that the Ombudsman of Western Australia, who is going to be taking on these significant roles, including being resourced by the taxpayer to the tune of some $2.4 million in due course, is not presently able to inform the Parliament, through the executive, of what the time line will be for these things because work is presently underway. That work is on materials to educate not only the two different sets of entities, but also decision-makers, so that they can get their heads around what exactly is intended by the terms "significant neglect of a child" and "any behaviour that causes significant emotional or psychological harm to a child" in clause 26. It is perhaps somewhat dangerous to be including an automatic provision that the clause will take effect 12 months' after the rest of the act. This is one of the perhaps rare instances in which it might have been desirable to have left this particular matter for proclamation. Keep in mind that I am on the record as repeatedly asking governments of both persuasions to minimise the circumstances in which they leave things to proclamation, but this one almost seems to have been in reverse, where the primary provisions could have been given a specific date and these ancillary ones that require further work could have been left to a date to be proclaimed in the future. Nevertheless, the Ombudsman has absolutely got his work cut out for him on this matter. That said, I have no further questions on clause 2.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Section 4 amended —

Hon NICK GOIRAN: Clause 5 deals with the insertion of some terms that will be used, and I want to take the attention of the Leader of the House specifically to two of those terms—that is, the term "investigator" and the term "religious body". The term "investigator" is set out on page 3, from lines 21 through to 25. The Leader of the House touched on this in her reply, courtesy of the remarks that I made in the second reading debate. One of the concerns is that despite the best efforts of the Ombudsman to educate entities, organisations might feel out of their depth with regard to this matter, and might choose to utilise the services of an external investigator. Equally, even if organisations might feel out of their depth, they might not feel that they have the financial resources to contract an external investigator. Consequently, the responsibility will fall upon an employee within the relevant entity. Is there an expectation that the Ombudsman will be providing any sort of, shall I say, short courses or something of that nature to assist entities to train up individuals within organisations on how to be an investigator?

Hon SUE ELLERY: Yes. As I said in my reply to the second reading debate, the sort of work that the office is going to do is to help build capacity to meet and comply with the scheme. That will include, in respect to these provisions in particular; developing tailored guidance and support materials, developing education programs for each sector in collaboration with the relevant peak bodies, and providing advice as requested. The Ombudsman will actually be proactive in providing the tailored guidance and education programs.

Hon NICK GOIRAN: One would presume that the materials that will be prepared by the Ombudsman's office and, indeed, the advice that could be taken over the telephone would be provided by the Ombudsman at no cost to entities. What will be the situation with the programs that the Ombudsman develops?

Hon SUE ELLERY: It will be free.

Hon NICK GOIRAN: I am not too concerned about whether the other jurisdictions charge for that; the fact that ours will be free in Western Australia is welcomed. However, is this consistent with the other jurisdictions—that their like bodies, whether that is a commissioner for children and young people, a guardian or otherwise, will provide those three forms of information, being the materials, the program and the advice?

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: Is there any intention, or scope, I should say, in the bill—it is already clear it is not the intention of the government to go down this path—for the qualifications for an investigator to be set out by way of regulation?

Hon SUE ELLERY: No, there is no head of power in the bill to provide for that.

Hon NICK GOIRAN: Is that something that the other jurisdictions do?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: I now turn to the other term, "religious body", which is found at page 3, lines 28 to 30. As I understand it, the term "religious body" currently appears in four Western Australian acts and two regulations, yet none of them have the term defined. Why was it deemed necessary and desirable to do so in this bill?

Hon SUE ELLERY: I am advised that the other jurisdictions had it defined in those terms. I cannot tell the member whether there was any variation in language, but each of the jurisdictions had a definition of "religious body".

Hon NICK GOIRAN: Is the Leader of the House in a position to indicate whether there are what I would describe as significant differences in our definition compared with those in the other jurisdictions?

Hon SUE ELLERY: The best recollection of the people at the table is that this was picked up out of existing legislation from one or all of those jurisdictions. If it gives the honourable member comfort, I will ask them to check during the dinner break whether there was a significant difference, but the advice that I am given is that there is not.

Hon NICK GOIRAN: Yes, please do that. Can the Leader of the House indicate who was consulted about this definition?

Hon SUE ELLERY: I do not have the list here. Again, I can probably get it over the dinner break. I am advised that 10 religious bodies were consulted on that definition.

Hon NICK GOIRAN: I am curious to see whether there are any differences in the definitions in other jurisdictions. I note in particular the reference at lines 20 and 30 to an operation under the auspices of one or more religious denominations or faiths, which appears, at first glance, to be a curious notion. Nevertheless, 10 organisations have been consulted, we are informed. I think the minister previously indicated that the Ombudsman consulted with some 120 or 126 stakeholders—a large number—and that any concerns that were raised with the Ombudsman have been not only taken into account, but also reflected in the bill. If we take that for what it is, it is reasonable for us to conclude that it is an indication that the 10 stakeholders who were expressly consulted about this definition, if we were to reveal who they were and ask them—I am not asking the government to do that—are satisfied with this definition of "religious body".

Hon SUE ELLERY: That is the advice I have been provided. I think it is worth noting that the advice provided to me is that the Ombudsman's office physically went back to meet with people to talk through their concerns and how they might be accommodated.

Hon NICK GOIRAN: The minister will have heard me indicate earlier that there are four acts in Western Australia at the moment that use the term "religious body", and two regulations, none of which include a definition. This will be the first time we will insert a definition, according to my research. What impact will us inserting this definition have on the interpretation of the term in the other acts?

Hon SUE ELLERY: I guess I have to start by taking at face value that what the honourable member says is true because I have not had the opportunity to check that. Let us assume that what the member said is true, for the purpose of this discussion. I will see whether there is any advice. I am not sure I can take this one much further because I am being advised that the people prepping this piece of legislation did not look at the other pieces of legislation in which that term appears.

Hon NICK GOIRAN: I will just make the observation that that is regrettable, because if we are going to be doing something new and different in this particular bill, it is important to be clear about whether it will have an impact on the way in which the term has always been understood and interpreted in those other four pieces of legislation. That said, the minister indicated that hopefully over the upcoming adjournment we might be able to at least get to the bottom of whether there are any significant differences in the other jurisdictions, and I am grateful for that.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Part III Division 3B inserted —

Hon NICK GOIRAN: It is probably fair to describe clause 7 as the most significant and substantial provision in the bill. It starts at page 4 of the bill and goes all the way to page 40. The minister will see that at the start of page 4 the very first term that is used is the very simple definition of "child". Given that the age that is being applied to the definition is the same as is available under the common law—18 years of age—why was it deemed desirable to expressly define the word "child", given that it is unnecessary to do so?

Hon SUE ELLERY: I am advised that the reason is twofold: first, to be clear; and, second, it is in the other jurisdictions' legislation. We were aiming for consistency, and that is what we did.

Hon NICK GOIRAN: I understand the desire to be consistent with the other jurisdictions. Indeed, we noted both in the minister's second reading speech and in my contribution to the second reading debate that the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse specifically called upon state and territory governments to establish nationally consistent legislative schemes, and this does fit with that. That said, the problem I have with that is we have already identified a number of instances when there is inconsistency, and the government has taken an approach for the reasons that have already been outlined. In something like this, when it really does not matter—it is not necessary to include it—it seems curious that that would be the approach taken when it could have implications for how other statutes are read in the event that they do not have these express definitions. Nevertheless, I do not think too much turns on that.

I move to the second term, which is "commencement day". There is a reference to a 2021 act. I take it that the government accepts that that will read 2022.

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: We will give that job to the clerks or parliamentary counsel to deal with it by way of a clerical amendment.

On page 5 is the term "physical assault". What was the rationale for not using the criminal definition of "assault"?

Hon SUE ELLERY: The criminal definition of "assault" is narrower than the definition the government has chosen for the scheme. The definition used is appropriate for a civil jurisdiction aimed at protecting children from abuse. The royal commission's findings support this approach. At volume 7, page 268 of the royal commission's report, the royal commission noted —

> … reportable conduct schemes should require the reporting of conduct by employees that is broader than conduct that would constitute a criminal offence.

A broader definition is consistent with the other jurisdictions and is the same as that used in New South Wales. If it is of assistance to the honourable member, New South Wales defines "assault" to mean —

> (a) the intentional or reckless application of physical force without lawful justification or excuse, or
>
> (b) any act which intentionally or recklessly causes another to apprehend immediate and unlawful violence.

Victoria uses the term "physical violence", which is not further defined, and the ACT includes the ill-treatment of a child, which also is not further defined, in the definition of reportable conduct. It also includes offences against the person under part 2 of the Crimes Act 1900. The view was that the New South Wales definition best suited our purposes.

Hon NICK GOIRAN: We can see here that the term "physical assault" that is proposed to be used is based on the New South Wales model. The minister indicated that it is a wider definition than the criminal definition of "assault". How much wider are we talking? We can see that the proposed definition, refers to the intentional application of physical force without lawful justification or excuse. If a person or an entity comes across that type of conduct—an intentional application of physical force without lawful justification or excuse—would it not be reported to police in any event? To what extent is it really broader than the criminal definition of "assault"?

Hon SUE ELLERY: I do not have any advice available to me at the table that could compare and contrast with the Criminal Code. Obviously, though, the view taken was that the New South Wales approach had the most definitions within it, if you like, as opposed to the other two jurisdictions that left certain elements undefined, and so that was deemed not to be necessary. But I do not have that kind of compare and contrast here.

Hon NICK GOIRAN: The words that appear at page 5, lines 28 to 34, are nearly identical to the New South Wales definition that was read out, which I do not quibble with. In this instance, it is helpful, given that Victoria and the ACT have appeared to take an undefined approach to this issue. This will assist persons in these entities to understand when they meet the threshold of needing to report to the Ombudsman.

On the notion of intentional application of physical force without lawful justification or excuse, would the intentional use of physical force by an employee in one of these relevant entities for self-defence be captured by this definition?

Hon SUE ELLERY: It will depend a little on the circumstances. There are questions around the management of a child—for example, physical contact that forms part of normal professional duties such as restraining a child. Physical contact that forms part of normal professional duties is not included in reportable conduct. The definition of "reportable conduct" under proposed section 19G sets out conduct that is not included in reportable conduct, which includes, under proposed subsection (2)(a), conduct that is —

> reasonable for the discipline, management or care of a child or of another person in the presence of a child, having regard to —
>
> > (i) the characteristics of the child, including the age, health and developmental stage of the child; and
> >
> > (ii) any relevant code of conduct or professional standard that at the time applied …

It will depend, honourable member, on the circumstances each time a report of that nature is made.

Hon NICK GOIRAN: On the self-defence scenario, if an employee is intentionally applying physical force for self-defence, that is not conduct that is reasonable for the discipline, management or care of a child. It is what I would describe as conduct that is reasonable for self-defence. That particular proposed section 19G(2) will not necessarily help the entity to understand —

Hon Sue Ellery: That did not go to self-defence.

Hon NICK GOIRAN: No.

Hon SUE ELLERY: The intention is not that someone who is acting in self-defence will have a report made against them, but someone will have to make a judgement about whether it was self-defence or not self-defence.

Hon NICK GOIRAN: I agree. I think it is important to get that on the record, and no doubt that will form part of the instructive materials that the Ombudsman will provide to entities. I can absolutely see that as part of, say, a frequently asked questions file.

I just want to touch on one further scenario before moving on to a different term. We dealt with the self-defence scenario. The minister has already helpfully taken us to proposed section 19G(2), which in my view adequately deals with the scenario whereby the application of the force is used not necessarily for self-defence, but to protect another person. That is captured in that particular provision.

Hon Sue Ellery: Even to protect the child from themselves.

Hon NICK GOIRAN: Indeed, to protect the child from self-harm is another good scenario.

The final scenario I want to touch on is about damage to property. We can foresee a scenario in which a child perhaps is, for whatever reason, about to embark on the destruction of property, so it is not a person here. Might a physical restraint in that situation be intentional application of force and fall into the category of reportable conduct?

Hon SUE ELLERY: In the first instance, it is about making sure the child is safe. If in the course of damaging property it is viewed at the time that in the heat of the moment if that kid keeps doing that he or she is going to hurt themselves, we can see how applying that physical force is a reasonable excuse to have. Equally, if there was any relevant code of conduct or professional standard that applied to the discipline, management or care of the child or other person—if, for example, a school or some other entity had a code of conduct around children damaging particular pieces of equipment because it could be detrimental to the child—that would be taken into account.

Hon NICK GOIRAN: I will move on to the next point after I make this comment. I think it is an area that would warrant further consideration by the Ombudsman and perhaps would warrant consultation with the Commissioner of Police to make sure that we put that beyond doubt rather than necessarily relying on an organisation or industry having a code of conduct. I suspect they will be able to address this point, but I want to make sure that they definitely turn their minds to it.

I want to touch on an issue under proposed section 19C—sexual misconduct. That term, which is found on page 6 starting at line 1, appears in only one other Western Australian act and one other regulation, but, similar to the earlier issue I raised, it is not defined in that particular act or regulation. Why is it being defined here? Perhaps the answer is that this is what is done in the other jurisdictions.

Hon SUE ELLERY: Yes, I am advised that is what the other jurisdictions do. I have asked whether there is a significant difference and I am advised that they all use very similar wording.

Hon NICK GOIRAN: With the earlier term, which is "physical assault", we ascertained that we are very much following the New South Wales model; the other two jurisdictions really leave it undefined. In this particular instance, "sexual misconduct" is defined in each of the other three jurisdictions, albeit perhaps with slight variations, but, consistent with those other three jurisdictions, will we also include a defined term?

Hon SUE ELLERY: Yes; there is no substantive difference. The closest form of words is in the New South Wales legislation, but they are all, I have to say, much of a muchness, honourable member.

Hon NICK GOIRAN: I now move to proposed section 19D, "Employees of relevant entities". Why does this provision, as we see at lines 6 and 7, only capture adult employees, contractors and volunteers?

Hon SUE ELLERY: I am advised that the intention is to avoid capturing those situations involving—the expression used is "Romeo and Juliet"—15 or 16-year-olds. That is the intention of that provision.

Hon NICK GOIRAN: It is a curious threshold, is it not? Even if that is the rationale, we might think that the threshold might have been 16 rather than 18 years of age. I can understand if the government wants to ensure that any sexual act involving somebody under the age of 16 years is relevantly dealt with, but it still seems peculiar that the choice is 18 years. Potentially, a 17-year-old employee could allegedly commit sexual misconduct or a sexual offence, but because they are 17 and not 18 years old, the entity would be under no obligation under this scheme to report the matter to the Ombudsman.

Hon SUE ELLERY: That is correct; the entity will not be under an obligation to report under this legislation. However, there may well an obligation to report under other pieces of legislation. It might be that a crime has been committed or is alleged to have been committed, and that might have to be reported to the police.

Hon NICK GOIRAN: Is the same threshold of 18 years of age used in other jurisdictions?

Hon SUE ELLERY: The advice is that we think it is the same. Again, we will use the opportunity of the dinner break to confirm that, but the best advice I have is that the answer is yes.

Hon NICK GOIRAN: Was consideration given at any stage to making the threshold 16 years of age?

Hon SUE ELLERY: No; I am advised that none of the other jurisdictions have that threshold.

Hon NICK GOIRAN: Was the Commissioner for Victims of Crime consulted about the bill generally, and specifically on this issue?

Hon SUE ELLERY: Yes, she was consulted on the bill; this issue was not raised.

Hon NICK GOIRAN: Was this issue not raised by any of the 126 stakeholders?

Hon SUE ELLERY: No, I was answering the question that the member asked me.

Hon NICK GOIRAN: I am not suggesting that the minister has not responded adequately; this is a follow-up question.

Hon SUE ELLERY: In fact, the opposite happened. Originally, that definition was not in the legislation. It was raised during consultation that the definition should be 18 years of age.

Hon NICK GOIRAN: This gets curiouser and curiouser. At least one stakeholder has expressly raised this with government and suggested that the threshold level should be 18 years. Was it just one stakeholder or were a number of stakeholders of that view?

Hon SUE ELLERY: I am advised that it was originally raised by one stakeholder, but the consultations were done in groups of multiple stakeholders, so others were party to the conversation and supported that.

Hon NICK GOIRAN: All right, we will move on from that point and see what information might arise during the break on exactly what the other jurisdictions have done on this threshold point. I remain concerned about scenarios of sexual misconduct and sexual offences by, particularly, volunteers who might be under the age of 18 years who, if they were 18 years old, would be captured and considered to be an employee. I am finding it difficult to understand the rationale from that one stakeholder, whoever it was, or others that might have agreed on what would be the distinction between a 17-year-old driving their vehicle to an entity's place, committing sexual misconduct at the age of 17 and not being required to be reported; whereas, had they had their eighteenth birthday, the entity would be mandatorily required to report them to the Ombudsman. But, as I say, I do not think we can take it any further today; we will see what the other jurisdictions have done.

I move to the next proposed section, 19E, which deals with the head of a relevant entity. Proposed subsection (4) states —

> The regulations may prescribe a person or class of persons to be the head of a relevant entity.

What are the person or classes of persons that are intended to be prescribed?

Hon SUE ELLERY: There is no list of proposed persons or classes of persons to be prescribed. It is there as one of those—I know the member loves these—catch-all provisions in the event that it is needed in the future.

Hon NICK GOIRAN: So that no-one is confused by the record, it is certainly not one of the provisions I love, but I think that the current government does love this type of provision. Is this regulation-making power something that is seen in other legislation in other jurisdictions?

Hon SUE ELLERY: I do not have information available to me at the table on whether other jurisdictions have a precise head of power in respect to the head of a relevant entity. We will check, and if we are able to advise the member, we will. They certainly have regulation-making powers within their acts.

Hon NICK GOIRAN: Other jurisdictions certainly have general regulation-making powers; whether they have this specific one remains to be seen.

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: Proposed section 19E(5) refers to subsection (4); that is the subsection we have just been dealing with, which there is no intention to use at the present time. It then states that those regulations have effect despite proposed subsections (1), (2) and (3). Can the minister help me understand what we are trying to achieve here?

Hon SUE ELLERY: It is to give effect in the event that it were deemed necessary that a particular class of person or persons ought properly to be deemed to be the head of a relevant entity; but, for whatever reason, that conflicted with proposed sections 19E(1), (2) and (3) that are already set out. It is as the member reads it; but, I have to say, we are not going into this with a list of whom we think it might apply to.

Hon NICK GOIRAN: Is the minister saying, then, that in the event the power for regulations set out in proposed subsection (4) is used, the regulation will possibly be inconsistent with proposed subsections (1), (2) and (3), and by virtue of proposed subsection (5) we are saying that notwithstanding the fact that it is inconsistent, the subsidiary legislation—that is, the regulation—will have primacy over proposed subsections (1), (2) and (3)?

Hon SUE ELLERY: That is correct.

Sitting suspended from 6.00 to 7.00 pm

Hon NICK GOIRAN: Prior to the interruption for the dinner break, there were a number of matters that the Ombudsman's office was potentially going to look into. Might this be a convenient time to provide an update to the chamber?

Hon SUE ELLERY: The first bit was about the definition of "physical assault" in this bill. In the Criminal Code, the term used is "assault". That definition is —

> A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another

> without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

It also includes a definition of the term "force". There is a bit more detail in the words used to describe what constitutes an assault. I probably have other information but I am going to sit down first.

I am also advised that the anticipated time until proclamation is about three months. There was a question about whether the provisions in the other jurisdictions included a regulation-making power for the heads of the entity. The answer to that is yes, for each of the jurisdictions. I am just checking that the words are the same.

I have an answer to the question about an employee being someone over 18 years of age. It is the same in Victoria but not in New South Wales or the Australian Capital Territory. The member will recall from our conversation that it was raised in stakeholder consultation here.

Hon NICK GOIRAN: I thank the minister and the Ombudsman's team for the provision of that information.

Hon SUE ELLERY: Sorry, honourable member. There is a bit of COVID happening behind us.

There is one more, which relates to the definition of "religious body". The definition in our bill is based on that in the ACT legislation. New South Wales also includes a definition in its act, which reads —

> (a) a body established for a religious purpose, and
>
> (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

Victoria uses the definition used by New South Wales. I do not know whether that helps the member. I will do it again, honourable member, and provide a proper comparison. In the bill before us now, "religious body" means —

> a body established or operated for a religious purpose that operates under the auspices of 1 or more religious denominations or faiths …

The same definition is used in the ACT bill. New South Wales and Victoria, which have identical definitions, have similar definitions. The definitions used by New South Wales and Victoria are the same, and the definitions used by the ACT and WA will be the same.

Hon NICK GOIRAN: I thank the Leader of the House and the Ombudsman's office for the provision of that supplementary information. Two of the three jurisdictions use the same definition for "religious body", that being New South Wales and Victoria, yet the choice has been to move away from that and implement the ACT model. On the face of it, the ACT definition appears to be the more peculiar of the definitions. As I said earlier, it is not clear to me why the ACT has included "operates under the auspices of 1 or more religious denominations or faiths" and why we would then do the same when, on a plain reading of it, it seems peculiar and the other two jurisdictions have chosen not to go down that path. Obviously, an intentional decision has been made, subject to, as the Leader of the House indicated, consultation with 10 stakeholders. I describe it as a peculiar choice. We cannot do anything further about it. If the matter had gone before the Standing Committee on Legislation, it might have been able to inquire into it, but that did not happen.

With regard to the other matter of the threshold age for an employee to be captured by the legislation—I refer to proposed section 19D on page 7, starting at line 6—the Leader of the House indicated that the New South Wales legislation does not limit it to the age of 18 years and mentioned that, nevertheless, the matter was expressly raised by a stakeholder and was subject to further considerations. Again, I note that that means it was a matter actively considered by government and the choice was made to go down this path. I generally commend the approach that has been taken. It is obvious that there has been wideranging consultation with some 126, I think, stakeholders.

I commend the breadth of that consultation. I also commend the fact that there appears to have been a great desire by the Ombudsman's office in preparing the brief to parliamentary counsel to make sure that all the stakeholder feedback has been not only considered, but also accommodated. As a general principle, I commend that approach, but it troubles me if the approach is simply to accept or facilitate the stakeholder feedback, absent deeper analysis. It seems to me, particularly in respect of the threshold age for an employee, that it would have been desirable for the Ombudsman or government to push back on the stakeholders and really get them to articulate in the clearest possible way why it is so important for the threshold level to be 18 years and not, for example, 16 years. That might have happened, but it is not at this point obvious that it did. If it did, no further explanation has been provided. That is a shame, but it is something that will hopefully be captured when, in the fullness of time, this legislation is reviewed. All of that said, I thank the minister, the advisers and the Ombudsman's office for the provision of the supplementary information.

I return to the matter we were considering prior to the adjournment—proposed section 19E(5), on page 9 of the bill. If regulations are to be made under proposed subsection (4), then in light of proposed subsection (5), will they have the effect of modifying the application of proposed subsections (1), (2) and (3) in a particular instance?

Hon SUE ELLERY: Yes, that is possible; but, again, I make the point that I made earlier. I know the honourable member has made it clear in other pieces of legislation and in this one that he does not like these kinds of catch-alls, but the best advice I have is that that is the intention. But no-one is going into this with the view that it is these types of people that we are trying to catch.

Hon NICK GOIRAN: Although I would describe it as undesirable, from time to time we see the sort of catch-all regulation-making power that is found at proposed section 19E(4). There have been many debates and discussions about that over the years, and there is no purpose in taking that any further this evening, but proposed subsection (5) is particularly relevant at this time. It could have derived from a famous king who came along and decided that, from time to time, he would like to have the power at the stroke of a pen to be able to change or modify the law by way of regulation. I suppose it is at the very least a yellow alert, if not a red alert, when the government includes on page 9, line 23, a regulation-making power about which the government says, "Well, we don't really intend to use it anyway, and we can't actually provide the house with a description of any persons or class of persons that we intend to prescribe", but it is then compounded by lines 25 and 26, under which the infamous king could come along and say, "Well, irrespective of everything else that Parliament's just passed from page 8, line 19 through to page 9, line 22, it means nothing in this instance because I say so by virtue of this special regulation that I've passed." That is something that would ordinarily exercise the mind of the Legislative Council, certainly in previous Parliaments, and certainly it would exercise the mind of the Standing Committee on Legislation irrespective of the composition of that committee and the chairing of it. It has been routinely drawn to members' attention and it seems inappropriate to be included in the bill. The point that I make is that if lines 23 to 26 were to be deleted, I guess, by the government's own admission, that would not be fatal to the bill because at the present point in time the government does not intend to prescribe any regulations under proposed section 19E(4).

To conclude this particular theme, is it the government's view that it considers both proposed subsections (4) and (5) to be necessary, as distinguished from desirable; and, if it is to be considered necessary, why is it necessary?

Hon SUE ELLERY: I have nothing further to add than what I have already said, honourable member. I note the member's views. They have been expressed before, not just by him, but by others in this chamber. I note the member's views, but the government is not of a mood to delete either proposed subsection (4) or (5). The best advice I have been given is that proposed subsection (5) is a safety net for proposed subsection (4). I note the point the member is making. I have been in this place for a long time, so I understand the arguments, but the government is not of a mood to delete them.

Hon NICK GOIRAN: As I speedily move to the next item for consideration in clause 7, I must make a little note to myself on the next occasion to undertake some research on the occasions when Hon Sue Ellery was in opposition and might have railed against Henry VIII clauses.

Hon Sue Ellery: You'll find them.

Hon NICK GOIRAN: I want to do it, Leader of the House, so that next time I can actually quote the remarks made by the honourable member once upon a time.

Hon Sue Ellery: It will not change my opinion.

Hon NICK GOIRAN: No, I understand that and I appreciate that in this instance the Leader of the House is operating under the instructions of the minister whom she is representing.

That said, I take the minister to proposed section 19F, which deals with a reportable allegation, and, in particular, the definition of "reportable allegation". In the New South Wales Children's Guardian Act 2019, division 6, sections 40(1) and (2), reference is made to the standard that is to apply when assessing whether conduct is in fact reportable conduct. The New South Wales legislation says that when assessing conduct, the head of the relevant entity must make a finding of reportable conduct if it is satisfied, on the balance of probabilities, that the case against the employee has been proved. Subsection (1) says —

> The head of the relevant entity or the Children's Guardian must make a finding of reportable conduct if it is satisfied that the case against the employee the subject of the reportable allegation has been proved against the employee on the balance of probabilities.

Subsection (2) states —

> Without limiting the matters the head of the relevant entity or the Children's Guardian may take into account in deciding whether it is satisfied the case has been proved on the balance of probabilities, the head of the relevant entity or the Children's Guardian may take into account —
>
> (a) the nature of the reportable allegation and any defence, and
>
> (b) the gravity of the matters alleged.

Compare and contrast that with what we have here in proposed section 19F, which commences at page 9 of the bill. Members will see that the threshold that is to be applied is "belief on reasonable grounds". Keeping in mind that the genesis of this matter was the New South Wales legislation and the findings of the royal commission with a view to having a nationally consistent approach, why is a different threshold being applied in this legislation?

Hon SUE ELLERY: There are a couple of things here. The honourable member has me at a disadvantage as I do not have in front of me the New South Wales act that he just referred to. I am advised that the member was referring to the provisions in that act that relate to an investigation once it has been conducted and an outcome determined. The bit we are dealing with in proposed section 19F is the grounds on which a report of an allegation is made, and the language is the same as that in Victoria and the ACT—that is, with reference to reasonable grounds or reasonable belief. In New South Wales, the relevant comparison—apples with apples—is an allegation that an employee has engaged in conduct that may be reportable conduct. I do not know that we were necessarily comparing apples with apples.

The other bit of information I have been provided with is that the definition of "reportable allegation" in the bill before us now is, in addition to being consistent with Victoria and the ACT, also consistent with our Western Australian legislation for children and community services, specifically in relation to mandatory reporting, working with children criminal record checks, and assessment and reassessment for child-related employment.

Hon NICK GOIRAN: If it is the case that a reportable allegation is merely the beginning of the matter and not a finding, what is the standard that will be applied by the Ombudsman and relevant entities when making such a finding?

Hon SUE ELLERY: I am advised that it is not set out in the legislation before us, and that, because it is deemed a civil matter, the WA regime will apply on the basis of the balance of probabilities.

Hon NICK GOIRAN: But that is not found in the bill before us.

Hon Sue Ellery: Correct.

Hon NICK GOIRAN: Why was the decision made to exclude it from the bill before us when it is expressly in the New South Wales legislation?

Hon SUE ELLERY: It was considered not necessary on the basis that the Ombudsman's own act, for example, operates on the balance of probabilities. It was deemed not necessary to spell it out in these provisions as that is how the Ombudsman conducts their obligations under their other legislative regime.

Hon NICK GOIRAN: Does the Parliamentary Commissioner Act 1971 contain a provision that sets out that the standard is on the balance of probabilities?

Hon SUE ELLERY: I am not sure we can take it much further because I am advised that no, it is not contained in the provisions of that act, but that is the way that the Ombudsman, whoever has held the position, has conducted their obligations in respect of the functions they have had to carry out.

Hon NICK GOIRAN: In other words, the Ombudsman, whoever holds that role, has always known without it needing to be specified by Parliament that the standard that is to be applied is the balance of probabilities. Despite the fact that New South Wales expressly put that in there, the decision was made to say it was unnecessary to do so here. I compare and contrast that with the information provided earlier on the definition of a child, which in the bill before us, at proposed section 19C, means a person who is under 18 years of age. Again, the Ombudsman, whoever that person is at any time, does not need the benefit of Parliament to tell them that a child is somebody under the age of 18, yet in this instance the government has expressly decided to include it. When I asked earlier why that was included, the explanation that was given was that is what was done in the other legislation. I simply point out that that approach was taken with regard to the definition of a child, yet it is not provided with regard to the standard of proof necessary to make a finding. Of the two, I would have thought that the standard of proof required for the finding would be the more important of the two, because it is the one that might be the subject of more detailed debate or consideration. Nevertheless, that is what the record currently reflects.

I turn to proposed section 19G, which deals with the concept of reportable conduct as distinct from a reportable allegation. This proposed section will be subsequently amended. Despite the fact that proposed section 19G begins on page 10 at line 5 and continues on to page 11 at line 4, it will change in about 15 months' time, particularly with regard to subsection (1). At the moment, reportable conduct will include conduct of —

(a) a sexual offence;

(b) sexual misconduct;

(c) a physical assault committed against, with or in the presence of, a child;

(d) an offence prescribed by the regulations for the purposes of this paragraph.

But in 15 months' time, it will also include —

(ca) significant neglect of a child;

(cb) any behaviour that causes significant emotional or psychological harm to a child;

That is by virtue of clause 26 of the bill. The minister will see at proposed section 19G that the conduct includes conduct irrespective of whether it has been commenced or concluded and whether the conduct occurred before, on or after commencement day. I am not concerned about conduct that has occurred on or after the commencement date, but I am interested in conduct that has occurred before the commencement date. When will time begin to run on the obligation of an entity to notify with regard to conduct that has occurred before?

Hon SUE ELLERY: Notification is required from the day that the proclamation is made. To use the member's description, the clock starts ticking on the obligation to report from that time.

Hon NICK GOIRAN: Does that mean that on the day of clause 7 being proclaimed as operative, a large backlog of notifications will be required to be sent to the Ombudsman?

Hon SUE ELLERY: They are obligated to meet those provisions only once they become aware. If they have been aware before, which I think is the member's question —

Hon Nick Goiran: Yes, they might be aware now, for example.

Hon SUE ELLERY: Yes, then presumably they have also advised police or whomever else, depending on the particular circumstances. That might already be known. The answer to the member's question is yes, there may well be historical matters that they will need to report from that time on. I need to clarify that. If they become aware after that date, the obligation is then; the clock starts ticking once this clause is proclaimed and they become aware of an event. It is not that the clock starts ticking on proclamation day. If they have known something for the last 10 years, 20 years, six months or six days, they will now have an obligation. The obligation to report is when they become aware of something new after the date of proclamation.

Hon NICK GOIRAN: Is it the case that the conduct that is being notified of must pertain to a person who is a child at the time the notification is given?

Hon SUE ELLERY: It is when the person was a child. This clause will be proclaimed. If the head of the entity becomes aware of conduct that occurred to someone who is now 21 years old, but was a child at the time, that is reportable. The question that needs to be answered is whether the person was a child when it happened. That is despite the fact that they may be an adult when they are reporting it to the entity.

Hon NICK GOIRAN: If that is true, that means that all matters forever with respect to an entity would need to be reported to the Ombudsman because there is one of two scenarios. The head of an entity, as at today, 16 August 2022, will already be aware of a certain number of matters but does not currently have an obligation to report them to the Ombudsman. Some of those matters will pertain to persons who are now adults. Once the operative provisions of the bill come into effect in approximately three months, the head of that entity might then become aware, for the first time, about what I would describe as historical matters, including those for persons who are now adults, and including matters that the head of the entity knows have already been reported to the police. It might have even been through the redress scheme and so forth. Is it really the intention of government that, in those instances, we still expect them to go to the Ombudsman and give them a notice?

Hon SUE ELLERY: The answer to the member's question is yes, also assuming that the person is an employee at the time that they bring it to the attention of the entity. But I think the point needs to be made that in that first report, the entity is saying, "This is what I have become aware of. This is what I have done. This is what I intend to do." The office of the commissioner will need to consider whether it is historical and whether it has been reported to the police and has been through the redress scheme et cetera and make a judgement about what, if any, further action needs to be taken. The prime purpose here is protecting a child.

Hon NICK GOIRAN: If the entity were aware of information of instances of a former employee, would there be no obligation on the part of the entity to report back to the Ombudsman?

Hon SUE ELLERY: That is correct.

Hon NICK GOIRAN: The minister will recall that I mentioned with respect to proposed section 19G that what is currently before us on pages 10 and 11 of the bill will not be the content of the act in approximately 15 months' time, because proposed subsection (1) will be expanded to include the provisions in clause 26. Is it then the case, just going further with these entities and their somewhat complicated obligations, that in approximately three months' time, we will say to them, "You need to inform the Ombudsman about any reportable conduct—sexual offences, sexual misconduct or physical assault—of your current employees. Be aware, entities, that in 12 months' time, we are going to retrospectively impose upon you a requirement to upgrade your notice." The notice that an entity may give at the three-month mark—that is from today—will suffice for 12 months, but in 15 months' time, will we expect them to send in a revised version in the event that their employee is otherwise captured by what is described as "significant neglect of a child" or "any behaviour that causes significant emotional or psychological harm to a child"?

Hon SUE ELLERY: While the officers are considering further advice for me, the member will recall—I also made the point in answer to earlier questions—that there will be a whole series of educational materials and programs prepared. I cannot imagine that the Ombudsman's office is going to be silent on that part that is coming into effect at a later period. But I will check with the officers whether there are any other points I need to make.

The advisers have confirmed that when the Ombudsman's office does that initial round of educational programs et cetera, it will make reference to the fact that there will be two additional criteria added. The extra time will give it the opportunity to prepare the material that will provide guidance to entities on what sorts of things constitute the elements that are set out in those two provisions in clause 26. We talked about this before. The member knows that those elements are a bit harder to identify and understand with some precision.

Hon NICK GOIRAN: The minister would be particularly mindful of this because one of the classes of entities is providers of education services.

Hon SUE ELLERY: With due respect, they are already used to looking at things like neglect and emotional and psychological abuse.

Hon NICK GOIRAN: Sure, but the principals of these schools do not have an obligation to report to the Ombudsman.

Hon SUE ELLERY: That is correct. All I am saying is that that category of people is most likely to understand what they are looking for.

Hon NICK GOIRAN: Yes, they are already on alert for these types of things in the ordinary course of their employment. They will need to return to the historical records on each of the employees in their school and ascertain whether there has ever been an allegation of any behaviour that causes significant emotional or psychological harm to a child.

Hon SUE ELLERY: That will be the case if someone comes to them, so remember the bit that we discussed earlier. It is not about them trawling back through their records. Once this legislation comes into effect and someone brings something to their attention, they will need to ascertain to what extent that is a reportable matter. They will go back and look at the provisions. They may need to do that piece of work when the provisions in clause 26 come into effect. If someone has come to them in the intervening period, they may need to do that, but it is not a case of a principal sitting there and being obligated to go back and look through all their files even if nobody has come to them or said anything. The obligation to provide a report to the commissioner kicks in if someone comes to them after these provisions have been proclaimed.

Hon NICK GOIRAN: Even though the principal of the school has a file, which they know exists, I appreciate that there is a distinction between people and what they might choose to do, in any event, out of a sense of moral obligation and what they are required to do under the law, with the pain of the penalty for failing to do so. To be clear: we are saying that the principal of the school, even though he or she knows that they have a file on a complaint about behaviour that causes significant emotional or psychological harm to a child and the complaint relates to a current employee, unless somebody actively brings it to their attention after commencement day, for the sake of the exercise that we are going through right now, by knocking on their door, metaphorically speaking, and saying, "I just remind you of that matter that you have in that file", they are not obliged to contact the Ombudsman.

Hon SUE ELLERY: That is correct. Let us go back to the first principle. It is about keeping children safe. If someone had reason to believe, irrespective of their obligation, that an allegation had been made against a teacher, a gardener, whoever, at a school, and they did not believe it had been properly dealt with at the time, they might feel inclined to lodge a report in any event. Having said that, these things are treated very seriously when those sorts of allegations are made, irrespective of this regime coming into effect. At the stroke of a pen, the director general has, can and does when required—far too frequently for my liking—say, "You are banned from school because X, Y, Z allegation has been made." There are strong mechanisms in place now.

I am not saying that that principal will be turned away by the Ombudsman; I am saying that the legal obligation to report kicks in if someone comes to them after this legislation has been proclaimed. If they have reason to believe that someone is still teaching kids and children are at risk, as opposed to saying that the police dealt with it 15 years ago and that person is no longer working in the schools, and they know that to be a fact, they might not do anything about that. They are certainly not obliged to and they might feel no moral obligation to because it was dealt with appropriately at the time. We should go back to the first principle. Are children at risk? Once this legislation becomes law, I think any principal worth their salt who believes that children are at risk will make a report anyway.

Hon NICK GOIRAN: Indeed. We would think that in that situation they would already have taken some industrial action with respect to the employee whom they are concerned about. I refer to a scenario in which a historical matter has been investigated and not substantiated, and somebody then comes forward and reminds the principal of the historical matter, but the principal feels no need to report that to the Ombudsman because it has already been looked into and it has been found that it has no substance. Would the fact that it has been raised on a fresh occasion trigger an obligation to go to the Ombudsman?

Hon SUE ELLERY: Yes, it would.

Hon NICK GOIRAN: The particular category of matters that is described as reportable conduct in proposed subsection (1) at present includes the following three things —

(a) a sexual offence;

(b) sexual misconduct;

(c) a physical assault committed against, with or in the presence of, a child;

There is also a fourth category, which is —

(d) an offence prescribed by the regulations for the purposes of this paragraph.

I assume that is another one of those famous McGowan Labor government safety valves.

Hon SUE ELLERY: I think it is fair to say it is one of parliamentary counsel's safety valves.

Hon NICK GOIRAN: Is it not the intention to have any offences listed?

Hon SUE ELLERY: We do not have a list.

Hon NICK GOIRAN: Not only will there not be a list, but also it is not presently the intention to include any offences by the use of that subsection?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: At the moment, we can reasonably take it that in approximately three months' time, we will have these three categories. Are each of those three categories of sexual offence, sexual misconduct and physical assault included in the legislation in New South Wales, Victoria and the Australian Capital Territory?

Hon SUE ELLERY: Yes, they are.

Hon NICK GOIRAN: Further to that, do those other jurisdictions also include significant neglect of a child, and behaviour that causes significant emotional or psychological harm to a child?

Hon SUE ELLERY: Yes, they do.

Hon NICK GOIRAN: I refer to proposed section 19H, "Reportable conviction". Will overseas convictions be captured under this proposed section?

Hon SUE ELLERY: Convictions under the jurisdiction of other states will be, yes. Convictions under commonwealth legislation will be, yes, even if that offence is committed under Australian commonwealth legislation but in another country.

Hon NICK GOIRAN: I am not talking about those types of offences. If a person was convicted of an offence overseas, would that be captured here?

Hon SUE ELLERY: I am advised that it will not be captured by being an offence, but it will be a reportable allegation. If someone says, "I know that person X committed this crime in"—insert country of your choice—that will be a reportable allegation, and steps will need to be taken to report it. Decisions will be then made about how best to investigate it et cetera.

Hon NICK GOIRAN: I ask the Leader of the House to turn to proposed section 19I, "Entities to which reportable conduct scheme applies". It states —

> The reportable conduct scheme applies to an entity set out in column 2 of Schedule 2 that —
>
> (a) exercises care, supervision or authority over children as part of its primary functions or otherwise; and
>
> (b) is not exempt under section 19O(1).

We have discussed previously that the bill captures government departments and agencies, but does the bill include commercial services for children, including entertainment or party services, gym or play facilities, photography services and the like?

Hon SUE ELLERY: I am advised that they are not included. The royal commission, in its final report, provided a rationale for certain institutions not being covered by reportable conduct schemes. It states —

> The recommended scope of reportable conduct schemes is narrower than the types of institutions required to comply with the Child Safe Standards.
>
> We do not recommend that institutions providing the following services come within the scope of reportable conduct schemes:
>
> - activities and services provided by clubs and associations with a significant membership of, or involvement by, children
> - coaching or tuition services for children
> - commercial services for children
> - transport services for children.
>
> Some of these services may nevertheless be covered if they are ancillary to other services that are covered—for example, transport services that are ancillary to a disability service.
>
> Given the limited evidence before us relating to these types of institutions, we believe that it would be a disproportionate regulatory burden to require that they be subject to additional oversight through reportable conduct schemes. In reaching this conclusion we also considered:
>
> - the relatively lower responsibility that these institutions have for the care, protection and supervision of children

If the honourable member think's about a children's birthday party organisation, a child might come into contact with that service once a year for a number of hours, as opposed to living in residential care in the care of the state. The report continues —

> - the significant regulatory burden that reportable conduct schemes place on institutions that have a high membership base and low resources, or that operate as sole traders or small businesses
> - the large number and diverse nature of institutions in this group, which could make regulation by government impractical
> - the potentially limited capacity of an oversight body to engage with and support these institutions in addition to the types of institutions that we recommend be covered
> - the fact that most of these institutions are not covered by the existing New South Wales, Victorian and Australian Capital Territory schemes.
>
> …
>
> Other existing and recommended regulatory mechanisms will ensure that institutions whose employees engage in child-related work, but are not covered by reportable conduct schemes, are nevertheless encouraged to improve their responses to, and reporting of, child sexual abuse.

The commission flagged that it might be considered something to do in the future and that state and territory governments should periodically review the operation of reportable conduct schemes to determine whether the schemes should cover additional institutions. I am also advised that that is specifically covered in the review provisions in the bill before us.

Hon NICK GOIRAN: I understand the point that the minister makes about those organisations that have what might be described as one-off contact with children. One of the categories that the minister mentioned is coaching or tuition services for children, and by the very nature of those activities, it would be more often than not the type of activity that is done on an ongoing basis, rather than a one-off basis, yet it will not be captured by the reportable conduct scheme. If I compare and contrast that, we see that page 58 of the bill has "Examples of activities, facilities, programs or services" that are intended to be captured by religious bodies, such as art groups, choir and music groups, dance groups, sports teams, tutoring services—to name just a few examples listed there. It is not obvious to me why those activities would be seen as more dangerous with regard to child-safe standards just because the organisation that runs it happens to be a religious body.

Hon SUE ELLERY: I will get some advice, but it is also the case that we could expect that if a child is interacting with one of those services, that is not the only contact they would have with that religious organisation. It is likely that they will attend more than just a youth group, for example, but I will see whether there is further advice I can give the member.

I am advised that it was trying to identify where ministers of a religious organisation, who would be considered employees, might engage with children, and that is why a list was provided of the scope of things which a religious organisation does but which, if they happened with a birthday party provider or a tutorial service, are not included. It is about recognising that ministers in a faith-based organisation will be captured as employees and to set out, as I understand it, the kinds of activities that they may be doing.

Hon NICK GOIRAN: It includes employees of that religious body, contractors and volunteers. Let us take, for example, a netball team that is run by a religious body compared with a netball team that is run by a secular organisation. Two different standards will apply, yet the risk to children participating in that activity, I argue, would be the same. It is not apparent why one group would not be captured, keeping in mind that someone who might be the coach of that particular netball team almost certainly in that context will be a volunteer. The person might even volunteer to be the coach in two different organisations. If there is reportable conduct in one, the Ombudsman will be notified as a matter of law; if it happens in the other organisation, not necessarily. In fact, in that situation, can the Ombudsman still receive a complaint if the scope of the conduct falls outside of the scheme?

Hon SUE ELLERY: The advice I have been provided is that religious institutions were deemed to be generally larger institutions than, say, an organisation that is running local netball teams. That may or may not be the case, and the member could probably come up with examples of when that is not the case. The prospect was that the royal commission said this is where to start, because of the evidence put before it about where the perpetrators of abuse against children have been and are. The member will note from the bit I read out earlier that the royal commission made the point that it was going to start with this. It was not going to include those other organisations because the burden of the regulatory regime would be too great on them, but it will not walk away from that forever and we need to take account of that in the review provisions, which is what we have done. The member is right if his line of thinking is that it is not perfect and it is not logically consistent. I understand the point the member is making, but the royal commission said, on balance, that the evidence before it is those institutions that have been the perpetrators of abuse.

Hon NICK GOIRAN: I thank the minister for that explanation. At least it helps to explain what I think we would describe as the start of this rather than necessarily being the finish line. That is helpful when we consider that the

legislation currently before us talks about dealing with this in two phases. I guess the minister is encouraging us and those observers who are interested in the passage of this bill to not see it as a two-phase reform but just the first two phases of reform. I think the minister has foreshadowed a future clause dealing with the issue of review.

Thinking about sports teams, it would be troubling. I go back to the fact that in the early group we will have providers of education services. It is routinely the case that providers of education services will have sports teams, just as it is with religious bodies, and these sports teams will be captured by that. But if a sports team falls outside those types of providers, at least for the foreseeable future, it will not be captured. That means that those who are particularly concerned about child safety will need to give special regard to those organisations, because the last thing we want is the perpetrators shifting their activities from schools and religious organisations, and seeing opportunities in other organisations that they might see as vulnerable. Such is the challenge for all of us.

Minister, speaking of schools and proposed section 19I, if a school was to use a subcontractor, let us say a plumber, to fix its bathrooms and an employee of that subcontractor is accused of reportable conduct, who is the head of the entity? Is it the school principal or the owner of the plumbing business?

Hon SUE ELLERY: The bill captures those contractors in schools who are engaged in a contract in activities related to children, say, a childcare service on a school site. In that case, the head of the entity is the director general for the Department of Education. A plumbing service, such as the example the member gave, is not captured by this.

Hon NICK GOIRAN: Is that because the service that the business is providing to the school is not a service related to children, even though a person might be working on bathrooms that the children are using?

Hon SUE ELLERY: That is correct, but that is a bad example because the kids would not go into the bathrooms while the plumber is working on them. The plumber would not want that. The kids would probably love it, but the plumber would not want that. Theoretically, that is correct. It is about the services they are engaged to provide. If they provide services to children, they are captured; and, if not, they are not.

Hon NICK GOIRAN: To use, perhaps, a better example, what about a contractor who is brought in by the school to look after the gardens? They will be all over the campus. Their job is to deal with the plants and so forth —

Hon Sue Ellery: Reticulation.

Hon NICK GOIRAN: Yes—the weeds, the height of the lawns and the like. They do not necessarily interact with children. That said, I cannot be the only student—back in the day—who had some interactions with the gardener. I think that would be routine; in fact, it would be a rather rude gardener who cannot even say hello to a child who walks by. In fact, I think the school and the principal would encourage that for the culture of the organisation. The point is that the subcontractor, who is providing a gardening service, is not captured by the scheme.

Hon SUE ELLERY: I am advised that a contracted gardener is not covered, but if the gardener is employed directly by the school, they are.

Hon NICK GOIRAN: I ask the minister to turn to the provision about employees of relevant entities, which is found at page 7. Proposed section 19D defines an employee of a relevant entity. We already know from the previous discussion that the starting threshold requires the person to be over the age of 18. Paragraph (a) defines an employee as —

> an officer or employee of the relevant entity …

That is exactly the scenario that the minister just outlined: the gardener is an employee of the relevant entity. Paragraph (b) states the employee must be —

> engaged by the entity to provide services to children, including as a volunteer or contractor …

The minister has indicated that so long as the volunteer or contractor is engaged to do something on the premises other than provide services to the children, they are not captured by the scheme. Is that the case in the other jurisdictions?

Hon SUE ELLERY: I am advised that it is.

Hon NICK GOIRAN: Proposed section 19J, which deals with the objects and principles of this division, refers to three objects —

> (a) preventing reportable conduct; and
>
> (b) reporting, notifying and investigating reportable allegations and reportable convictions; and
>
> (c) taking appropriate action in response to findings of reportable conduct.

Proposed paragraphs (b) and (c) seem to be obviously addressed by the bill. How is it that this division will help to prevent reportable conduct?

Hon SUE ELLERY: We have already talked about the extent of the work that will be done on education and the level of consultation that will happen with industry and peak bodies of industry to provide assistance to those who will be obligated to report. That of itself will mean there will be significant public awareness of the issues around reportable conduct and abuse of children. If we use the netball example again, a person may well find themselves

in that position during the course of their work, because they run a school or whatever it is that will be covered by this legislation, and they will carry that information with them for the rest of their life, whether it is attending their kids' netball games on the weekend or whatever. In the first instance, there will be an enormous number of people in the workforce and in the organisations captured by this legislation who will be made aware of the obligations. In a sense it is like achieving cultural change. Once people start to talk about family and domestic violence, for example, a lot of things flow from that. I am going to see whether there is further information I need to give the member. But in a very general sense, at the very least there will be public awareness of the issues.

I am also advised, and the honourable member might intend to take us there anyway, that proposed section 19R sets out the provisions the head of the relevant entity has to put in place to prevent reportable conduct as well.

Hon NICK GOIRAN: I thank the minister for that explanation. Proposed section 19L starts to carve out scenarios in which the scheme will no longer apply to an agent of the Crown. Why is that so?

Hon SUE ELLERY: I think this is another—let us hope he is not listening—standard Parliamentary Counsel special. I am advised that this is a standard clause in many pieces of Western Australian legislation.

Hon NICK GOIRAN: Can we look at the first one, minister?

Hon Sue Ellery: These are around penalties.

Hon NICK GOIRAN: Yes. Proposed section 19L states that proposed section 19U(6) will not apply if the relevant entity is an agent of the Crown. Proposed section 19U(6) says —

> It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (2).
>
> Penalty for this subsection: a fine of $5 000.

I think the minister gave the example of a director general earlier; I cannot recall whether it was Education or Communities.

Hon Sue Ellery: Yes, it was Education.

Hon NICK GOIRAN: Let us use that as an example. Hypothetically, the director general for Education fails without reasonable excuse to comply with proposed subsection (2)—that is, to give written notice to the Ombudsman within seven working days—and is then immune. I do not think that that can be said to be a Parliamentary Counsel special and something that is routinely found in legislation.

Hon SUE ELLERY: I am advised that is correct, honourable member.

Hon NICK GOIRAN: It is correct in the sense that that is what would occur: the director general would be immune from prosecution, and the government considers that to be satisfactory. This will apply only to agents of the Crown; it will not apply to anybody else. Therefore, if anyone else in Western Australia under these headings—forget about the public bodies, because they are the immune ones; they are the special class of Western Australian citizens—a provider of private education services, private health services, out-of-home care services, childcare services or youth justice services, or the religious bodies that we discussed earlier, or providers of disability services or accommodation and respite services for children, fails to notify the Ombudsman within seven working days, under this new scheme that we are about to pass, they will be subject to a fine of $5 000. But if they happen to be in the luxurious position of being within a public authority, they do not need to be worried about that.

Hon SUE ELLERY: I would not describe it as a luxurious position. The member is right, though; they will not be subject to the fines and penalties. But it is the case, for example, that relevant heads of entities in the public sector have agreements in place with the Public Sector Commissioner and are required to comply with legislation, and the Public Sector Commissioner can take action against them on the basis of their failure to comply with relevant legislation.

Hon NICK GOIRAN: Minister, that is with respect to proposed section 19U(6), which is the notification to the commissioner. But as we consider what else these individuals are immune from, we turn to proposed section 19W, "Head of relevant entity must respond to reportable allegation or report conviction". Proposed subsection (7) states —

> It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (1) or (6).
>
> Penalty for this subsection: a fine of $5 000.

The type of element that the head of a relevant entity will have failed to have done, without reasonable excuse, is set out at proposed section 19W(1), which states —

> As soon as practicable after the head of a relevant entity becomes aware of a reportable allegation or reportable conviction involving an employee of the relevant entity, the head of the relevant entity —
>
> (a) must —
>
> (i) investigate the reportable allegation or reportable conviction …

And so on and so forth. Again, if you are the director general of Education, the director general of Communities or, indeed, the Commissioner of Police, you need not be concerned because you can fail to respond to such an allegation or reportable conviction and there will be no penalty for you. Is there some other way in which these individuals will be captured so that they are not treated—I say it somewhat tongue-in-cheek, but for the lack of a better description—as a first-class citizen who is immune from these things while everybody else has to comply with the state of the law?

Hon SUE ELLERY: As was just set out in the example the member gave at proposed section 19U(6)—it can be provided for the other two that are listed in the same proposed section—as public servants, as heads of their respective agencies, they are held to account by the agreements that are put in place between them and the Public Sector Commissioner, which will include provisions that they need to comply with legislation. In fact, the outcome for them may be considerably worse than a $5 000 fine. Although they are excluded from these provisions, they will not fail to be held to account. The Public Sector Commissioner holds them to account, and they are expected to comply with all relevant legislation.

Hon NICK GOIRAN: Will there be a protocol in place for the Ombudsman to report these matters to the Public Sector Commissioner?

Hon SUE ELLERY: There does not need to be a protocol in place. The Ombudsman can report matters to the Public Sector Commissioner at any point. I will check and see whether it is planned to have one, but the Ombudsman has regular catch-ups with all sorts of senior people in government, including the Public Sector Commissioner. The Ombudsman has a role to monitor the rollout and implementation of the scheme, so he can make a report at any time to anyone about that. Of course, the Ombudsman has powers equivalent to those of a royal commission. For example, if he wanted to hold an inquiry off his own motion, he has the power to do so.

Hon NICK GOIRAN: If we consider proposed section 19W(7), we see that it states —

> It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (1) or (6).

That deals with them becoming aware of a reportable allegation involving an employee, and they are required to investigate, but they have not done so. For reasons I will explain in a moment, the Ombudsman might be completely unaware that that situation has occurred. In contrast, the earlier provision provides that information must be disclosed to the commissioner within seven working days. It will, of course, be the Ombudsman who decides whether to instigate a prosecution under that provision. It may be a situation in which the Ombudsman has a case before him and one of his hardworking officers says, "I need to let you know, Mr Ombudsman, that person X has failed to provide this information within seven working days and is therefore in breach of section 19U. I recommend that you take some action." He then says, "Thank you for drawing that to my attention. Unfortunately, what you have failed to highlight is that this person cannot be captured because they are an agent of the Crown." Surely the Ombudsman must have a protocol at that time to say, "Look, instead of referring this matter to police for a prosecution, my standard operating procedure is that I now launch some kind of complaint or send some material to the Public Sector Commissioner."

Hon SUE ELLERY: It is not that they are not captured; it is that the penalties set out therein do not apply to them. When that comes to the attention of the commissioner, the commissioner's response would be the same as it would be if the person were the head of a private sector organisation—that is, "Provide due cause. Do you need assistance? Is there some way I can help you meet your obligations?" The difference is, ultimately: what power does the commissioner have to implement the penalty? That is where the difference is; it is not that they do not have the obligation. In the same way that the Public Sector Commissioner provides training for directors general and others around all manner of governance obligations, including which matters must be reported to the Corruption and Crime Commission et cetera, I am absolutely sure the Public Sector Commissioner would do the same kind of exercise in this situation. As I said, although the powers of the Public Sector Commissioner to deal with a director general who has failed to comply with a piece of legislation that they are required to comply with do not run to imprisonment, they certainly have the capacity to go beyond a $5 000 fine.

Hon NICK GOIRAN: The point is conceded that the penalties, or the sanctions, for an agent of the Crown almost certainly would be more severe than the penalty that is set out in this proposed section, so I do not quibble with that. What I am trying to seek confirmation of is that there will actually be a sanction and a defined process, because here in the legislation there certainly is in regard to any other Western Australian captured by the scheme. I would describe these particular individuals as being silent.

Hon Sue Ellery: I understand the point you are making.

Hon NICK GOIRAN: That could be satisfied by there being an already existing protocol in the Ombudsman's office to say that any instance when an agent of the Crown is seen to be in breach of the Ombudsman's legislation, the Ombudsman has a protocol that automatically refers the matter to either the Public Sector Commission or the Corruption and Crime Commission. That may already exist. I do not know. I guess that is what I am trying to get to the bottom of.

Hon SUE ELLERY: I understand the point the honourable member is trying to make. I am not sure whether a formal document or memorandum of understanding like that exists and I do not think I have that information at the table, but I can tell the member that the Public Sector Commissioner makes it her business to make sure that her officers are complying with the legislation they are required to comply with. I am sure that she will have conversations with the Ombudsman and I am sure that he will probably initiate the same thing in reverse, but the penalty rests in the functions that she carries out and the policies and procedures she has in place. They go to the performance agreements that she has with the public sector directors general that have set out within them a whole range of standard provisions, which include compliance with the legislation pursuant to their particular responsibilities. The member will not find it in this bill. That is where that set of provisions exist.

Hon NICK GOIRAN: I will conclude with an observation, hopefully for the benefit of Parliamentary Counsel if they are listening to this debate. I understand what is trying to be achieved here. I think that a nice solution when we find this scenario before us in future legislation would be to simply mandate that a report has to be made to the Public Sector Commission or the CCC. All that would be required is an extra clause to say that the commissioner—that is, the Ombudsman—must, in the event that he or she finds these scenarios to have unfolded, report the matter to one of those organisations. I think that would neatly capture everything, but we can move on.

The minister has helpfully, during her second reading reply, set out the supplementary resources that will be provided to the Ombudsman to fulfil this new expanded role, which is set out at proposed section 19M, "Functions of the commissioner in relation to scheme". That sets out proposed subsections (1)(a) through to (k). The minister will see that it includes at proposed subsection (1)(j) on page 15 that a report will be provided to Parliament on the reportable conduct scheme. What will be the frequency of that reporting?

Hon SUE ELLERY: The commissioner will report annually to the Parliament but may also make a report about any matter at any time, and is not precluded from doing that.

Hon NICK GOIRAN: Will there be a specific annual report?

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: Is that distinct from the annual report that the Ombudsman provides?

Hon SUE ELLERY: I am advised that it will be within the report that the Ombudsman provides.

Hon NICK GOIRAN: Proposed sections 19M(1)(e) and (f), on page 14, refer to the commissioner considering whether or not something is in the public interest. Does the Ombudsman currently have to apply a public interest test from time to time?

Hon SUE ELLERY: There is a public interest provision in the secrecy provisions of the Parliamentary Commissioners Act.

Hon NICK GOIRAN: At proposed section 19N, what class or type of conduct is likely to be exempted by the commissioner?

Hon SUE ELLERY: Examples of conduct that may be exempted include: conduct that has been identified as not creating a heightened risk for children, which therefore does not need to be captured by the scheme; specified conduct for entities that have established effective investigation processes and demonstrated an ability to respond to investigations to an appropriate standard; conduct that has been inadvertently included; and conduct that it is no longer appropriate or necessary for the scheme to capture. As the member will note in proposed subsection (2), the commissioner must publish the details of that. I am also advised, if it is helpful to the honourable member, that recommendation 7.10 in the royal commission's report was that reportable conduct schemes should provide for power to exempt any class or kind of conduct from being reportable conduct.

Hon NICK GOIRAN: That takes us to proposed section 19O and the exempt entities, or the possibility of entities being exempt. Is it the intention to exempt any entities?

Hon SUE ELLERY: No, not at this point, but as the scheme matures, that might come to be considered prudent.

Hon NICK GOIRAN: Do New South Wales, Victoria and the ACT all include these types of exemption provisions?

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: At proposed section 19P, we move from the notion of exempting conduct and entities and we turn to exempting investigations. Will the commissioner be required to report on the exemptions that he gives?

Hon SUE ELLERY: I am advised that, no, there is not a specific provision requiring him to do that, but, by way of good practice, it may well be that he does that in a de-identified way in the annual report.

Hon NICK GOIRAN: Yes, I think so, and I would encourage the Ombudsman to give consideration to that for obvious reasons—identifying an investigation would seem to defeat the purpose of exempting an investigation.

If there were to be some form of a table in the annual report, which is not uncommon, that would indicate the frequency of the use of these exemption provisions. I think that would be appropriate, particularly when we consider

that at proposed section 19M there is an obligation on the part of the Ombudsman to publish details of any exempt class or kind of conduct, and that that publication will take place on the commissioner's website. It does seem to me that although there is strong transparency with regard to that exemption provision, the silence with regard to proposed sections 19O and 19P, although understandable, might be remediated in the form of a de-identified table or report. I encourage the commissioner to look at that.

Moving to proposed section 19Q, "Commissioner may approve head of relevant entity in certain circumstances", how will the Ombudsman communicate to the heads of each relevant entity their new responsibilities under the scheme?

Hon SUE ELLERY: I am advised that there will be direct contact with the head of the entity. That will also be considered as part of the guidelines and educative material that is being prepared. I am advised that some initial discussions have already commenced with, for example, some of the corporate executives of respective government agencies that will be captured by the regime.

Hon NICK GOIRAN: It seems to me that under proposed section 19Q the relevant entity must take the first step and nominate a person or a holder of a position in the entity to be the head of the entity, and that will subsequently come before the Ombudsman and he will then give that person approval or otherwise. What will happen if no person comes forward?

Hon SUE ELLERY: I am advised that because the commissioner's office will be aware of the entities to be captured, if they do not receive notification from the entity identifying who the head is, they will reach out; that is, the commissioner will reach out to the entity to make sure that they meet its obligations.

Hon NICK GOIRAN: Is that an indication that the government or the Ombudsman knows how many entities will be captured by the scheme?

Hon SUE ELLERY: I am advised that work has begun on identifying the entities to be captured. The work done so far indicates probably about 4 000 entities. That is not a precise figure. Once the legislation is passed, that work will be expedited and the figure will become more precise.

Hon NICK GOIRAN: There is work to be done and the work is underway. At this point it is fair to say that because the work is underway, we do not have a complete list of the entities. As the Leader of the House foreshadowed in an earlier clause, possibly clause 1, what we expect would occur after the commencement of this matter is that new entities will emerge and the Ombudsman cannot necessarily be expected, I do not think, to be in this constant state of scanning and monitoring for the emergence of new entities that may be captured by this scheme. Again, I go to my question: What will happen if an entity exists and does not provide the name and there is no volunteer? Is there any penalty on the organisation for failing to have nominated a head? What kind of power exists for the Ombudsman to pursue this?

Hon SUE ELLERY: While the advisers are finding that bit of information, the member may remember what I said way back at the beginning when we started questioning. The intention is not to take a sledgehammer approach; it is to be educative. As a minister in the government, I imagine that, over time, public sector guidelines, Premier's circulars or whatever would be developed for the public sector so that every time a new entity is created, part of the notification process goes to the obligations under this bill and the commissioner is notified. I imagine that sort of thing would happen over time. As I described for the public sector, for other sectors, I am advised that many of the organisations are already captured in other regulatory frameworks, so lists already exist, for example, for some of the other regulatory frameworks that the Ombudsman's office is familiar with and used to dealing with. If the point the member is making is that this is a big task, there is no question about that. It will be an evolving task as well. It is never going to be static. That is a point well made and understood.

Hon NICK GOIRAN: That is helpful, minister, but when push comes to shove, if a new entity exists, the entity is such that it is intended to be captured by this scheme. As set out in proposed section 19Q(1)(b), if the entity has no chief executive officer or principal officer and it refuses to provide a person, the patient and tolerant Ombudsman will continue to knock on that entity's door and encourage it, because he does not want to take the sledgehammer approach, and educate it on the importance of complying with this scheme. When push comes to shove, what power will the Ombudsman have in this scenario?

Hon SUE ELLERY: There is not a penalty. There is not a fine. There is not an imprisonment. Ultimately, the Ombudsman will have the power to name and shame. As we discussed a few clauses ago, the commissioner will have the power to make a report to Parliament at any time about any matter.

Hon NICK GOIRAN: That is good. I will move on to proposed section 19R. It includes a large range of duties and responsibilities that are being imposed upon heads of relevant entities. Some of these things might be said to already be occurring with—I think this was the phrase used in an earlier part of the debate—a "modern" organisation. We might expect that it would be doing this; nevertheless, it is a fairly robust set of requirements. What is the nature of the support that is going to be provided, particularly for volunteer organisations?

Hon SUE ELLERY: It is recognised that some of the organisations that are going to be captured may not have put some of these things, such as complaints mechanisms, in place already. It is proposed that the Ombudsman's

office will work with, and have resources available relevant to, each industry so that organisations can access guidance notes and some common resources through, for example, their peak body organisations. The honourable member would be well aware that organisations such as the Chamber of Commerce and Industry of Western Australia provide a whole range of regulatory, particularly industrial, employment advice to its members, which range from some very small organisations to some very large organisations. Organisations can access guidance notes and some common resources. The provision of education advice and assistance is set out in the functions of the Ombudsman, which we have already canvassed, around education and providing advice.

Hon NICK GOIRAN: I move to proposed section 19S. What is the penalty for noncompliance with proposed section 19S(2)?

Hon SUE ELLERY: Similar to that which I described before, there is no fine, penalty or imprisonment, but, as I have said, the Ombudsman has the power to name and shame—for example, to make a report to the Parliament about any particular matter.

Hon NICK GOIRAN: I take the minister to proposed section 19U, "Head of relevant entity must notify Commissioner". This is where we invoke the seven working day time frame, which I expressed some concern about in the second reading debate. In response to that, the minister explained in part to the chamber that the seven working day period is longer than the Victorian legislation, which I understand has a three-day period, and shorter than the Australian Capital Territory legislation, which has a 30-day period. What is the period of time for the New South Wales legislation?

Hon SUE ELLERY: It is seven days.

Hon NICK GOIRAN: Is that seven working days as well?

Hon SUE ELLERY: Yes, I am advised that it is.

Hon NICK GOIRAN: There has been some interaction with those other jurisdictions, and I think the minister indicated that the Ombudsman visited each of those jurisdictions. Did any of those jurisdictions—Victoria with its three-day period, New South Wales with its seven-day period or the ACT with its 30-day period—indicate whether any problems arose as a result of the time frame that they were using?

Hon SUE ELLERY: No, but if the member recalls, I think I made this point; I cannot remember whether it was in the second reading reply or in reply to a subsequent question. The royal commission made the point that it thought that 30 days was too long. If the prime focus is the safety of children, then waiting 30 days is too long.

Hon NICK GOIRAN: That being so, there was still a decision to not invoke the Victorian model of three days. Why was that?

Hon SUE ELLERY: I thought I said this in my second reading reply speech, but maybe I did not. Originally, the draft had three days. In the process of consultation, stakeholders raised that that was too short, so the seven-day figure was the response.

Hon NICK GOIRAN: I agree. If the head of a relevant entity becomes aware of a reportable allegation or conviction involving a person who is an employee of their relevant entity, they need to be satisfied about a number of things. We have teased out a range of examples over the course of today. These are things that would be in the mind of the head of the relevant entity. It could then be the case that the head of the relevant entity might want to take advice on their obligations. Keep in mind we have already accepted that organisations might choose to use an external investigator because they do not feel equipped to do this themselves, albeit that might come at a cost. In the same spirit, they may want to go to an external source of advice, particularly a lawyer, to make sure they are complying correctly with the scheme. Seven working days will require them to expedite not only seeking the advice, but also receiving the advice. In her reply, the minister helpfully mentioned the possibility of an extension being granted, and referred us to proposed section 19U(4). Is that provision for an extension also available in other jurisdictions?

Hon SUE ELLERY: We do not have that information at the table. I am advised that it is in at least one but I cannot tell the member which one that is.

As I said during my response to the second reading debate, I think it is worth noting that in discussions with the other jurisdictions, from my recollection, nobody reported an issue that they had that amount of time, whether it was three days or seven days. That was not proving to be a barrier.

I also made the point that certainly in the first part of the life of this scheme, the Ombudsman is not looking to use a sledgehammer. It may well be that the head of the entity says that they will do it but they need further advice. Certainly, the approach that the Ombudsman will take in the first instance will be to either guide them in the formal provisions that relate to exemptions or assist them. If we look at this situation in five or 10 years, a different approach may be taken, but the system has to grow and it has to start somewhere. A very deliberate decision has been made. We will not whack people over the head in the first instance.

Hon NICK GOIRAN: Did the minister say that the request for the extension, with respect to this extension provision that is found at proposed section 19U(4), ought to be submitted within seven working days?

Hon SUE ELLERY: I am advised that that would be the expectation.

Hon NICK GOIRAN: The minister mentioned that at least one of the other jurisdictions has an extension provision. Has that extension provision needed to be invoked or used?

Hon SUE ELLERY: I do not have that information at the table.

Hon NICK GOIRAN: I must say that the advisers have been doing an outstanding job recollecting information relating to this matter. It is forgivable, once in a blue moon, for something to not be immediately top of mind. I say that in all seriousness. The advice has been excellent during consideration of this legislation.

I take the minister to proposed section 19U(2)(j). We have one of these infamous clauses. What is the information that is intended to be prescribed by the regulations?

Hon SUE ELLERY: There is nothing specifically planned.

Hon NICK GOIRAN: This is one of those occasions when the government will blame parliamentary counsel and I will blame the government for allowing it to be there, and we will move forward.

Proposed section 19U(6) provides that if the head of an entity fails to comply with proposed subsection (2), the penalty will be $5 000. This penalty level is found frequently throughout the bill. If I remember correctly, when we were discussing this matter under clause 1, the minister was potentially going to go away and see whether there were any significant deviations in the penalties of the other jurisdictions.

Hon SUE ELLERY: I did ask the advisers at the table and was told that there were not.

Hon NICK GOIRAN: So the $5 000 penalty is consistent with New South Wales, Victoria and the ACT, but I think the minister also drew to our attention the Children and Community Services Act.

Hon SUE ELLERY: Yes, four elements in the Children and Community Services Act have similar penalties.

Hon NICK GOIRAN: Very good. I refer to proposed section 19V, "Information may be disclosed to Commissioner or head of entity". What security measures will be in place to ensure that the highly sensitive information that is provided to the commissioner will remain confidential?

Hon SUE ELLERY: I am advised that the Ombudsman is well versed in maintaining confidentiality provisions. Secrecy provisions exist within the legislation that covers his work. I do not have a list of the specific things in place, but the member would obviously be aware that that office carries out a range of other functions and has provisions in place to ensure confidentiality.

Hon NICK GOIRAN: Some of the matters that the Ombudsman deals with are important to the person who is putting the complaint before the commissioner but would not necessarily be at the level of sensitivity as an unproven allegation of sexual misconduct. What types of matters is the office of the Ombudsman dealing with in its functions and role that equates to that level of sensitivity?

Hon SUE ELLERY: The child death review function is one of them. Family and domestic violence is another. Those are serious matters; if the wrong information got out or if incorrect information got out, that could destroy people's lives and could lead to prosecution. Very serious information is held within that office.

Hon NICK GOIRAN: In this instance, unlike perhaps some of those other scenarios, the Ombudsman will have what I think I previously described as a hands-on role working with these entities because the Ombudsman gets to choose whether he wants to monitor them undertaking the investigation or, potentially, sit back and monitor the police undertaking the investigation or, indeed, undertake the investigation himself. When the Ombudsman undertakes his own investigation, there will already be the existing provisions with respect to security of information. Dealing with the police, it follows that the police are routinely dealing with these sensitive matters. A different situation will arise depending on the entity that is involved. Some may be very large and have almost specialists in the field. Others will be quite amateur with respect to these matters, mere novices, yet they will be dealing with the most highly sensitive information. Will there be special protocols as between the Ombudsman and the entities to maximise the prospect of that sensitive information being kept confidential?

Hon SUE ELLERY: I am advised that will be covered in the guidance and education material that will be prepared. There will be standing operating procedures set out within those.

Hon NICK GOIRAN: Proposed section 19W is another area that we touched on not only in the second reading debate, but also briefly during debate on clause 1. This is the issue of entities having the capacity to engage an independent investigator, but it also enables an employee to investigate the reportable allegation. I previously asked the minister with respect to the protection for reporters and entities, and the minister helpfully drew our attention to proposed section 30AA. Are there any protections in place for the employee undertaking the investigation?

Hon SUE ELLERY: I provided the provisions in my second reading reply. A person cannot do anything to the detriment of another person because they have made a will or may in the future exercise a power or perform a duty imposed by the act. The penalty for that is $8 000 and imprisonment for two years. It is section 30B.

Hon NICK GOIRAN: The minister referred me to the amendment to section 30B found at clause 22, but the $8 000 penalty is in the primary act.

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: I ask the minister to turn to proposed section 19W(4), which states —

> As soon as practicable after making a finding of reportable conduct in relation to an employee under this Act, the head of the relevant entity must ensure that —
>
> (a) appropriate action is taken in relation to the employee in response to the finding; …

What is intended by "appropriate action"?

Hon SUE ELLERY: It will be entirely dependent on the nature of what is found. It could be training, dismissal or referral to the police. It could be all manner of things and will depend entirely on the circumstances. The member may recall from our conversation about measures, for example, that an entity will be required to put measures in place to prevent reportable conduct occurring. We talked about policies and procedures that the commissioner might recommend and provide some assistance on. I anticipate that if policies and procedures are put in place setting out an organisation's expectations and what will happen if they do not comply or are found in breach of them, then the commissioner would expect those provisions, those policies, to be applied. What that will be made up of will depend entirely on the circumstances of the conduct that is found, the policies and procedures of the organisation and whether, in fact, it needs to be referred for criminal investigation.

Hon NICK GOIRAN: What will be the sanction for the head of an entity who fails to take appropriate action?

Hon SUE ELLERY: I am advised that there will not be a penalty. The honourable member will have seen that proposed subsection (7) sets out the penalties for proposed subsection (1) or (6); we are talking about proposed subsection (4). I am advised that it would be much harder for the Parliamentary Commissioner for Administrative Investigations to apply a penalty, given that what is required is appropriate action and that is a matter for judgement. It is possible that the Ombudsman may make further recommendations to the entity, saying, "I suggest you consider X, Y or Z action, given this is what you found." The name and shame, the report to Parliament, remains in place, but it was deemed that it will be too difficult to impose a fine on something that is a matter of judgement and entirely dependent on the particulars at hand.

Hon NICK GOIRAN: We do not want the commissioner to be some kind of industrial inspector providing an ancillary role to the important role that we are already giving him.

I would describe proposed section 19X as the natural justice provision. What will be the required time frame for the head of the relevant entity to inform the employee they are subject to an investigation?

Hon SUE ELLERY: I am advised that the decision not to include a time frame was because we do not want to be prescriptive; for example, the matter might have to be referred to the Western Australia Police Force or the Corruption and Crime Commission and we do not necessarily want to compel the entity to let the subject of the investigation know if it would perhaps compromise what those two bodies were doing. The view was taken not to specify a period of time. That is the advice I have been given.

Hon NICK GOIRAN: Is that the case in the other jurisdictions?

Hon SUE ELLERY: I am advised, yes.

Hon NICK GOIRAN: I turn to proposed section 19ZH(1).

Hon Sue Ellery: Zooming!

Hon NICK GOIRAN: I do not want the minister to get too carried away, but we are making substantial progress.

Within what time frame will the head of the relevant entity be required to notify the parties, including an employee, a child and the child's parent or guardian, that a reportable allegation or conviction has been reported to the commission?

Hon SUE ELLERY: I am advised there is no specified time frame for similar reasons to those I outlined previously, honourable member. It might compromise action that has to be taken under other legislation.

Hon NICK GOIRAN: Further to this proposed section, the minister will recall that in my speech in the second reading debate, I expressed a concern about proposed sections 19ZH(3)(b) and (c), for different reasons. I will not spend too much time on proposed subsection (3)(c), which is the perennial issue about circumstances prescribed by the regulations. In the absence of any information to the contrary, I assume that that is just there in the now-traditional way of the forty-first Parliament. I remain modestly concerned about proposed paragraph (b), which is found on page 38, starting at line 14, and the mandatory nature of it. By way of further explanation, although I did touch on it in the second reading debate, to be clear, there is no question that it is appropriate that the Ombudsman and the head of the relevant entity have regard to the view of the child concerned. As a matter of principle, that is entirely appropriate.

Things become grey when we leave it to the commissioner or the head of the relevant entity to, in their mind, be satisfied that the child in question, first of all, has sufficient maturity; secondly, understands the nature of the matter that is before them; and, thirdly, expresses a view about whether it should or should not be disclosed to, for example, a parent. Again, keep in mind that there is already an appropriate catch-all provision in proposed subsection (3)(a), which says that the commissioner—that is, the Ombudsman—or the head of the relevant entity must not disclose information if the disclosure would put the wellbeing of the child or the safety of another person at risk. That is an important and appropriate provision that will be put in place, and it will be mandatory for both the Ombudsman and the head of the relevant entity.

But that seems to be sufficient; that seems to be enough. But then we introduce this new element in the bill at proposed subsection (3)(b), wherein we ask those people to then weigh up another consideration to do with the child and whether they have sufficient maturity and understanding and consent; in that instance, we then mandate that the commissioner or the head of the relevant entity must not provide the information. It concerns me because I can foresee a scenario wherein those two things would be in conflict. To disclose the information to the parent—obviously, we are talking about a parent who is not the alleged perpetrator—who the Ombudsman or the head of the relevant entity might know or believe is the best person to journey alongside that victim of child sexual abuse and to help that child in those circumstances but to be prohibited from disclosing it because of proposed subsection (3)(b) does trouble me slightly.

We have touched on this, particularly in the second reading debate. What I am interested to know is: Firstly, what is the extent to which the other jurisdictions have the same provision in place? Secondly, what is the extent to which there was express consultation on this point?

Hon SUE ELLERY: I am advised, firstly, no, it does not exist in other jurisdictions. Secondly, it was raised in consultation. The member will recall that I said earlier that those consultations were held in groups of people and groups of agencies, so it was raised there. I am not advised that there were any objections to it; no objections were made. To the extent that there was an express discussion—there was an express discussion, because someone suggested it—no-one objected to it.

Hon NICK GOIRAN: The other jurisdictions do not include it.

Hon Sue Ellery: Correct.

Hon NICK GOIRAN: At whose suggestion will we introduce the provision? Someone thought it was appropriate to include this. I understand the point the minister is making that there was consultation and no-one objected, but what is the —

Hon Sue Ellery: It was made in the consultation, so what we put in was not drafted by the original drafters. That issue was raised in consultation.

Hon NICK GOIRAN: Is the minister in a position to indicate whether it was raised by one stakeholder or multiple stakeholders?

Hon Sue Ellery: I don't think I can.

Hon NICK GOIRAN: Is that because the information is not present and available to the minister?

Hon Sue Ellery: Correct.

Hon NICK GOIRAN: It really is a point of concern that none of the other jurisdictions has this provision. We have inserted it, potentially on the basis of one stakeholder's request. I accept that no-one else has objected, but it does not seem as though it is the preferred course of action. Nevertheless, that is where we are. Can the minister assist the chamber by indicating how the provision is intended to work in the event that the commissioner and the head of a relevant entity have a different level of satisfaction as to whether the child has sufficient maturity to consent to the disclosure?

Hon SUE ELLERY: That is a good question. As with all aspects of the scheme, the Ombudsman will provide oversight of these decisions. Ultimately, I think the Ombudsman would keep a very close eye on these provisions, and if he thought he had to intervene, he would do so. I am advised that if a parent becomes aware, they can make a complaint to the commissioner, and I am just finding out where those provisions are in the bill.

We might, if we can, move on with the honourable member's questions while we look that up; it is taking a moment.

Hon NICK GOIRAN: The information we are currently looking for is a provision under which, as I understand it, if a parent finds out that there has been a reportable conduct matter, they can put in a complaint. Would they put the complaint in to the Ombudsman?

Hon SUE ELLERY: That is as I understand it, but I do not know whether it is set out as specifically as a complaint about that particular provision. My advisers are trying to find it. They tell me it is in there, but they are trying to find it.

Hon NICK GOIRAN: We are still on clause 7, so if the minister is happy, we can return to that when the information is available.

I turn to the head of the relevant entity making a determination on the level of satisfaction they have with the child and whether the child has sufficient maturity. I take the minister's point that the Ombudsman will have this oversight role. We could have a scenario in which the entity is implicated very heavily in the matters that are being complained of and therefore we would have the Ombudsman providing oversight to ensure that the child was not being placed under duress over the consent they might provide on their disclosure. However, another scenario could be that the Ombudsman, who almost certainly will be entirely a stranger to that set of circumstances, might not be the person who is best placed to determine what is in the best interests of the child. The Ombudsman might not know the family. Indeed, the head of the relevant entity might well know better than the Ombudsman in a particular circumstance. That scenario could exist. It is that conflict that troubles me. If the head of the relevant entity said, "I've decided that the child does not have sufficient maturity, and so I am going to disclose this information to the parent", notwithstanding that the Ombudsman holds a different view, would a penalty apply to the head of the relevant entity?

Hon SUE ELLERY: No penalty is set out in the provisions of the bill.

If the honourable member is happy to go to the matter that we were looking at before, it is found at proposed section 19ZB on page 30. Under proposed section 19ZB(3) —

> The Commissioner may decide to conduct an investigation under this section —
>
> …
>
> (d) in response to a complaint made to the Commissioner by any other person —

The provisions beforehand refer to a complaint by an employee, for example —

> in relation to any of the following that affects the person in the person's personal capacity —
>
> (i) the handling or investigation …
>
> (ii) a finding of reportable conduct …
>
> (iii) any action taken or not taken by the head of a relevant entity in response to a finding of reportable conduct in relation to an employee of the relevant entity.

I am advised that is the provision that the commissioner could use to deal with a complaint.

Hon NICK GOIRAN: I accept that that provision exists and is appropriate and that there is a complaints handling mechanism under this scheme by which the commissioner may decide the course of conduct and the like and investigate, but the parents cannot complain if they do not know about it. It troubles me that we are talking about an allegation of sexual abuse of a child. The allegation does not involve the parent and yet the head of an entity and the Ombudsman, who could largely be strangers, will get to decide ahead of the parent, who could be completely unaware of what is occurring with their child. As a matter of principle, I am concerned about that. I cannot take it any further this evening, but I hope that the Ombudsman, as he prepares his educative materials and the like over the next three months, gives strong consideration to this issue, particularly in light of what we have identified tonight, which is that none of the other jurisdictions have gone this way. I respect the fact that consultation occurred and that there were no objections, but I would just ask for extra caution to be applied when considering how we are going to use this particular provision.

I move now to proposed section 19ZH(3)(c). The minister has indicated previously in our discussions that there is no intention for the government at this stage to prescribe any regulations. The minister will be pleased to know that, at this point, I have no further questions on clause 7.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Section 20 amended —

Hon NICK GOIRAN: Clause 9 will amend section 20 of the Parliamentary Commissioner Act 1971. I ask the minister to specifically consider proposed section 20(2AA), which is at the start of page 42. The intention is to insert —

> No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the head of a relevant entity or an investigator conducting an investigation under Division 3B, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of an investigation by the Commissioner under this Act.

My question is: why is this clause necessary?

Hon SUE ELLERY: I am advised it is necessary in respect of the other bits of legislation that govern the functions of the Ombudsman. Essentially, this means that even if another piece of legislation exists that says to someone, "You must not disclose", the Ombudsman's power is greater than that. It takes priority over that. That person is released from their obligation not to disclose under another piece of legislation, given the primacy of the Ombudsman's role in investigations.

Hon NICK GOIRAN: Is this, again, something that was found in the models in the other three jurisdictions?

Hon SUE ELLERY: No, and I think that is a function of the other functions not sitting within the Ombudsman in those jurisdictions. This is consistent with the powers the Ombudsman has in the other areas that he has responsibility for.

Hon NICK GOIRAN: Is there a like provision to proposed subsection 2AA already in the Parliamentary Commissioner Act 1971, in other parts and divisions?

Hon SUE ELLERY: Yes, with respect to the 1971 act, and I will see whether there are others. In the Parliamentary Commissioner Act 1971, section 20(2A) says —

> No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown or any authority to which this Act applies, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of an investigation under this Act.

This provision extends that to all entities to be covered by the scheme, not just government entities. Of course, the parliamentary commissioner's responsibility is to handle complaints about how government has made decisions et cetera, so the way that this is written in the bill before us now extends that power beyond a complaint about government agencies.

Clause put and passed.

Clause 10: Section 21 amended —

Hon NICK GOIRAN: Just for the sake of facilitating the passage of the bill this evening, I indicate that after some questions on clause 10, my next question is at clause 25. My questions at clause 25, which would capture clauses 25, 26 and 27, could probably be dealt with in one group.

With regard to clause 10, there is discussion about the commissioner having the power to enter a premises. Will any notice be given?

Hon SUE ELLERY: I am advised that we do not think so, but we will triple-check. It is the same argument that we used for the previous line of questioning. There is an existing provision that the Ombudsman has the power to enter any government agency for the purpose of carrying out their function dealing with complaints about government agencies. This will extend it beyond those government agencies.

Hon NICK GOIRAN: Section 21 of the act as it is at the moment already contains a power to enter premises, but as the Leader of the House indicated, that is limited to premises used or occupied by any department authority to which the act applies, whereas this bill will expand that, only in circumstances in which there is an investigation under division 3B. Nevertheless, what will be the extent of any oversight mechanism for this power of entry?

Hon SUE ELLERY: There is nothing specific. There is no parliamentary inspector; there is no parliamentary committee.

Hon NICK GOIRAN: If there is a misuse by the Ombudsman's office of this power to enter premises under amended section 21 of the act, where will the complaint lie?

Hon SUE ELLERY: I am advised that as he is an officer of the Parliament, ultimately, Parliament could take action, but there is nothing set out in the Parliamentary Commissioner Act 1971 that provides any oversight and there is not intended to be in this bill either.

Hon NICK GOIRAN: With regard to the power of entry into premises, is there any power for the commissioner to also, having entered the premises, seize any documents or materials?

Hon SUE ELLERY: No.

Clause put and passed.

Clauses 11 to 24 put and passed.

Clause 25: Schedule 2 inserted —

Hon NICK GOIRAN: Clause 25 inserts schedule 2, found at page 56 of the bill. We briefly touched on this earlier and the minister will note that the schedule presently before us, which will be inserted for the first time immediately after schedule 1, will be in place for 12 months and thereafter it will be amended to the extent that we see in the information provided at clause 27. How does the combined schedule—what it will look like in approximately 15 months—compare with what is in place in the other jurisdictions?

Hon SUE ELLERY: I am advised that it is the same.

Clause put and passed.

Clauses 26 and 27 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.

DAVID MUNDY

Statement

HON DAN CADDY (North Metropolitan) [9.39 pm]: It is rare that we rise in this place to recognise sports stars. However, the weekend saw the send-off match to mark the retirement of one of the greatest players to play for a Western Australian AFL club. Although I hope he will still be playing in the last weekend in September, as a 20-plus-year member of the mighty Fremantle Dockers, I feel compelled tonight to rise and recognise the incredible career of David Mundy. His career has spanned almost the entire life of my now adult son, such is his longevity. In his inaugural year, he was an AFL Rising Star nomination and won the Beacon Award for the best young talent. He won the Glendinning–Allan Medal in 2013 in what was arguably the strongest Fremantle line-up in the club's history. He won the Doig Medal—that is the fairest and best—in 2010. He was a member of the 2015 All-Australian team and he was team captain of the Fremantle Dockers in 2016. He retires as the game's record holder for the Fremantle Dockers, currently at 373 games, and in the top 10 for the most games in AFL history. That is a significant achievement. He is eleventh on the all-time list of goal kickers for Fremantle, which is extraordinary when one considers that his early career was as a halfback flanker. He has achieved 159 goals, 4 123 kicks, 3 769 handballs, 1 484 marks and 1 410 tackles. Those are extraordinary figures that tell only part of the story of this most extraordinary of careers.

On a personal note, I want to thank David for the years of entertainment he has provided me as a member of the Fremantle Football Club. It was particularly fitting that his send-off game was a hard-fought win in a derby. The stats show that in his retirement year, he was still one of the best on-ground. David and players of his ilk are the reason many of us go to the football. He will be missed. Thank you, Mr Mundy.

EMYRIA — CANNABIDIOL TREATMENT TRIAL

Statement

HON DR BRIAN WALKER (East Metropolitan) [9.41 pm]: Members, I will be very brief. How can I follow that?

I rise this evening to acknowledge and congratulate scientists at Emyria—a Perth-based drug development company of which I am sure we are all aware—on their announcement this morning that they have received approval from the human research ethics committee to commence phase 3 clinical trials for what would be an over-the-counter pure cannabidiol treatment for the short-term symptoms of psychological distress. I also note the significant support for research into developing MDMA for medical purposes. This approval puts the scientists at Emyria on track to deliver one of the first successful registrations in this field.

I am sure the whole house will join me in wishing managing director Michael Winlo and all his team at Emyria the very best as they continue to move towards large-scale production.

House adjourned at 9.42 pm